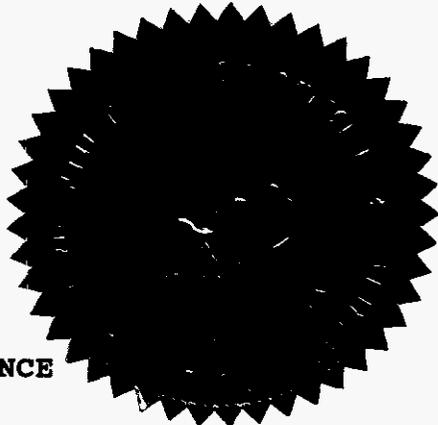


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 951056-WS  
: Application for rate :  
: increase in Flagler :  
: County by Palm Coast :  
: Utility Corporation. :  
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PROCEEDINGS: PREHEARING CONFERENCE  
  
BEFORE: COMMISSIONER DIANE K. KIESLING  
Prehearing Officer  
  
DATE: Thursday, June 20, 1996  
  
TIME: Commenced at 9:30 a.m.  
Concluded at 12:30 p.m.  
  
PLACE: Betty Easley Conference Center  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida  
  
REPORTED BY: H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporter

1 **APPEARANCES:**

2           **WAYNE L. SCHIEFELBEIN, and KATHRYN COWDERY,**  
3 Gatlin, Woods and Carlson, The Mahan Station, 1709-D  
4 Mahan Drive, Tallahassee, Florida 32308, Telephone No.  
5 (904) 877-7191, appearing on behalf of **Palm Coast**  
6 **Utility Corporation.**

7           **RICHARD D. MELSON,** Hopping Green Sams and  
8 Smith, Post Office Box 6526, Tallahassee, Florida  
9 32314, Telephone No. (904) 222-7500, appearing on  
10 behalf of **Dunes Community Development District.**

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

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

21           **ALBERT J. HADEED,** 1200 Moody Boulevard, #11,  
22 Bunnell, Florida, 3211, appearing on behalf of **Flagler**  
23 **County.**

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25

1                                    P R O C E E D I N G S

2                    (Hearing convened at 9:40 a.m.)

3                    **COMMISSIONER KIESLING:** I'll call the  
4 hearing to order. Staff, could you read the notice?

5                    **MR. EDMONDS:** Pursuant to notice, this time  
6 and place has been designated for a prehearing  
7 conference in Docket Number 951056-WS, application for  
8 a rate increase in Flagler County by Palm Coast  
9 Utility Corporation.

10                    **COMMISSIONER KIESLING:** I'll take  
11 appearances.

12                    **MR. SHIEFELBEIN:** My name is Wayne  
13 Shiefelbein. I'm with the firm Gatlin, Woods and  
14 Carlson. We represent Palm Coast Utility Corporation.

15                    **MS. COWDERY:** Kathryn Cowdery, Gatlin, Woods  
16 and Carlson, representing Palm Coast.

17                    **MR. MELSON:** Richard Melson of the law firm  
18 Hopping Green Sams and Smith, P.A., representing the  
19 Dunes Community Development District.

20                    **MR. REILLY:** Steve Reilly with the Office of  
21 Public Counsel on behalf of the citizens of the State  
22 of Florida.

23                    **MR. HADEED:** Good morning. My name is Al  
24 Hadeed. I'm the County Attorney for Flagler County,  
25 and we have petitioned for intervention.

1           **MR. EDMONDS:** Scott Edmonds and Bobbie Reyes  
2 on behalf of Commission staff.

3           **COMMISSIONER KIESLING:** Are there any  
4 preliminary matters, Mr. Edmonds, that we need to deal  
5 with? I would assume I need to deal with Flagler's  
6 petition to intervene.

7           **MR. EDMONDS:** Yes.

8           **COMMISSIONER KIESLING:** Recognizing that it  
9 has been filed so recently that there has not been an  
10 opportunity for responses, is everyone willing and  
11 ready to deal with that motion?

12           **MS. COWDERY:** Yes, Commissioner.

13           **COMMISSIONER KIESLING:** No objections. All  
14 right.

15           I've reviewed your motion, and considering  
16 that you're a customer, at the very least, you have  
17 standing there, and I'm not making any ruling on any  
18 other standing, but I will grant the intervention. So  
19 now you're a real party.

20           **MR. HADEED:** Thank you, your Honor.

21           **COMMISSIONER KIESLING:** Any other  
22 preliminary matters?

23           **MR. EDMONDS:** None that I'm aware of.

24           **MS. COWDERY:** Would this be an appropriate  
25 time to ask you about the status of the pending

1 discovery matters?

2           **COMMISSIONER KIESLING:** You could ask me  
3 about it. We've been working on orders, but they  
4 aren't signed yet, and they will be out by tomorrow.

5           **MS. COWDERY:** I just was wondering if there  
6 would be anything done at the prehearing today on any  
7 of these orders, or if you were doing it outside the  
8 scope of the prehearing conference.

9           **COMMISSIONER KIESLING:** I guess if you could  
10 be more specific. I mean, I'm not planning to order  
11 discovery or, you know, grant protective orders here.  
12 I'll do that in a written order.

13           But to the extent that there are some  
14 arguments that were made that may relate to the  
15 relevance of some issues, that's still fair game. You  
16 know, if there are issues that one of the parties has  
17 proposed that someone else thinks is irrelevant, you  
18 know, make your argument today.

19           I'm setting issues today. I'm not  
20 necessarily ruling on discovery today. There were  
21 just so many of them it was difficult to get orders  
22 out before the prehearing.

23           **MS. COWDERY:** One thing that we just filed  
24 yesterday that I don't know if it came to your  
25 attention was a response to Flagler County's

1 memorandum in support of the Office of Public  
2 Counsel's motion to compel production of the option  
3 agreement, and as part of that response --

4 **COMMISSIONER KIESLING:** I've seen that.

5 **MS. COWDERY:** As part of that response, we  
6 did suggest that if you were inclined to compel  
7 production, that we feel strongly enough about that  
8 issue that we would have the document made available  
9 to you for an in camera inspection, and I just wanted  
10 to let you know that we do have that available if  
11 that's something that you are interested in.

12 **COMMISSIONER KIESLING:** It's not something  
13 I'm interested in today.

14 **MS. COWDERY:** Okay. Thank you.

15 **COMMISSIONER KIESLING:** I've read the  
16 memorandum and I've read all the others, and we are in  
17 the midst of drafting an order that will set forth my  
18 position, my ruling, on those.

19 **MS. COWDERY:** Okay. Thank you,  
20 Commissioner.

21 **COMMISSIONER KIESLING:** Okay. Anyone else  
22 have any preliminary matters? If not, let's just go  
23 through the draft prehearing.

24 I see in front of me that both Citizens and  
25 Palm Coast have submitted some changes and positions

1 for issues that did not have them and additional  
2 amendments.

3           Since this is the first that I've seen  
4 those, as we get to the particular issues or  
5 witnesses, just go ahead and tell me what is in here  
6 so I don't have to try to compare three documents as  
7 we go along.

8           Someone else -- and I don't know who, so I'm  
9 assuming staff -- left a list of the documentary  
10 exhibits and a list of orders for official  
11 recognition.

12           **MR. MELSON:** Commissioner Kiesling, that is  
13 Dunes, and I apologize for not labelling it with its  
14 source.

15           **COMMISSIONER KIESLING:** Good. Okay. Then  
16 the same will go when we get to those sections, then,  
17 if you will just tell me what's in these. Mr. Hadeed?

18           **MR. HADEED:** Yes, Commissioner. Now that we  
19 do have party status, I did prepare our prehearing  
20 statement keyed to the June 13th draft, and with your  
21 permission, I'll provide you with a copy.

22           **COMMISSIONER KIESLING:** Well, have you  
23 provided everyone else with a copy?

24           **MR. HADEED:** Yes, I have.

25           **COMMISSIONER KIESLING:** Court reporter, too?

1           **MR. HADEED:** Yes.

2           **COMMISSIONER KIESLING:** Thank you. Anyone  
3 else have any changes? Okay. Then we'll just go  
4 through the order and see what we have.

5           I know that there were some typos and things  
6 that I found that I have already conveyed to  
7 Mr. Edmonds, but I'll go ahead and make sure that they  
8 get mentioned so that everyone eventually has the same  
9 document in front of them.

10           And starting for me in the second sentence  
11 of the case background, I just found, according to the  
12 St. Johns River Water Management District, Palm Coast  
13 is located in a critical use area. I don't know why  
14 we -- I mean, is there a dispute about whether they're  
15 in a critical use area?

16           **MR. EDMONDS:** I don't believe there is.

17           **COMMISSIONER KIESLING:** Okay. Then can't we  
18 just say that they're in a critical use area as  
19 designated by the Water Management District?

20           **MR. EDMONDS:** Certainly.

21           **COMMISSIONER KIESLING:** Since they're not  
22 witnesses here, that wouldn't be subject to proof.  
23 Okay.

24           Any changes from anyone else in the case  
25 background? We'll just work our way through in order

1 of the table.

2           **MR. SHIEFELBEIN:** The only correction that  
3 we found was on page 2, the fourth paragraph of the  
4 narrative, line 3. There's a percentage given for the  
5 requested revenue increase that we think is incorrect.  
6 We think that that is 26, that .94, percent, and  
7 continuing on the next line the percentage for  
8 wastewater, we believe, is 47.31 percent; and that's  
9 all.

10           **COMMISSIONER KIESLING:** Those are quite some  
11 differences. Clearly they aren't typos.

12           Staff, do we have some basis for the numbers  
13 that you had proposed, or do you accept the percentage  
14 changes?

15           **MR. SHIEFELBEIN:** Mr. Seidman could perhaps  
16 shed some light on this.

17           **MR. SEIDMAN:** Maybe I can explain why the  
18 percentages are wrong. I checked them out, and it  
19 looks like you divided the proposed increase by the  
20 total revenues after the increase, rather than the  
21 proposed increase by the revenues before the increase.  
22 The dollar amounts are correct. It's just that the  
23 denominator in your percentage is wrong.

24           **MR. EDMONDS:** Assuming that's so, then we  
25 would accept the utility's percentages.

1           **COMMISSIONER KIESLING:** Okay. Anybody on  
2 the number cruncher staff have any comment on that?  
3 That's okay?

4           **MR. EDMONDS:** It appears to be okay with  
5 them.

6           **COMMISSIONER KIESLING:** Then those  
7 percentages are changed to 26.94 and 47.31.

8           **MR. EDMONDS:** Yes, ma'am. Can we reserve  
9 the right to verify the calculations?

10           **COMMISSIONER KIESLING:** Absolutely. Any  
11 others for you?

12           **MR. SHIEFELBEIN:** No. Thank you.

13           **COMMISSIONER KIESLING:** Anything from anyone  
14 else on the case background?

15           **MR. EDMONDS:** Nothing.

16           **COMMISSIONER KIESLING:** Witnesses; any  
17 changes, addition or deletion of issues? What issues  
18 from staff are Mr. Wilkening and Ms. Rodriguez and  
19 Mr. Martin going to be testifying on?

20           **MR. EDMONDS:** Yes. On the revised copy we  
21 have filled those in. However, Mr. Wilkening's issue  
22 on that revised copy is incorrect. It should be 66  
23 instead of 67 as indicated. Ms. Rodriguez will be  
24 Issue 1. Mr. Martin will be Issue 1.

25           **COMMISSIONER KIESLING:** Anyone else have any

1 changes or additions? Let's start again with Palm  
2 Coast.

3 **MR. SHIEFELBEIN:** Thank you. The handout  
4 that we've distributed makes an attempt to tie, in a  
5 more up-to-date way, the Palm Coast witnesses with the  
6 issues as identified in the draft, and if those would  
7 just be incorporated in without putting you all  
8 through all those numbers.

9 The only things perhaps worth noting is that  
10 on rebuttal, the order of our presentation, it would  
11 be Mr. Spano first followed by Seidman and Guastella.

12 **COMMISSIONER KIESLING:** Okay. Mr. Melson?

13 **MR. MELSON:** Both of Dunes' witnesses,  
14 Mr. Moyer and Mr. Milian, should show both Issues 67  
15 and 68.

16 **COMMISSIONER KIESLING:** Okay.

17 **MR. MELSON:** And we would ask at this point  
18 if it would be possible to agree to take Mr. Moyer  
19 during the second day of the hearing. That would  
20 accommodate some other obligations he's got and,  
21 frankly, with customer testimony the first day and  
22 utility's witnesses, I doubt we would get to him in  
23 any event; but we would like to schedule him for the  
24 second day if we could.

25 **COMMISSIONER KIESLING:** All right. Any

1 objection to that?

2 Okay. The second day is the 2nd; right?

3 **MR. MELSON:** Yes, Commissioner.

4 **COMMISSIONER KIESLING:** So I can just put an  
5 asterisk next to him just like the one that's next to  
6 Mr. Wilkening.

7 **MR. MELTON:** It works with the existing  
8 footnote, yes, ma'am.

9 **MR. REILLY:** The citizens would like to  
10 double-check their numbers here, and we'll have that  
11 to staff, if there's any changes at all, by today,  
12 this afternoon.

13 **COMMISSIONER KIESLING:** And since I haven't  
14 had a chance to look at Flagler's prehearing, I assume  
15 you're not adding any witnesses, you're just dealing  
16 with the issues that are here and the witnesses that  
17 are here?

18 **MR. HADEED:** That is correct, Commissioner.

19 **COMMISSIONER KIESLING:** One other question,  
20 and this relates to Mr. Wilkening. Does that footnote  
21 mean that he's only available the second day?

22 **MR. EDMONDS:** That's correct.

23 **COMMISSIONER KIESLING:** And no one has an  
24 objection to that either?

25 **MR. MELSON:** No. Commissioner Kiesling, I

1 don't know whether this is the appropriate while we're  
2 discussing order of witnesses. We would like the  
3 opportunity to make a very brief opening statement at  
4 the outset of the hearing. I would anticipate no more  
5 than five minutes.

6 **COMMISSIONER KIESLING:** All right. Well, if  
7 you want one, everybody else will get one, so does  
8 everyone want to make one?

9 **MR. SHIEFELBEIN:** We would like to retain  
10 the option, and we have no objection to Mr. Melson's  
11 request.

12 **COMMISSIONER KIESLING:** Mr. Reilly?

13 **MR. REILLY:** Our position would be the same.

14 **MR. HADEED:** The same.

15 **MR. EDMONDS:** Staff has no objection.

16 **COMMISSIONER KIESLING:** Okay. Well, I'll go  
17 ahead and put a provision in here that allows for  
18 everyone to make a five-minute opening statement, and  
19 those who choose to waive that opportunity can do so,  
20 obviously. I'm not going to beg them to talk for five  
21 minutes.

22 Okay. Basic positions: Any changes? I see  
23 that the utility has changed its basic position in its  
24 filing.

25 **MR. SHIEFELBEIN:** Yes. What's new there

1 essentially is the second paragraph.

2           **COMMISSIONER KIESLING:** Okay. And Citizens,  
3 any changes? Dunes, any changes?

4           **MR. MELSON:** No changes.

5           **MR. REILLY:** No changes.

6           **COMMISSIONER KIESLING:** Staff, any changes?

7           **MR. EDMONDS:** No changes.

8           **COMMISSIONER KIESLING:** We'll start on the  
9 issues and the positions. Issue 1.

10           **MR. SHIEFELBEIN:** Yes, ma'am. We have a  
11 more elaborate statement of position on our handout.  
12 Would you prefer I read it into the record, or just  
13 refer to it?

14           **COMMISSIONER KIESLING:** Well, if we start  
15 reading all of them into the record, since everyone  
16 has them in writing, we're going to be here until  
17 after 5:00 today, so I will just take them from your  
18 written filings.

