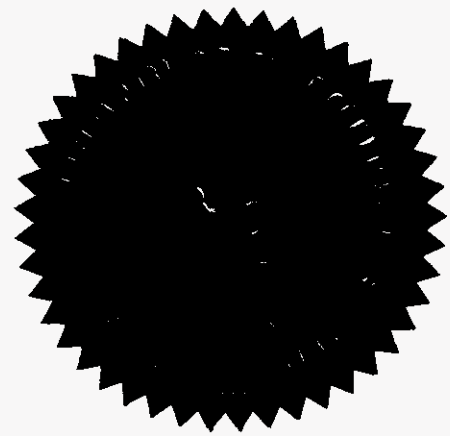


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 950495-WS

Application for a rate increase :
 and increase in service :
 availability charges by SOUTHERN :
 STATES UTILITIES, INC. for :
 Orange-Osceola Utilities, Inc. :
 in Osceola County, and in :
 Bradford, Brevard, Charlotte, :
 Citrus, Clay, Collier, Duval, :
 Highlands, Lake, Lee, Marion, :
 Martin, Nassau, Orange, Osceola, :
 Pasco, Putnam, Seminole, :
 St. Johns, St. Lucie, Volusia :
 and Washington Counties. :



VOLUME 1 - MORNING SESSION

Pages 1 through 115

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER DIANE K. KIESLING
Prehearing Officer

DATE: Friday, April 19, 1996

TIME: Commenced at 10:00 a.m.
Concluded at 6:25 p.m.

PLACE: The Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

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

8166

DOCUMENT NUMBER-DATE

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1 **APPEARANCES:**

2 **KENNETH A. HOFFMAN**, Rutledge, Encenia,
3 Underwood, Purnell and Hoffman, P. O. Box 551,
4 Tallahassee, Florida 32302-0551, Telephone No. (904)
5 681-6788, and **BRIAN P. ARMSTRONG** and **MATTHEW FEIL**,
6 1000 Color Place, Apopka, Florida, 32703, Telephone
7 No. (407) 880-0058, appearing on behalf of **Southern**
8 **States Utilities, Inc.**

9 **ARTHUR JACOBS**, Jacobs and Peters, 401 Center
10 Street, Fernandina Beach, Florida 32304, appearing on
11 behalf of the interest of the consumers and customers
12 located in Naussau County.

13 **MICHAEL B. TWOMEY**, Route 28, Box 1264,
14 Tallahassee, Florida 32310, Telephone No. (904)
15 421-3586, appearing on behalf of **Marco Island Civic**
16 **Association, Inc.**, **Sugarmill Woods Civic Association,**
17 **Inc.**, **Spring Hill Civic Association, Inc.**, concerned
18 **citizens of Lehigh Acres, East County Water Control**
19 **District and Harbor Wood Civic Association.**

20 **MAGGIE O'SULIVAN**, **RALPH JAEGER** and **LILA**
21 **JABER**, Florida Public Service Commission, Division of
22 Legal Services, 2540 Shumard Oak Boulevard,
23 Tallahassee, Florida, 32399-0870, Telephone No. (904)
24 413-6199, appearing on behalf of the **Commission Staff.**

25

1 **APPEARANCES CONTINUED:**

2

3 **JACK SHREVE**, Public Counsel, and **CHARLES J. BECK**,
4 **HAROLD McLEAN**, **STEVE REILLY**, Associate Public Counsels, Office
5 of Public Counsel, 111 West Madison Street, Room 812,
6 Tallahassee, Florida 32399-1400, Telephone No. (904) 488-9330,
7 appearing on behalf of the **Citizens of the State of Florida**.

8 **ALSO PRESENT:**

9 **CHUCK HILL**, **BILL LOWE**, and **JOANN CHASE**, FPSC
10 Division of Water and Wastewater.

11 **FORREST LUDSEN**, Souther States Utilities, Inc.

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P R O C E E D I N G S

(Hearing convened at 10:00 a.m.)

COMMISSIONER KIESLING: If everybody is ready we'll go ahead and get started on this so we're not here until tomorrow morning. I don't have the gavel down here. Call the hearing to order. Will the Staff counsel please read the notice?

MS. O'SULLIVAN: Yes, Commissioner.

Pursuant to notice this time and place has been set for a prehearing conference in Docket No. 950495-WS, application for rate increase by Southern States Utilities, Incorporated.

COMMISSIONER KIESLING: Thank you.

Appearances. Just take them in the order that they are listed, so Mr. Hoffman.

MR. HOFFMAN: Good morning, Commissioner Kiesling. My name is Kenneth A. Hoffman. I'll also enter an appearance for William B. Willingham, both of us with the firm of Rutledge, Encenia, Underwood, Purnell and Hoffman, P. O. Box 551, Tallahassee, Florida 32302-0551. I will also enter appearances for Brian P. Armstrong and Matthew Feil. Their address is 1000 Color Place, Apopka, Florida 32703, all appearing this morning on behalf of Southern States Utilities, Inc.

1 COMMISSIONER KIESLING: All right.

2 MR. BECK: Commissioner, Jack Shreve,
3 Charles Beck, Harold McLean, Steve Reilly, Office of
4 the Public Counsel, 111 West Madison Street, Room 812
5 Tallahassee, Florida 32399-1400, appearing on behalf
6 of the Florida citizens.

7 COMMISSIONER KIESLING: Mr. Jacobs.

8 MR. JACOBS: My name is Arthur Jacobs. I'm
9 with Jacobs and Peters, a law firm in Fernandina
10 Beach, Florida, 401 Center Street, 32304, here on
11 behalf of the interest of the consumers and customers
12 located in Naussau County.

13 COMMISSIONER KIESLING: Let me just be
14 clear. You represent Amelia Island Community
15 Association and some other community associations,
16 right?

17 MR. JACOBS: That's correct. In discussing
18 this with Ms. O'Sullivan, I think we're going to
19 change it to Nassau County interest in the final
20 order, but right now it's listed as Amelia Island
21 Community Association, et al, and that's the same
22 group.

23 COMMISSIONER KIESLING: Thank you.

24 MR. TWOMEY: Madam Commissioner, I'm Mike
25 Twomey, P. O. Box 5256, Tallahassee, Florida

1 32314-5256. I'm appearing on behalf of the Marco
2 Island Civic Association, Inc., Sugarmill Woods Civic
3 Association, Inc., Springhill Civic Association, Inc,
4 Concerned Citizens of Lehigh Acres, East County Water
5 Control District and Harbor Woods Civic Association.

6 COMMISSIONER KIESLING: Okay. Staff.

7 MS. O'SULLIVAN: Maggie O'Sullivan and Lila
8 Jaber on behalf of the Commission Staff.

9 COMMISSIONER KIESLING: Is anyone here for
10 Citrus County?

11 MR. TWOMEY: No, ma'am. But I spoke with
12 Larry Hague this morning who is the county attorney,
13 and he asked me to tell you that he is faxing you now,
14 if he hasn't already and sending by regular mail,
15 their prehearing positions and statements which is
16 essentially that they would adopt the rate design and
17 rate structure positions taken by Sugarmill Woods and
18 all of the positions taken by Public Counsel.

19 COMMISSIONER KIESLING: So it is your
20 understanding they are not introducing anything that
21 is their --

22 MR. TWOMEY: That's correct. That's going
23 to be it.

24 COMMISSIONER KIESLING: Because, obviously,
25 if when we do get it if there is something new in it

1 that isn't covered by either of those two sets of
2 issues, I'm going to have a problem.

3 MR. TWOMEY: Sure.

4 COMMISSIONER KIESLING: Okay.

5 MR. TWOMEY: It's pretty clear. It just
6 says that they take Sugarmill on rate design.
7 Everything else they go with the Public Counsel.

8 COMMISSIONER KIESLING: Okay.

9 MR. FEIL: Commissioner, if I may for
10 clarification, do I take it to mean that you are
11 excusing Citrus County from appearing today, just so
12 the record is clear.

13 COMMISSIONER KIESLING: That's not what I
14 said.

15 MR. FEIL: All right.

16 COMMISSIONER KIESLING: I don't have a
17 request to excuse them. I don't have a reason to
18 excuse them. I'm just simply reflecting that if they
19 take any position other than one already taken by a
20 party that they are simply adopting, that they are not
21 going to be able to put on anything in support of
22 that.

23 MR. FEIL: Thank you.

24 COMMISSIONER KIESLING: All right. I do
25 need to make an announcement.

1 Prentice Pruitt who was formerly the
2 Commission advisor is coming back. I think retirement
3 is not all to his liking, so he will be sitting in as
4 the advisor to the Commission during the proceedings
5 in this case. So I just am letting you all know that
6 we will have Mr. Pruitt back with us again for that
7 purpose.

8 Staff, are there any preliminary matters?

9 MS. O'SULLIVAN: Commissioner, there are
10 several pending motions which you may want to take up
11 the conclusion of the prehearing. They're listed at
12 the end of the prehearing at this moment.

13 COMMISSIONER KIESLING: Okay. I signed a
14 number of orders this morning, since I just flew in on
15 a plane at 9:15, and I guess we'll address which
16 motions are still outstanding then when we get to the
17 end, because I don't know how long it takes to
18 actually get them out but I did sign them before I
19 came down.

20 MS. O'SULLIVAN: I'll check during a break.

21 COMMISSIONER KIESLING: Okay. Anything else
22 preliminary?

23 MS. O'SULLIVAN: Not that Staff is aware of.

24 COMMISSIONER KIESLING: Anyone else. Let's
25 start with SSU.

1 MR. FEIL: Nothing preliminary that I know
2 of, ma'am.

3 COMMISSIONER KIESLING: All right.
4 Mr. Shreve.

5 MR. SHREVE: Commissioner, yes. We've just
6 been handed a document from Southern States, and I
7 think we'll get into the routine rate case prehearing
8 at some point, but this raises some new issues that I
9 think we need to talk about and see where we're going
10 with it as well as another one that is on the table
11 that this certainly emphasizes, I think, should be
12 talked about and I'd like to go ahead and get those
13 out of the way at this point before some of us have to
14 leave.

15 This alleges an ex parte communication from
16 sometime back. I'll get to that in just a minute.
17 But there is a public allegation of an ex parte
18 communication made by Mr. Armstrong and Mr. Hoffman a
19 couple of weeks ago, of an ex parte communication --
20 at the time I believe they said something to the
21 effect that it was a more grievous ex parte
22 communication than the one that we have been
23 discussing concerning the Lieutenant Governor's
24 letter. That, at this point, is a public allegation
25 and still stands, and I think has to be faced because,

1 clearly, it's something that just has to be cleared up
2 at this point. I don't want that hanging out there
3 for any of the Commissioners to be concerned about.
4 If they are alleging an ex parte communication on my
5 part, it's with one or more of the Commissioners. It
6 has to be clarified and put to rest so that somebody
7 doesn't come in at sometime in the future saying there
8 was an ex parte communication with some of you that
9 had some affect on this case. It's a very real issue
10 and I think we need to put it to bed right now. You
11 recall the allegation a couple of weeks ago.

12 COMMISSIONER KIESLING: Yeah. Let me just
13 say this. I mean, I've heard everybody in this case
14 say a whole lot of outrageous things through the
15 arguing of motions and posturing, and to my knowledge
16 there is no outstanding allegation that relates to
17 public Staff -- Public Counsel that is at issue in
18 this proceeding. And so --

19 MR. SHREVE: But it becomes an issue if it
20 involves the Commissioners that are sitting.

21 COMMISSIONER KIESLING: I agree. But, you
22 know, there's been no issue presented to me.

23 MR. SHREVE: Okay. I'm not talking about
24 the issue on this right now, but there very clearly
25 was an allegation of an ex parte communication which

1 cannot involve one person. And it's in this case.
2 And if they want to raise it and they claim there is
3 an ex parte communication, then I think we have to
4 face it now or put it to rest and say there was none.
5 Otherwise, some action is going to have to be taken as
6 far as sitting Commissioners.

7 COMMISSIONER KIESLING: I'm going to ask
8 them if there is that allegation, but I do take issue
9 with one thing. If there is not -- if they say there
10 is no outstanding issue in this proceeding, then I'm
11 not going to go behind that and have them -- and
12 require that they say -- that they retract their
13 allegation. I mean, if I was going to do that,
14 Mr. Shreve, I'd be having everybody at this table
15 retracting things that have gone on.

16 MR. SHREVE: Well, maybe we're missing each
17 other, Commissioner. But, to me, if there's an
18 allegation that affects a specific Commissioner where
19 the law requires that Commissioner to file that ex
20 parte communication within 15 days or be subject to
21 penalties, I think that is important in this
22 proceeding and not necessarily an issue as to the rate
23 case.

24 COMMISSIONER KIESLING: Well, let me find
25 out. Is there an outstanding issue or allegation that

1 you intend to pursue that relates to an ex parte
2 communication with any Commissioner sitting on this
3 case?

4 MR. ARMSTRONG: No, Commissioner, there is
5 not.

6 MR. SHREVE: Commissioner, perhaps -- you
7 asked if they intended to pursue.

8 There was an allegation that I had an ex
9 parte communication, and Mr. Hoffman, after the
10 hearing, and I heard him say this, said it was with
11 you.

12 COMMISSIONER KIESLING: With me?

13 MR. SHREVE: Now I want it cleared up
14 because I don't want that hanging out there while you
15 are sitting on this panel.

16 COMMISSIONER KIESLING: Well, I don't
17 either. I mean, I don't know that I've ever spoken to
18 you, Mr. Shreve.

19 MR. SHREVE: You recall the allegation.
20 There was very definitely an allegation in public.

21 COMMISSIONER KIESLING: Yeah, but I had no
22 idea it related to me.

23 MR. SHREVE: All right. But that was what
24 was said. And if there -- at least with one or more
25 of the Commissioners as far as the allegation was

1 concerned, and I want it he cleared up.

2 COMMISSIONER KIESLING: Now that I know that
3 it's supposedly me I want it cleared up, too.

4 MR. SHREVE: I would think so, and I think
5 this is the problem: I think any one of the
6 Commissioners would have wanted it cleared up if there
7 wasn't an ex parte communication, but if the
8 allegation is there accusing someone then we need to
9 know about it.

10 COMMISSIONER KIESLING: Is there any problem
11 that you all think exists regarding an ex parte
12 communication that involves me or any other
13 Commissioner?

14 MR. ARMSTRONG: No, Commissioner. And I can
15 clear that up for you.

16 COMMISSIONER KIESLING: I'd like you to.

17 MR. ARMSTRONG: The statement made was at
18 the customer service hearings in Sunny Hills, which
19 was one of the first customer service hearings in this
20 case. There was discussion between Mr. Shreve and
21 Commissioner Deason and yourself. He was discussing
22 the problems that he had with the Company's notice.
23 Mr. Hoffman had overheard that discussion and
24 approached at that point and got involved in that
25 discussion. When you read the customer service

1 hearing, you reflected that in the customer service
2 hearing that that happened. So we don't have an
3 issue; you reflected it in the customer service
4 hearing. The point we made at that point was just
5 those communications, just because Mr. Hoffman did
6 approach after it had gone on, that's the kind of
7 thing we just don't want to see happening. We didn't
8 make any allegation other than to say you cleared up
9 the matter that day.

10 COMMISSIONER KIESLING: Also I think that
11 the memories of everyone involved would reflect that
12 throughout that discussion I kept saying this is
13 something we need to resolve after we open the
14 hearing. You know, I can't keep people from coming up
15 and saying things. You know, all I can do is insist
16 that they bring it up during the hearing.

17 MR. ARMSTRONG: That's correct,
18 Commissioner. We have no allegation outstanding.

19 COMMISSIONER KIESLING: Okay. Thank you,
20 Mr. Shreve, for bringing that up. I am just
21 ceaselessly amazed.

22 MR. SHREVE: I am too.

23 COMMISSIONER KIESLING: But okay. Does that
24 resolve your preliminary issue at least as to that?

25 MR. SHREVE: As to that, I guess it does. I

1 suppose there is no allegation of an ex parte
2 communication at this point. And I suppose
3 Commissioner Deason, since he mentioned it, wouldn't
4 have to worry about that either.