19           **MR. SHIEFELBEIN:** That would be fine. And  
20 we also indicate the witness on our update.

21           **COMMISSIONER KIESLING:** Great. Anyone else  
22 have changes or additions to Issue 1?

23           **MR. REILLY:** We have our standard position  
24 on that, and it's reflected in our updated list.

25           **COMMISSIONER KIESLING:** Okay. Issue 2.

1           **MR. SHIEFELBEIN:** For the utility, it's as  
2 stated in the draft prehearing order.

3           **COMMISSIONER KIESLING:** Dunes, you don't  
4 have any positions except on the very particular  
5 issues that relate to your one --

6           **MR. MELSON:** That's correct. We've got no  
7 position, except on Issue 67 and 68. There are a  
8 couple of issues on which we take no position at this  
9 time, but that we may, based on the record, brief  
10 them.

11           **COMMISSIONER KIESLING:** All right. OPC,  
12 have you filed a position now on Issue 2?

13           **MR. REILLY:** Yes, as reflected in the  
14 update.

15           **COMMISSIONER KIESLING:** Okay. Issue 3.

16           **MR. SHIEFELBEIN:** As stated in the draft  
17 prehearing order.

18           **COMMISSIONER KIESLING:** All right. Dunes  
19 didn't take a position. OPC?

20           **MR. REILLY:** As stated in the update.

21           **MR. EDMONDS:** Staff would like to change its  
22 position on Issue 3.

23           **COMMISSIONER KIESLING:** All right.

24           **MR. EDMONDS:** Instead of "no position at  
25 this time," our position shall be "yes."

1           **COMMISSIONER KIESLING:** Do we have a witness  
2 name?

3           **MR. EDMONDS:** No.

4           **MR. REILLY:** In that case, our position will  
5 change, because it was "same as staff."

6           **COMMISSIONER KIESLING:** It was?

7           **MR. REILLY:** It was.

8           **COMMISSIONER KIESLING:** No. It's shown here  
9 as "no position at this time."

10          **MR. REILLY:** No, that's -- but I said  
11 same -- but look at the update.

12          **COMMISSIONER KIESLING:** Oh. Same as staff.  
13 Okay.

14          **MR. REILLY:** And so we would just say "no  
15 position at this time."

16          **COMMISSIONER KIESLING:** Okay. Issue 4?

17          **MR. SHIEFELBEIN:** For the utility, "as  
18 stated in the draft prehearing order."

19          **MR. MELSON:** No position.

20          **COMMISSIONER KIESLING:** OPC, any position?

21          **MR. REILLY:** As stated in the update.

22          **COMMISSIONER KIESLING:** Staff?

23          **MR. EDMONDS:** Staff takes a position.

24          **COMMISSIONER KIESLING:** What is it?

25          **MR. EDMONDS:** "1979, by PCUC."

1           **MR. REILLY:** Our position, of course, would  
2 change again for that same reason, and we'll just go  
3 back to where we were.

4           **MR. SHIEFELBEIN:** Excuse me. Would staff be  
5 identifying a specific witness, or just taking that  
6 position?

7           **MR. EDMONDS:** Just taking that position.

8           **MR. SHIEFELBEIN:** That's fine.

9           **COMMISSIONER KIESLING:** All right. 5?

10          **MR. EDMONDS:** No.

11          **MR. SHIEFELBEIN:** The utility's position  
12 would be as stated in the draft prehearing order.

13          **COMMISSIONER KIESLING:** Why don't I go to  
14 staff first, and that will avoid having -- I didn't  
15 mean that addressed to you. I meant that addressed to  
16 OPC. What is staff's position now?

17          **MR. EDMONDS:** "1991, by PCUC; no witness."

18          **COMMISSIONER KIESLING:** Should I assume,  
19 then, that your position is "no position at this  
20 time?"

21          **MR. REILLY:** You might just say "No position  
22 pending further development of the record."

23          **COMMISSIONER KIESLING:** All right. Issue 6.  
24 I think Issue 6 needs some rewording to begin with,  
25 and here's what I would propose; and if everyone is in

1 agreement that that addresses the issue, instead of  
2 saying "Is the staff auditor's use of," I would start  
3 it off with "How should the sprayfield and RIB site be  
4 valued."

5           And then I would assume that PUC would have  
6 some other position, but staff would be saying "using  
7 the trended historical costs." I mean, that seemed to  
8 be a better statement of the issue, in my mind. Any  
9 objection to rewording it that way?

10           **MR. SHIEFELBEIN:** None.

11           **COMMISSIONER KIESLING:** Then, PCUC, what  
12 would your position be on Issue 6 if it's not a simple  
13 no? How should the sprayfield and RIB site be valued?

14           **MR. SHIEFELBEIN:** These parcels -- I'm  
15 winging it, so --

16           **COMMISSIONER KIESLING:** Okay. Well, you can  
17 turn around and ask Mr. Seidman.

18           **MR. SHIEFELBEIN:** It's good to know he's  
19 there. But these parcels should be valued at their  
20 fair market value as of the date they were first  
21 dedicated to utility service.

22           **COMMISSIONER KIESLING:** Okay. I'm going to  
23 just knock off kind of the lead-in there and just say  
24 "at fair market value as of the date they were first  
25 dedicated to utility service," if that's acceptable to

1 you.

2 **MR. SHIEFELBEIN:** Yes, ma'am. Did you have  
3 down -- is that "at their fair market value?"

4 **COMMISSIONER KIESLING:** Yes. "At fair  
5 market value as of the date they were first dedicated  
6 to utility service."

7 **MR. SHIEFELBEIN:** Thank you.

8 **COMMISSIONER KIESLING:** All right. Dunes,  
9 any position?

10 **MR. MELTON:** No position.

11 **COMMISSIONER KIESLING:** OPC.

12 **MR. REILLY:** Let staff go first. This is  
13 really their issue. They've taken the lead on it.  
14 We're following that lead.

15 **MR. EDMONDS:** I believe you already stated  
16 our position.

17 **COMMISSIONER KIESLING:** "Using trended  
18 historical costs?"

19 **MR. EDMONDS:** Yes.

20 **COMMISSIONER KIESLING:** And still witness  
21 Dodrill?

22 **MR. EDMONDS:** Yes.

23 **MR. REILLY:** And I believe you can put  
24 "agree with staff," for Public Counsel.

25 **MR. SHIEFELBEIN:** If I may, on Issue 6, the

1 witnesses for the utility should be Spano and Seidman.

2 **COMMISSIONER KIESLING:** Okay.

3 **MR. REILLY:** And on Public Counsel's  
4 position put Dismukes as the witness.

5 **COMMISSIONER KIESLING:** And this is one of  
6 those that Flagler probably has something they need to  
7 change.

8 **MR. HADEED:** Yes; correct. We adopt the  
9 staff position.

10 **COMMISSIONER KIESLING:** So "agree with  
11 staff." On the previous ones where I didn't hear from  
12 you, I'm just going to be using what is in your just  
13 filed prehearing, and if there are any changes that  
14 need to be made as we get to those, just be sure to  
15 jump in.

16 **MR. HADEED:** That's what I intend to do.  
17 Thank you, Commissioner.

18 **COMMISSIONER KIESLING:** Thank you. All  
19 right. Issue 7; any change?

20 **MR. SHIEFELBEIN:** The utility's position  
21 would be "as stated in the draft prehearing order."

22 **COMMISSIONER KIESLING:** And everyone else  
23 has taken a position, so I assume there's no change.  
24 Am I assuming correctly?

25 **MR. REILLY:** That's correct.

1           **COMMISSIONER KIESLING:** And, Flagler, yours  
2 is as stated in your prehearing?

3           **MR. HADEED:** Correct.

4           **COMMISSIONER KIESLING:** Okay. 8; I think  
5 there needs to be an insertion of the word "of"  
6 between the word "cost" and "the" in the issue. And  
7 then with that added, any change in anyone's position?

8           **MR. SHIEFELBEIN:** No change.

9           **MR. REILLY:** No change.

10          **MR. MELSON:** No change.

11          **COMMISSIONER KIESLING:** All right. "Should  
12 plant in service," Issue 9; any change?

13          **MR. SHIEFELBEIN:** Yes, ma'am. The utility's  
14 position would be "as stated in the update," and the  
15 witness is Seidman.

16          **COMMISSIONER KIESLING:** Anyone else?

17          **MR. MELSON:** No change.

18          **MR. REILLY:** No change.

19          **COMMISSIONER KIESLING:** Okay. Issue 10?

20          **MR. SHIEFELBEIN:** No change.

21          **MR. MELSON:** No change.

22          **MR. REILLY:** Staff?

23          **MR. EDMONDS:** No change.

24          **MR. REILLY:** Then we would change ours to  
25 "as stated in the updated," which says "same as

1 staff."

2 **MR. SHIEFELBEIN:** Madam Commissioner, may I  
3 address Issue 10 briefly?

4 **COMMISSIONER KIESLING:** Sure.

5 **MR. SHIEFELBEIN:** Someone will kick me  
6 behind me if there's late breaking information, but  
7 when last I checked, we really had no idea what really  
8 was at issue on Issue 10.

9 It's a pretty broad statement, and sometimes  
10 broad statements, we know what it's about anyway.  
11 This is not one of them.

12 We've designated Mr. Seidman as the witness  
13 because he's chiefly responsible for the financial end  
14 of the MFRs, but if nothing else, we wanted to let you  
15 know that we're not on notice here as to what is going  
16 on.

17 **COMMISSIONER KIESLING:** Whose issue is this?  
18 Staff?

19 **MR. EDMONDS:** Yes. And the reason we have  
20 it listed as an issue is because we're still waiting  
21 for outstanding discovery, which I believe is supposed  
22 to be provided tomorrow.

23 **MS. COWDERY:** Well, which discovery --

24 **COMMISSIONER KIESLING:** You're going to have  
25 to put on your mike, if you're going to talk.

1           It might be easier if staff could just  
2 identify what labor they think may not be properly  
3 capitalized so that we're all on notice as to what  
4 issue they're looking at.

5           **MR. EDMONDS:** Apparently the response to the  
6 relevant interrogatory in the discoveries says that  
7 the utility will respond by June 21st, and they have  
8 not responded yet.

9           **MS. COWDERY:** Then that will be responded to  
10 either today or tomorrow.

11           **COMMISSIONER KIESLING:** I'm still unclear,  
12 since I don't have all the discovery in front of me,  
13 what is the discovery item, or question or request?

14           **MR. EDMONDS:** Can we come back to this one?

15           **COMMISSIONER KIESLING:** Sure.

16           **MR. SHIEFELBEIN:** Thank you.

17           **COMMISSIONER KIESLING:** Issue 11, any  
18 changes that are not --

19           **MR. SHIEFELBEIN:** No changes.

20           **MR. MELSON:** No changes.

21           **COMMISSIONER KIESLING:** No change on staff's  
22 part?

23           **MR. EDMONDS:** No change.

24           **COMMISSIONER KIESLING:** Okay. 12?

25           **MR. SHIEFELBEIN:** No change.

1           **MR. MELSON:** No change.

2           **MR. REILLY:** No change.

3           **COMMISSIONER KIESLING:** 13?

4           **MR. SHIEFELBEIN:** No change.

5           **MR. MELSON:** No change.

6           **MR. REILLY:** No change.

7           **COMMISSIONER KIESLING:** 14. Well, why don't  
8 we, since there seem to be some that there is no  
9 change, just when I call the number, if you have a  
10 change say "we have a change."

11           **MR. SHIEFELBEIN:** Okay.

12           **COMMISSIONER KIESLING:** Thank you. Issue  
13 14? 15?

14           **MR. EDMONDS:** Issue 14, staff would be  
15 willing to drop this issue. I'm not sure if there's a  
16 real dispute with OPC.

17           **MR. REILLY:** I believe there is. I think  
18 that our witness will be recommending that no more  
19 than a 10% unaccounted for allowance should be  
20 permitted, so I think that's a position he wants to  
21 try to defend at the hearing. We're on 14; is that  
22 correct?

23           **COMMISSIONER KIESLING:** Yes.

24           **MR. EDMONDS:** That's 14, yes.

25           **MR. REILLY:** But may I respond?

1           **COMMISSIONER KIESLING:** Well, let me just  
2 hear from staff first on why you think there's no  
3 issue.

4           **MR. REILLY:** Yes, ma'am.

5           **MR. EDMONDS:** Well, if that's the case, that  
6 OPC is taking 10%, then there is an issue.

7           **MR. SHIEFELBEIN:** It's my understanding,  
8 however, that Mr. Biddy does not testify that there is  
9 excess unaccounted for water in this case and, in  
10 fact -- which is quite low.

11           The only statement that I recall that he  
12 makes is that there was an anomalous figure, what he  
13 thought was an anomalous figure, for one month where  
14 it was a negative number, and I won't editorialize on  
15 that, but there's certainly no attempt by him, I don't  
16 believe, to advocate an adjustment, or to really use a  
17 standard.

18           **MR. REILLY:** Well, you're moving on now to  
19 the next issue, which is issue 15, and I -- we might  
20 have to go back and get those exact discovery requests  
21 that are outstanding. But it's my understanding that  
22 there's still some discovery that we're going to  
23 receive that will be able to finalize whether we are  
24 going to propose an adjustment or not, so we just  
25 didn't want to forestall -- or eliminate that

1 possibility, so that's --

2 **MR. SHIEFELBEIN:** If that's the case --

3 **MR. REILLY:** And I'm not sure that we  
4 even -- I think we did not raise this. I think staff  
5 or somebody thought this was an appropriate  
6 methodology question to put in there. So it's really  
7 not even an issue that we put in there, but that they  
8 thought it was appropriate, and we took a position.

9 **MR. SHIEFELBEIN:** I was not aware that there  
10 continued to be any real concern on the issue. If  
11 there is, I guess we have a live issue.

12 **COMMISSIONER KIESLING:** I would just suggest  
13 that, you know, within as quickly as possible after  
14 you receive that discovery if you determine that there  
15 is no issue, that you advise all of us so that we can  
16 not be preparing for that issue.

17 **MR. REILLY:** Absolutely. We will do that.

18 **COMMISSIONER KIESLING:** 16?

19 **MR. EDMONDS:** Are we still -- I'm sorry. If  
20 we could go to 15 for a second.

21 **COMMISSIONER KIESLING:** I'm sorry.

22 **MR. EDMONDS:** The same thing. Staff --  
23 we're not sure what the issue is here, and whether it  
24 needs to be an issue, seeing as no one --

25 **MR. REILLY:** And as to 15, we do have an

1 updated position pursuant to our -- and it goes along  
2 the same line of discovery, and obviously when that's  
3 received and analyzed -- and we'll have a period of a  
4 number of days, I guess, depending on what we do or do  
5 not get to make that determination.

6 I would assume that that will, of course, be  
7 done prior to the hearing, so I will endeavor to  
8 notify the parties prior to the hearing, whether  
9 that's live or not for the hearing.

10 **COMMISSIONER KIESLING:** Okay. How long do  
11 you think it will take you after you receive the  
12 discovery to do that? Because I have some concern,  
13 not because I -- certainly not because I think you  
14 won't follow through, but when you say "I'll endeavor  
15 to," that doesn't lock you in.

16 **MR. REILLY:** I have my consultant here. I  
17 could ask him how many days after receipt of discovery  
18 can he make this determination.

19 **COMMISSIONER KIESLING:** Right. (Pause)

20 **MR. REILLY:** He is pledging to try to do it  
21 within three days of receipt.

22 **COMMISSIONER KIESLING:** Okay. And when is  
23 this discovery supposed to be -- when is it due?

24 **MS. COWDERY:** Let's nail down the discovery.  
25 Are we talking about that Interrogatory 73, or what

1 are we talking about?

2 **MR. REILLY:** Let me consult.

3 **COMMISSIONER KIESLING:** Okay. (Pause)

4 **MR. REILLY:** I believe it is the disputed  
5 Interrogatory 73, which is going to be ruled on, as  
6 well as some in the fourth set, fourth and final set  
7 of discovery, which is going to be ruled on on some  
8 expedited basis; and whenever we get those, it will be  
9 three days after that.

10 **COMMISSIONER KIESLING:** When did you file  
11 this fourth set?

12 **MR. REILLY:** I believe it was May 28th.

13 **COMMISSIONER KIESLING:** Did I know about  
14 that?

15 **MR. EDMONDS:** Yes. There's an order.

16 **COMMISSIONER KIESLING:** It's one of the  
17 orders we've been working on?

18 **MR. EDMONDS:** Yes.

19 **COMMISSIONER KIESLING:** Okay. I just didn't  
20 recognize it as the fourth set.

21 **MR. REILLY:** And once those come in, then  
22 we'll work within that three-day time period.

23 **COMMISSIONER KIESLING:** Okay. Or as part of  
24 my ruling if I rule that certain discovery doesn't  
25 need to be done, then I assume that would also allow

1 for some change in a position.

2 **MR. REILLY:** That's correct.

3 **COMMISSIONER KIESLING:** 16; I thought this  
4 was a real exciting one, because in my draft nobody  
5 had a position.

6 **MR. SHIEFELBEIN:** This, at least in our  
7 understanding -- and I have a feeling that we're going  
8 to end up talking about discovery again -- but this is  
9 an issue that staff first mentioned at the  
10 pre-prehearing, which I think was last week. And we  
11 certainly can take a position that -- then the  
12 position would be as in the update, "no," and we can  
13 offer up our general witnesses; but we really don't  
14 know where, in fact, there's any concern about the  
15 level of flushing in the system, or adjustments to the  
16 level of --

17 **MR. EDMONDS:** Perhaps it would help if I put  
18 out staff's position on this, because we do have a  
19 position on this issue now. And we would also propose  
20 a minor change in the wording of the issue. After  
21 "flushing," have "at PCUC's water system and, if so,  
22 what adjustments are appropriate."

23 **MR. SHIEFELBEIN:** Could you repeat that?  
24 I'm sorry. I didn't hear that first part.

25 **COMMISSIONER KIESLING:** After the word

1 "flushing."

2 **MR. SHIEFELBEIN:** Oh, after the word.

3 **MR. EDMONDS:** After the word, "flushing."

4 So it would read: "Is there excess flushing at PCUC's  
5 water system, and if so, what adjustments are  
6 appropriate."

7 **MR. SHIEFELBEIN:** I did not hear the staff's  
8 position. I'm sorry.

9 **MR. EDMONDS:** I haven't stated it yet.

10 **MR. SHIEFELBEIN:** Oh.

11 **MR. EDMONDS:** Staff's position is "20 to 25  
12 percent of the water at PCUC is used for flushing. At  
13 this time staff has no position as to whether  
14 adjustments to expenses are appropriate."

15 **COMMISSIONER KIESLING:** Would you repeat  
16 that again?

17 **MR. EDMONDS:** "20 to 25 percent of the water  
18 at PCUC is used for flushing. At this time staff has  
19 no position as to whether adjustments to expenses are  
20 appropriate."

21 **COMMISSIONER KIESLING:** Everybody got that?

22 **MR. REILLY:** And if you would allow me to  
23 meet with my consultant, and we'll give you our  
24 position about by 5:00 today on that newly worded  
25 issue. We're going to need to talk about that.

1                   **COMMISSIONER KIESLING:** Okay.

2                   **MR. MELSON:** Dunes takes no position.

3                   **COMMISSIONER KIESLING:** And Flagler's is as  
4 set out in your --

5                   **MR. HADEED:** Correct.

6                   **MR. EDMONDS:** Commissioner, if you'd like,  
7 we're ready to return to Issue 10.

8                   **COMMISSIONER KIESLING:** Great.

9                   **MR. EDMONDS:** And staff has an interrogatory  
10 that requests the utility to itemize the amount that  
11 was capitalized for each employee by name, title and  
12 department. And the response was that that response  
13 would be provided by June 21st.

14                   So in essence, it's hard for us to take a  
15 position, because we have not seen the discovery yet  
16 and we don't know whether it's been properly  
17 capitalized. And we might be prepared after seeing  
18 the response to discovery to drop the whole issue.

19                   **COMMISSIONER KIESLING:** Okay.

20                   **MS. COWDERY:** Just make sure that you  
21 understand that the discovery is due tomorrow. It's  
22 not that it's a late discovery or anything like that.

23                   **COMMISSIONER KIESLING:** I understand that.

24 17?

25                   **MR. SHIEFELBEIN:** For the utility, the

1 position would be "as stated on the update."

2           **MR. REILLY:** And Public Counsel, "as stated  
3 in the update."

4           **COMMISSIONER KIESLING:** Staff, any change in  
5 yours on 17?

6           **MR. EDMONDS:** No.

7           **COMMISSIONER KIESLING:** Okay. 18? No  
8 change. 19?

9           **MR. EDMONDS:** We have a change to our  
10 position on Issue 18.

11           **COMMISSIONER KIESLING:** Okay.

12           **MR. EDMONDS:** We just have a change to the  
13 first sentence in the position, so that it reads  
14 "Staff believes that the wastewater system does have  
15 infiltration and inflow associated with nonused and  
16 useful lines."

17           **COMMISSIONER KIESLING:** Okay.

18           **MR. SHIEFELBEIN:** Was that "excess," or  
19 simply --

20           **COMMISSIONER KIESLING:** I understood that he  
21 had, in essence, deleted that word.

22           **MR. EDMONDS:** We had deleted that word.

23           **COMMISSIONER KIESLING:** And how about the  
24 rest of it? It stays the same?

25           **MR. EDMONDS:** The rest of it stays the same.

1                   **COMMISSIONER KIESLING:** Does that change  
2 anyone else's? Then Issue 19? No changes. 20?

3                   **MR. REILLY:** In 20 we believe there was a  
4 couple of words left out of our issue, and the issue  
5 is as worded, except we had after the word  
6 "distribution system," where it ends, a comma followed  
7 with "supply wells and water treatment plants,"  
8 question mark; and that is as worded in our update.  
9 That language is in our update. It was a little more  
10 inclusive, though. And then our position would not  
11 change.

12                   However, there is some repeated language in  
13 our position as outlined in the draft prehearing  
14 order, and that extra language is also identified in  
15 the update and just needs to be deleted, because it  
16 was repeated twice.

17                   **COMMISSIONER KIESLING:** And it's the words  
18 "fire flow provision --

19                   **MR. REILLY:** "By sufficient."

20                   **COMMISSIONER KIESLING:** "By sufficient."

21                   **MR. REILLY:** Correct.

22                   **MR. SHIEFELBEIN:** Can I have a moment on  
23 that, please?

24                   **COMMISSIONER KIESLING:** Yes. (Pause)

25                   **MR. SHIEFELBEIN:** Okay. Thank you, and I

1 have no change.

2           **MR. EDMONDS:** In light of the rewording of  
3 the issue, we would request that we provide an updated  
4 position by the end of the day.

5           **COMMISSIONER KIESLING:** Okay. Issue 21?

6           **MR. REILLY:** Public Counsel had a change to  
7 the update, and the only difference between the  
8 updated position and the one stated here is changing  
9 the word from "the" to "a," where it says "no, the  
10 single maximum day;" and it now reads, "no, a single  
11 maximum day.

12           **COMMISSIONER KIESLING:** All right. 22?

13           **MR. SHIEFELBEIN:** The utility's position is  
14 reflected in the update.

15           **COMMISSIONER KIESLING:** All right. And no  
16 change from anyone else. 23? 24?

17           **MR. SHIEFELBEIN:** On 24 the utility's  
18 position is on the update.

19           **COMMISSIONER KIESLING:** Any other change,  
20 then, as a result? 25? Somebody better have some  
21 changes here, or at least an addition.

22           **MR. SHIEFELBEIN:** We would like to start off  
23 with suggesting a slight rephrasing of the issue;  
24 simply that "what are the appropriate methods," as  
25 opposed to "what is the appropriate method."

1           **COMMISSIONER KIESLING:** Any objection to  
2 that change?

3           **MR. REILLY:** No objections here.

4           **COMMISSIONER KIESLING:** Okay. That change  
5 is made in the issue. How about positions?

6           **MR. SHIEFELBEIN:** Our position would be "as  
7 given on the update."

8           **COMMISSIONER KIESLING:** Which is "as per  
9 used and useful."

10           **MR. REILLY:** Our position would be "as  
11 stated in the update," but with making the word,  
12 "method," plural to "methods."

13           **COMMISSIONER KIESLING:** All right.

14           **MR. MELSON:** Dunes has no position.

15           **COMMISSIONER KIESLING:** Staff -- go ahead.

16           **MR. HADEED:** And, Commissioner, on that  
17 Issue 25, we will adopt the OPC position, Flagler  
18 County. So that's a change in the document that I  
19 furnished you.

20           **COMMISSIONER KIESLING:** All right. You  
21 adopt OPC.

22           **MR. HADEED:** That's correct.

23           **COMMISSIONER KIESLING:** And then, staff.

24           **MR. EDMONDS:** Staff would just change to  
25 correct the grammar. "The appropriate methodologies

1 are as presented."

2 COMMISSIONER KIESLING: Okay. 26?

3 MR. SHIEFELBEIN: On 26, the utility's  
4 position would be as on the update.

5 COMMISSIONER KIESLING: Dunes, no position?

6 MR. MELSON: No position at this time on  
7 this issue.

8 COMMISSIONER KIESLING: At this time. Okay.

9 COMMISSIONER KIESLING: OPC?

10 MR. REILLY: "As stated in the update."

11 COMMISSIONER KIESLING: Staff?

12 MR. EDMONDS: No change.

13 MR. HADEED: I'm sorry, Commissioner.

14 COMMISSIONER KIESLING: Go ahead,  
15 Mr. Hadeed.

16 MR. HADEED: And Flagler County would adopt  
17 the position of OPC on that issue.

18 COMMISSIONER KIESLING: Okay. Now 27, 28?

19 MR. SHIEFELBEIN: On 28 -- okay. On 28 the  
20 position would be for the utility as on the update.

21 COMMISSIONER KIESLING: Any other changes?

22 (No response.)

23 COMMISSIONER KIESLING: 29? 30?

24 MR. SHIEFELBEIN: On 30 the utility's  
25 position is on the update.

1                   **COMMISSIONER KIESLING:** Anyone else? 31,  
2 32, 33?

3                   **MR. SHIEFELBEIN:** On 33 the utility's update  
4 gives its position.

5                   **COMMISSIONER KIESLING:** All right. 34 and  
6 35, I thought, needed a little help in the rewording  
7 department of the issues; and so I would propose on 34  
8 to reword it as "Should nonused plant, nonused  
9 accumulated depreciation, nonused CIAC or nonused  
10 accumulated amortization of CIAC be included in rate  
11 base."

12                   Does that fairly represent the issue that  
13 was being set out there?

14                   **MR. SHIEFELBEIN:** This is a thorny area. If  
15 I'm hopefully stating it correctly, I don't think  
16 anyone is advocating the affirmative of that position.

17                   There are some very, to the utility,  
18 startling positions being advocated in this case  
19 relative to where CIAC enters into the ratemaking  
20 equation, and we have various issues like this where  
21 we're trying to get in the record what accepted rate  
22 setting methodology is, and -- because, of course, all  
23 these components have to go somewhere.

24                   And so we would prefer to keep the proposed  
25 wording on that to establish what proper ratemaking

1 treatment is on that, as well as some other  
2 components, related components that will come up both  
3 in rate base and in cost to capital.

4 **COMMISSIONER KIESLING:** I guess I'm having a  
5 little trouble following this. First of all. It  
6 would seem to me that everyone's position is no, so --

7 **MR. SHIEFELBEIN:** There's a little bit of  
8 equivocation, perhaps, by OPC.

9 **COMMISSIONER KIESLING:** Generally, no.

10 **MR. REILLY:** That's right.

11 **MR. SHIEFELBEIN:** And I don't want to argue  
12 the merits of --

13 **COMMISSIONER KIESLING:** Well, I mean, are  
14 you taking a position that --

15 **MR. REILLY:** That it's not --

16 **COMMISSIONER KIESLING:** -- that general rule  
17 doesn't apply here?

18 **MR. REILLY:** This is not our issue. I don't  
19 believe that -- I believe that it's no, no, no, no,  
20 no. That's not what we would be proposing in another  
21 issue.

22 **MR. SHIEFELBEIN:** If it's straight nose,  
23 with the acceptance of the Dunes taking no position,  
24 may we have this as a --

25 **MR. REILLY:** Well --

1           **MR. SHIEFELBEIN:** -- stipulation?

2           **MR. REILLY:** I'd like to talk to my  
3 consultant, you know, on this issue. I think she has  
4 said generally, no, that is correct. I know that she  
5 is proposing an issue which is identified as a  
6 specific issue which will be explored at the hearing.

7           I don't want to -- you know, some  
8 stipulation to somehow forestall her to pursue this  
9 other issue, if that's what is being attempted here.  
10 But I think she has said generally, you know, that is  
11 correct, that would be the normal ratemaking as the  
12 position was worded. Treatment --

13           **COMMISSIONER KIESLING:** Well, that goes back  
14 to my rewording of the issue. I mean --

15           **MR. SHIEFELBEIN:** I don't mean to belabor  
16 it, and if --

17           **COMMISSIONER KIESLING:** I mean, is it proper  
18 ratemaking treatment to include -- I don't know. Are  
19 you asking has the Commission included it in the past?

20           **MR. SHIEFELBEIN:** Or for that matter, has  
21 anyone ever, anywhere, which is part of the problem we  
22 have with this and related issues. I don't mean to  
23 belabor it, and --

24           **COMMISSIONER KIESLING:** Well, I don't mean  
25 to belabor it either, but the issue is not going in

1 until I'm satisfied with the wording, so --

2           **MR. SHIEFELBEIN:** With that understanding,  
3 we would accept your rewording of the issue, and our  
4 position would be I'd like to expand it, "No. To do  
5 so would be contrary to proper ratemaking principles."

6           **MR. REILLY:** I scribbled down the rewording,  
7 and I don't think I have it completely, but may I  
8 assume that I will get it?

9           **COMMISSIONER KIESLING:** Yes. Let me just  
10 write down what he said. "No. To do so would  
11 violate --

12           **MR. SHIEFELBEIN:** "Be contrary."

13           **COMMISSIONER KIESLING:** "Be contrary to  
14 proper ratemaking principles." Thank you.

15           Okay. The issue that I'm proposing, the  
16 rewording is: "Should nonused plant, nonused  
17 accumulated depreciation, nonused -- it's the same one  
18 that's there except, instead of the first part, it  
19 begins with "should" and it ends with -- after the  
20 last CIAC it ends with "be included in rate base."

21           **MR. REILLY:** Okay. And I believe I know  
22 what her position will be, but let me get that to you  
23 by 5:00 just to make sure.

24           **COMMISSIONER KIESLING:** Okay. My assumption  
25 from what is already in your updated position is that

1 her answer is going to be no.

2           **MR. REILLY:** I think that's correct. Let me  
3 be sure of that.

4           **COMMISSIONER KIESLING:** And, staff, your  
5 answer is no?

6           **MR. EDMONDS:** That's correct.

7           **COMMISSIONER KIESLING:** So if everyone's  
8 answer is no, Flagler, is your answer is no?

9           **MR. HADEED:** Our answer is no.