5 COMMISSIONER KIESLING: I think they've said
6 what they are going to say. I'm not going to try to
7 put words in their mouth. I don't feel like there's
8 any outstanding allegation that involves me, and I
9 don't think they have any intent of pursuing one. And
10 they acknowledge that --

11 MR. SHREVE: Well, I'm not that worried
12 about them pursuing it, but that there was not an ex
13 parte allegation.

14 COMMISSIONER KIESLING: I think that's what
15 they said, Mr. Shreve, that it was placed on the
16 record after the hearing opened, and it's, therefore,
17 no longer an ex parte communication.

18 MR. SHREVE: Okay. That was not what was
19 said in the meeting the other day, but that is okay as
20 long as there is no allegation of an ex parte
21 communication.

22 The other one is this --

23 COMMISSIONER KIESLING: Yeah, I'll take this
24 up in a minute. I mean, I just got it too, so --

25 MR. SHREVE: Good. Thank you.

1 COMMISSIONER KIESLING: Let me just work my
2 way down the line. Mr. Jacobs, are there any
3 preliminary matters that you feel we need to discuss?

4 MR. JACOBS: No, ma'am, there are not.

5 COMMISSIONER KIESLING: Okay. And
6 Mr. Twomey.

7 MR. TWOMEY: No. I understand you're going
8 to take the pending motions at the end.

9 COMMISSIONER KIESLING: That's usually where
10 we take them. Since I have just received this new
11 list of, I guess, one, two three issues -- four
12 issues -- Staff, do you have any recommendation on
13 when would be the appropriate time to take these up?

14 MS. O'SULLIVAN: We have several new issues.
15 I think we have some proposed by OPC in their latest
16 filing, as well. We could take them up when we come
17 to the issues portion of the Prehearing Order.

18 COMMISSIONER KIESLING: That would be my
19 preference only because, you know, it's going to take
20 quite a bit of time to get through what we already
21 have, and -- I mean, I'm not feeling to favorable
22 about bringing up any new issues at this point, and I
23 haven't even had a chance to read what SSU has filed.

24 MR. SHREVE: Well, some of us will not be
25 able to be here for the full meeting. These are new

1 issues. At this point, they are not issues in the
2 case.

3 COMMISSIONER KIESLING: That's right.

4 MR. SHREVE: If they are going to become, I
5 think we need to discuss them and get them out of the
6 way because there is a lot that's going to have to be
7 done.

8 COMMISSIONER KIESLING: Are you telling me
9 that you're leaving?

10 MR. SHREVE: I may have take leave, yes.
11 But I have people here, but I want to be here for this
12 type thing. And it's a new issue. I see no reason --
13 I think we ought to go ahead and take it up, hit it
14 head-on and see what's going to happen.

15 COMMISSIONER KIESLING: Well, I prefer to
16 take them up when new issues come up. I think I've
17 indicated my reason why. We've got a lot to get
18 through, and new issues come up after all of the other
19 issues.

20 MR. SHREVE: Well, I don't think taking them
21 out of order or taking something like this particular
22 issue up, which is a brand-new one, would add any time
23 to it whether we take it up now or later. This is an
24 accusation that I think we're going to have to get
25 some rulings on.

1 COMMISSIONER KIESLING: Well, maybe I need
2 to take time to read it because, you know, that's what
3 I'm trying to avoid is having to read a whole bunch of
4 stuff right now before -- while we're all sitting here
5 as opposed to being able to read it during a break so
6 that I have some idea of what's going on.

7 MS. JABER: Commissioner Kiesling, may I
8 offer a suggestion?

9 COMMISSIONER KIESLING: Yes.

10 MS. JABER: Depending on how you rule on
11 these issues it may affect the other part of the
12 order, so you may want to take a break and read these
13 issues, because it does affect the testimony and all
14 the other parts of the order.

15 COMMISSIONER KIESLING: Okay. Then I'll sit
16 here -- all I need to read is the first page and the
17 top of the next page, all the rest of them are
18 positions on existing issues; is that correct?

19 MR. FEIL: Yes, ma'am. (Long pause)

20 COMMISSIONER KIESLING: All right. I've
21 read them. I guess I need to look to SSU. We'll go
22 through them issue-by-issue for you to explain to me
23 why at this point this issue should be brought up and
24 included in any way in this docket.

25 MR. ARMSTRONG: On issue A, Commissioner.

1 COMMISSIONER KIESLING: Yes.

2 MR. ARMSTRONG: Southern States became
3 aware, particularly that the counsel for Southern
4 States, became aware first of the possibility of an ex
5 parte communication. It was the date of the agenda
6 conference in which the Commission determined that
7 Chuck Hill could be deposed in this matter. And
8 Southern States -- because of the seriousness of the
9 allegations made there about ex parte communications
10 that might have gone on between the Company and
11 Mr. Hill, we made an investigation at that point in
12 time. At that time sitting in the audience -- Ken
13 Gatlin, former counsel for Southern States, was in the
14 audience, and we engaged him in a conversation and
15 first we made aware -- or counsel was first made aware
16 that there was an ex parte communication that had
17 occurred in this docket, but we hadn't had --

18 COMMISSIONER KIESLING: In this docket?

19 MR. ARMSTRONG: No, no. In 900329 with a
20 former Commissioner.

21 COMMISSIONER KIESLING: Six years ago.

22 MR. ARMSTRONG: Who no longer sits. At that
23 point in time we still hadn't had any independent
24 verification of facts. We knew there was nothing that
25 could be gained from a deposition of Mr. Hill for

1 Southern States because there have been no ex parte
2 communications -- conversations with Mr. Hill.
3 Subsequent to that there was further communications
4 with Mr. Gatlin and his office. And then as of last
5 week, for the first time, we understood that
6 Mr. Gatlin had been approached by Mr. Shreve to
7 discuss what his involvement was and what he would say
8 if he was asked to testify. Mr. Gatlin then
9 reaffirmed the facts and allegations that he had made
10 to us.

11 Now we were faced with a situation where a
12 subpoena duces tecum had been served on Mr. Hill for
13 deposition by, I believe it was Mike Twomey,
14 representing his clients for Monday. With this
15 prehearing going on today and knowing that if there's
16 any -- the stated purpose of that was to find ex parte
17 communications, to find out about them. Knowing that,
18 knowing that it's our belief that Mr. Hill has
19 information regarding the only ex parte communication
20 we know about with Southern States, we felt we had to
21 raise the issue here, because if it is a true
22 allegation, then Southern States doesn't see any
23 reason -- any justifiable reason why we should be
24 continued to be denied rate case expense which we had
25 to write off. Rate case expense which we incurred and

1 then was written off because the case was actually
2 dismissed. And there's quite a bit of information
3 that under oath Mr. Gatlin and Mr. Hill and Mr. Ludsen
4 might be able to shed on this question.

5 COMMISSIONER KIESLING: Okay.

6 MR. ARMSTRONG: We felt it would be forever
7 waived if we hadn't raised it here in this prehearing
8 conference.

9 COMMISSIONER KIESLING: All right.
10 Mr. Shreve, since it apparently involves you.

11 MR. SHREVE: Well, I think -- I do not know
12 much about this, but I do know that Mr. Armstrong and
13 Mr. Hoffman approached the Staff -- I don't know why
14 he didn't tell you about this -- a couple of weeks
15 ago. And you might want to get Rob Vandiver down
16 here. Lila Jaber is here. I think she was one of the
17 ones that Mr. Armstrong approached. And it was my
18 understanding that what they said at that time was --
19 and this is what Rob told me, so you may want to get
20 him in here -- that they said Karla Teasley had some
21 information that could get Chuck Hill fired.

22 COMMISSIONER KIESLING: Wait a minute. Wait
23 a minute. Just let me kind of get us focused.

24 I don't want to go into the allegations. I
25 just want to know whether it's appropriate for a new

1 issue to be introduced at this time and -- I mean, I
2 don't care who said what to who. That's for a trier
3 of fact.

4 MR. SHREVE: That's what Mr. Armstrong just
5 went through.

6 COMMISSIONER KIESLING: No. My
7 understanding of what Mr. Armstrong just went through
8 was explaining why they bring it up now as opposed to
9 sometime prior to now. And that's all I'm looking at.

10 MR. SHREVE: I don't think there was any ex
11 parte communication. I guess they're saying that
12 Commissioner Gunter was the person that was involved.
13 He's dead, of course.

14 COMMISSIONER KIESLING: Where does it say --

15 MR. SHREVE: I don't know. I don't know
16 what we're talking about here --

17 COMMISSIONER KIESLING: I don't either.

18 MR. SHREVE: -- arguing about the thing.

19 COMMISSIONER KIESLING: See, that's why I
20 don't want to get into the allegations. I just want
21 to get into whether it's appropriate to raise this
22 issue at this time and then we'll deal with the
23 allegations. Because if it's not appropriate to even
24 bring this up at this time in this case, then I don't
25 have to get into the allegations.

1 MR. SHREVE: I don't even know that I know
2 enough about what they're talking about. It's a
3 little bit silly to me. I can't understand, one, I
4 assume they have known about this for six years. I
5 didn't understand Mr. Armstrong's explanation of what
6 type of investigation they did when and then -- I
7 didn't follow all of that as to what they were -- came
8 in now with this because Chuck Hill's deposition was
9 being taken by Mr. Twomey on Monday.

10 COMMISSIONER KIESLING: Okay.

11 MR. SHREVE: I very much resent the whole
12 thing but that's not a part of this and I'll take -- I
13 think the whole thing needs to be investigated more
14 than just this. I don't know what to answer to you at
15 this point.

16 MR. BECK: Commissioner, may I add that it's
17 my understanding that Mr. Gatlin was counsel for
18 Southern States at that time, that they would have
19 known this for six years if there is such an
20 allegation. They've certainly not shown you good
21 cause for raising it at this point. This should have
22 been part of their case in chief at the time they
23 brought the case. Absent any showing of good cause
24 why they were raising this today for the first time --
25 and, again, I think counsel for Southern States was

1 deliberately indirect in when they first found out
2 about this. You know, it does seem odd that their own
3 counsel knew this six years ago, why they just found
4 out about it now. Absent a showing of good cause, you
5 shouldn't allow the issue at this point.

6 MR. SHREVE: And I reply now to what Mr.
7 Armstrong said. I did talk to Ken Gatlin. I talked
8 to him at the Barefoot Bay hearing because at that
9 point your Staff had been told, the two of them, as I
10 understand it -- it didn't mention me, it said, Chuck
11 Hill -- that Karla Teasley has something on Chuck
12 Hill -- all right, or knows something that could get
13 Chuck Hill fired, or something like that. I think
14 your Staff looked into it and said there wasn't
15 anything to it as far as that goes. I asked Ken
16 Gatlin what that was about and he told me -- and I'll
17 let your Staff tell you the story on the whole thing.
18 I did talk to Ken Gatlin. There's certainly nothing
19 wrong with that. And he told me about the situation;
20 that he had been told something.

21 Now, beyond that, the whole thing is
22 absolutely ridiculous. I don't know enough about it.
23 I will know enough about it. Maybe your Staff has
24 something to add.

25 COMMISSIONER KIESLING: Mr. Twomey, do you

1 have anything to add on this?

2 MR. TWOMEY: Well, not going to the merits
3 of it. But procedurally I adopt Mr. Beck's comments.

4 Mr. Gatlin was counsel for this Company
5 until whatever point they replaced counsel and had an
6 obligation to tell them at that point. Beside which,
7 I'm not aware of any statute or precedent of this
8 Commission that allows -- would allow the Commission,
9 in the first place, to go back and take \$1.1 million
10 of rate case expense from three or four cases ago and
11 lump it in and ask that my clients, amongst all the
12 rest of the clients, customers of this utility, be
13 forced to pay even more than they are asked presently
14 by the petition. This isn't a part of the initial
15 MFRs and rate application of the Company. This is an
16 amendment to the application that they have. It is an
17 increase in the application, and in that regard I
18 think it's improper. Irrespective of whether you or
19 anybody else thinks there's an investigation warranted
20 under these circumstances -- I'm not suggesting you,
21 I'm just saying, Mr. Shreve, whether there's
22 investigation required of these allegation and so
23 forth, I don't think the issue is proper in this case.
24 And if it's entertained, I don't think that the dollar
25 amount should be entertained as being appropriate for

1 recovery from my clients or anybody else.

2 COMMISSIONER KIESLING: All right. Staff.
3 Who over there is going to add something to this?

4 MS. O'SULLIVAN: Very brief, I hope.

5 On a first reading of the issues our two
6 concerns would be relevance and timing. This is
7 recovery of a previous rate case expense. It was not
8 raised in the MFRs. They also did not file another
9 rate case back in 1990 when their first case was
10 denied.

11 I'm not sure if you want to discuss Issues B
12 through D at the same time.

13 COMMISSIONER KIESLING: No, I want to do
14 them one at a time just because they are kind of all
15 over the place in terms of authority.

16 MS. O'SULLIVAN: Right. I think we would
17 have serious concerns with the relevance and the
18 timing of these issues. Also concerns about the
19 revenues and recovery in this docket being affected
20 significantly by this claim. They have not included
21 this in their MFRs.

22 COMMISSIONER KIESLING: Okay. I need to
23 look at the statute just to see -- it seems to me that
24 if I recall what is in Chapter 120 on ex parte
25 communications it makes it a criminal offense to

1 engage in an ex parte communication that you don't
2 place on the record. And to that extent, we don't do
3 criminal, also, so I'm not sure this is their remedy.
4 But, you know, I can look at that -- yes, Mr. Jacobs.
5 I didn't know you wanted to add anything, sir. I
6 didn't mean to skip you.

7 MR. JACOBS: That's all right. Thank you
8 very much.

9 Again, I'm not as impassioned as some of
10 these people seem to be on this case. I'm just here
11 to get on with this case. This has been, in my
12 experience, a case is of SCUD missile attacks coming
13 from all directions. This is just a northeast
14 Florida, small-town lawyer expression. This is
15 laches. I mean, laches have to attach sometime.
16 These kinds of things are certainly improper in this
17 case. There is no relevance here. I agree with
18 Ms. O'Sullivan and Mr. Beck. I'm just amazed that
19 they would come forward at this time with this kind of
20 an allegation that has no relevance at all. We're
21 talking about six years ago and, certainly, this could
22 set this case off for another year. I mean, we'd have
23 to have a continuance to go into this matter. You'd
24 have to have all kinds of investigations. I would say
25 let's get on with it. I think this is totally

1 irrelevant.

2 COMMISSIONER KIESLING: Well, I tend to
3 agree with you, but I just want to look at the
4 statute. (Long pause)

5 I actually think it's in Chapter 112.

6 MS. O'SULLIVAN: 120.6, Subsection 3, talks
7 about the penalties.

8 COMMISSIONER KIESLING: 120.66.

9 MS. O'SULLIVAN: That's a civil penalty,
10 though.

11 COMMISSIONER KIESLING: Well, there's that
12 one, but I thought that there was something back in
13 Chapter 112 on public officers/employees about what
14 they could do. And it actually seems like this
15 involves an allegation that also includes that. But
16 be that as it may.

17 MR. FEIL: Commissioner, if I may, I think
18 what you're referring to is in 350.042(6)

19 COMMISSIONER KIESLING: Just tell me what it
20 says.

21 MR. FEIL: "Any Commissioner who knowingly
22 fails to place on the record any such communication in
23 violation of this section within 15 days of the date
24 of such communication is subject to removal and may be
25 assessed a civil penalty not to exceed \$5,000."

1 You may have been referring to that or to
2 another reference of the person who makes the
3 communication, but that is the penalty for the
4 Commissioner.

5 COMMISSIONER KIESLING: Right. But since
6 the Commissioner apparently is deceased, I'm not as
7 concerned about that as I am about whether there was
8 an ex parte communication also, apparently, between
9 Mr. Hill and SSU's attorney. Wasn't that part of what
10 I just heard? Or did I misunderstand that?

11 MR. SHREVE: I don't disagree with anything
12 you're saying. I don't really disagree with what
13 anyone else has said here except the Company.