10           **COMMISSIONER KIESLING:** If everyone's answer  
11 is no, then, yeah, why is this at issue? I mean, I'm  
12 getting into this circular thing. I don't know what  
13 you're talking about, Mr. Shiefelbein, but at least as  
14 far as this part of it, it doesn't seem that there's  
15 an issue.

16           **MR. SHIEFELBEIN:** I understand that, and if  
17 that is, in fact, the case, then we would like to have  
18 it reflected as a stipulation.

19           **COMMISSIONER KIESLING:** Okay.

20           **MR. REILLY:** And let me confirm that, if I  
21 can, by 5:00.

22           **COMMISSIONER KIESLING:** And if you're able  
23 to confirm that, then the stipulation --

24           **MR. REILLY:** The stipulation part of -- all  
25 right.

1           **COMMISSIONER KIESLING:** And the stipulation  
2 would be that "nonused plant, nonused accumulated  
3 depreciation, nonused CIAC and nonused accumulated  
4 amortization of CIAC should not be included in rate  
5 base."

6           **MR. REILLY:** Okay.

7           **COMMISSIONER KIESLING:** Correct?

8           **MR. REILLY:** That would be my understanding.

9           **COMMISSIONER KIESLING:** Correct?

10          **MR. SHIEFELBEIN:** Could we ask at the tail  
11 end of the phrasing of the issue be included as  
12 "components of rate base"?

13          **COMMISSIONER KIESLING:** "Should not be  
14 included as components?"

15          **MR. SHIEFELBEIN:** "Of rate base."

16          **COMMISSIONER KIESLING:** I mean, that may go  
17 back to rewording the issue. I mean, if there's no  
18 objection, I can word the issue as should all of those  
19 things, that I'm not going to read again for the third  
20 time, be included as components of rate base.

21          **MR. MELSON:** That's better.

22          **COMMISSIONER KIESLING:** Is that an  
23 acceptable rewording?

24          **MR. EDMONDS:** Not for staff.

25          **COMMISSIONER KIESLING:** Okay. So tell me

1 why. Tell me what the problem is here.

2 **MR. EDMONDS:** The problem is that it is,  
3 CIAC is included as a -- nonused and useful plant is  
4 included as a component of rate base, and it reduces  
5 rate base.

6 **COMMISSIONER KIESLING:** Okay. Let's start  
7 over. My problem is it's not going to go in as "is it  
8 proper ratemaking treatment to include." I mean, I  
9 don't think that that's an appropriate statement of an  
10 issue that relates to what should be or should not be  
11 in rate base.

12 **MR. SHIEFELBEIN:** I think the wording that  
13 we're -- the revised wording that we're proposing  
14 recognizes that these components involve both debits  
15 and credits in their calculation, is the only fine  
16 distinction we're trying to make here.

17 **COMMISSIONER KIESLING:** Do we need to take a  
18 minute?

19 **MR. SHIEFELBEIN:** We'll concede to the  
20 wording if you all are firm on that.

21 **COMMISSIONER KIESLING:** Okay. So to recap,  
22 the issue is now going to be, should all of those  
23 things be included in rate base. The utility's  
24 position is "No. To do so would be contrary to proper  
25 ratemaking principles." Dunes has no position, OPC is

1 going to get back to us with a position, but they  
2 think it's going to be no, and staff's position is no.

3 And should that be the case, then the  
4 stipulation that would be included as a stipulation  
5 would be that all of those things should not be  
6 included in rate base. Yes?

7 **MR. EDMONDS:** Yes.

8 **COMMISSIONER KIESLING:** Acceptable,  
9 Mr. Shiefelbein?

10 **MR. SHIEFELBEIN:** Yes.

11 **COMMISSIONER KIESLING:** Okay. We're going  
12 to go through the same agony on 35. So I guess my  
13 proposed rewording would be something like -- I  
14 haven't written it down, so I'm ad-libbing this one:  
15 "Should CIAC be included as a deduction from plant  
16 determining rate base." No?

17 Let's start with you. Does that capture  
18 what you're trying to capture?

19 **MR. SHIEFELBEIN:** Well enough.

20 **COMMISSIONER KIESLING:** Pardon me?

21 **MR. SHIEFELBEIN:** Well enough.

22 **MR. REILLY:** You said "Should CIAC be  
23 included."

24 **COMMISSIONER KIESLING:** "Should CIAC be  
25 included as a deduction from plant in determining."

1 Anybody got a problem with that rewording? If not,  
2 then positions?

3 **MR. SHIEFELBEIN:** For the utility, our  
4 position would be as reflected on the update. And, if  
5 I might, back on Issue 34 I'd like to retain the  
6 updated position that I have on that as well as the --  
7 I apologize for being so cryptic. I could read you my  
8 modified position on 34 if you'd like.

9 **COMMISSIONER KIESLING:** Okay.

10 **MR. SHIEFELBEIN:** It's nothing you haven't  
11 heard or seen before. For 34 the utility position in  
12 its entirety would be: "No. To do so would be  
13 contrary to proper ratemaking principles. Only used  
14 portions of these components are properly recognized  
15 in determining rate base."

16 **COMMISSIONER KIESLING:** Which comes from the  
17 update.

18 **MR. SHIEFELBEIN:** Yes, ma'am. And then on  
19 35 simply "as stated on the update."

20 **COMMISSIONER KIESLING:** Okay. OPC?

21 **MR. REILLY:** I will also get with you by  
22 5:00 on this reword so I understand the nuances of  
23 what's going on here today.

24 **COMMISSIONER KIESLING:** And, staff, any  
25 update to your position, then?

1           **MR. EDMONDS:** For 35?

2           **COMMISSIONER KIESLING:** Yes.

3           **MR. EDMONDS:** Is no?

4           **COMMISSIONER KIESLING:** It's no.

5           **MR. EDMONDS:** Yes.

6           **COMMISSIONER KIESLING:** Instead of yes.

7           **MR. EDMONDS:** Correct.

8           **COMMISSIONER KIESLING:** Okay.

9           **MR. EDMONDS:** Hold on a, second please.

10 (Pause)

11           **COMMISSIONER KIESLING:** I don't want to be  
12 difficult, but it just seems to me that asking whether  
13 something is proper ratemaking treatment is a  
14 different issue than whether it should be included or  
15 not.

16           And I would assume that what is proper  
17 ratemaking treatment can be discerned from previous  
18 orders and how things have been treated in the past,  
19 and if there's a change from that, then it would be up  
20 to staff to prove up why they think we should change  
21 what we've done in the past.

22           **MR. EDMONDS:** Could I suggest that we take a  
23 short break? Staff does not agree with the wording of  
24 the issue as it stands now, and maybe a few minutes  
25 would help to get this straightened out.



1           **MR. REILLY:** Well, they're going to drop 35.  
2 That's going to be new 34, as I understand it.

3           **MR. EDMONDS:** That's my understanding, as  
4 well.

5           **COMMISSIONER KIESLING:** Okay. So the new 35  
6 is, "Should nonused CIAC be included as a reduction to  
7 rate base."

8           **MR. EDMONDS:** 34.

9           **COMMISSIONER KIESLING:** That's what I meant.  
10 I'm sorry. And what are the various parties'  
11 positions now?

12           **MR. SHIEFELBEIN:** Our position would remain  
13 the same as previously modified.

14           **COMMISSIONER KIESLING:** Okay. OPC?

15           **MR. REILLY:** By 5:00.

16           **COMMISSIONER KIESLING:** And, staff, yours is  
17 still no?

18           **MR. EDMONDS:** That's correct.

19           **COMMISSIONER KIESLING:** Then, 35. Dropped?  
20 Is 35 dropped?

21           **MR. EDMONDS:** That's my understanding.

22           **MR. HADEED:** Commissioner, before you move  
23 on on Issue Number 34, obviously because of the  
24 reformulation, Flagler County will adopt the OPC  
25 position.

1           **COMMISSIONER KIESLING:** That they haven't  
2 even taken yet.

3           **MR. HADEED:** Yes.

4           **COMMISSIONER KIESLING:** But you're sure  
5 you're going to adopt.

6           **MR. HADEED:** Yes. The mental gymnastics on  
7 this issue has been interesting, so we prefer to  
8 defer.

9           **COMMISSIONER KIESLING:** Okay. Then we're  
10 taken care of on 34 and 5. 36?

11           **MR. SHIEFELBEIN:** 36, I think, should be  
12 rephrased more similar, I guess, to that reflected on  
13 the utility update for most of the wording.

14           I think, as agreed, it would read: "What is  
15 the proper amount of CIAC to use as a deduction from  
16 rate base."

17           And our position is closest to that on the  
18 update. I would merely eliminate the words "from  
19 plant" from the updated utility position.

20           **COMMISSIONER KIESLING:** All right. OPC?

21           **MR. REILLY:** We would have no change to our  
22 position, even after that wording.

23           **COMMISSIONER KIESLING:** Okay. Staff?

24           **MR. EDMONDS:** We would have no change  
25 either.

1           **COMMISSIONER KIESLING:** Okay. 37?

2           **MR. REILLY:** We have a new position, as  
3 outlined in the update, or an amended position.

4           **COMMISSIONER KIESLING:** And that's "At a  
5 minimum net debit deferred taxes," that one?

6           **MR. REILLY:** That's correct.

7           **COMMISSIONER KIESLING:** Staff, any change on  
8 37?

9           **MR. EDMONDS:** No change.

10          **COMMISSIONER KIESLING:** 38?

11          **MR. SHIEFELBEIN:** Yes. On 38, this is  
12 considered by us up to this point as to being a  
13 phantom issue. If nothing else, we want everyone to  
14 know that we have no idea of what is being contested  
15 here.

16                 It sort of seems like this is a, well, if  
17 we've forgotten anything in the rate base area, that  
18 this is -- and we think of it later, this is where we  
19 would argue it.

20          **COMMISSIONER KIESLING:** I think that's  
21 exactly what it is.

22          **MR. SHIEFELBEIN:** And I think that the  
23 framing of issues needs to have a little bit more  
24 specificity than that.

25          **MR. REILLY:** Could I comment on that? This

1 is a Public Counsel issue. This issue was put in  
2 because of the outstanding discovery.

3 It's my understanding that discovery that we  
4 are receiving, and -- or hopefully will be receiving,  
5 will, you know, identify that with specificity.

6 I, again, have no problem living by the rule  
7 that you said before, within three days of receiving  
8 discovery identifying with more particularity exactly  
9 what, if any, issue falls out of that information.

10 I did, fortunately, in preparing to come  
11 here, I asked the consultant to identify with  
12 specificity which discovery requests are outstanding  
13 that impact on this particular area; and as to Issue  
14 38, it's my understanding that Interrogatory 85 and  
15 POD 64, which --

16 **COMMISSIONER KIESLING:** Would you just tell  
17 me the subject matter, because I have read all these,  
18 but I didn't memorize the numbers.

19 **MR. REILLY:** Well, it's as to adjustments to  
20 plant and service.

21 **COMMISSIONER KIESLING:** Okay. That was the  
22 question --

23 **MR. REILLY:** Yes.

24 **COMMISSIONER KIESLING:** -- and that was the  
25 interrogatory and POD --

1           **MR. REILLY:** This is related to information  
2 that could result in further adjustments.

3           **COMMISSIONER KIESLING:** I'm trying to  
4 understand what you asked for in that interrogatory.

5           **MR. REILLY:** Let me just pull it.  
6 Interrogatory No. 84: "In August, 1995, the company  
7 received \$1,125,000 of CIAC from the Dunes Community  
8 Development District. Is this CIAC included as an  
9 offset to rate base? If the entire amount is not  
10 included as an offset to rate base, state the amount  
11 so included and why the entire amount is not included  
12 as an offset to rate base." That's Interrogatory 84.  
13 I'm sorry. That's another one. It's 85.

14           Interrogatory 85: "Did the company take  
15 some percolation ponds out of service? If yes, when  
16 were they taken out of service and what was the  
17 accounting treatment of the cost of the percolation  
18 ponds. (Identify the amounts and accounts debited or  
19 credited in conjunction with removing these  
20 percolation ponds from service.) Is the cost of the  
21 land or any portion of the percolation ponds included  
22 in the company's requested rate base? If yes, state  
23 the amount included in rate base and why it is  
24 appropriate for the cost of the percolation ponds to  
25 be included in rate base." That's Interrogatory 85.

1           As to POD 64, that is "Provide a copy of all  
2 appraisals of all real property acquired since 1990."

3           **COMMISSIONER KIESLING:** Okay.

4           **MR. REILLY:** And, again, depending on what  
5 we are allowed to get and when we're allowed to get  
6 it, we will -- I do have to next-day deliver this to  
7 her, so it would be, hopefully, three days when she  
8 receives it, so I can get to her as quickly as  
9 whatever we're allowed to get.

10           **MR. SHIEFELBEIN:** May I make some  
11 observations?

12           **COMMISSIONER KIESLING:** Certainly.

13           **MR. SHIEFELBEIN:** And perhaps this is a  
14 problem that just can't be resolved, but we don't know  
15 what the findings are or will be on the discovery. We  
16 don't know what the practicalities may be for the  
17 discovery that we may have to produce, but it doesn't  
18 seem inconceivable to me that the three days, or what  
19 have you, may be around the hearing or at the hearing  
20 that Mr. Reilly is talking about getting back to us.

21           **COMMISSIONER KIESLING:** Well, when is the  
22 discovery due?

23           **MR. SHIEFELBEIN:** Well, it's all --

24           **COMMISSIONER KIESLING:** I mean, is all of  
25 this discovery subject to the motions or requests for

1 protective orders, all of these items?

2 **MS. COWDERY:** Requests for Production No. 64  
3 was provided on Monday. That was part of the response  
4 to OPC's third set of requests for production of  
5 documents, so that one has already been provided.  
6 Interrogatory No. 85 is part of the fourth set of  
7 interrogatories to which we have objected.

8 **MR. REILLY:** And by the way, as to the third  
9 set, I was out of town. I came back as soon as I got  
10 in and I next-day delivered. So as for that, that has  
11 been, I believe, next-day delivered as of yesterday, I  
12 believe.

13 **MS. COWDERY:** It was served Monday.

14 **MR. SHIEFELBEIN:** It seems that if nothing  
15 else, there could be -- it might be reasonable to  
16 require wordings of issues that relate to the subject  
17 matters of those discovery requests, and I'm not  
18 demanding that that be done right this moment.

19 But I don't think that there may be  
20 outstanding discovery on perc ponds out of service, or  
21 any appraisals being done justifies a grab bag issue.  
22 If there's an issue, it ought to address those areas  
23 of concern.

24 **COMMISSIONER KIESLING:** Well, I agree with  
25 that. So under your issue that you have proposed for

1 Issue 38, the only items or areas of inquiry that you  
2 are waiting for relate to perc ponds and appraisals?

3 **MR. REILLY:** When I spoke to them this  
4 morning, you know, to get these citations, that's the  
5 two she gave me; and if she might have overlooked a  
6 third, you know, I will call her today, but that's  
7 what she gave me. That's correct.

8 So I don't have a problem with getting with  
9 her and specifying the exact discovery requests, the  
10 subject matter of those requests and further refining,  
11 you know, the wording of the areas that are being  
12 probed.

13 **COMMISSIONER KIESLING:** Okay.

14 **MR. REILLY:** And having that to you by  
15 sometime certain.

16 **COMMISSIONER KIESLING:** How about by  
17 tomorrow afternoon?

18 **MR. REILLY:** By 5:00 tomorrow. Okay.

19 **COMMISSIONER KIESLING:** Yes. I mean, I want  
20 an opportunity to look at these and hear any  
21 objections, or whatever, so that we can get a timely  
22 prehearing order out.

23 **MR. REILLY:** All right.

24 **COMMISSIONER KIESLING:** So you'll look at 38  
25 and reword it to make it specific to those areas that

1 you are still looking at.

2 **MR. REILLY:** Okay.

3 **COMMISSIONER KIESLING:** All right. 39? No  
4 changes. 40?

5 **MR. REILLY:** We do have an update position  
6 on 39. "As per the update."

7 **COMMISSIONER KIESLING:** Okay.

8 **MR. REILLY:** I think the only difference is  
9 that we dropped the word "yes." Let me see. I think  
10 everything else should be the same.

11 **COMMISSIONER KIESLING:** Okay. 40? This is  
12 a fallout issue. 41?

13 **MR. EDMONDS:** Staff would request to move  
14 this issue to the next to last issue of the Cost of  
15 Capital section, which would put it between Issue 46  
16 and 47.

17 **COMMISSIONER KIESLING:** And renumber?

18 **MR. EDMONDS:** And renumber it.

19 **COMMISSIONER KIESLING:** Are you going to  
20 make sure, then, that everybody's statement of who is  
21 testifying about what issue correctly reflects this  
22 change --

23 **MR. EDMONDS:** Yes.

24 **COMMISSIONER KIESLING:** -- in renumbering?

25 Okay.

1           **MR. REILLY:** We have a slight rewording of  
2 our position on 41.

3           **COMMISSIONER KIESLING:** Okay. Well, let me  
4 take it up then. Let me renumber, move it, and then  
5 we'll take it up when we get to that spot.

6           **MR. REILLY:** Okay.

7           **COMMISSIONER KIESLING:** Then renumbered  
8 Issue 41 is: "Should the utility be penalized by  
9 reduction in ROE for its treatment of depreciation?"

10          **MR. SHIEFELBEIN:** We would like to suggest a  
11 minor change in the phrasing of that issue as  
12 reflected on our update.

13          **MR. REILLY:** That will not be necessary,  
14 because that's an OPC issue that you will be pleased  
15 to hear that we are going to drop. Apparently, the  
16 last case was the one-eighth O&M formula. In this  
17 case they're doing the balance sheet approach, and  
18 apparently that covers this adjustment.

19          **COMMISSIONER KIESLING:** Well, that brings us  
20 to the question of in preparing the final prehearing  
21 order, are you going to renumber for the dropped ones,  
22 or are you just going to mark them as dropped so that  
23 we don't have to go back and renumber for everything  
24 else?

25          **MR. EDMONDS:** Just mark them as dropped.

1                   **COMMISSIONER KIESLING:** Okay. Then  
2 renumbered 42.

3                   **MR. SHIEFELBEIN:** I beg your pardon? Is  
4 there anything that would be appropriate to do --  
5 there remains prefiled testimony in Public Counsel's  
6 filing. Would you be, when the witness takes the  
7 stand, be deleting those --

8                   **MR. REILLY:** Amendments at the appropriate  
9 time, yes.

10                   **MR. SHIEFELBEIN:** That's fine. Thank you.

11                   **MR. REILLY:** And I assume the same would be  
12 the case with rebuttal.

13                   **MR. SHIEFELBEIN:** We want to keep the  
14 rebuttal in. I'm kidding. I'm sorry.

15                   **COMMISSIONER KIESLING:** I'll permit you all  
16 to do that when the witness is called. Issue 42,  
17 renumbered 42, which used to be 43?

18                   **MR. SHIEFELBEIN:** The utility's --

19                   **COMMISSIONER KIESLING:** Has that been taken  
20 care of?

21                   **MR. SHIEFELBEIN:** No. This is old Issue 43?

22                   **COMMISSIONER KIESLING:** Yes.

23                   **MR. SHIEFELBEIN:** Well, our updated position  
24 to 43 would be, oddly enough, on our update. Sorry.

25                   **COMMISSIONER KIESLING:** Well, I have got the

1 same kind of problem with the way the issue is phrased  
2 about whether it is proper ratemaking treatment that I  
3 had with the others, so --

4 **MR. SHIEFELBEIN:** Could I have a moment?

5 **COMMISSIONER KIESLING:** Yes.

6 **MR. REILLY:** So you're suggesting that  
7 "Should CIAC be included as a component of the capital  
8 structure," is your rewording?

9 **COMMISSIONER KIESLING:** Well, I'm going to  
10 wait and see what they have to say about it, but it  
11 would be something like --

12 **MR. REILLY:** This is not their issue. I  
13 think this is our issue.

14 **COMMISSIONER KIESLING:** Oh. How could this  
15 be your issue? You took no position.

16 **MR. REILLY:** No. I -- let me see. No. I  
17 think I have a position in our updated.

18 **COMMISSIONER KIESLING:** Oh, okay.

19 **MR. REILLY:** I think what this represents is  
20 a rewording of an OPC issue that got reworded at the  
21 pre-prehearing conference, if my memory serves me  
22 correctly. I think the genesis of this issue, I  
23 think, comes from Public Counsel, and we do have a  
24 position, and it is reflected in the updated, under  
25 Issue 43.

1           **MR. SHIEFELBEIN:** Okay. Your rephrasing of  
2 43 would be what?

3           **COMMISSIONER KIESLING:** "Should CIAC be  
4 included as a component of the cost of capital."

5           **MR. SHIEFELBEIN:** Okay. And our position on  
6 the update works just fine for that rephrased issue  
7 with both witnesses, Seidman and Guastella.

8           **MR. REILLY:** And our updated position, I  
9 think, is fine with the reworded issue, except you  
10 might add Dismukes as the witness for that updated  
11 position.

12           **COMMISSIONER KIESLING:** Staff?

13           **MR. EDMONDS:** Staff has no changes to its  
14 position.

15           **COMMISSIONER KIESLING:** All right.

16 Renumbered 43?

17           **MR. SHIEFELBEIN:** The utility's position and  
18 witnesses would be as shown on the update.

19           **COMMISSIONER KIESLING:** Okay. OPC, any  
20 change?

21           **MR. REILLY:** No, no change.

22           **COMMISSIONER KIESLING:** Staff?

23           **MR. EDMONDS:** No change.

24           **COMMISSIONER KIESLING:** Renumbered 44, "What  
25 is the appropriate cost of debt?"

1           **MR. SHIEFELBEIN:** The utility's position is  
2 on the update.

3           **MR. REILLY:** OPC's position is on our  
4 update.

5           **COMMISSIONER KIESLING:** Staff, any change in  
6 yours?

7           **MR. EDMONDS:** No changes.

8           **COMMISSIONER KIESLING:** Okay. Renumbered  
9 45?

10          **MR. SHIEFELBEIN:** It appears that we have a  
11 potential stipulation not indicated anywhere in our  
12 statement, but is that we would -- part of the  
13 question is "what's the cost rate;" and we certainly  
14 agree with staff that the cost rate is zero. We give  
15 a year-end balance.

16          **COMMISSIONER KIESLING:** Wait a minute.

17          **MR. SHIEFELBEIN:** I'm sorry?

18          **COMMISSIONER KIESLING:** We're on what used  
19 to be 46.

20          **MR. SHIEFELBEIN:** Yes, ma'am.

21          **COMMISSIONER KIESLING:** Now renumbered 45.  
22 Okay. I'm sorry. I had just read staff says no  
23 position, and didn't realize that they did include a  
24 position at the end. So go ahead, then. I'm sorry.

25                 So yours is even different than that which

1 you prefiled, or that which you submitted today, which  
2 is "We'll stipulate to OPC's adjustment of \$125,569,  
3 with a resulting year-end balance of 2,391,641 before  
4 reconciliation to rate base."

5 That's your position, or are you changing it  
6 now?

7 **MR. SHIEFELBEIN:** Well, I wanted to also  
8 indicate we don't answer on that what the cost rate  
9 is, and we agree with staff, and I think we agree with  
10 Public Counsel as well, that the cost rate is zero.  
11 Now, I don't know -- there may be some moving targets.

12 **COMMISSIONER KIESLING:** OPC?

13 **MR. REILLY:** It appears that our numbers are  
14 the same. The only thing I'd like to double-check is  
15 this resulting year-end balance. I don't have any  
16 reason to believe that our number would be different,  
17 would it? Would Kim's number be different?

18 **MR. SEIDMAN:** Not before reconciliation.

19 **MR. REILLY:** So, you know, it's a possible  
20 stipulation if we can just confirm that.

21 **COMMISSIONER KIESLING:** And where is staff  
22 on that as a stipulation?

23 **MR. EDMONDS:** Staff would agree with the  
24 stipulation.

25 **COMMISSIONER KIESLING:** So we have a

1 stipulation?

2           **MR. REILLY:** With my ability to confirm that  
3 2,391,641, since that's being added to our position;  
4 but I have no reason to believe that -- again, we'll  
5 confirm that.

6           Earlier I had said that we would do certain  
7 things by 5:00 today, and I realized our schedule,  
8 being like it is, we have a deposition.

9           **COMMISSIONER KIESLING:** Tomorrow.

10           **MR. REILLY:** Well, that's tomorrow on some  
11 items. Certain other items I think I said by 5:00  
12 today. If you don't mind, if we can make everything  
13 5:00 tomorrow, because we have a deposition, I think,  
14 today that starts right after lunch, and -- well,  
15 we'll just see. It may be that I'll be tied up all  
16 afternoon; but no later than 5:00 for everything  
17 tomorrow.

18           **COMMISSIONER KIESLING:** Okay. All right.  
19 Then we have a potential stipulation. It's just up to  
20 you to make sure that Ms. Dismukes does not disagree  
21 with that additional figure that was given.

22           **MR. REILLY:** Correct.

23           **MR. EDMONDS:** Could we hammer out the  
24 language for the stipulation while we're here? Does  
25 anybody object to that?

1           **MR. REILLY:** Sure.

2           **COMMISSIONER KIESLING:** Sure.

3           **MR. REILLY:** Do you have suggested language?

4           **COMMISSIONER KIESLING:** Yes.

5           **MR. EDMONDS:** Well, how about: Cost-free  
6 investment tax credits should be increased by 125,569  
7 with the resulting year-end balance of the two million  
8 figure.

9           **COMMISSIONER KIESLING:** Could you start  
10 again, though? "Cost-free investment tax credit  
11 should be --

12           **MR. EDMONDS:** Increased.

13           **COMMISSIONER KIESLING:** "Increased with a  
14 resulting year-end balance of 2,391 641." And then do  
15 you want to include "before reconciliation to rate  
16 base?"

17           **MR. EDMONDS:** Sure. Yeah.

18           **MR. REILLY:** Yes, I believe so.

19           **MR. EDMONDS:** And then in addition say the  
20 cost rate is zero. Oh, yeah; you're right. Never  
21 mind. Sorry.

22           **COMMISSIONER KIESLING:** Yeah; cost-free  
23 includes the zero.

24           **MR. EDMONDS:** Okay. Thank you.

25           **COMMISSIONER KIESLING:** And then we'll go

1 back to 41, which is now renumbered 46, and you wanted  
2 to rephrase the issue, Mr. Shiefelbein?

3 **MR. SHIEFELBEIN:** Old Issue 41?

4 **COMMISSIONER KIESLING:** Yes.

5 **MR. SHIEFELBEIN:** No, ma'am. It's fine as  
6 it is. We're talking about --

7 **COMMISSIONER KIESLING:** Sorry. I was  
8 looking at 42. Okay. Any changes in -- or are there  
9 positions on 46?

10 **MR. REILLY:** We have a position, "as stated  
11 in the update."

12 **COMMISSIONER KIESLING:** All right; staff?

13 **MR. REILLY:** And it's stated under 41, of  
14 course.

15 **COMMISSIONER KIESLING:** Right.

16 **MR. EDMONDS:** Staff has no changes.

17 **COMMISSIONER KIESLING:** Okay. And then 47,  
18 any changes?

19 **MR. SHIEFELBEIN:** Well, our best shot for  
20 the utility is on the update for Issue 47, though I  
21 guess given the renumbering of issues, that would  
22 affect the issue reference we have in our updated  
23 position.

24 **COMMISSIONER KIESLING:** Which is now Issue  
25 45.

1           **MR. SHIEFELBEIN:** Yes. Thank you.

2           **COMMISSIONER KIESLING:** Okay. Then we're  
3 into net operating income, Issue 48.

4           **MR. SHIEFELBEIN:** The utility's position is  
5 on the update.

6           **COMMISSIONER KIESLING:** Any change from  
7 anyone else? 49?

8           **MR. SHIEFELBEIN:** The utility's position on  
9 Issue 49 is on the update.

10          **COMMISSIONER KIESLING:** Any other changes?

11          **MR. REILLY:** No changes.

12          **COMMISSIONER KIESLING:** 50?

13          **MR. SHIEFELBEIN:** Utility, update.

14          **COMMISSIONER KIESLING:** No others. 51?

15          **MR. SHIEFELBEIN:** Also, utility, update.

16          **COMMISSIONER KIESLING:** No other changes?

17          **MR. REILLY:** No changes.

18          **COMMISSIONER KIESLING:** 52?

19          **MR. SHIEFELBEIN:** Utility, update.

20          **COMMISSIONER KIESLING:** Hearing no others,  
21 53?

22          **MR. SHIEFELBEIN:** Yes, Madam Commissioner.  
23 On Issue 53, this is another one of those issues where  
24 we must confess at this point we don't know where the  
25 problem is.

1           **COMMISSIONER KIESLING:** Yes.

2           **MR. EDMONDS:** Staff is willing to drop this  
3 issue.

4           **COMMISSIONER KIESLING:** Completely?

5           **MR. EDMONDS:** Completely.

6           **COMMISSIONER KIESLING:** Any objection to  
7 dropping it? OAll right. 53 is dropped. 54?

8           **MR. SHIEFELBEIN:** If I could have a moment,  
9 please. (Pause)

10          **MR. EDMONDS:** Staff is willing to drop 54,  
11 as well.

12          **COMMISSIONER KIESLING:** Okay. 55.

13          **MR. SHIEFELBEIN:** 55, the utility's position  
14 is on the update.

15          **COMMISSIONER KIESLING:** Any other changes?  
16 56?

17          **MR. SHIEFELBEIN:** 56, utility, update.

18          **COMMISSIONER KIESLING:** 57?

19          **MR. SHIEFELBEIN:** Utility, update.

20          **COMMISSIONER KIESLING:** 58?

21          **MR. SHIEFELBEIN:** Utility, update, as well.

22          **COMMISSIONER KIESLING:** 59?

23          **MR. SHIEFELBEIN:** Issue 59 is one of those  
24 grab-bag, in case we forgot anything else issues, so  
25 we therefore are objecting.

1           **COMMISSIONER KIESLING:** And what discovery  
2 is outstanding on this one?

3           **MR. REILLY:** I have the specific citations  
4 on that. It's my understanding it's Interrogatory 75,  
5 76, 77, 78, 82, 83, and PODs 62, 63, 75, and 78.

6           **COMMISSIONER KIESLING:** Most of those  
7 numbers, judging by the numbers, fall within your  
8 fourth set.

9           **MR. REILLY:** I'm looking right now. As to  
10 interrogatories, they begin -- because, apparently,  
11 interrogatories, there are some in the fourth and some  
12 in the third.

13           In the POD's they begin on -- apparently all  
14 the PODs. No. Excuse me. 62 and 63 are in the  
15 third, 75 and 78 are in the fourth.

16           **MS. COWDERY:** And, Commissioner, I believe  
17 that the interrogatories -- unless, I missed  
18 Mr. Reilly stating this already -- 75, 76, 77 and 78  
19 were also served on him on Monday as part of the third  
20 set.

21           **MR. REILLY:** As I said, that's been next-day  
22 delivered to her. You know, it's just a matter of  
23 working out what you feel is appropriate on  
24 assimilating that information, identifying with  
25 specificity, you know, where we're going, so the

1 company could be put on notice. You know, I would  
2 still live with the --

3 **COMMISSIONER KIESLING:** They were delivered  
4 on Monday?