14 It does concern me -- I understand what
15 you're saying about Commissioner Gunter being
16 deceased, so it doesn't affect him and there is no
17 criminal penalty. It does concern me that that
18 allegation is made. But that has nothing to do with
19 this.

20 If this is brought in as an issue I want
21 ample time to do my own discovery and show why this
22 type thing might be said by anyone. If they want to
23 take a deposition that is not an issue in this case, I
24 also want discovery or some type of relief if they
25 come out -- I don't even know what they are going to

1 get. From what I have heard so far all they would try
2 to do is make some bare insinuations out of it. But
3 if they are going to take a deposition that's not an
4 issue in here and try to come out with something like
5 that that they can just throw out as sleaze, then I
6 want an opportunity to do something about that. So if
7 this is going any further, I want an opportunity to
8 take a look at the whole thing, do my discovery and
9 have ample time to pull in who I want to and show why
10 this might have transpired or what might have
11 transpired or what went on, because this is about as
12 sleazy as I've ever seen.

13 COMMISSIONER KIESLING: Well --

14 MR. ARMSTRONG: Commissioner, we do have two
15 points just in rebuttal.

16 COMMISSIONER KIESLING: Make them quick.

17 MR. ARMSTRONG: Okay. One is that Southern
18 States is requesting on the issue that the costs be
19 recovered as a setoff against any potential reductions
20 in the case, so we're not asking for an incremental
21 above the MFR revenue requirement. And, second, I'd
22 just like for it to be clear for the record that
23 Southern States, nor any of our representatives, have
24 ever represented that Karla Teasley has information
25 that could get Chuck Hill fired. That is a totally

1 inaccurate statement.

2 COMMISSIONER KIESLING: Well, you know,
3 right now I don't even really care. We are a week,
4 essentially, from hearing. And without regard to what
5 the allegations may be or what you think you can show
6 at some other time, I'm not going to permit this to be
7 an issue in this case. I think there are other forums
8 if there been an alleged improper -- (pause) -- I also
9 just got a note from someone who is apparently
10 listening to this, reminding me that the law on ex
11 parte communications with Commissioners wasn't even in
12 effect at the time that this alleged ex parte
13 communication occurred. So all that does is bolster
14 what I was already going to do which is to deny this
15 issue. If anybody wants to go further with it, find
16 another forum, because this isn't it and it's not
17 going to happen in this rate case. And if you -- you
18 know, find another forum. It's not going to be here.

19 MR. HOFFMAN: Commissioner Kiesling, if I
20 may just real quickly for the record. I don't believe
21 that that's correct. I believe that the ex parte
22 statute became effective in July of 1990, which from
23 what we know about the allegations would place that
24 law in effect prior to the events which would support
25 the issue.

1 COMMISSIONER KIESLING: As I indicated, that
2 wasn't the reason for my ruling.

3 MR. HOFFMAN: Sure. Okay.

4 COMMISSIONER KIESLING: Particularly since,
5 you know, apparently the information was available to
6 Southern States through its attorney at the time.

7 MR. HOFFMAN: I understand.

8 COMMISSIONER KIESLING: And again,
9 Mr. Jacobs, there's not been any clear-cut case that
10 says laches can apply in administrative proceedings,
11 but I also agree with that that -- I mean, at this
12 point we may never know what happened, because people
13 are gone, people's memories fade and one of the
14 apparently integrally involved persons is dead. So
15 it's not -- all I'm saying it's not going to happen in
16 this case. If you want to find another place to bring
17 it up, that's our prerogative.

18 MR. HOFFMAN: Yes, ma'am. Secondly, if I
19 could just very briefly state just for the record that
20 it is our position that if the allegations were proven
21 to be true, that the appropriate remedy would lie with
22 the Commission. And the reason for that is this would
23 fall within the context of the doctrine of an
24 exception under the doctrine of administrative
25 finality which -- I mean, you could have, for example,

1 an order of this Commission going back to 1982, or '86
2 or '88 or whatever it may be, but if it is
3 subsequently found that that order was entered based
4 on some mistake, or wrongdoing or inadvertence or
5 whatever it may have been, I think the law would
6 support the Commission coming back to reconsider that
7 decision.

8 COMMISSIONER KIESLING: You can raise that
9 in a pleading. All I'm ruling is this is not going to
10 happen in this case in this hearing right now.

11 MR. HOFFMAN: Right.

12 COMMISSIONER KIESLING: I'm not telling you
13 where your remedies may lie.

14 Issue B. Let me ask you on Issue B, C and
15 D. If I understand these correctly you are actually
16 trying to recover fees and costs from another party in
17 this proceeding, not through rates. Is that correct?

18 MR. HOFFMAN: Yes.

19 COMMISSIONER KIESLING: And what statute are
20 you relying on? Is it 120.57(1)(b)(5).

21 MR. HOFFMAN: Yes.

22 COMMISSIONER KIESLING: And if I recall that
23 section and, again, it's been a few years, it requires
24 a motion or a petition that doesn't necessarily get
25 dealt with in the course of the proceeding. And I'm

1 -- again, let me look it up. (Pause)

2 Let me just ask you a couple of quick
3 questions. I've reread (1)(b)(5), and it does say it
4 needs to be raised by motion.

5 At the time that -- did you include in your
6 response to the motion to dismiss any request for
7 attorney's fees?

8 MR. HOFFMAN: No. We have not --

9 COMMISSIONER KIESLING: And you are now
10 wanting to -- have you filed a motion seeking
11 attorney's fees and costs in connection with that?

12 MR. HOFFMAN: Not as of yet.

13 COMMISSIONER KIESLING: Okay. And since we
14 have not ruled on the motion to dismiss, when would
15 be, in your mind, the appropriate time for that issue
16 to be taken up?

17 MR. HOFFMAN: Commissioner Kiesling, since I
18 understand what the Commission has done is it's
19 essentially said, "We will rule on the intervenors
20 March 12 motion to dismiss at the end of this case
21 along with all the other issues." Then it would seem
22 appropriate to me that this would be one other issue
23 that would be ruled on at the end of the case as part
24 of the final agenda.

25 COMMISSIONER KIESLING: All right. At least

1 I understand your allegations and the basis for them.
2 This is related to you, Mr. Twomey, so let me hear
3 what you have to say about this.

4 MR. TWOMEY: Yes, ma'am. I think you've
5 essentially outlined the answer, I believe. And that
6 is that the Commission has deferred ruling on the
7 intervenors' motion to dismiss and you have -- and
8 properly so, I think, until the end of the evidence is
9 heard. The motion to dismiss is not an issue in this
10 case. It seems to me likewise what they should
11 properly, as you pointed out, style as a motion for
12 attorney's fees should be made in the form of a motion
13 and it should not be -- it's not an issue in this
14 case, and should be ruled upon at the conclusion of
15 evidence. Obviously from my perspective, if you got
16 to the end of the case and granted the motion to
17 dismiss, their fee issue might be considered moot.
18 But don't make it an issue. Have them file a motion.

19 COMMISSIONER KIESLING: That's more my
20 concern. Is the statute requires that it be done by
21 motion. And I'm not willing to include an issue at
22 this point when I don't have a motion to back it up.
23 Although, if you would like to file a motion, I
24 believe that would keep the issue alive so that at the
25 end of the case, if you -- depending upon the ruling

1 on that motion to dismiss, if you wish to at that time
2 then request attorney's fees, I think it's right to do
3 that. But I'm not going to make it an issue that we
4 have to deal with and everyone has to take a position
5 on.

6 MR. ARMSTRONG: Would that apply to Issues
7 B, C and D, then? We can deal with all those motions.
8 They all request fees and costs.

9 COMMISSIONER KIESLING: Yes. I just -- you
10 know, at least the practice at DOAH was that in these
11 kinds of cases you file the motion up front so
12 everybody knows that you're going to make an issue out
13 of it but then depending upon the ruling on the
14 particular issue, you either can renew your motion and
15 ask then that it be dealt with, or you can just let it
16 die. And since there is no motion I'm going to let
17 you file one if you choose to, and we'll deal with it
18 after the conclusion of the case.

19 MR. ARMSTRONG: Commissioner, would it be
20 permissible to make the oral motion now so that we
21 could just have it preserved in the record or would
22 you prefer it in writing?

23 COMMISSIONER KIESLING: It's going to have
24 to be a written motion.

25 MR. ARMSTRONG: Okay. That's fine. Thank

1 you.

2 COMMISSIONER KIESLING: Mainly because
3 what's contained here is simply too nebulous to be
4 able to even identify what the legal standards you're
5 asserting are or whether it's something that
6 frivolous, whether it's filed for an improper purpose.
7 There's a whole line of case laws on each of those,
8 and I'm not willing to add them in until we have a
9 complete motion.

10 MR. ARMSTRONG: Okay. Thank you.

11 COMMISSIONER KIESLING: Okay. Now can I go
12 on to where I should be?

13 MS. O'SULLIVAN: Page 1.

14 COMMISSIONER KIESLING: Actually, I don't
15 think that Page 1 needed anything.

16 Page 2, the case background. Any problems
17 with the statement of the case background, which is
18 essentially what has been appearing in all of these
19 cases all along? Any changes?

20 MR. ARMSTRONG: Madam Commissioner, there is
21 one. The number at the very bottom of Page 3, just
22 before the Roman numeral II, the number says
23 18,645,073.

24 COMMISSIONER KIESLING: Yeah.

25 MR. ARMSTRONG: That was the number that

1 related if we had Hillsborough, Polk and Hernando in.
2 The number without those counties is 18,137,502. And
3 the Company wasn't aware if you wanted to add a
4 sentence that would identify the total rate -- total
5 revenue requirement being requested in the case. We
6 would propose adding a sentence that says, "The
7 Company is requesting total jurisdictional water and
8 wastewater revenue based on a 1996 test year of
9 65,302,524" just to make it clear.

10 COMMISSIONER KIESLING: Is there any
11 objection to changing the number, the 18 million
12 number and to adding that sentence? Mr. Beck? None?
13 Mr. Jacobs? Mr. Twomey?

14 MR. TWOMEY: No, ma'am.

15 COMMISSIONER KIESLING: Staff?

16 MS. O'SULLIVAN: No.

17 COMMISSIONER KIESLING: Okay. We'll add it.

18 Are there any issues still remaining
19 regarding confidential information?

20 MS. O'SULLIVAN: The Company has indicated
21 that they have no confidential information in the
22 testimony I believe; is that correct?

23 MR. FEIL: Yes. The other day I told
24 Mr. Jaeger that there was no confidential information
25 contained in the prefiled testimony from OPC that we

1 have as of yesterday.

2 COMMISSIONER KIESLING: Okay.

3 MR. BECK: Commissioner, the draft
4 prehearing requires us to give notice to the Company
5 of any documents that we might use that they would
6 claim confidentiality, and I'd like to do that right
7 now.

8 COMMISSIONER KIESLING: Okay.

9 MR. BECK: The documents we intend to use at
10 the hearing that they've claimed confidential are all
11 documents contained in a letter dated September 27th,
12 1995, to me from Mr. Hoffman. They include a one-page
13 response concerning 1994 executive bonuses, a
14 four-page response regarding severance pay, their
15 respond to our Document Request No. 76, a one-page
16 response regarding an employee engaged in lobbying
17 activity. And those are the items contained in
18 Mr. Hoffman's letter or attached to his letter.

19 In addition to that, we intend to use their
20 response to our Document Request No. 69, which
21 concerns bonus and incentive compensation.

22 COMMISSIONER KIESLING: All right. Did you
23 get all of that? Okay.

24 MR. HOFFMAN: Yes, ma'am.

25 COMMISSIONER KIESLING: Mr. Jacobs,

1 anything from you on confidential information?

2 MR. JACOBS: No, ma'am.

3 COMMISSIONER KIESLING: Mr. Twomey?

4 MR. TWOMEY: No.

5 COMMISSIONER KIESLING: Staff anything you
6 need to insert here?

7 MS. O'SULLIVAN: No. As long as they give
8 us a hard copy of that list again so I could make sure
9 I have it correct.

10 COMMISSIONER KIESLING: Okay.

11 MR. HOFFMAN: Commissioner Kiesling.

12 COMMISSIONER KIESLING: Yes.

13 MR. HOFFMAN: The Staff served on April 10th
14 their 12th request for production of documents to
15 Southern States. And that document request requests
16 some federal income tax information which we intend to
17 produce pursuant to a notice of intent to request
18 confidential classification, and I wanted to just put
19 you on notice of that.

20 COMMISSIONER KIESLING: All right. And put
21 Staff on notice, I think.

22 MR. HOFFMAN: Put Staff.

23 MS. O'SULLIVAN: We were aware of that, yes.
24 Thank you.

25 COMMISSIONER KIESLING: All right. Then we

1 can move on to posthearing procedures. I'm going to
2 go ahead and kind of go a little out of order here so
3 that the whole thing makes sense, because it's
4 indicated that there is a request for an extension of
5 the pages from 60 pages. And having spent nine hours
6 just going through this draft prehearing I can assure
7 you you're going to need more than 60 pages, so I'm
8 going to go ahead and tell you now, even though we
9 won't get to motions for quite some time, that I'm
10 going to grant the additional page limit up to 150
11 pages.

12 And if any of you think you need more than
13 that, then you'll have to come in and file a specific
14 request with some justification.

15 Prefiled testimony and exhibits and
16 witnesses.

17 MS. O'SULLIVAN: Commissioner, we have
18 several pending motions, pending requests and pending
19 matters to discuss.

20 COMMISSIONER KIESLING: Do we need to take
21 them up now?

22 MS. O'SULLIVAN: I believe some of them
23 should be taken up now.

24 COMMISSIONER KIESLING: All right. If would
25 identify which ones those are so I can pull them out

1 of my packet here.

2 MS. O'SULLIVAN: Okay. First is Staff's
3 request to strike witnesses that have not prefiled
4 testimony. We also have a request by the Utility to
5 present some witnesses, both direct and rebuttal. We
6 have a few additional witnesses I believe that have
7 been listed. We have a request to include DEP
8 witnesses by video conferencing. And I think we have
9 several corrections to make to the order as well.
10 Also, there are some requests to take witnesses on
11 certain days or to excuse them on other days.

12 COMMISSIONER KIESLING: Okay. Well, how far
13 down are we before we get any of the questionable
14 witnesses in terms the motions to strike, etcetera?

15 MS. O'SULLIVAN: I believe that starts on
16 Page 7.

17 COMMISSIONER KIESLING: Page 7. Okay.
18 Until we get down to that issue, are there any
19 proposed changes or additions or anything we need to
20 discuss regarding the witnesses listed on Page 6?

21 MR. BECK: Yes, commissioner. The first
22 witness listed is Mr. Aaron Sandbulte appearing for
23 Southern States Utilities. He has information that is
24 relevant to our motion to dismiss, and I would ask
25 that we be allowed leave to question him about

1 information raised in our motion to the extent that it
2 goes further than is addressed in his prefiled
3 testimony.

4 One of the problems we face with respect to
5 Mr. Sandbulte is that he's not a Florida resident.
6 Our only alternative would be to subpoena him when he
7 appears here, which doesn't really seem to make sense
8 to do that since he's going to be here anyhow. That's
9 why I'm requesting leave at this point, so we'll know
10 if there's going to be a problem or not about that to
11 question him when he does appear for Southern States.

12 COMMISSIONER KIESLING: All right. Let me
13 hear from the other parties, but also indicate to you
14 that if I grant this that the forum that I would grant
15 it in would be that we would go all through the
16 prefiled, the cross on the prefiled and the redirect
17 on the prefiled. And then once everybody is through,
18 then let you call Mr. Sandbulte as your witness while
19 he's here and on the stand, and I would assume as an
20 adverse witness, adverse party witness. And that way
21 you can have him on direct to ask your questions.

22 MR. BECK: Commissioner, let me add
23 something else, because we might as well clear it up.
24 We have issued subpoenas and they are in the process
25 of being served, as we've indicated in our prehearing

1 statement of one of the witnesses whom we would
2 subpoena. The subpoenas direct them to be here the
3 first day of the hearings. I'm not quite sure how to
4 handle this. If Southern States is willing to produce
5 the people that we subpoena at another time, you know,
6 I have no problem with that. But on the other hand,
7 our subpoena directs them to be here at 9:00 on the
8 first day. So in one respect I would like to request
9 that they testify at the time we subpoenaed them for
10 because we had to do something. On the other hand, if
11 they are going to produce the people at another time,
12 that's agreeable to me. I can't control them coming
13 at some time other than the time we've subpoenaed
14 them.

15 COMMISSIONER KIESLING: Well, I understand
16 that. But if they all relate to the issues that were
17 raised in your motion to dismiss, I think we indicated
18 at the last agenda conference that we were not going
19 to take them all on the first day. We were going to
20 take them in the ordinary course of when you would be
21 presenting your case, and we will accommodate, you
22 know, people that have a time problem. But since
23 Mr. Sandbulte is listed as the first witness, then my
24 assumption is he'll be here on the first day.

25 MS. O'SULLIVAN: Commissioner, I would also

1 point out that Mr. Beck's request, you might also want
2 to discuss Ms. Teasley and, I believe, Ms. Roberts,
3 who are also in the same situation. I believe they
4 have prefiled some testimony.

5 COMMISSIONER KIESLING: That's three pages
6 over, though.

7 MS. O'SULLIVAN: Okay.

8 COMMISSIONER KIESLING: I'm still just
9 looking at the ones that are listed on Page 6. I'll
10 work my way down through the list because it's too
11 long to jump around.

12 MR. BECK: Well, I understand. I just
13 wanted to try to get it all together. Now,
14 Mr. Sandbulte we have not subpoenaed, that's why I'm
15 raising the issue with respect to him.

16 COMMISSIONER KIESLING: Okay. Let me hear
17 from you on how you want the -- if the procedure that
18 I proposed for letting them take him as their own
19 witness as an adverse witness is acceptable.

20 MR. ARMSTRONG: Commissioner, as I
21 understand your proposal it would be acceptable. But
22 because of the gravity of this rate case and the
23 importance of this rate case to Minnesota Power, Mr.
24 Sandbulte has indicated that he would be available for
25 his direct and would be available later on subsequent

1 for rebuttal. We would propose that the Commission
2 stick to what they decided last Tuesday and that was
3 that if Public Counsel wanted to call witnesses on
4 this issue, that they do so in their case in chief and
5 that's what our preferred course of conduct would be.

6 COMMISSIONER KIESLING: And to the extent
7 that they are listing witnesses who are not also your
8 witnesses, I agree. But as to Mr. Sandbulte, once
9 he's up there and everyone has finished their case on
10 the direct rebuttal, I mean the direct cross and
11 redirect, I think it would be just as convenient to go
12 ahead and let them at that time get their direct out
13 of the way and shift it that way.

14 MR. ARMSTRONG: Okay. That would apply to
15 Ms. Teasley, too, then? They are not rebuttal, you're
16 right. That's your preference?

17 COMMISSIONER KIESLING: I mean let's just go
18 ahead and get them over while we have them up here.

19 MR. ARMSTRONG: Okay. We can do that.

20 MR. HOFFMAN: Commissioner Kiesling, along
21 the same lines of the subject that Mr. Beck has
22 raised, one of the five witnesses that Mr. Beck
23 intends to call on the issue of their motion to
24 dismiss is Mr. Armstrong.

25 COMMISSIONER KIESLING: Okay. Interesting.

1 MR. HOFFMAN: I understand that a subpoena
2 has been served for Mr. Armstrong. Mr. Beck has taken
3 Mr. Armstrong's deposition. We want to avoid having
4 to file a motion to quash that subpoena and we want to
5 avoid a dispute or a potential dispute over
6 Mr. Armstrong's role as an advocate on behalf of
7 Southern States in this proceeding. So I'm raising it
8 now, and I'm raising it to see if the Office of Public
9 Counsel and the other intervenors will agree that
10 should Mr. Armstrong testify in this proceeding that
11 there will be no effort to eliminate him or disqualify
12 him as an attorney for Southern States.

13 COMMISSIONER KIESLING: This is interesting.
14 It just gets more and more interesting.

15 All right. So let me just understand. Up
16 to this point they have taken Mr. Armstrong's
17 deposition. You did not at that time raise, you know,
18 attorney-client privilege or anything like that so I
19 guess at this point it's been waived.

20 MR. HOFFMAN: No, ma'am. I disagree with
21 that.

22 Public Counsel took Mr. Armstrong's
23 deposition over our objection in the 1992 rate case.
24 And so we had gone through that issue before. So we
25 did not see the need for us to render what we thought

1 would be a superfluous motion at that point. And we
2 understood from that prior order that it would be our
3 obligation to respond to objectionable questions,
4 including questions that addressed any attorney-client
5 privilege matters, matters that I don't believe
6 Mr. Beck got into at the deposition. But it is the
7 Office of Public Counsel that has subpoenaed
8 Mr. Armstrong for hearing. And I think he's under an
9 obligation to appear unless we file a motion to quash.
10 What I'm saying to you today is he's willing to appear
11 and respond to what I would anticipate would be the
12 same subject matters that Public Counsel went into
13 during Mr. Armstrong's deposition. But if he does
14 that, we do not want any effort on the part of Public
15 Counsel or any other intervenor to attempt to
16 disqualify him as an advocate for Southern States.

17 COMMISSIONER KIESLING: All right.

18 MR. BECK: I'll be glad to tell that it is
19 our intention that we -- we do not have an intention
20 to move to disqualify him for counsel for Southern
21 States, if that's the concern.

22 COMMISSIONER KIESLING: Okay.

23 MR. BECK: I would have a problem if he were
24 to argue on the motion about his own credibility. But
25 as counsel for Southern States otherwise in the case I

1 have no problem.

2 COMMISSIONER KIESLING: All right. Does
3 that satisfy your need there?

4 MR. TWOMEY: Just to satisfy, same for my
5 clients.

6 COMMISSIONER KIESLING: Okay.

7 MR. HOFFMAN: Yes, ma'am. Thank you.

8 COMMISSIONER KIESLING: All right. I'm
9 still on Page 6, so Mr. Sandbulte will be called by
10 you as an adverse witness after he finishes the
11 testimony that he has actually prefiled and
12 examination on that.

13 MR. BECK: Okay. And is Southern States
14 agreeing that we need not subpoena him as a witness?

15 COMMISSIONER KIESLING: He'll be here.

16 MR. ARMSTRONG: Southern States agrees.

17 COMMISSIONER KIESLING: Okay. Also on
18 Page 6 I have a Mr. Hartman who is not available on a
19 particular day. Do we have any problem with -- is
20 there any objection that if we have to accommodate him
21 in some way that we can do that? Any objection to
22 accommodating Mr. Hartman, as we will a number of
23 other witnesses, in terms of days? All right. That
24 at least lets me go to Page 7.

25 MS. O'SULLIVAN: Commissioner, the Utility

1 has requested, I believe, six witnesses be allowed to
2 present direct and rebuttal at the same time.

3 COMMISSIONER KIESLING: Okay.

4 MS. O'SULLIVAN: Staff would agree to all of
5 those except for Ms. Kimball because her rebuttal is
6 quite voluminous. We would also agree to that request
7 only if we could call the witness back if further
8 cross appears necessary or further rebuttal appears
9 necessary during the proceeding.

10 MR. HOFFMAN: We have no objection.

11 COMMISSIONER KIESLING: Okay. How about
12 Mr. Beck, any problem with that for you?

13 MR. BECK: No, I understand that Ms. Kimball
14 will be direct and rebuttal separately. She's listed
15 under rebuttal as well. I have no problem either way.

16 MR. HOFFMAN: Commissioner, I understand
17 that with this stipulation that she will still be
18 called before May 11?

19 COMMISSIONER KIESLING: Yeah. At this point
20 I don't think that we're -- I'm not dealing with the
21 date. I'm just dealing with whether she's going to do
22 direct and rebuttal at the same time.

23 MR. HOFFMAN: Okay.

24 COMMISSIONER KIESLING: Mr. Twomey,
25 objection from you on that?

1 MR. TWOMEY: No, ma'am.

2 COMMISSIONER KIESLING: All right. Then to
3 that extent we will allow Witnesses Hartman, Elliott,
4 Edmunds, Bliss, and Whitcomb to present their direct
5 and rebuttal at the same time. And as to Witness
6 Kimball, hers will not be presented at the same time.
7 And if I understood also Staff's request, that for the
8 six witnesses who are listed here, that they continue
9 to be available for Staff to call them back if they
10 need to in order to clarify some answer that comes
11 after them.

12 MR. HOFFMAN: Thank you.

13 MS. O'SULLIVAN: Thank you. Commissioner,
14 we also have a witness that was not included in the
15 order because it's a pending motion to permit
16 late-filed testimony. It relates to the Amelia Island
17 witness which is Mr. Ryland, I believe.

18 COMMISSIONER KIESLING: Okay. Why don't we
19 go ahead -- can I just finish SSU's witnesses in
20 chief --

21 MS. O'SULLIVAN: I'm sorry.

22 COMMISSIONER KIESLING: So that I cannot get
23 lost? I do note under, I guess, Ms. Kowalsky and a
24 number of others that Southern States has indicated
25 dates in the week following what is the end of the

1 noticed hearing. And to the extent that you have
2 included that, I'm not sure where you got your
3 information, but I'm going to be gone that week and
4 it's not my understanding that we're going to be
5 having a hearing that week. My understanding is and
6 was that we're going to go into the evenings and go on
7 Saturday if need be, but I don't know -- you know,
8 there's no notice for that week, and I just need to be
9 sure that everybody is clear that if you're planning
10 to have witnesses here for that week and not before,
11 that you may need to rethink that.

12 Okay. Now I'm down to Marco, et al. Should
13 I deal with Amelia Island's witness before I get to
14 that?

15 MR. JACOBS: If you wish, please do.

16 COMMISSIONER KIESLING: Okay. I know that I
17 do have somewhere in here a motion.

18 MS. O'SULLIVAN: It's No. 6.

19 COMMISSIONER KIESLING: Yes. Nassau's
20 motion to file late filing of testimony. Is there any
21 objection to that?

22 MR. TWOMEY: No objection.

23 MR. HOFFMAN: No.

24 COMMISSIONER KIESLING: Hearing none, I will
25 grant that motion. And you can proceed accordingly,

1 Mr. Jacobs.

2 Okay. Any changes, additions or things we
3 need to discuss for Witnesses Mann, Hansen, Bertram
4 Woelffer, Dusseau?

5 MR. TWOMEY: Madam Commissioner, what I'd
6 like to do is when we get to the proper point is get a
7 day certain, if possible, for Judge Mann, as well as
8 Mr. Woelffer. If it appears that we're in the
9 neighborhood of when they could be taken on a day.

10 COMMISSIONER KIESLING: All I can tell you
11 is that we'll have to determine that as the hearing
12 proceeds. There's no way at this point that I could
13 guess at a day that we might be getting to them.

14 MR. TWOMEY: I understand. Except that
15 other people have done the same thing, they've asked
16 for --

17 COMMISSIONER KIESLING: No, they've excluded
18 days.

19 MR. TWOMEY: I thought I saw someplace else
20 where there was --

21 COMMISSIONER KIESLING: Well, I don't recall
22 seeing at this point any specific days or times were
23 requested, only when they weren't there.

24 MR. TWOMEY: Look at Page 11.

25 MR. ARMSTRONG: Madam Commissioner,

1 Southern States has requested that the DEP witnesses
2 and Water Management District witnesses be given a
3 date certain.

4 COMMISSIONER KIESLING: Yes. I'm going to
5 deal with that when I get to them, and that's because
6 they are agency employees who are not in our control.

7 MR. TWOMEY: I understand.

8 COMMISSIONER KIESLING: So all I can do for
9 Judge Mann and Mr. Woelffer is tell you that we'll do
10 our best to come up with a day when we know how things
11 are going.

12 MR. TWOMEY: And we would appreciate that.
13 I would suggest your consideration of taking the
14 witnesses such as -- let me say first, on Page 8,
15 strike the Department of Commerce by subpoena. Strike
16 Secretary Wetherell.

17 COMMISSIONER KIESLING: Wait a minute.
18 Charles Dusseau is not going to be a witness?

19 MR. TWOMEY: Leave him in.

20 COMMISSIONER KIESLING: Okay. But the only
21 reason that it says, "Department of Commerce" at the
22 top of that page is because it was the --

23 MR. TWOMEY: Oh, I'm sorry.

24 COMMISSIONER KIESLING: -- what was below
25 Mr. Dusseau's name.

1 MR. TWOMEY: Okay. You're right. Thank
2 you. Leave him in. Strike Mr. Wetherell.

3 COMMISSIONER KIESLING: Completely.

4 MR. TWOMEY: Yes.

5 COMMISSIONER KIESLING: All right.

6 MR. TWOMEY: Then I was going to suggest for
7 your consideration that it might, since they're close
8 in time anyways, that you might consider putting the
9 quote/unquote "motion to dismiss" witnesses together.
10 That is put my people I subpoena in line with those
11 indicated to be subpoenaed by Public Counsel, just as
12 a consideration.

13 COMMISSIONER KIESLING: All right. I think
14 that I prefer to take them in the order that they are
15 listed, unless there is some extenuating reason that
16 we need to take one out of order.

17 MR. TWOMEY: Fine.

18 Other than that, I was going to ask -- I had
19 the name of the Duval County Health Department person,
20 and I just lost it in one of these stacks, but I'll
21 have it in a minute. We would intend to subpoena one
22 of the Health Department individuals on the lead
23 education issue.

24 COMMISSIONER KIESLING: Yeah. We do need to
25 talk about that. I mean, obviously, at this point in

1 the proceeding if you haven't even given us the name,
2 haven't given anybody the name, it's going to be
3 pretty difficult to take depositions and figure out
4 what this person is going to be saying. And I guess
5 the reason you want to call this person is to talk
6 about the lead in the Beacon Hills system.

7 MR. TWOMEY: Yes, ma'am. And whether the
8 Company has complied with the rule requirements for
9 dealing with such.

10 COMMISSIONER KIESLING: Does anyone else
11 have any questions, concerns or discussion on that
12 witness?

13 MR. ARMSTRONG: Commissioner, the Company
14 would note that the lead issue in Beacon Hills,
15 there's a DEP and/or Duval County witness that Staff
16 has sponsored -- they have somebody that covers every
17 facility that Southern States operates that's included
18 in this proceeding. So there is somebody already
19 there that would be available for cross examination,
20 and we have had notice that that person would be
21 available. At this point we don't even have a name of
22 who that person would be from Duval County and that
23 certainly seems to be a problem for the Company.

24 MS. O'SULLIVAN: Staff also notes that those
25 witnesses are the subject of Staff's request to

1 strike.

2 COMMISSIONER KIESLING: Okay.

3 MR. ARMSTRONG: I'm sorry. Ms. O'Sullivan
4 might have mistook me. I meant the Staff witnesses
5 from DEP and the county.

6 MS. O'SULLIVAN: Right. I was discussing
7 Mr. Dusseau.

8 COMMISSIONER KIESLING: She was also
9 pointing out to me that this witness is included among
10 the motion to strike witnesses.

11 MR. ARMSTRONG: Oh, I see.

12 COMMISSIONER KIESLING: As are -- just tell
13 me who all you want to strike so I don't have to sort
14 through the list of who they listed compared to who
15 you want to strike.

16 MS. O'SULLIVAN: Our motion addressed
17 witnesses that had not prefiled direct testimony or
18 rebuttal testimony. Charles Dusseau; Ms. Wetherell,
19 who has been stricken; Karl Koch; the individual to be
20 named later for Harbor Woods; Mr. Sharkey; Tracy
21 Smith; Dr. Cirello; Karla Teasley; Brian Armstrong;
22 Ida Roberts; Stephanie Smith and Charles Sweat, and
23 Richard Harvey and John Sowerby. Our motion included
24 those witnesses. We got notice from the Utility
25 subsequent to that to add two more witnesses to that

1 list, so we would amend our Motion to Strike to
2 include Elsa Potts and Dan Hoofnagle.