5 **MR. REILLY:** You can do it in two batches, I  
6 guess. You can do -- when it was given to us -- I  
7 think she just may be receiving it today, as a matter  
8 of fact, because I think we next-day delivered it as  
9 soon as I got back in town midday yesterday, so she  
10 should be getting it today.

11 **COMMISSIONER KIESLING:** Is tomorrow by 5:00  
12 asking too much?

13 **MR. REILLY:** For the third set?

14 **COMMISSIONER KIESLING:** Yes.

15 **MR. REILLY:** I know Kim can do it. Yeah,  
16 I'll just -- whatever you -- I think three days is  
17 what I -- you know, to try to assimilate it, and I  
18 had--

19 **COMMISSIONER KIESLING:** And it was delivered  
20 on Monday so --

21 **MR. REILLY:** Right. So --

22 **COMMISSIONER KIESLING:** You know, I'm sorry  
23 you were out of town, but if it just sat for that  
24 amount of time, then --

25 **MR. REILLY:** So it's 5:00 p.m. specifying

1 issues that relate to discovery from the third set.

2 **COMMISSIONER KIESLING:** Right.

3 **MR. REILLY:** And are in --

4 **COMMISSIONER KIESLING:** For Issue 59.

5 **MR. REILLY:** For Issue 59.

6 **COMMISSIONER KIESLING:** And then within  
7 three days after delivery of discovery from the fourth  
8 set.

9 **MR. REILLY:** From the fourth set. Okay.

10 **COMMISSIONER KIESLING:** Okay,

11 Mr. Shiefelbein?

12 **MR. SHIEFELBEIN:** (Nodding head.)

13 **COMMISSIONER KIESLING:** The best we can do.

14 60?

15 **MR. SHIEFELBEIN:** On Issue 60 our position  
16 is as stated, but there's a few related topics I'd  
17 like to bring up on this.

18 First of all, I think we have agreement by  
19 all parties, as reached at the pre-pre, that we would  
20 update our rate case expense information, this coming  
21 Monday, the 24th; and so that's what we're talking  
22 about there in our position as "updated closer to  
23 hearing." It's our proposal that we refile any  
24 updated projections and documentation of actual on  
25 that date. I don't believe there's any objection to

1 that.

2           **COMMISSIONER KIESLING:** What's your  
3 intention as to whatever occurs between the 24th and  
4 posthearing? Are you going to agree with the  
5 estimates?

6           **MR. SHIEFELBEIN:** We will follow your  
7 direction on that. Personally, without burdening the  
8 Commission, I think it's always good to have the most  
9 updated information you can, whether it's higher or  
10 lower.

11           I know that -- and Kathryn is more on top of  
12 this than I am -- but I think that it's our  
13 expectation to have actual information in this filing  
14 on Monday as recently as two days ago; and we would  
15 take advantage of any opportunity offered to us to --  
16 we've certainly made our projections, which are  
17 considerable, and we expect to stay within those  
18 projections, but if there's an opportunity that no one  
19 would oppose to further update that at the appropriate  
20 time, we'd do it.

21           **COMMISSIONER KIESLING:** What's our general  
22 practice?

23           **MR. SHIEFELBEIN:** I think it varies from  
24 case to case.

25           **COMMISSIONER KIESLING:** Well, having just

1 sat through Southern States, and having had a major  
2 issue about these updates, I think I would be happier  
3 to have some clarification that we're all going to  
4 live with.

5 **MR. EDMONDS:** My understanding is that  
6 normal practice is that we just get one exhibit with  
7 an estimate of what it will take to complete.

8 **COMMISSIONER KIESLING:** Is that the one  
9 that's filed on the 24th, or are you talking about one  
10 that's filed like at the hearing?

11 **MR. EDMONDS:** On the 24th.

12 **COMMISSIONER KIESLING:** Okay.

13 **MR. SHIEFELBEIN:** That's fine. My other  
14 concern on Issue 60 -- and this didn't go over too  
15 well at the pre-pre -- but staff and the Public  
16 Counsel have in their testimony taken the position  
17 that we, the utility, did not reduce its rates to  
18 reflect the expiration of rate case expense  
19 amortization from the utility's last rate case.

20 We've responded to that. I won't get into  
21 the merits of the issue. That has disappeared from  
22 the list of issues as a distinct area of concern, and  
23 instead is being, at least in this draft here, shown  
24 as OPC's statement of position on what I consider to  
25 be a current rate case expense issue; and I certainly

1 think it makes more sense to have a current rate case  
2 expense issue, which we always do.

3           **COMMISSIONER KIESLING:** Which is Issue 60.

4           **MR. SHIEFELBEIN:** Right. And to have an  
5 issue, if staff and Public Counsel are really pursuing  
6 this, regarding this prior rate case expense  
7 amortization.

8           I'm a little bit ill at ease with the  
9 consolidation of those two that seems to have happened  
10 here with at least OPC's position.

11           **MR. REILLY:** Well, I'm sorry if the utility  
12 is uncomfortable with OPC's position, but we would  
13 prefer to, you know, take our positions and then have  
14 to defend them at the hearing.

15           As to Issue 60, we do not have a particular  
16 problem if he feels more comfortable identifying this  
17 issue of this old rate case expense treatment, and he  
18 has proposed Issues 60A and B.

19           We would recommend, however, that if 60A is  
20 going to be retained in the prehearing order, that it  
21 at least be reworded, because I think we have  
22 basically a stipulation that we all agree that the  
23 Commission did not in the last Palm Coast rate case  
24 order this treatment to be done. So that issue, if  
25 it's going stay worded as it is, goes away as a

1 stipulation.

2 **COMMISSIONER KIESLING:** On 60A.

3 **MR. REILLY:** On 60A.

4 **COMMISSIONER KIESLING:** Right.

5 **MR. REILLY:** However, a better wording that  
6 might get at what the utility is attempting to do, I  
7 think, would be should the Commission have ordered a  
8 rate reduction after amortization of rate case expense  
9 in the last Palm Coast rate case order.

10 **COMMISSIONER KIESLING:** Wait a minute. Wait  
11 a minute. Wait a minute. If you think the Commission  
12 made an error in that order by not ordering that  
13 reduction, your time to bring that up would have been  
14 on appeal.

15 **MR. REILLY:** Right.

16 **COMMISSIONER KIESLING:** I mean, whatever  
17 that order says is what that order says, and what the  
18 Commission should or shouldn't have done that far back  
19 is kind of just tough.

20 **MR. REILLY:** Well, then, that's fine. So  
21 let them -- I have no problem if 60A goes away, so let  
22 them -- is a stipulation then.

23 **COMMISSIONER KIESLING:** Okay. Well,  
24 let's --

25 **MR. REILLY:** Let's take them one at a time.

1           **COMMISSIONER KIESLING:** Yes, let's. 60; any  
2 change in anyone's position?

3           **MR. EDMONDS:** No.

4           **COMMISSIONER KIESLING:** Okay. 60A?

5           **MR. SHIEFELBEIN:** Well, 60A is --

6           **COMMISSIONER KIESLING:** Is it still an  
7 issue?

8           **MR. SHIEFELBEIN:** As stated, the utility's  
9 position.

10           **COMMISSIONER KIESLING:** Well, why are we  
11 doing that? I mean, the order either says that it's  
12 ordered or not. I mean, it speaks for itself.

13           **MR. REILLY:** I'm suggesting a stipulation,  
14 because my position would be "No, period; Dismukes."  
15 And I just see, no, no, no. Well, I do see a no  
16 position, but otherwise it seems like a string of  
17 no's.

18           **MR. SHIEFELBEIN:** I would be delighted to  
19 have 60A as a stipulation.

20           **COMMISSIONER KIESLING:** Well, maybe I'm not  
21 saying the same thing, so listen to what I'm saying.  
22 The order speaks for itself. Why do we have to have  
23 an issue at all? Just official recognition of the  
24 order allows you then to make whatever argument you  
25 wish to make. I mean, why is there even an issue that

1 needs a stipulation?

2           **MR. SHIEFELBEIN:** Well, we asked ourselves  
3 that same question, because we are, in all sincerity,  
4 totally aghast at this argument that we didn't do  
5 something that maybe should have been done that really  
6 shouldn't have been done.

7           And we're dealing with testimony that goes  
8 into this by the staff witness, and then Public  
9 Counsel takes that argument a step further ordering a  
10 retroactive refund of over-recovery of rate case  
11 expense that they're willing to stipulate that we  
12 weren't ordered to use in reducing rates.

13           So it's a very bewildering thicket, and one  
14 way for me to try to deal with that thicket was to  
15 either raise issues or get stipulations on essential  
16 components of that.

17           I don't know if reasonable people can  
18 disagree as to what that order says, but perhaps  
19 unreasonable people can; and I think there is some  
20 unreasonable testimony in this case on that issue,  
21 without belaboring that.

22           I think it's -- I will defer to you, Madam  
23 Commissioner, but I think that a stipulation would be  
24 appropriate on that narrow question.

25           **COMMISSIONER KIESLING:** Well, here's the way

1 I propose to handle it and somebody can tell me where  
2 I'm wrong.

3 I propose to strike the issue entirely, and  
4 if there's testimony that relates to whether or not a  
5 reduction should have been ordered in the last one, to  
6 strike that testimony in the prefiled testimony.

7 It's not an issue. I don't care what should  
8 have been done. If it wasn't done, it wasn't done. I  
9 don't know what the testimony is, but if the order  
10 doesn't order it, then it seems settled to me. And I  
11 assumed we would be striking some of your witness'  
12 testimony, so I think you might want to say something  
13 to me.

14 **MR. REILLY:** I'm not aware of any testimony  
15 that would be stricken by Public Counsel. Are you?

16 **MR. SHIEFELBEIN:** Well, the -- we're  
17 mystified by the logic that gets us to a \$305,000  
18 refund and --

19 **COMMISSIONER KIESLING:** Then maybe I need to  
20 start over. Mr. Reilly, looking back at Issue 60, you  
21 have no position -- let me make sure I understand. Do  
22 you have a position about what the appropriate amount  
23 of rate case expense in the current case is or should  
24 be?

25 **MR. REILLY:** We do not at this time.

1           **COMMISSIONER KIESLING:** Okay. So your  
2 statement of what you -- your position on 60 doesn't  
3 really answer 60, it relates to an alleged reduction  
4 because of failure to reduce rates from the last rate  
5 case expense; right?

6           **MR. REILLY:** It's my understanding that this  
7 was a matter that was in the staff audit, and I  
8 believe that our witness perhaps might have read that  
9 recommendation and she might have incorporated some  
10 recommendation in her testimony. I have not been able  
11 to get to it here today. So what is your question?

12           **COMMISSIONER KIESLING:** My question is: Is  
13 there an issue about a reduction of current rate case  
14 expense based on the alleged failure to reduce rates  
15 after the last rate case expense?

16           **MR. REILLY:** I believe that there is a  
17 recommendation to that effect.

18           **COMMISSIONER KIESLING:** A recommendation  
19 from Ms. Dismukes?

20           **MR. REILLY:** Right; and she will be  
21 available to defend that position at the hearing.

22           **COMMISSIONER KIESLING:** And she will be  
23 available to defend it if I allow it to be an issue.  
24 I'm trying to understand still how this can be an  
25 issue.

1           If everyone is in agreement that the order  
2 did not order them to do so, and on Issue 60B, if  
3 everyone is in agreement that Section 367.081(6)  
4 became effective prior to the official filing date --

5           **MR. SHIEFELBEIN:** After.

6           **MR. REILLY:** It's my understanding that this  
7 statute became effective --

8           **COMMISSIONER KIESLING:** After, yes.

9           **MR. REILLY:** After -- the official filing  
10 date, but prior to the hearing, prior to the decision  
11 of what would be an appropriate rate case expense, and  
12 prior to the order being issued in the last rate case.

13           And I guess that is the basis of the  
14 recommendation, that the effects of that statute could  
15 be considered by this Commission in this case, and  
16 that would be up to your ruling; but I think that was  
17 the basis of the audit adjustment. I believe that was  
18 the basis of Citizens --

19           **MR. SHIEFELBEIN:** May I respond?

20           **COMMISSIONER KIESLING:** Yes. But I would  
21 like one clarification from staff first. Is it  
22 staff's position that there should be any rate  
23 reduction in this case based on the failure to reduce  
24 rates after amortization from the last rate case?

25           **MR. EDMONDS:** No.

1           **COMMISSIONER KIESLING:** Okay. So it's now  
2 either your issue, or staff is dropping it.

3           **MR. REILLY:** I don't think we can pursue it  
4 at this point, then. We were basically supporting  
5 staff's --

6           **COMMISSIONER KIESLING:** And staff is not  
7 taking that position any longer.

8           **MR. REILLY:** So that would effectively pull  
9 the rug out from under our position, I would think.

10           **COMMISSIONER KIESLING:** Okay. Then going  
11 back to Issue 60, since 60A and 60B are going to be  
12 gone, would it be fair for me to understand that  
13 Ms. Dismukes' testimony about the reduction of  
14 \$305,677 would now not be the correct position on that  
15 if there is no issue about that?

16           **MR. REILLY:** Right. And what I would like  
17 to do on our position for Issue 60, in light of  
18 deleting 60A and 60B and in light of staff's position  
19 on these issues, is to allow me to bring you our  
20 updated position on that after talking to her, along  
21 with those others, by 5:00 p.m. tomorrow.

22           **COMMISSIONER KIESLING:** All right. I would  
23 be happy to do that. However, one of the other things  
24 that you need to bring us, then, is what portions of  
25 her testimony you are now willing to strike as it

1 relates to this reduction, which is no longer being  
2 supported.

3           **MR. REILLY:** Okay. And you want that by  
4 5:00 tomorrow as opposed to at the beginning of the  
5 hearing?

6           **COMMISSIONER KIESLING:** Yes. I think that  
7 it's fair to get this resolved. And to the extent  
8 that there are any staff witnesses that prefiled  
9 testimony on this, also I would expect that that  
10 testimony would be stricken.

11           **MR. EDMONDS:** Absolutely.

12           **MR. HADEED:** Madam Commissioner, Flagler  
13 County, in light of the changes to these issues, on  
14 Issue 60 Flagler County will adopt the staff position.

15           **COMMISSIONER KIESLING:** Okay. You adopt  
16 staff, and on 60A and B you don't need a position,  
17 then.

18           **MR. HADEED:** Correct.

19           **COMMISSIONER KIESLING:** Thank you. All  
20 right. 61? OPC, is yours updated?

21           **MR. REILLY:** Yes, it is updated.

22           **COMMISSIONER KIESLING:** This is a fallout  
23 issue anyway, isn't it? I mean, don't we have to  
24 resolve used and useful before we can resolve --

25           **MR. SHIEFELBEIN:** I believe it is.

1           **COMMISSIONER KIESLING:** Okay. 62; any  
2 changes? 63?

3           **MS. COWDERY:** Commissioner, we would request  
4 that this issue be deleted. It's irrelevant to the  
5 case. The potential sale has no bearing on the rate  
6 case, and I think my arguments you've probably already  
7 read. In the responses to motion to compel, I've  
8 cited the J.J Mobile Homes case as some support for  
9 it.

10           **COMMISSIONER KIESLING:** Okay. I would like  
11 some clarification, I guess from OPC, on how this  
12 potential sale or the option is relevant to this case.

13           **MR. REILLY:** Well, it is our understanding,  
14 our belief, that this option agreement is probably  
15 what's driving this very case.

16           But for the contracts that we have not been  
17 able to see, but for the fact that these have been  
18 entered into, we probably would not be here in a rate  
19 case at all. Of course we don't have that language  
20 before us, but that's one belief.