3 MR. FEIL: Madam Commissioner, if I may.
4 Ms. O'Sullivan mentioned Richard Harvey, he did
5 prefile rebuttal.

6 MR. ARMSTRONG: David York.

7 COMMISSIONER KIESLING: David York.

8 MR. ARMSTRONG: David York is who she meant,
9 I think.

10 COMMISSIONER KIESLING: Who I see listed
11 here at the end were John Sowerby and David York. I
12 didn't see Mr. Harvey in your motion.

13 MS. O'SULLIVAN: I'm sorry. That shouldn't
14 be Mr. Harvey. It's Elsa Potts and Dan Hoofnagle.

15 COMMISSIONER KIESLING: All right. Let me
16 see here. We have a response from SSU on that. And
17 we have a response from Citizens. Do we have a
18 response from you, Mr. Twomey?

19 MR. TWOMEY: No, ma'am, not a written one.
20 I was just joining Public Counsel's response. Maybe
21 even Southern States.

22 COMMISSIONER KIESLING: All right. Let's at
23 least hear argument on it, then. It's your motion.

24 MS. O'SULLIVAN: Staff will be very brief.
25 This was filed as a request to strike the witnesses

1 because of our concern that several witnesses,
2 approximately 15, were listed without having prefiled
3 testimony. The order establishing procedure in this
4 docket required that each party would prefile in
5 writing all testimony that it intends to sponsor and
6 failure to do so may bar the admission of such
7 testimony and exhibits.

8 Our concern is the lack of notice to the
9 parties and the impact upon the hearing schedule.

10 The Commission does not have any procedures
11 on this issue as set out in our rules. Past decisions
12 indicate that if a witness is truly adverse to a
13 party, that party may subpoena that witness for live
14 testimony. We do agree with that, that if a witness
15 is truly adverse, he or she cannot be compelled to
16 provide testimony. Our concern at this point was
17 there had been no demonstration of adverse witnesses
18 prior to the prehearing statements being filed or
19 leave requested to depart from the order establishing
20 procedure.

21 An adverse party -- witness is a party to an
22 action whose interests are opposed to the interests of
23 another party in the action. According to the Rules
24 of Civil Procedure, Rule 1.450, an adverse witness is
25 a person whose testimony is prejudicial to a party

1 that called that witness and may be impeached.

2 The Commission should require that each
3 party demonstrate that their witnesses truly are
4 adverse. Again, our concern is the notice and the
5 ability to prepare for a hearing without a
6 demonstration that the parties truly are adverse.

7 COMMISSIONER KIESLING: All right. I'll
8 just take them in order of the responses in the stack.
9 Mr. Armstrong.

10 MR. ARMSTRONG: Thank you, Commissioner.

11 Southern States would take note -- I guess,
12 first, the comment would be that the Commission rules
13 do not appear to be exclusive and certainly shouldn't
14 bar the introduction of testimony such that the
15 Commission could have a full and fair record in this
16 proceeding.

17 Southern States wishes to introduce the
18 testimony of several DEP witnesses. Until a week or
19 so before the rebuttal was due from Southern States
20 the DEP witnesses, two of them, had been working
21 diligently with Southern States to provide prefiled
22 rebuttal. However, the DEP made a determination that
23 they would also be considering intervening in the
24 case, but they made a determination not to provide
25 prefiled rebuttal on behalf of Southern States and I

1 use that in quotes, because they would be appearing
2 before a sister agency. And they requested that
3 Southern States -- that they would provide testimony,
4 are willing to do so, but they request that we do that
5 by subpoena. So we have willing witnesses from DEP
6 who are willing to come to testify.

7 Another matter, and it's another distinction
8 from the cases cited by Staff in their motion, is that
9 the DEP witnesses are being requested to testify
10 regarding used and useful issues that they have
11 previously given notice to Commission Staff through
12 letters that they've written to the Commission,
13 through workshops, through a used and useful
14 presentation made by Commission Staff to the
15 individuals we'd like to have come and testify before
16 the Commission. So I think there is notice in this
17 case as to what they will testify about. A number of
18 those letters have been introduced by other SSU
19 witnesses in this case already as exhibits in prefiled
20 testimony.

21 The witnesses wish to come and testify
22 regarding conflicts or perceived conflicts that they
23 have with DEP rules and their interpretation of
24 statutes as they impose requirements on Southern
25 States and what they perceive as conflicts with the

1 Commission's treatment of utilities and in this case
2 Southern States, regarding those rules.

3 They have noted to us that there was a
4 memorandum of understanding that they felt would be
5 something that would compel them to come in for issues
6 of these sorts to present their testimony to the
7 Commission.

8 We also would like to note that in the
9 pre-prehearing in the first one which occurred
10 probably a month ago, if not a little bit more, we had
11 some discussions about the fact that we might need to
12 file or present witnesses by subpoena because we
13 otherwise could not produce them. And at that point
14 Public Counsel and the Company did agree that there
15 would be some subpoenas, and there wasn't any
16 objection raised at that time by any other party,
17 including Staff, that we would do that. We agreed at
18 that point to identify in the first draft of the
19 prehearing statements who those witnesses would be.
20 The Company did do that with respect to Mr. York and
21 Mr. Sowerby. And subsequent to that we were -- had
22 further discussions with DEP and they agreed that
23 Mr. Hoofnagle and Ms. Elsa Potts also would testify.

24 So we just hope that in the spirit of
25 getting all of the information that the Commission

1 would need, and we hope would want, in the record
2 regarding the used and useful issues, and particularly
3 the interpretation of DEP's own rules and the statutes
4 that apply to DEP, that we would be permitted to bring
5 in these witnesses. And as we indicated yesterday
6 when we met with those witnesses and other DEP Staff,
7 we don't perceive them being witnesses on behalf of
8 the Company but, rather, they are there to basically
9 reaffirm what was in those letters and then answer any
10 questions of any party, as well as the Commissioners,
11 that they might have in this case.

12 COMMISSIONER KIESLING: All right. You
13 didn't file anything, so I guess you're not taking a
14 position on this, Mr. Beck.

15 MR. BECK: I certainly did file a pleading,
16 Commissioner. Would you like to read it or an
17 opportunity to read it before we get into argument?

18 COMMISSIONER KIESLING: No. I have this
19 one. I meant in relationship to the witnesses they
20 had listed. I have your response as it relates to the
21 witnesses you have listed.

22 MR. BECK: Yes.

23 COMMISSIONER KIESLING: You don't have a
24 position as it relates to the witnesses of SSU.

25 MR. BECK: Just from listening to

1 Mr. Armstrong. As long as they provide the documents
2 they are talking about to all parties ahead of time, I
3 don't think we would have any objection. I think they
4 should provide better notice of what the purpose is of
5 calling these witnesses.

6 COMMISSIONER KIESLING: Okay. Mr. Jacobs,
7 do you have a dog in this fight?

8 MR. JACOBS: No, ma'am, I don't.

9 COMMISSIONER KIESLING: Okay. Mr. Twomey?

10 MR. TWOMEY: I may have Chris Carter who is
11 the person that --

12 COMMISSIONER KIESLING: Your mike is off.

13 MR. TWOMEY: I'm sorry. Chris Carter is an
14 Environmental Specialist III with the HRS/Duval County
15 Public Health Unit. And it is true that a letter
16 written by him is attached to a DEP employee
17 testifying on behalf of the Staff. But I think in the
18 spirit of what SSU is stating on their other
19 witnesses, which I don't have any objection to either
20 as long as we get their -- the documents they referred
21 to, this correspondence with the Staff and the
22 presentation and all that kind of thing, notice of
23 that, I don't have any problem. And I'd like retain
24 the option -- be able to subpoena Chris Carter on the
25 lead issue in Beacon Hills.

1 COMMISSIONER KIESLING: Let me see if I
2 understand here. As to the DEP witnesses that you
3 have cited or requested to have here without prefiled,
4 you are going to provide to everyone, I guess soon, if
5 you haven't already, what it is that they're going to
6 be doing here, what the subject matter is, or if they
7 have a report or something, what -- a copy of that
8 report?

9 MR. HOFFMAN: Commissioner Kiesling, the
10 letters have already been included as exhibits in the
11 prefiled testimony of Mr. Harvey and Mr. Hartman.

12 COMMISSIONER KIESLING: Okay.

13 MR. ARMSTRONG: We'll be bringing in the
14 DEP Staff to testify regarding that. The letters
15 address used and useful, they address margin reserve
16 issues and they address DEP's interpretation of the
17 statute regarding the 100% used and useful character
18 of reuse facilities.

19 COMMISSIONER KIESLING: Is there anything
20 that has been provided to the other parties until
21 right now that at least gives them notice of what
22 those two witnesses are going to talk about? I guess
23 that's Mr. York -- no, that's Ms. Pots and
24 Mr. Hoofnagle.

25 MR. ARMSTRONG: On the prehearing statement

1 we identified those witnesses with the issues that are
2 contained in the prehearing statement. As we go
3 through the draft prehearing order, the prehearing
4 statements that the company has already filed with the
5 Commission, we identified those DEP witnesses with the
6 issues that they would address.

7 COMMISSIONER KIESLING: Okay.

8 MR. ARMSTRONG: If there are any additional
9 letters that they would intend to introduce, we
10 certainly would get -- you know, I will ask them that
11 today, if they are permitted to testify, and we'll get
12 that to the parties right away.

13 COMMISSIONER KIESLING: Okay. And then this
14 person, Chris Carter, that you are proposing to call,
15 Mr. Twomey, since apparently a letter that was written
16 by him was attached to one of the other witnesses, at
17 least that's not going to be a total surprise -- are
18 you planning to ask any questions beyond what is
19 contained in that letter and the subject matter of
20 that letter?

21 MR. TWOMEY: Well, not beyond the subject
22 matter. I mean the issue is whether -- I think it's
23 conceded in the evidence now that there was a lead
24 exceedance in Beacon Hills and the issue that I want
25 to address by Mr. -- or Ms. -- whoever.

1 COMMISSIONER KIESLING: I don't know.

2 MR. TWOMEY: Chris Carter's testimony would
3 be whether the Company complied with the rule
4 requirement for public education. So that's the scope
5 of it.

6 MR. ARMSTRONG: The Company wouldn't object
7 to -- now that we know who it is and we know what that
8 letter is, the Company would not object to the
9 Commission having the full information regarding that
10 as well.

11 COMMISSIONER KIESLING: Okay. And Staff
12 now.

13 MS. O'SULLIVAN: I'd like to make just a
14 brief response.

15 SSU's response indicates those witnesses are
16 not adverse. They are testifying regarding favorable
17 information for the Company or they believe they are
18 testifying on the Company's behalf. The Harbor
19 decision required the Company to prefile depositions
20 in lieu of prefiled testimony in that case, just to
21 point that out.

22 If you do determine to allow them to present
23 them live by subpoena -- they have referred to some
24 letters in other witnesses' testimony -- I think we
25 would definitely ask there be a list given of the

1 letters as opposed to us going through other prefiled
2 witnesses' testimony to try to figure out what might
3 be raised to a live witness.

4 COMMISSIONER KIESLING: Okay. And do you
5 have anything that you want to add to this part of the
6 discussion before I get to your witnesses? Mr. Beck?

7 MR. BECK: No.

8 COMMISSIONER KIESLING: All right. I have
9 some level of concern, along with Staff, about not
10 having any idea why these people are being called.
11 And to the extent that they are being called based on
12 a letter or something that is already in the prefiled,
13 I'm going to permit you to call them. For any who
14 have not either had their deposition taken so that
15 everyone knows what the area of inquiry is, or filed a
16 letter, I need to have some further discussion.

17 So are there any of those remaining of the
18 ones that SSU is listing or that Mr. Twomey is
19 listing? Yes? No? All of yours -- at least
20 everybody either has somewhere in the prefiled a copy
21 of a letter or a report or something from them so that
22 we know the area, or their deposition has been taken.

23 MR. ARMSTRONG: The letters were written
24 either by the people we are calling or their Staff.

25 COMMISSIONER KIESLING: Okay. As long as

1 you identify that with those witnesses that that --
2 you know, they're appearing as the supervisor or
3 whatever of the person whose report that is, I will
4 allow them.

5 MR. ARMSTRONG: Thank you, Commissioner.

6 COMMISSIONER KIESLING: As to Chris Carter,
7 be that person male or female since no one seems to
8 know, I will perform you to call Chris Carter on the
9 subject matter of the letter that has been prefiled,
10 because that one is not going to contain a big
11 surprise.

12 MR. TWOMEY: Thank you.

13 COMMISSIONER KIESLING: And you have, or are
14 planning to take, the depositions of Secretary
15 Dusseau, Mr. Koch, and the Lieutenant Governor today,
16 and so the subject matter of those witnesses will also
17 be known.

18 MR. TWOMEY: Yes, ma'am. Let me ask you --
19 right, we've previously taken the deposition of
20 Secretary Dusseau and we'll do Mr. Koch today.

21 With respect to those people that have to be
22 subpoenaed, it's not clear to me. What are you
23 suggesting in terms of when we -- how we go about
24 subpoenaing them for dates? What dates should we use?
25 How should we do that?

1 COMMISSIONER KIESLING: Let me put it to you
2 this way: If you are able to work out with that
3 witness and the other parties, you know, a date that
4 would be best, then I'm willing to consider that.

5 MR. TWOMEY: Very good.

6 COMMISSIONER KIESLING: Because this is a
7 different situation than witnesses who have filed
8 prefiled testimony. And that's about the best I can
9 do.

10 MR. TWOMEY: That's reasonable.

11 COMMISSIONER KIESLING: Until I get to the
12 part of doing it by video teleconferencing, which may
13 also be of assistance to your witness, and we'll deal
14 with that when I get to it.

15 Okay. Mr. Shreve, as to your portion of
16 this. Mr. Beck, are you going to argue?

17 MR. BECK: Commissioner, let me ask, I just
18 don't think Staff's arguments apply to the witnesses
19 we have subpoenaed. And I'd like to ask Staff if they
20 are actually arguing that, their motion with respect
21 to our witnesses.

22 MS. O'SULLIVAN: I believe we would agree
23 that all but two of the witnesses listed by you do
24 work for the Utility and certainly would be considered
25 adverse party witnesses. The other two, if you go by

1 the definition of adverse party or adverse witness,
2 may not be -- may or may not be, I'm not quite sure.

3 MR. BECK: So are you still seeking to stop
4 us from calling those witnesses? That's my question.

5 MS. O'SULLIVAN: It's up in the air.

6 COMMISSIONER KIESLING: Okay. Well, let me
7 see if I understand.

8 Mr. Sharkey, Mr. Smith, Dr. Cirello, Karla
9 Teasley, Brian Armstrong, Ida Roberts, Stephanie Smith
10 and Charles Sweat, those are the witnesses that are at
11 issue apparently. Is that correct?

12 MS. O'SULLIVAN: Correct.

13 COMMISSIONER KIESLING: And depositions have
14 been taken of Mr. Sharkey, Mr. Smith?

15 MR. BECK: Every witness, Commissioner.

16 MS. O'SULLIVAN: Yes.

17 COMMISSIONER KIESLING: Okay. So at least
18 to the extent that there's not going to be any
19 surprise about what they are here about, that's not
20 the problem Staff has; is that correct?

21 MS. O'SULLIVAN: That's correct. The whole
22 purpose of our motion was to bring to the attention
23 the fact that leave had not been requested to exceed
24 the order establishing procedure.

25 COMMISSIONER KIESLING: Okay. While I agree

1 with Staff that there would have been better ways for
2 everyone to have raised this prior to the last week
3 before we were going to have the prehearing, I'm going
4 to be, you know, consistent with what I just said to
5 SSU's witnesses, which is for these witnesses that
6 there is a deposition and no one is going to be
7 surprised about why they are here or what they are
8 going to be testifying about, I'm going to permit
9 them. Although I do have some level of concern that I
10 need to express to all of you about how we can get,
11 you know, ten days before a hearing and suddenly have
12 15 or 18 witnesses added to the list. That alarms me,
13 and it suggests to me that there has not been totally
14 forthright communication between all of the parties in
15 this proceeding when they were making determinations
16 of who they were going to call and why. Just so that
17 we're all clear, you know, it alarms me that we could
18 get this close without having had some discussion
19 among the parties about the identities of these
20 witnesses and whether these problems could be
21 resolved. But I will permit OPC's witnesses to be
22 called by subpoena.

23 MR. BECK: Commissioner.

24 COMMISSIONER KIESLING: Yes.

25 MR. BECK: There's one of our witnesses that

1 we've listed that is not under the control of Southern
2 States and that's Stephanie Smith.

3 COMMISSIONER KIESLING: Okay. I don't know
4 who that is.

5 MR. BECK: Let me explain the issue with
6 respect to Stephanie Smith. All of the other
7 witnesses Southern States controls, either by contract
8 or by direct employment. Stephanie Smith was
9 secretary to Secretary Dusseau. She has left his
10 employment. However, she is in town and I spoke with
11 her yesterday. She is, by all accounts, an innocent
12 bystander whose reason we need to call is because she
13 can testify as to the origin of some words on a
14 document that say "deadline January 3rd." We have
15 taken her deposition. It was a very short deposition.
16 I have asked Southern States if they would agree to
17 allow us to present that deposition into evidence in
18 lieu of calling her, and they have said no. So we're
19 going to have to subpoena her. I've talked to her and
20 she says the first day of the hearings would be
21 inconvenient. She's just starting a new job here in
22 town and would like to get on and off as quickly as
23 possible. I'd like to ask you if you could set a
24 specific time, either May 1st, 2nd or 3rd, and put her
25 up the first thing in the morning on that day. She

1 will come out here from her new job and testify. I
2 don't expect she'll be more than ten minutes. It's an
3 accommodation to her because she is really just a
4 bystander to the whole process.

5 COMMISSIONER KIESLING: All right. Well,
6 let me just also ask SSU. Having had an opportunity
7 to review that deposition, is there any room for
8 negotiation on whether you're going to allow this
9 witness to testify by deposition? I mean, there's no
10 pressure here, I'm just asking.

11 MR. ARMSTRONG: No, Commissioner. None of
12 us have read the deposition, so we wouldn't know what
13 is in the deposition.

14 MR. BECK: No, Commissioner. The deposition
15 has not been transcribed.

16 COMMISSIONER KIESLING: Oh.

17 MR. BECK: However, they were represented --
18 Southern States was represented at the deposition, so
19 they know very well what was said. They were there.
20 It was a very short deposition.

21 MR. ARMSTRONG: None of the three of us at
22 the table were there at the deposition.

23 MR. BECK: Mr. Willingham of Mr. Hoffman's
24 firm was there.

25 MR. ARMSTRONG: No, what I'm saying is none

1 of us were there, so I don't know what was said.

2 COMMISSIONER KIESLING: All right. Let me
3 just leave it this way. Get it transcribed.

4 MR. ARMSTRONG: If we read it and we can
5 agree, we'll be glad to do that.

6 COMMISSIONER KIESLING: And I urge you to
7 read it as soon as it's available and determine
8 whether we can at least dispense with one witness out
9 of 50, whatever there are.

10 MR. ARMSTRONG: Okay.

11 MS. O'SULLIVAN: Commissioner, I have one
12 mistake. On Page 8 Mr. Rothschild is listed by
13 subpoena. That should be stricken, "by subpoena."

14 COMMISSIONER KIESLING: All right. Now
15 we're on to Page 9 and the Staff witnesses.

16 MR. BECK: Commissioner.

17 COMMISSIONER KIESLING: Yes. Did I miss
18 one?

19 MR. BECK: I thought we were only doing the
20 subpoenaed witnesses. We also have on Page 8 --

21 COMMISSIONER KIESLING: Okay.

22 MR. BECK: -- our witnesses. I have one or
23 two things with respect to our witnesses.

24 COMMISSIONER KIESLING: Okay.

25 MR. BECK: Mr. Katz is not available the

1 8th, 9th or 10th. And Mr. Rothschild is not available
2 the 9th or 10th. Other than that, they are available.
3 We would like to ask for a date certain. I understand
4 that may not be able but at least those are the dates
5 they are not available.

6 COMMISSIONER KIESLING: All right. Let's
7 just see how we proceed during the first week and
8 we'll definitely accommodate witnesses to the maximum
9 extent possible.

10 MR. HOFFMAN: Commissioner Kiesling, two
11 other items concerning the witnesses on this page.
12 One is Mr. Beck mentioned Mr. Sharkey as one of the
13 witnesses that the Company controls. I would disagree
14 with that to the extent it makes any difference.

15 Mr. Sharkey did appear at deposition with
16 his own independent attorney, and I have no reason to
17 believe that he would not be so similarly represented
18 if he appears to testify at the hearing.

19 COMMISSIONER KIESLING: All right. If I
20 understand, though, the subject matter of his
21 testimony is related to his activities as a
22 representative of Southern States.

23 MR. HOFFMAN: Absolutely correct.

24 COMMISSIONER KIESLING: In that instance I'm
25 going to allow him to be called. That way he can

1 certainly appear here with his own attorney. And if
2 his own attorney wants to file a motion to quash or do
3 anything else with that subpoena, you know, he can do
4 that.

5 MR. HOFFMAN: Right.

6 COMMISSIONER KIESLING: But I think he is
7 sufficiently under the control of SSU in that he is a
8 paid representative of SSU to keep that requirement
9 that you make him available via subpoena.

10 MR. ARMSTRONG: And, Commissioner, for the
11 record, there's no way that the Company would instruct
12 him at all not to be here. As far as we're concerned
13 he's going to be here under subpoena unless his lawyer
14 says something different.

15 COMMISSIONER KIESLING: Okay. I mean,
16 that's fine.

17 MR. HOFFMAN: Commissioner, at one of the
18 pre-prehearing conferences Mr. Beck raised the
19 prospect of stipulating the three cost of capital
20 witnesses in this case into the record. That would be
21 Mr. Rothschild, Dr. Morin and Mr. Maurey, the witness
22 for the Staff, and Southern States is prepared to do
23 that.

24 COMMISSIONER KIESLING: Okay. So
25 Mr. Rothschild -- is everyone else willing to

1 stipulate him in? How about Staff?

2 MS. O'SULLIVAN: Staff agrees with that.

3 MR. HOFFMAN: Commissioner, we would also --

4 COMMISSIONER KIESLING: Well, let me get
5 these as I go. Mr. Rothschild. Who was the next one?

6 MR. HOFFMAN: Dr. Morin, M-O-R-I-N.

7 COMMISSIONER KIESLING: What page is he
8 listed on?

9 MR. HOFFMAN: He is listed on Page 6.

10 COMMISSIONER KIESLING: All right. Any
11 objection from anyone else? All right.

12 MR. HOFFMAN: Commissioner, and also Andrew
13 Maurey for the Staff on Page 9.

14 COMMISSIONER KIESLING: Okay. Okay. I also
15 have an issue that I neglected to bring up that is
16 back on Page 8, and that is the presentation of the
17 Witnesses Larkin and DeRonne or DeRonne as a panel.
18 It's my understanding that they have filed their
19 testimony as one document. Is it SSU that has the
20 objection to them appearing as a panel?

21 MR. HOFFMAN: Yes.

22 COMMISSIONER KIESLING: Okay. Could you
23 tell me more about your objection?

24 MR. HOFFMAN: We would like the opportunity
25 to directly confront and cross examine each of the two

1 individuals, and we think we have a constitutional
2 right to do that. And we think that we have the right
3 to ask them -- to ask each individual questions
4 without, for example -- I'll just pick Mr. Larkin,
5 without Mr. Larkin looking to Ms. DeRonne for
6 assistance and rehabilitation.

7 So we think that -- while we don't, per se,
8 object to the compilation of their testimony in one
9 document, we do think we have the right to
10 independently cross examine each individual.

11 COMMISSIONER KIESLING: And are you
12 suggesting that sitting as a panel that you cannot
13 direct your question to one individual or another and
14 require an answer from the individual to whom you
15 direct your question?

16 MR. HOFFMAN: I think we could,
17 Commissioner, so long as they were instructed, each
18 individual was instructed, that we would be asking
19 questions to a specific individual and it was only
20 that individual who we would like a response from.

21 COMMISSIONER KIESLING: Yeah. I mean, that
22 doesn't seem like it's any -- that doesn't seem
23 unusual to me. You know, I think that there are
24 probably four categories of questions that you could
25 address to the panel. It would be one that was

1 addressed to the panel in general and let them decide
2 who is going to answer it. You can direct a question
3 to one individual on the panel by name or to the other
4 individual on the panel by name. Or you could ask
5 both of them to answer the same question while they
6 are both sitting there.

7 MR. HOFFMAN: Very good.

8 COMMISSIONER KIESLING: It doesn't seem that
9 permitting that range of direct, you know, identified
10 questions is going to deny you any rights of cross
11 examination, and that would be how I would intend to
12 permit cross --

13 MR. HOFFMAN: Very good. Thank you.

14 COMMISSIONER KIESLING: -- at that time.
15 That acceptable to you?

16 MR. BECK: Yes, commissioner.

17 COMMISSIONER KIESLING: Does anyone else
18 have a problem with that? All right.

19 MS. O'SULLIVAN: One more item on Page 8.

20 COMMISSIONER KIESLING: Yes.

21 MS. O'SULLIVAN: As we discussed, I believe
22 with Mr. Sandbulte, I think Ms. Teasley, and on
23 Page 9, Ms. Roberts, are in the same situation, that
24 OPC has added them as witnesses by subpoena. You
25 indicated with Sandbulte that you would allow him to

1 present his direct testimony and then be presented as
2 a direct witness.

3 COMMISSIONER KIESLING: Wait a minute. Mr.
4 Sandbulte isn't listed on Page 8 of my draft.

5 MS. O'SULLIVAN: Right. Right. On Page 8
6 and Page 9 Ms. Teasley and Ms. Roberts.

7 COMMISSIONER KIESLING: Yes, I saw those.

8 MS. O'SULLIVAN: And Tracy Smith, I believe,
9 are listed by OPC as subpoena witnesses, have also
10 filed prefiled testimony. Mr. Sandbulte --

11 COMMISSIONER KIESLING: Oh, they have?

12 MS. O'SULLIVAN: Yes, rebuttal testimony.

13 MS. JABER: Let me clarify. Commissioner
14 Kiesling, the point that Ms. O'Sullivan is trying to
15 raise here is if you want to be consistent with what
16 you've told the parties to do with Mr. Armstrong, you
17 just might want to note for the record that when those
18 individuals -- Sandbulte, I'm sorry -- when those
19 individuals get up to testify, they'll do their direct
20 testimony as you've directed here, but then they will
21 also be able to testify on OPC's Motion to Dismiss the
22 allegations that were made in the Motion to Dismiss.

23 COMMISSIONER KIESLING: Yes, as their
24 direct --

25 MS. JABER: Right.

1 COMMISSIONER KIESLING: Once we're finished
2 with one aspect, then whoever has also indicated that
3 they are going to use them as a witness will then have
4 an opportunity to ask direct questions.

5 MS. JABER: Right. And for the record, they
6 may want to identify on the record who those people
7 are so we can indicate so in the Prehearing Order as
8 well.

9 COMMISSIONER KIESLING: Okay.

10 MR. BECK: I think I'm clear, but let me
11 check, Commissioner. Mr. Sandbulte is the very first
12 witness.

13 COMMISSIONER KIESLING: Right.

14 MR. BECK: He gets up and puts in his direct
15 testimony for the Company, everybody cross examines.

16 COMMISSIONER KIESLING: Yeah, and they do
17 redirect.

18 MR. BECK: When it's all over, I then call
19 him to the stand at that point and not wait until all
20 of the other subpoenaed witnesses.

21 COMMISSIONER KIESLING: Exactly. It just
22 seems.

23 MR. BECK: And you say you want to do that
24 with respect to Ms. Roberts and Ms. Teasley, as well?

25 MS. JABER: I think that that's what the

1 Commissioner wants. And for the record, you would
2 just indicate who those people are so we can indicate
3 that in the prehearing order.

4 MR. BECK: Those are the only two.
5 Ms. Roberts and Ms. Teasley filed rebuttal testimony.

6 MS. JABER: What about Tracy Smith?

7 MR. BECK: He has not filed any testimony.

8 MS. JABER: I know he didn't file testimony,
9 but at the agenda conference you indicated that Tracy
10 Smith, you would want to ask him questions surrounding
11 the motion to dismiss as well.

12 MR. BECK: Yes.

13 MS. JABER: Okay.

14 COMMISSIONER KIESLING: So they'll do it in
15 the order in which they are listed here.

16 MR. BECK: Right.

17 MR. HOFFMAN: I believe that procedure would
18 apply for Mr. Sandbulte, Ms. Teasley and Ms. Roberts.

19 MR. BECK: We're in agreement.

20 COMMISSIONER KIESLING: Okay. All right.
21 Moving on to Page 9 and the list of -- I don't know
22 how many there are -- DEP witnesses.

23 MS. O'SULLIVAN: Before we get to those
24 witnesses --

25 COMMISSIONER KIESLING: Okay. I'm Sorry.

1 I'm not trying to jump ahead of you.

2 MS. O'SULLIVAN: That's okay. Janice
3 Beecher listed as a witness for Staff. She resides in
4 Michigan, is a professor up in Michigan, and we would
5 like to ask that she be taken at a date certain.

6 COMMISSIONER KIESLING: I think it's Iowa.

7 MS. O'SULLIVAN: Oh, I'm sorry, Indiana.

8 I'm sorry.

9 COMMISSIONER KIESLING: Indiana. I knew it
10 was one of I's.

11 MS. O'SULLIVAN: One of those midwestern
12 states. We'd like to request a date certain,
13 preferably May 6th, for her to fly down and present
14 her testimony.

15 COMMISSIONER KIESLING: May 6th is the day
16 that you are requesting?

17 MS. O'SULLIVAN: Yes.

18 COMMISSIONER KIESLING: Any objection to May
19 6th?

20 MR. ARMSTRONG: None from the Company.

21 COMMISSIONER KIESLING: Mr. Twomey, any
22 objection to May 6th? Mr. Twomey, any objection to
23 taking the testimony of Dr. Janice Beecher on May 6th?

24 MR. TWOMEY: Not at all.

25 COMMISSIONER KIESLING: To accommodate a

1 travel schedule.

2 MR. TWOMEY: Not at all.

3 COMMISSIONER KIESLING: All right.

4 MR. TWOMEY: She's a fine lady.

5 COMMISSIONER KIESLING: Okay.

6 MR. ARMSTRONG: Commissioner, that does
7 bring to mind that I overlooked the question regarding
8 the DEP and Water Management District witnesses.

9 COMMISSIONER KIESLING: I haven't gotten
10 there yet. I'm still trying to.

11 MR. ARMSTRONG: Okay.

12 COMMISSIONER KIESLING: Believe me, I'm
13 trying mightily to get there. All right. Anything
14 else before I get to Mr. Allen, et al?

15 MS. O'SULLIVAN: No.

16 COMMISSIONER KIESLING: Okay. Starting with
17 Mr. Allen and going through Ms. Touart. All right.
18 It's my understanding that there has not been any --
19 an agreement among the parties on how to get these
20 witnesses to testify, and that at least at this point
21 I don't remember which one it is that wants them here.
22 Is that OPC?

23 MS. O'SULLIVAN: Typically, Commissioner,
24 these witnesses, many of them, are split into the
25 record. They are DEP witnesses who testify as to

1 quality of service and of the condition of the
2 facilities. We have not been able to split any of
3 those witnesses into the record.

4 COMMISSIONER KIESLING: So you're talking
5 about stipulating them in and then if we can't
6 stipulate them in, then whether they have to come here
7 live or do it by teleconferencing.

8 MS. O'SULLIVAN: That's correct. This is a
9 significant number of witnesses that are all over the
10 state, DEP or HRS employees.