21           Secondly, we believe that while the company  
22 states that this is some option that is speculative  
23 and it may or may not happen, we believe that what  
24 facts that we've been able to bring to bear is that  
25 this is but a series of transactions where -- that, in

1 fact, this option agreement is really virtually a fait  
2 accompli, because Minnesota Power & Light or its  
3 affiliates have already actually closed and purchased  
4 the sale -- of the purchase of the 13,000 acres that  
5 ICDC previously owned, and the associated accounts  
6 receivable and the whole mechanism that related  
7 between ICDC and PCUC in funneling CIAC prepaid,  
8 guaranteed revenue agreements, everything.

9           The whole interrelationship that has  
10 historically been there between ICDC and PCUC has now  
11 been put in place with Minnesota Power & Light.

12           And, in fact, on our on-site inspection when  
13 we were talking to customers and other people in the  
14 community that apparently some of their relatives  
15 worked for PCUC, they said these -- the employees of  
16 PCUC are already reporting to the Minnesota Power &  
17 Light people. Changes are being made that affect  
18 expenses.

19           **COMMISSIONER KIESLING:** Wait a minute. But  
20 that's my question. If they occurred after the end of  
21 the historic test year, and presumably even after the  
22 end of the projected test year that ended December 31,  
23 '95, how can they possibly have an impact on this case  
24 if we are looking at already historic data?

25           **MR. REILLY:** Well, I'm asked to comment on

1 documents I have not seen as to time periods. It may  
2 well be that these contracts have been executed prior  
3 to the end of the test year, that changes were being  
4 made and were, in fact, made during the test year.

5           We have an audit that picked up legal  
6 expenses that were attempted to be collected in this  
7 rate case that were found to be associated with the  
8 transaction, and staff has recommended they be deleted  
9 from the rate case.

10           I believe that these changes which are  
11 taking place as a result of this major event of the  
12 utility being sold is changing all sorts of O&M  
13 matters.

14           It's my understanding that now instead of  
15 having the regular PCUC meter readers going out and  
16 reading the meters, that changes have been instituted  
17 during the test year that have Florida Power & light  
18 people going around and reading the meters.

19           Previously customers would go to PCUC, of  
20 course, and go to their corporate offices there right  
21 at Palm Coast and pay their bills. Now, I understand,  
22 as a result of the changes which are being -- taking  
23 place as a result of the Minnesota Power & Light  
24 takeover and PCUC people reporting to these Minnesota  
25 Power & Light personnel that now have taken ICDC's

1 place, that they're not accepting payments at the  
2 utility office.

3 In fact, all customers are instructed to  
4 send their payments to Orlando for payment, and if a  
5 customer comes in there and says, will you at least  
6 acknowledge that this is being received today, they  
7 said, no, we're not stamping anything, you need to --  
8 you can either put it in a drop box here or send it  
9 off to Orlando, which is mysteriously close to Apopka,  
10 and it's just that --

11 **COMMISSIONER KIESLING:** Mysteriously close  
12 to Apopka? Get a grip, Mr. Reilly.

13 **MR. REILLY:** Well, it is geographically very  
14 close to Apopka. Now, the relationship of why this  
15 change, we don't know. I mean, we're grasping,  
16 admittedly, in the dark. It's just this is a major --

17 **COMMISSIONER KIESLING:** I think what you  
18 started to say is "we're grasping at straws."

19 **MR. REILLY:** No, I --

20 **COMMISSIONER KIESLING:** And I agree that you  
21 are.

22 **MR. REILLY:** Well, I believe this is a major  
23 event in changing it, and the relationship is so  
24 complete between ICDC and PCUC in the handling of  
25 moneys funnelling to this utility, that to not be able

1 to -- to put blinders, in effect, for the Commission  
2 to not know what the details of this transaction,  
3 which has happened in the test year, I believe, and  
4 has affected expenses in the test year -- which, one,  
5 it specifically was picked up.

6           What about the, you know, the others that  
7 perhaps have yet to come to light that may or may not  
8 come to light as more discovery is received. You  
9 know, I just believe that --

10           **COMMISSIONER KIESLING:** Well, first of all,  
11 that assumes that I'm going to allow that discovery.

12           **MR. REILLY:** That is correct. If you  
13 forestall all discovery on this issue, then obviously  
14 there will be little we can do with it at the hearing.  
15 I mean, that goes without saying.

16           But when we learned of this major  
17 development, we felt it incumbent on us to discover  
18 the details of that arrangement, as it -- since we're  
19 adopting rates on a going-forward basis, it seems  
20 inconceivable, from our perspective, that the  
21 Commission would adopt these rates without being  
22 mindful of this major, major development which, as I  
23 said, it may well be the driving force to this entire  
24 rate case.

25           But for the information that we're asking to

1 be discovered, we would not be here for a rate case at  
2 all. That's our belief.

3 **COMMISSIONER KIESLING:** Let me ask you one  
4 thing. Are you willing right now to tell us the date  
5 on which the purchase option was signed?

6 **MS. COWDERY:** The option agreement, I  
7 believe, itself, the option agreement was signed April  
8 1st, 1996. It is an option agreement.

9 **COMMISSIONER KIESLING:** Were there any  
10 contracts or agreements to buy or sell that were  
11 signed in 1995?

12 **MS. COWDERY:** No, ma'am.

13 **COMMISSIONER KIESLING:** I mean, I can  
14 discover that by just looking at it in camera. So I'm  
15 assuming that since they had the documents here for me  
16 to look at in camera, that I don't think they're  
17 misleading us, Mr. Reilly. With that --

18 **MR. REILLY:** Then what is the explanation  
19 for the legal expenses associated with negotiating the  
20 proposed option in the test year? Do we have an  
21 explanation on that?

22 **COMMISSIONER KIESLING:** That's the date the  
23 contract was signed. I mean, I would assume that  
24 negotiations were ongoing for some period of time, but  
25 that doesn't mystify me either.

1           In that case I'm going to, at least -- even  
2 though I have not entered an order, it's my intention  
3 to deny the motion to compel on those items and to  
4 delete those as an issue. So Item 63 is gone.

5           **MR. SHIEFELBEIN:** If I might, Madam  
6 Commissioner, there's certainly no need to get into  
7 it, but I would just like to go on record as saying  
8 that the many statements that Mr. Reilly made  
9 regarding the potential operational effect on current  
10 operations of the utility, there's -- he indicated  
11 that there were customers that were concerned about  
12 that. I don't question their sincerity and their  
13 concern, but those are not consistent with our  
14 understanding of what the operations are there or  
15 their motivation; and I'd like to just leave it at  
16 that.

17           **COMMISSIONER KIESLING:** Okay. 64 is a  
18 fallout issue. I guess I ought to at least ask staff  
19 if you have any problem with Issue 63 being deleted.

20           **MR. EDMONDS:** No.

21           **COMMISSIONER KIESLING:** Then 65, Revenue  
22 Requirement, is a fallout issue. 66; any position  
23 from OPC?

24           **MR. REILLY:** We have no position.

25           **COMMISSIONER KIESLING:** Okay.

1           **MR. REILLY:** As stated in the update.

2           **COMMISSIONER KIESLING:** Okay. It would  
3 appear to me that on Issue 66, both the utility and  
4 staff are saying no, but staff's explanation is  
5 critical to the reason to their no statement, so that  
6 I don't think that this is one that's amenable to a  
7 stipulation.

8           **MR. EDMONDS:** That's correct.

9           **COMMISSIONER KIESLING:** I don't suppose  
10 you're willing to stipulate to staff's position?

11           **MR. SHIEFELBEIN:** Certainly the bottom line  
12 we are.

13           **COMMISSIONER KIESLING:** Yes, but not the  
14 whole explanation?

15           **MR. SHIEFELBEIN:** No, ma'am.

16           **COMMISSIONER KIESLING:** Okay. Then I'll  
17 leave that as an issue, since we're sort of trying to  
18 work our way through this whole area of reuse and how  
19 you allocate the costs of reuse to water and  
20 wastewater customers. I think that it will be -- this  
21 will present another opportunity to the Commission to  
22 try to clarify where we are and what we're doing with  
23 that.

24           Issue 67?

25           **MR. SHIEFELBEIN:** The utility's position is

1 "yes, as per MFRs."

2 **MR. MELSON:** Dunes would like to add  
3 designation of witnesses Moyer and Milian, M-I-L-I-A-N  
4 following its position.

5 **COMMISSIONER KIESLING:** OPC, any change?

6 **MR. REILLY:** No change.

7 **COMMISSIONER KIESLING:** Staff?

8 **MR. EDMONDS:** No change.

9 **COMMISSIONER KIESLING:** 68? This was your  
10 other issue. Any change? 69? I guess this is a  
11 fallout issue. 70, 71?

12 **MR. REILLY:** We have, "As stated in our  
13 update."

14 **COMMISSIONER KIESLING:** 71?

15 **MR. REILLY:** On 70.

16 **COMMISSIONER KIESLING:** All right. 71, 72.

17 **MR. SHIEFELBEIN:** I beg your pardon. "No  
18 change, as indicated in the order."

19 **COMMISSIONER KIESLING:** Okay. We're down to  
20 exhibit lists.

21 **MR. SHIEFELBEIN:** If I may, the utility  
22 update, hopefully, is state of the art as far as the  
23 utility's prefiled exhibits. There are some  
24 differences that might bear brief mentioning for the  
25 parties' benefit.

1           On the prehearing order it indicates as FS-5  
2 on page 33, the pending application for approval of  
3 revised service availability charges, and staff has  
4 advised us that they're aware we have a companion  
5 docket, that you all are aware of that, but that it's  
6 not appropriate to have that in as a prefiled exhibit  
7 in this case. So it is there if we need it. In its  
8 place, we've moved up the old FS-6 to FS-5.

9           Now, the response to deficiency letter, I  
10 apologize for not bringing this to the parties'  
11 attention earlier, but I would like to make sure --  
12 and we don't need to confirm on the record today --  
13 but that everyone -- I'm certain staff has it -- that  
14 everyone has that, because we really consider that to  
15 be a part of the MFRs, our response to the deficiency  
16 letters. And there were various schedules that are  
17 supposed to supersede that in the original MFR. And  
18 if for some reason anyone doesn't have it, we would be  
19 glad to get it to them, but that we didn't re-profile  
20 it in our case.

21           **COMMISSIONER KIESLING:** Let me make sure who  
22 has got it. Mr. Melson, have you got it?

23           **MR. MELTON:** Yes, ma'am.

24           **COMMISSIONER KIESLING:** Mr. Reilly?

25           **MR. REILLY:** I'll have to confirm that. I'm

1 not sure.

2           **COMMISSIONER KIESLING:** Well, if you don't  
3 have it, let him know, but the presumption is that you  
4 do.

5           **MR. REILLY:** I believe we do.

6           **MR. HADEED:** Flagler County does not, and so  
7 we would appreciate a copy.

8           **MR. SHIEFELBEIN:** We'd be glad to.

9           **COMMISSIONER KIESLING:** You may proceed.

10           **MR. SHIEFELBEIN:** There's no song and dance  
11 with Mr. Guastella's and Spano's updated exhibit list,  
12 and if I could just glance are --

13           **COMMISSIONER KIESLING:** Spano's isn't even  
14 in -- oh, he's a rebuttal witness. Sorry.

15           **MR. SHIEFELBEIN:** Yes, ma'am.

16           **COMMISSIONER KIESLING:** Let me take them in  
17 the order that they're in here and then the order that  
18 they're going to testify. So John Guastella has JFG-1  
19 and 2.

20           Then, Dunes, is there any change in your  
21 exhibits for Mr. Moyer or Mr. Milian?

22           **MR. MELSON:** No, ma'am, no change.

23           **COMMISSIONER KIESLING:** How do you pronounce  
24 it?

25           **MR. MELSON:** Milian.

1                   **COMMISSIONER KIESLING:** I'll call him  
2 Mr. Million. That's probably what he's charging your  
3 client. Any changes to Mr. Bidy or Ms. Dismukes'  
4 Exhibits?

5                   **MR. REILLY:** I was noticing that  
6 Ms. Dismukes does have 16 schedules, and for some  
7 reason when I go from page 35 to page 36, I don't see  
8 that Schedule 16, so we might need to add that.

9                   **COMMISSIONER KIESLING:** Okay. Ms. Amaya?

10                  **MR. EDMONDS:** No changes.

11                  **COMMISSIONER KIESLING:** Mr. Dodrill?

12                  **MR. EDMONDS:** No changes.

13                  **COMMISSIONER KIESLING:** Ms. Rodriguez.

14                  **MR. EDMONDS:** No changes.

15                  **COMMISSIONER KIESLING:** Now, we're to  
16 Mr. Spano. Listed in here is CS-1 and 2, and you have  
17 listed four exhibits.

18                  **MR. SHIEFELBEIN:** Yes.

19                  **COMMISSIONER KIESLING:** How many are  
20 actually prefiled?

21                  **MR. SHIEFELBEIN:** All of them.

22                  **COMMISSIONER KIESLING:** And is there a  
23 reason we didn't pick all four of those up on the  
24 exhibit list? I mean, we do have them; correct?

25                  **MR. EDMONDS:** I do not know.

1           **MR. SHIEFELBEIN:** They accompanied his  
2 prefiled rebuttal testimony.

3           **MR. EDMONDS:** It very well could have just  
4 been an oversight.

5           **MR. SHIEFELBEIN:** I think that this portion  
6 of the draft might have been prepared before you had  
7 the rebuttal.

8           **MR. EDMONDS:** That's what it was. You're  
9 right.

10           **COMMISSIONER KIESLING:** Okay. And then  
11 Mr. Seidman also has several rebuttal exhibits that  
12 were attached, I guess, to his prefiled rebuttal.

13           **MR. SHIEFELBEIN:** Yes, ma'am. And FS-12 is  
14 something that we had actually filed with the  
15 Commission on May 28th in the due course, provided all  
16 then existing parties with a copy. Out of an  
17 abundance of caution, we refiled it as an exhibit on  
18 the due date. FS-13 is the documents that we'll be  
19 filing on the 24th.

20           **COMMISSIONER KIESLING:** Okay.

21           **MR. MELSON:** Commissioner Kiesling?

22           **COMMISSIONER KIESLING:** Yes.

23           **MR. MELSON:** This is where one of my pieces  
24 of paper comes in. Dunes handed out to the parties  
25 this morning, and has discussed briefly with

1 Mr. Shiefelbein, a list of five documentary exhibits  
2 that we would like to use at the hearing.

3           They are all documents either submitted to  
4 the Department of Environmental Protection by PCUC in  
5 connection with construction and operation permits for  
6 its plant, or in one case, DEP's notice of permit  
7 modification.

8           We've identified the portions of those  
9 documents that we would like to have included. I  
10 understand that Mr. Shiefelbein may want to have other  
11 sections included as well, and we're amenable to  
12 working with him and putting together as a single  
13 document anything up to and including the entire  
14 report. And I would ask to identify these essentially  
15 at the outset of the hearing as stipulated exhibits,  
16 and I don't know whether Mr. Shiefelbein is going to  
17 have an objection or not.

18           **COMMISSIONER KIESLING:** Well, tell me what  
19 your position is.

20           **MR. SHIEFELBEIN:** Well, that might change,  
21 depending on yours, unless I can get a better deal.

22           On the first four of the exhibits listed on  
23 Mr. Melson's list, he's correct; we think there are  
24 other sections that need to go in with those. I don't  
25 think we need to drive you crazy with that. I think

1 by tomorrow we could easily have a neatly typed up  
2 consolidated list on that.

3           We're trying basically at this point to work  
4 harder to eliminate stuff, because there's maps and  
5 blue lines and things that we don't think are  
6 essential.

7           The only thing that really bothers me about  
8 this is the last item on the list. I have -- we only  
9 became aware yesterday that Rick wanted to have this  
10 admitted. I have no reason to doubt its authenticity  
11 as far as it being a letter that transmitted a report  
12 to DEP.