11 COMMISSIONER KIESLING: All right. Well,
12 Let me start it from this point then. Since this list
13 was circulated and you all were at the pre-pre, has
14 there been any change in position on whether the
15 testimony of these people can be stipulated in? Is
16 that what you are asking?

17 MS. O'SULLIVAN: Yes.

18 COMMISSIONER KIESLING: Okay.

19 MS. O'SULLIVAN: And if not, we would ask
20 for video conferencing.

21 COMMISSIONER KIESLING: Okay.

22 MR. ARMSTRONG: Southern States agrees to
23 stipulate the witnesses in.

24 MR. BECK: We do not, although we certainly
25 have no objection to the teleconferencing on a date

1 specific, but we think the Commissioners should hear
2 these witnesses. So we are not willing to stipulate
3 their testimony into the record.

4 COMMISSIONER KIESLING: All right. I guess
5 Mr. Twomey is not in here so he doesn't care. I'm
6 certainly willing to have these witnesses testify via
7 teleconferencing for specific dates and times. Do you
8 have a list or something?

9 Have you passed it out to anybody else?

10 MS. O'SULLIVAN: Staff has been attempting
11 to secure video conferencing facilities that are
12 located throughout the state. It's very difficult to
13 reserve time on the satellite. We have found some
14 dates and times and listed the witnesses, and we're
15 passing that out right now. We'd like to request
16 these times be granted. These are blocks of times
17 that obviously may take less time than blocked out.

18 COMMISSIONER KIESLING: Does anyone know
19 where Mr. Twomey went?

20 I would only note that we're doing -- we
21 have a three-hour block to do three HRS witnesses in
22 Jacksonville, and it may be that his Witness Carter
23 could just be done at the same time and he doesn't
24 have to drag that person all the way over here. So if
25 he comes in, I'll ask him that. Here he comes.

1 MS. O'SULLIVAN: One note, too, that we've
2 requested that Ms. Beecher be taken on May 6th as
3 well, so there may be a little time crunch there.

4 COMMISSIONER KIESLING: That's fine. I
5 would not have missed you but for the topic we're
6 discussing.

7 MR. TWOMEY: Should I take offense at that?
8 (Laughter)

9 COMMISSIONER KIESLING: No, no. I wouldn't
10 have sent someone to find you if I hadn't needed your
11 input.

12 MR. TWOMEY: I see.

13 MR. SHREVE: I was thinking that was the
14 first thing that all of us could agree on, that we
15 probably would not have missed Mr. Twomey.

16 COMMISSIONER KIESLING: Okay. Mr. Twomey,
17 Staff has circulated a list of potential times and
18 dates for teleconferencing testimony by all of these
19 witnesses. And the reason that I needed you was that
20 on May 9th they have time on the satellite from
21 Jacksonville for two witnesses plus an HRS witness.

22 MR. TWOMEY: Yes, ma'am.

23 COMMISSIONER KIESLING: And I was wondering
24 if you would also perhaps like to include the witness
25 you're subpoenaing, Ms. or Mr. Carter.

1 MR. TWOMEY: I think that's an excellent
2 idea.

3 COMMISSIONER KIESLING: To keep that person
4 from having to come over here.

5 MR. TWOMEY: Yes, that's an excellent idea.

6 COMMISSIONER KIESLING: Okay. Staff, can
7 you accommodate that and work it out with Mr. Twomey
8 and the witness?

9 MS. O'SULLIVAN: Certainly.

10 COMMISSIONER KIESLING: Okay. Well, it's
11 my intent, unless somebody has a big objection, to go
12 ahead and allow these witnesses to be taken on this
13 time schedule.

14 MR. ARMSTRONG: Commissioner, we don't have
15 a problem with the teleconferencing, but May 8th was
16 the date that we have cleared with all the DEP and
17 Water Management District people, if we could get a
18 time certain for them. Only David York couldn't do it
19 on the 8th and he preferred the 9th. But May 8th was
20 the day we wanted to try to get all of them in.

21 COMMISSIONER KIESLING: But we can't get
22 time on the satellite. Do you want them to come here
23 instead?

24 MR. ARMSTRONG: Well, our people were going
25 to come here. They are all here. I mean, most of

1 them are here already, and they were going to come
2 here to testify live on the 8th.

3 MS. O'SULLIVAN: Well, we do have -- these
4 are just blocks of time that are set forth on the
5 video conferencing. It may take much less time than
6 the times listed there.

7 MR. ARMSTRONG: We might not have -- are we
8 going to have testimony and cross for every one of the
9 witnesses?

10 MR. BECK: There will be some, but I suspect
11 it will be very short. I think these witnesses will
12 move quickly.

13 COMMISSIONER KIESLING: Okay. We'll just
14 get started first thing that morning and go until
15 we're done. And that will include the witnesses
16 you're bringing in that day, too. I mean, I can't
17 speak for the Chairman, but I will certainly urge the
18 Chairman when we get to this to do everything in our
19 power to facilitate that schedule.

20 MR. ARMSTRONG: Thank you, Commissioner.

21 COMMISSIONER KIESLING: All right. And if
22 between now and the hearing, if there are even some of
23 these DEP witnesses that, you know, can be stipulated,
24 I would just urge you to look at them critically and
25 stipulate not only them but as many others as possible

1 where it is possible, especially ones from other
2 agencies, because this is imposing quite a burden on
3 these other agencies to have this many of their key
4 people tied up.

5 MR. ARMSTRONG: Commissioner, I hate to keep
6 bringing it up, but if we could move David York, then,
7 from the bottom of Page 10, if we could move him to
8 after Harold Wilkening on Page 11, because he was the
9 only one who definitely could not do it on the 8th.

10 COMMISSIONER KIESLING: Could not do it on
11 the 8th.

12 MR. ARMSTRONG: Right, so he's the only one
13 who preferred to do it on the 9th. I think if we
14 moved him past Wilkening, we could probably be
15 conceding to what he needs.

16 COMMISSIONER KIESLING: Okay. So you just
17 want to move the order. So that York goes after
18 Wilkening.

19 MR. ARMSTRONG: Right.

20 COMMISSIONER KIESLING: Okay.

21 MS. JABER: Commissioner, may I interrupt?

22 COMMISSIONER KIESLING: Yes.

23 MS. JABER: Ms. Beecher, we suggested May
24 6th before I saw this list. Because she has to make
25 flight arrangements, just in case this does go all day

1 on May 6th, if I may suggest -- May 7th is an agenda
2 -- May 9th, maybe in the evening or something,
3 afternoon.

4 COMMISSIONER KIESLING: May 9th, that's
5 almost the end of the hearing.

6 MS. JABER: Right.

7 COMMISSIONER KIESLING: I mean, that's
8 Friday before the hearing is over on Saturday.

9 MS. JABER: May 3rd.

10 COMMISSIONER KIESLING: May 3rd. Acceptable
11 to everyone?

12 MR. ARMSTRONG: Yes.

13 COMMISSIONER KIESLING: All right. Then
14 Dr. Beecher will testify on May 3rd.

15 Now, can I get down to rebuttal? Is there
16 anything else? Okay. Then on rebuttal is there any
17 issues that I need to deal with regarding Mr. Harvey's
18 testimony? What about Potts and Hoofnagle? They were
19 not named -- they were not listed in your Motion to
20 Strike, but you did bring them up orally. Do we need
21 to deal with them?

22 MS. O'SULLIVAN: That's correct. The
23 Utility in a letter subsequent to the prehearing
24 statement giving me some new positions added those
25 individuals as witnesses, and we voice the same

1 concerns with them regarding the lack of notice and
2 prefiling.

3 COMMISSIONER KIESLING: All right. Then let
4 me go through them. Has Mr. Harvey's deposition been
5 taken or any -- anything that we could look at or the
6 parties could look at to know what he's going to be
7 doing here?

8 MR. ARMSTRONG: Commissioner, he submitted
9 prefiled rebuttal testimony.

10 COMMISSIONER KIESLING: Okay.

11 MR. ARMSTRONG: The other four, Potts,
12 Hoofnagle, Sowerby and York were the four witnesses we
13 discussed earlier.

14 COMMISSIONER KIESLING: Okay. Well, I
15 thought we had discussed others, but I didn't
16 know that -- is there something in writing from
17 Ms. Potts that others already have so that they know
18 what --

19 MR. ARMSTRONG: That's what we're going to
20 identify. She's a superior of one of the other people
21 who did something in writing and then Dan Hoofnagle is
22 in charge of the Water Division over there at DEP.

23 COMMISSIONER KIESLING: Well, that still
24 leaves a broad range of things for him to testify
25 about.

1 MR. ARMSTRONG: We've agreed to supply in
2 the testimony. We're going to identify the letters,
3 give copies of the letters, identify what each of
4 these people would testify about. It would be the
5 used and useful issue and the 100% reuse -- 100% used
6 and useful on the reuse facilities; margin reserve as
7 far as used and useful goes.

8 COMMISSIONER KIESLING: Any problem from
9 Public Counsel on any of those? Okay. Mr. Twomey,
10 any problem with those witnesses?

11 MR. TWOMEY: No, ma'am.

12 COMMISSIONER KIESLING: Okay. Well, I still
13 have some level of concern about what exactly it is
14 that they're going to be testifying about. We do have
15 some time before rebuttal, and we have to work out
16 some way that, you know, the parties can know the
17 parameters of the testimony of each of these
18 individuals so that they can at least prepare in some
19 way. So can you provide something in writing by, I
20 don't know, noon on Monday or something?

21 MR. ARMSTRONG: That's fine.

22 COMMISSIONER KIESLING: And let me just
23 indicate for everybody that it's my intention to set
24 noon on Monday as the deadline for everybody to comply
25 with anything that they need to file, like an update

1 of a position or anything like that, because I have an
2 out-of-town hearing that I have to leave for on
3 Tuesday, and I won't be back until Thursday night or
4 Friday morning, one or the other, and I would like to
5 have this prehearing out and signed before I leave on
6 Tuesday. So Staff's going to be working Monday
7 arduously, and I need everybody who has got anything
8 they are going to be filing to get that in by noon on
9 Monday. And I would also indicate, when I say by noon
10 on Monday, if you file it down in the clerk's office,
11 please be sure that also a copy of it gets to Staff
12 immediately.

13 MS. O'SULLIVAN: I would also add a request
14 that it be put on diskette to speed up compilation.

15 COMMISSIONER KIESLING: Okay. I have no
16 problem with that, either.

17 MS. O'SULLIVAN: Thank you.

18 COMMISSIONER KIESLING: Then as to Potts,
19 Hoofnagle, I guess Sowerby and York, those are the
20 four that are by subpoena that we don't know exactly
21 what they are going to be here for, so you'll file
22 that, and I will deny the Motion to Strike as long as
23 there is adequate information provided by noon on
24 Monday. And based on that information, if there's
25 something new that comes up, you know, everyone is

1 free to file some other emergency request if it
2 suddenly turns out they're going to be talking about
3 something that no one anticipated. Mr. Ferrell, Mr.
4 Yingling, Mr. Adams, Mr. Wilkening, what was the date
5 certain that you had hoped to have for them?

6 MR. ARMSTRONG: May 8th.

7 COMMISSIONER KIESLING: May 8th. Was that
8 -- because that was the date that you picked or
9 because that was the date they picked?

10 MR. ARMSTRONG: Well, we had to speak with
11 all four and find out what was the best date for the
12 four of them. A couple of them, they are traveling,
13 so.

14 COMMISSIONER KIESLING: But those four did
15 prefile testimony?

16 MR. ARMSTRONG: Yes, both prefiled rebuttal
17 testimony.

18 COMMISSIONER KIESLING: All right. And
19 since I haven't read their prefiled yet, obviously,
20 are any of them ones that we can stipulate and keep
21 them from having to come if they are just going to say
22 "I'm the supervisor of so and so?" Mr. Beck or
23 Mr. Shreve? Can we stipulate the prefiled of Ferrell,
24 Yingling, Adams or Wilkening, or -- I think there was
25 one more -- or Harvey?

1 MR. BECK: Commissioner, I'm not prepared to
2 answer that. This is the first time anybody has ever
3 asked to stipulate their testimony into the record.

4 COMMISSIONER KIESLING: Yeah, I mean, I just
5 brought it up. I didn't bring it up with anyone else.

6 MR. BECK: I'm not prepared.

7 COMMISSIONER KIESLING: Since they indicated
8 that one of them was going to testify basically as the
9 supervisor of someone else -- did I misunderstand
10 that?

11 MR. ARMSTRONG: That was in regard to the
12 DEP people.

13 COMMISSIONER KIESLING: Oh. That was
14 regarding the DEP people. Okay. Then I'm sorry. I
15 didn't realize that they were substantive as opposed
16 to procedural. Well, then, as to people such as the
17 custodian of the records or supervisor of someone
18 else's report, if in any further discussions you all
19 can just agree to stipulate that that person is and
20 save them from having to come, it would just -- it
21 would be helpful. I'm not saying anyone has to
22 stipulate to anything. I just want to explore it.

23 MS. O'SULLIVAN: Could Staff clarify which
24 witnesses those were again? Were those Ferrell,
25 Yingling, Adams and Wilkening?

1 COMMISSIONER KIESLING: No, it was
2 apparently the others, Ms. Potts or Mr. Hoofnagle.

3 MS. O'SULLIVAN: So you want to stipulate in
4 their testimony which we don't have prefiled?

5 MR. HOFFMAN: No.

6 COMMISSIONER KIESLING: If they are only
7 appearing to say "I'm the supervisor of so and so and
8 this is their report," that seems to me to be
9 something we can stipulate. By stipulation, not by,
10 you know, it doesn't have to relate to an issue in
11 particular.

12 MS. O'SULLIVAN: Okay. Thank you.

13 COMMISSIONER KIESLING: You know, if you can
14 clarify among yourselves. Okay.

15 Now, also on this page is where I have
16 noticed again that you have listed the dates in the
17 following week that I don't know how this -- what I
18 would call miscommunication occurred, but --

19 MR. ARMSTRONG: Just strike it.

20 COMMISSIONER KIESLING: Okay. Anything on
21 the remaining witnesses for SSU that are listed on
22 Page 11 or Page 12 as rebuttal witnesses.

23 MR. HOFFMAN: Commissioner.

24 MR. ARMSTRONG: Yes.

25 MR. HOFFMAN: Yesterday afternoon we filed a

1 motion to submit additional rebuttal testimony of
2 approximately, I think, 27 witnesses. The reason we
3 did that was in response to the Commission's decision
4 on Tuesday, this past Tuesday, confirming that an
5 issue of alleged misconduct or mismanagement on the
6 part of SSU will be included as an issue in the rate
7 case. It's obviously a very serious issue. It's one
8 where the intervenors are taking the position that
9 there ought to be a penalty imposed on SSU of a
10 hundred basis points.

11 We have a number of individuals, 27 in fact,
12 who attended the customer meetings which have been
13 discussed at length throughout the second set of
14 customer service hearings. And there have been a
15 number of disparaging comments made about the accuracy
16 of the information conveyed by Southern States
17 representatives at those meetings.

18 We think in fairness to us we ought to have
19 the opportunity to submit this testimony. The
20 testimony of each of these witnesses will probably not
21 exceed five pages. It will probably be about five
22 pages each and it will be fairly similar. But that
23 motion was not included as one of the pending motions
24 in the Prehearing Order because it was not filed until
25 yesterday afternoon.

1 COMMISSIONER KIESLING: Has anybody else
2 seen it yet?

3 MS. O'SULLIVAN: I did not see it on CMS
4 this morning. It has not be logged in.

5 MR. BECK: Southern States must have mailed
6 it yesterday, because they hand-deliver some things to
7 us, and we don't have it. So I assume they mailed it
8 to us so we'd get it after the prehearing conference.

9 MR. HOFFMAN: No, that's not true. I
10 instructed my secretary to fax it to Mr. Beck and Mr.
11 Twomey at some point about 5:00 yesterday afternoon.

12 MR. TWOMEY: In defense of Mr. Hoffman, I
13 think, I think I saw that someplace. Since I sit next
14 to my fax machine, I think it came in with another
15 document.

16 MR. BECK: We don't have it.

17 COMMISSIONER KIESLING: Apparently we don't
18 have it.

19 MR. BECK: Witness after witness testified
20 at the public hearing subject to cross examination by
21 Southern States. Southern States chose not to
22 question those witnesses about what they said. Their
23 testimony is part of the record. It seems incredibly
24 late in this process -- we filed the motion to dismiss
25 five weeks and three days ago and we have pursued the

1 issue as well -- for them to come in here today and
2 say, "We have 20 some witnesses we want to file." It
3 just boggles my imagination. We object vehemently.
4 I'd want to ask those witnesses questions. It's too
5 late in the process to be trying to be submit 27
6 witnesses, whatever they have, particularly after they
7 chose not to ask a question of all the witnesses who
8 testified at the public hearings about what was said
9 at the private Southern States' meetings.

10 COMMISSIONER KIESLING: Let me hear from
11 Staff first. And Mr. Twomey if you want --

12 MR. BECK: Can I make want more comment?

13 COMMISSIONER KIESLING: Yes.

14 MR. BECK: They have submitted rebuttal
15 testimony by Ida Roberts concerning that. Question,
16 If they saw fit to file rebuttal testimony by Ida
17 Roberts, where were the other 27 witnesses at the time
18 they filed Ida Roberts' rebuttal testimony?

19 COMMISSIONER KIESLING: All right.

20 MR. TWOMEY: I adopt Public Counsel.

21 MS. O'SULLIVAN: Staff notes that as well,
22 that Ms. Roberts did address customer service
23 testimony. I believe we're talking about the
24 witnesses that are on Page 8 and 9 of SSU's handout
25 this morning. Are those the same witnesses?

1 MR. ARMSTRONG: Yes.

2 MS. O'SULLIVAN: If so, several of those
3 witnesses already have provided testimony I note.

4 COMMISSIONER KIESLING: But they want to
5 provide more.

6 MS. O'SULLIVAN: Right. Correct. Just
7 hearing this the first time, Staff would object again,
8 similar to our request to strike the witnesses that
9 were even listed on the prehearing statements. This
10 is way too late in the process to do this. And as
11 Mr. Beck noted, they did address some customer service
12 testimony. In the rebuttal they had the opportunity
13 to file it in rebuttal and give parties a chance to
14 look at that rebuttal. We're not even sure who some
15 of these individuals are who are listed here.

16 MR. HOFFMAN: Briefly Commissioner,
17 Ms. Roberts' rebuttal testimony that was filed on
18 March 21st responded to the comments that were made at
19 the customer service hearings, directed on numerous
20 occasions in response to specific questions of Public
21 Counsel, to Ms. Roberts individually. The subject
22 matter of these 27 witnesses that we propose to file
23 is indeed essentially the same as part of Ms. Roberts
24 testimony. But it was only Ms. Roberts who filed the
25 testimony because the accusations were directed at

1 her.

2 I am probably as boggled -- my mind is as
3 boggled as Mr. Beck's is in connection with the
4 decision that the Commission made on Tuesday. We,
5 frankly, were surprised that that motion to dismiss
6 remains pending and that an issue of alleged
7 misconduct or mismanagement remains pending, based on
8 what is alleged in the Motion to Dismiss. We think
9 now that that issue has been confirmed for inclusion
10 that we ought to have the opportunity to fully respond
11 because it's a very serious issue and there are very
12 serious financial consequences to the Company in
13 connection with that issue.

14 COMMISSIONER KIESLING: Anything further?

15 MS. O'SULLIVAN: I'm not sure if this is
16 helpful or not but I'll say it anyways.

17 I note that in the past when we have had
18 witnesses provide live testimony, the Utility is
19 allowed to present live rebuttal if they can argue
20 that they couldn't have presented prefiled rebuttal
21 because they weren't aware of the subject of the live
22 testimony. But, again, this is awfully late in the
23 process for listing 27 additional witnesses when the
24 issue, at least, has been known and discussed in
25 several pre-prehearings or prehearing meetings amongst

1 the parties.

2 COMMISSIONER KIESLING: I'm not inclined to
3 permit any of the witnesses who have not already filed
4 rebuttal to introduce something new at this time. It
5 just seems like it is so late in the process; that the
6 prejudice of it would outweigh any benefit to you.

7 However, I am more willing to at least
8 entertain the idea of the supplemental rebuttal of the
9 witnesses who have already filed rebuttal, but having
10 not seen it and not have any idea of what it goes to
11 that makes it difficult for me. Does it go to --

12 MR. HOFFMAN: Commissioner, it goes to --

13 COMMISSIONER KIESLING: Directly to --

14 MR. HOFFMAN: It goes to corroboration of
15 that portion of Ms. Roberts' testimony which discusses
16 the statements made by Ms. Roberts at the customer
17 service meetings held by Southern States after the
18 second set of customer notices were mailed to our
19 customers.

20 During the customer service hearings
21 accusations were made by customers and by the Office
22 of Public Counsel that Ms. Roberts misrepresented
23 certain information. Misrepresented the role of the
24 Office of Public Counsel, for example. Another
25 example, that Ms. Roberts advised the customers that

1 the Commission had already determined what level of
2 revenue increase the company would receive in this
3 proceeding. Ms. Roberts adamantly disputes that in
4 her testimony. The testimony of these 27 witnesses or
5 the seven that have already filed testimony
6 corroborate that.

7 COMMISSIONER KIESLING: As to any of those
8 meetings at which they were present.

9 MR. HOFFMAN: Yes, ma'am. Correct.

10 COMMISSIONER KIESLING: All right. I'm
11 going to permit the supplemental rebuttal if it's
12 limited to what you just said.

13 MR. BECK: Commissioner, I wanted to address
14 that matter. First of all, you're ruling on a motion
15 I haven't seen, you know, that apparently they put in
16 the mail yesterday.

17 Secondly, this is corroborating testimony
18 that they filed. If the testimony was filed, why are
19 they waiting now to corroborate it? They knew it at
20 the time they filed the prefiled testimony of Ida
21 Roberts. There is absolutely no cause given by the
22 Company why they didn't file this with Ida Roberts'
23 testimony if the purpose of this is to corroborate it.

24 Secondly, this goes back to testimony by the
25 customers that was given in January. Where have they

1 been? You know, it's been no secret that we were
2 trying to dismiss this case and it's been no secret
3 that we're going to raise an issue about
4 mismanagement. We've done it up front. We did it
5 verbally. It's in our prehearing statement. They
6 have waited until the late second to do this.
7 Discovery ends Monday. We have no opportunity to
8 question these witnesses. It's just a late-filed
9 attempt to buttress the case that they should have
10 filed at the time their other witnesses were filed.

11 COMMISSIONER KIESLING: Well, that raises a
12 different concern. I mean, my an assumption was it
13 was going to be -- it's true, we haven't seen it yet
14 so I cannot make any assumptions about what it is or
15 if it is something that would require discovery. And
16 so until it's here, I'm not going to rule on those
17 seven. And I'm going to look at it after I see it.
18 But I can put you on notice now that if it goes beyond
19 just simply saying, "I was there and that's what
20 happened," I may not allow it. I just have to see it
21 first.

22 MR. HOFFMAN: Yes, ma'am. Thank you. I
23 understand that you are reserving ruling only as to
24 the seven witnesses.

25 COMMISSIONER KIESLING: That's who I'm

1 reserving ruling on until I have an opportunity to
2 even see what it is. As to the others, it's simply
3 too late.

4 MR. BECK: May I inquire have you filed the
5 testimony or submitted it with your motion?

6 MR. HOFFMAN: No, we haven't.

7 COMMISSIONER KIESLING: Okay. I thought it
8 was with your motion.

9 MR. HOFFMAN: No, we haven't. In our motion
10 we have asked for permission to file it. We can get
11 it filed depending on when we finish today, either
12 this afternoon or certainly first thing Monday
13 morning.

14 MR. BECK: I renew my objection.

15 COMMISSIONER KIESLING: Staff, when was the
16 pre-prehearing in this?

17 MS. O'SULLIVAN: We had one, I believe, in
18 January and then one on April 8th.

19 COMMISSIONER KIESLING: Okay. And nothing
20 since then?

21 MS. O'SULLIVAN: No.

22 MR. ARMSTRONG: Commissioner, if I may,
23 March 12th the Motion to Dismiss was filed. Our
24 rebuttal, I believe, had to be filed by March 26th.

25 MR. HOFFMAN: 21.

1 MR. ARMSTRONG: 21. So we only had a period
2 of a week at that point in time, too, since the
3 allegations have been made.

4 MR. BECK: Commissioner, they have had every
5 day since we filed that. They have waited until
6 today. They have had five weeks and three days and
7 they still haven't filed it even as we sit here.

8 COMMISSIONER KIESLING: Okay. At least at
9 this point I'm just going to take this issue under
10 advisement, because I need to do some thinking about
11 it, and it does look like we need to at least take
12 lunch at some point, and I'll come back and deal with
13 that when we come back on the record after lunch.

14 MR. SHREVE: Commissioner, if I may make one
15 point on that. It's not just as to our motion, but
16 the testimony of those witnesses were given. They had
17 rebuttal testimony filed by Ida Roberts which was
18 fine. The time they had to rebut those witnesses,
19 which is very much a part of this case for the
20 consideration of the Commission, should have been
21 after that, not since filing anything else.

22 COMMISSIONER KIESLING: Okay. Let's just
23 finish the rest of the witness list, and then it's my
24 intention to take not a long lunch at all, but since I
25 caught a 6:40 plane yesterday, held a hearing until

1 8:00 last night, then caught a 7:00 a.m. plane back,
2 I've got to eat something.

3 Is there anything else on any of the
4 witnesses that I need to either deal with or at least
5 take under advisement until after lunch?

6 MS. O'SULLIVAN: Commissioner, I believe OPC
7 was going to supplement Ms. Dismukes's testimony; is
8 that correct. Do you want to address that now?

9 MR. BECK: We filed before today two
10 supplemental testimonies, one addressing the letter
11 that was produced after the date and the other the
12 income tax returns. Early last week we found out that
13 an affiliate of Southern States was purchasing land in
14 Palm Coast and that newly created affiliate has an
15 option to purchase Palm Coast Utilities.

16 We are raising an issue about allocating
17 overheads to the Palm Coast facility. I have proposed
18 testimony here. I have delivered it to Southern
19 States. It's based on information we've had no more
20 than two weeks, and it's short testimony by Kimberly
21 Dismukes. We're going to ask her third supplemental
22 testimony be allowed based on the fact it addresses
23 issues that weren't even known until the last few
24 weeks.

25 COMMISSIONER KIESLING: You know, it becomes

1 like a death spiral, you know. You know, having to
2 debate when you first heard about it in order to
3 determine it is just, you know, getting unbelievable.

4 MR. BECK: It didn't happen until this
5 month. Let me phrase it that way. The option to
6 purchase the Palm Coast Utility by an affiliate of
7 Southern States did not happen until this month.

8 COMMISSIONER KIESLING: And what
9 relationship does that alleged transaction have to
10 this case?

11 MR. BECK: That some of the overhead -- this
12 is on projected test year and that some of the general
13 and common overhead of the Company should be allocated
14 to that facility, and that's what the supplemental
15 testimony is addressing, the allocation of overheads
16 to the new facility.

17 COMMISSIONER KIESLING: Let me see if I can
18 just try to follow this. An affiliate that is not
19 Southern States --

20 MR. BECK: We have information that shows
21 that Southern States itself, the company Southern
22 States, was intimately involved in this transaction.
23 And it appears to us, although we'll have to pursue
24 it, is that the transaction was set up so that it
25 would go -- the option would go to an affiliate of

1 Southern States and not Southern States itself.
2 Although it seem abundantly obvious to us, at least,
3 that Southern States will eventually run this company.
4 We have a forecasted test year, and given that, we
5 believe that some of the overhead should be allocated
6 to this system just like they are to the other
7 facilities of Southern States.

8 COMMISSIONER KIESLING: Okay. And this
9 affiliate, though, is purchasing land or they are
10 purchasing a utility.

11 MR. BECK: There are two different
12 transactions, as I understand it. There's a land
13 transaction that's not the subject of this and there's
14 been an actual purchase of the land in Palm Coast by
15 the Southern States affiliate. Secondly, there has
16 been an option acquired by a newly created subsidiary
17 of Minnesota Power, too. And this is an option to
18 purchase Palm Coast Utility which is a company that is
19 currently in front of the Commission for a rate
20 increase. We believe that given that, those
21 circumstances, that some of the overheads, general and
22 common overheads of Southern States that are allocated
23 to all of their existing facilities should be
24 allocated there as well.

25 COMMISSIONER KIESLING: This purchase hasn't

1 even occurred.

2 MR. BECK: That's correct. There has been
3 an option granted.

4 COMMISSIONER KIESLING: Staff?

5 MS. O'SULLIVAN: Commissioner, this
6 addresses, I believe, an issue that OPC has requested
7 be added to the Prehearing Order. We haven't gotten
8 to that point yet. I didn't mean to get into the
9 substance of the issue at this point. I just wanted
10 to note that they had requested supplemental testimony
11 before we left the witness portion of the Prehearing
12 Order.

13 If I could have a moment to look at our
14 position on the issue, I believe -- just one moment.

15 MR. TWOMEY: While she's doing that, may I
16 say I support Public Counsel's request.

17 COMMISSIONER KIESLING: Okay.

18 MS. O'SULLIVAN: We could always reserve
19 ruling on this until we get to that issue in the
20 Prehearing Order.

21 MR. ARMSTRONG: And I haven't said anything
22 because I don't know that I need to. But If you want
23 to hear Southern States's position we could.

24 COMMISSIONER KIESLING: Part of the reason
25 that I'm only interested in this is, you know, when I

1 start deciding, you know, who can file supplemental
2 rebuttal a week before the hearing and who can't, you
3 know, it's information I need to have. So, yeah, I'll
4 take that one under advisement, too, during lunch. I
5 probably will not make a ruling on those witnesses or
6 that supplemental testimony until we get to that
7 issue. But I appreciate the information.

8 MR. HOFFMAN: Commissioner, I would just
9 note that we were provided a copy of that testimony,
10 but we were not provided a copy of any motion setting
11 forth the justification for permitting it to be
12 prefiled. So I just note that for the record. I
13 don't know if one has been filed or not.

14 MR. BECK: This is an oral motion. We have
15 not filed it.

16 COMMISSIONER KIESLING: Okay. I have 12:30.
17 Can everybody manage to eat something by 1:00?
18 Anyone? Half hour, is that enough? Okay.

19 MR. SHREVE: Commissioner, could I get
20 clarification. We had a discussion earlier, and the
21 new issue was not allowed for Southern States we had
22 the first discussion on.

23 They have subpoenaed two witnesses for
24 deposition on this coming Monday on that issue. I'd
25 like to know if those depositions are going to be

1 taken. I assume they are not since it's not an issue
2 in the case. If they are to be taken without it being
3 an issue in the case, I still want it understood that
4 we have complete discovery left. Unless they are just
5 not going to be taken because of this.

6 COMMISSIONER KIESLING: I don't know. They
7 can do whatever they want to. All I'm saying is it's
8 not going to be an issue in this case. And, you know,
9 if they want to gather information, you want to gather
10 information, you do whatever you want, but I'm not
11 going to permit it to come into this case in any way.

12 MR. SHREVE: With that, I would suppose
13 since they are taking the depositions on that date and
14 talking about whatever it is they are talking about,
15 we will not be limited in our discovery since it won't
16 be coming in this case anyway.

17 MR. ARMSTRONG: Not part of this case.

18 COMMISSIONER KIESLING: You know, as far as
19 I'm concerned if that's the only things they're asking
20 them -- you know, I don't even know if a subpoena
21 issued in this docket is going to be sufficient to get
22 the witnesses there if it's not an issue. You know,
23 you all can work that out. You have 30 minutes during
24 lunch to try to figure it out. I need to tell you
25 that I don't have control of the button that turns the

1 mikes off, so you need to take care of yourselves.

2 (Thereupon, lunch recess was taken at

3 12:30 p.m.)

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5 (Transcript continues in sequence in

6 Volume 2.)

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