13           We think, though, that as far as going to  
14 the truth of any matter asserted, that it is -- it  
15 only tells a party of the story. And, frankly, I  
16 apologize, but we haven't quite figured out how to  
17 deal with this yet, but we have a problem with having  
18 that go in by itself unexplained, because we do think  
19 it may be misleading. And I can go on, but I can  
20 stop, too, for the moment.

21           **COMMISSIONER KIESLING:** Well, let me just  
22 hear from Mr. Melson on that and see if there does  
23 seem to be some resolution on the last item.

24           **MR. MELSON:** I believe it qualifies as an  
25 exception to the hearsay rule as an admission. It is

1 a letter signed by the president of the utility, in  
2 his capacity as president, to transmit a letter to DEP  
3 of an application that was transmitted in the course  
4 of his employment. I believe it is therefore  
5 admissible without the availability of the declarant.

6 If Mr. Shiefelbein has some additional  
7 matters that he believes are necessary to explain  
8 that, I certainly won't object to that coming in. I'm  
9 not trying to mislead. This simply has a statement in  
10 it that we believe is relevant to this case.

11 **MR. SHIEFELBEIN:** Again, like I say, I don't  
12 come with a prefabbed solution to this, but we, up to  
13 this point -- and, again, we received this at  
14 yesterday afternoon's deposition, and we have been  
15 back and forth on the fax machine with folks at Palm  
16 Coast -- we've been made aware of two letters,  
17 additional letters, that I made available to Rick this  
18 morning, and I don't think we necessarily see eye to  
19 eye that they're linked.

20 We think they are, that these are subsequent  
21 letters, exchange of letters between the Dunes and  
22 Palm Coast as to storage capabilities by the Dunes;  
23 and I think the meat of the letter that Rick likes,  
24 the part of it that he likes, goes to storage  
25 capability of Dunes.

1           **MR. MELSON:** Commissioner Kiesling, we've  
2 got no objection to the admission of either of the two  
3 letters that Mr. Shiefelbein identified to us this  
4 morning. We can plan to ask a witness at the hearing  
5 as to how they should be interpreted, but we're happy  
6 to have them come in.

7           **COMMISSIONER KIESLING:** Which witness?

8           **MR. MELSON:** It would probably be our  
9 witness Moyer, who is the District manager.

10          **COMMISSIONER KIESLING:** Let me see if I  
11 understand. You're going to ask your witness Moyer to  
12 interpret a letter from PCUC to DEP which he didn't  
13 draft.

14          **MR. MELSON:** No, ma'am. I'm sorry. I'm  
15 talking about the two additional letters that  
16 Mr. Shiefelbein has identified. One is a letter from  
17 Palm Coast to the District setting forth its  
18 understanding of a conversation the parties had. The  
19 other is a reply letter from the District to Palm  
20 Coast setting forth its understanding of the  
21 conversation.

22                 I personally don't believe those are  
23 relevant, but we will not object to them coming in,  
24 and to the extent that a question or two to Mr. Moyer,  
25 either on cross or redirect, would help explain, we're

1 more than happy to do that.

2           **MR. SHIEFELBEIN:** Here's my dilemma. Once  
3 we have a moment to think about this -- which should  
4 come any day now, and I would except for folks other  
5 than me should be by tomorrow -- there may be  
6 additional materials or things related to this, and  
7 I'm not looking at creating clutter, but we just  
8 haven't had adequate time to figure out how to put  
9 this letter from Mr. Trace to DEP into proper context  
10 without the benefit of a live witness.

11           If I could have a minute or two to talk to a  
12 gentleman that's here from Palm Coast, I might have a  
13 practical solution to that.

14           **MR. MELSON:** Commissioner Kiesling, I might  
15 have a practical solution prior to that.

16           **COMMISSIONER KIESLING:** Okay. Tell me  
17 yours.

18           **MR. MELSON:** If there is no objection to the  
19 three reports, the notice of permit to file for  
20 modification, perhaps we could stipulate to those, I  
21 will commit to work with Mr. Shiefelbein on the  
22 transmittal letter, and if we cannot resolve it prior  
23 to the hearing, we'll bring the matter up then, but I  
24 guess I am confident we can resolve it. We've been  
25 dealing fairly well in this process.

1           **COMMISSIONER KIESLING:** Does that at least  
2 help us for immediate --

3           **MR. SHIEFELBEIN:** I'm stunned only fairly  
4 well, but that sounds fine.

5           **COMMISSIONER KIESLING:** Okay. So we'll at  
6 least show that there's a stipulated exhibit which is  
7 made up of the first four items on the Dunes exhibit  
8 list, and you all can try to come up with some  
9 resolution as to the last one; and if you're able to,  
10 then fine, just let us know so that we can get a  
11 stipulated resolution of that reflected in the  
12 prehearing.

13           If you're unable to, also let us know that,  
14 so that at least the items can be listed and there  
15 could be resolution at the hearing as to whether or  
16 not one or all of them will come in.

17           **MR. MELSON:** Thank you.

18           **MR. SHIEFELBEIN:** It is also understood that  
19 the four stipulated exhibits will collaborate as far  
20 as their content.

21           **COMMISSIONER KIESLING:** Absolutely.

22           **MR. MELSON:** Commissioner Kiesling, I also  
23 handed out a preliminary list of orders that we intend  
24 at the hearing to ask for official recognition of. I  
25 was not looking for a ruling today. I simply wanted

1 to alert the parties and hope to avoid having to copy  
2 all of them for Mr. Shiefelbein and, frankly, the  
3 staff as well.

4 For your information, these are all orders  
5 in which the Commission has dealt with the issue of  
6 effluent rates.

7 **COMMISSIONER KIESLING:** All right. Is there  
8 any need for him to provide copies for you,  
9 Mr. Shiefelbein, at hearing?

10 **MR. SHIEFELBEIN:** No.

11 **COMMISSIONER KIESLING:** Mr. Reilly, any need  
12 for you?

13 **MR. REILLY:** No.

14 **COMMISSIONER KIESLING:** Mr. Hadeed?

15 **MR. HADEED:** No.

16 **COMMISSIONER KIESLING:** Staff?

17 **MR. EDMONDS:** No.

18 **COMMISSIONER KIESLING:** Cool. Okay; but you  
19 will provide them to the Commission.

20 **MR. MELSON:** Yes.

21 **COMMISSIONER KIESLING:** The list, not  
22 necessarily the orders.

23 **MR. MELTON:** Correct. I will have a list  
24 that cites them in more detail available at the outset  
25 of the hearing, and if we find that we -- and I think

1 this is an exhaustive list. If we find any more of  
2 the orders, we will be adding them to it.

3 **COMMISSIONER KIESLING:** Okay. Next item.

4 **MR. SHIEFELBEIN:** I have no objection to  
5 that, and that's fine. I've never quite understood  
6 the jurisprudence of the process where we take notice  
7 of the Commission's orders, but be that as it may --

8 **COMMISSIONER KIESLING:** Why not?

9 **MR. SHIEFELBEIN:** Well, I wonder if the  
10 Commission might be considered to be already on notice  
11 of those orders. I don't know, but if that's the  
12 procedure --

13 **COMMISSIONER KIESLING:** The requirement is  
14 that the parties place each other on notice a certain  
15 number of days before the hearing that they are going  
16 to ask for official recognition, and I think that's  
17 what he's complying with.

18 **MR. MELSON:** It's also to ensure that it's  
19 in a record on appeal, which I don't anticipate the  
20 need for.

21 **MR. SHIEFELBEIN:** My education continues.  
22 By that same token, I would like the Commission to  
23 take notice of a list of orders that I have not yet  
24 compiled; but what those orders are, first of all,  
25 would be the final orders in Palm Coast's prior rate

1 cases before this Commission.

2           And I don't want to detain you now. I  
3 could, in a matter of a minute or two, recite those.  
4 I don't have those written down right now. That would  
5 be going back over a period of about 16 years, and  
6 there's probably about six orders. I can provide  
7 those to the parties by tomorrow morning's deposition.

8           **COMMISSIONER KIESLING:** Okay. As long as  
9 you circulate the list and put everybody on notice  
10 that you intend to ask for official recognition of  
11 those orders, whatever their numbers are, then if  
12 anyone wants to object to that official recognition,  
13 they can be prepared to do so at the hearing.

14           **MR. SHIEFELBEIN:** Well, I will do so  
15 promptly.

16           **COMMISSIONER KIESLING:** Okay.

17           **MR. EDMONDS:** I might add that staff will be  
18 doing the same thing.

19           **COMMISSIONER KIESLING:** Mr. Reilly, I assume  
20 that if everybody else is getting in on this, if you  
21 have any that weren't listed by anybody else, you'll  
22 do the same.

23           **MR. REILLY:** That's correct.

24           **THE REPORTER:** Commissioner, may I change.  
25 my paper?

1                   **COMMISSIONER KIESLING:** Yes.

2                                   (Pause.)

3                   **COMMISSIONER KIESLING:** Okay.

4                   **MS. COWDERY:** Commissioner Kiesling, just to  
5 make it clear, we have a few other orders for our list  
6 of orders to be officially recognized, other than  
7 simply the PSC rate orders.

8                   **COMMISSIONER KIESLING:** Okay. Just give us  
9 the numbers.

10                   All right. On to the draft prehearing. We  
11 do have three proposed stipulations, and it looks like  
12 we may have a few more to add to them. Do we have a  
13 stipulation on the three that are proposed in the  
14 draft prehearing?

15                   **MR. MELSON:** Commissioner, I'm not sure what  
16 the proper posture is. We don't object. We will join  
17 in the stipulation, if required to, but really prefer  
18 just to let them go.

19                   **COMMISSIONER KIESLING:** If it doesn't relate  
20 to your issues --

21                   **MR. MELSON:** Right.

22                   **COMMISSIONER KIESLING:** -- I don't care what  
23 you do.

24                   **MR. MELTON:** Thank you.

25                   **COMMISSIONER KIESLING:** You're welcome.

1 Mr. Reilly, you all are in agreement on those three?

2 MR. REILLY: Yes, we agree.

3 COMMISSIONER KIESLING: Mr. Hadeed, since  
4 you're a latecomer, I don't know that you have much to  
5 say, but --

6 MR. HADEED: No. We have reviewed these and  
7 concur.

8 COMMISSIONER KIESLING: Mr. Shiefelbein,  
9 you're fine?

10 MR. SHIEFELBEIN: Yes.

11 COMMISSIONER KIESLING: Staff is fine?

12 MR. EDMONDS: Yes.

13 COMMISSIONER KIESLING: Okay. Those three  
14 will be in there, plus any others that may arise out  
15 of our discussion today or what is going to be filed  
16 by the parties over the next few days.

17 Pending motions. I can go ahead and tell  
18 you my rulings on a few of these items, particularly  
19 No. 2, No. 6 and No. 8. I've reviewed all the written  
20 documentation, and I'm going to deny the request for  
21 oral argument. I don't see that it would add anything  
22 to my deliberations on the other items.

23 On Item No. 3 I signed an order yesterday  
24 granting that motion for extension of time by one day,  
25 I guess. And as to the other requests for protective

1 orders or motions to compel, there will be an order  
2 out by tomorrow. Am I right on that?

3 **MR. EDMONDS:** Yes.

4 **COMMISSIONER KIESLING:** We are going to  
5 finish it. Okay.

6 **MR. EDMONDS:** Did you say No. 8 or No. 9?

7 **COMMISSIONER KIESLING:** I only have No. 8.  
8 I don't have a No. 9.

9 **MR. EDMONDS:** Okay.

10 **COMMISSIONER KIESLING:** It's in the updated  
11 one?

12 **MR. EDMONDS:** Yes.

13 **COMMISSIONER KIESLING:** Okay. I'm still  
14 working from the old one, because that's where all my  
15 notes were. There's a whole list of them. Look at  
16 this.

17 Okay. Deny on 2. Grant on Item 3. Deny on  
18 6. (pause) It's denying on 9, not 8 because it's  
19 been renumbered. On 10, since I haven't seen these --

20 **MR. EDMONDS:** This number 10, unless I'm  
21 mistaken, we have resolved all the issues on that, and  
22 so I do not think a ruling is necessary.

23 **MS. COWDERY:** I believe we have resolved  
24 them.

25 **COMMISSIONER KIESLING:** All right. Then I'm

1 going to just list it as moot as far as me making a  
2 ruling because it's resolved.

3 Back on No. 8, your objection to the third  
4 set, No. 73 --

5 **MR. EDMONDS:** That is part of a pending  
6 order. Actually, all the rest of them are except for  
7 No. 13, which has already been ruled on, granted.

8 **COMMISSIONER KIESLING:** Yes. Then there  
9 will be an order out tomorrow that resolves the  
10 remaining motions to compel and requests for  
11 protective order and PUC's objections as they relate  
12 to the fourth set of interrogatories and requests for  
13 production.

14 **MS. COWDERY:** Commissioner, I had not had  
15 time yet to file a response to OPC's third motion to  
16 compel, which would be due tomorrow. I hate to slow  
17 down the process, but I'd still like to file a  
18 response to that.

19 **COMMISSIONER KIESLING:** Okay. And when are  
20 you going to have that filed?

21 **MS. COWDERY:** Well, I can try to do it  
22 around noonish tomorrow.

23 **COMMISSIONER KIESLING:** Why don't we do  
24 this. I'll enter two separate orders. One that will  
25 be entered tomorrow will be on the items that we've

1 been working on that everybody has had their response  
2 time on, and then by Monday at 5:00 I will enter my  
3 order on the things that were just recently filed that  
4 have not had a response time.

5 **MS. COWDERY:** Okay.

6 **MR. SHIEFELBEIN:** At the risk of appearing  
7 too pushy, I'm wondering --

8 **COMMISSIONER KIESLING:** Why should that stop  
9 you now?

10 **MR. SHIEFELBEIN:** Well, I've tried. There  
11 sometimes can be, just because of sheer logistics,  
12 quite a delay in the time that an order might get to  
13 be physically delivered to Records, and then after it  
14 gets through printing and so forth and dealing with  
15 many other things, we could easily lose a workday or  
16 two on getting those.

17 I'm wondering if there's some -- without  
18 burdening Records, if there's some mechanism, such as  
19 enabling us to get, through staff, copies of signed  
20 not yet issued orders or something like that, that  
21 might enable us to tackle whatever needs to be tackled  
22 most quickly.

23 **COMMISSIONER KIESLING:** Let me tell you how  
24 far I'm willing to go. I'm not going to ask staff to  
25 release orders that are signed before Records does.

1 That creates an awkward situation that I'm not willing  
2 to get into but I will -- Mr. Edmonds, once I sign  
3 those, would you have the time, or someone in your  
4 office have the time, to at least call the parties and  
5 tell them what the bottom line ruling was on each of  
6 those?

7 **MR. EDMONDS:** Sure.

8 **COMMISSIONER KIESLING:** Is that acceptable?

9 **MR. SHIEFELBEIN:** We appreciate it. Thank  
10 you.

11 **MR. MELSON:** And there's no need to call  
12 Dunes.

13 **MR. EDMONDS:** Thank you.

14 **MS. COWDERY:** There is one matter that  
15 didn't make it on this list that we filed yesterday  
16 that we already referred to. It's moot at this point.

17 But it's the June 19th filing, which was  
18 PCUC's request for oral argument on the County's  
19 memorandum in support of motion to compel the option  
20 agreement, just so you know it's out there.

21 **COMMISSIONER KIESLING:** Okay.

22 **MS. COWDERY:** But since you've already ruled  
23 that the option agreement not be produced, it would,  
24 no doubt, be moot.

25 **COMMISSIONER KIESLING:** All right. Well,

1 certainly to the extent that you are asking for oral  
2 argument, I have obviously already made a ruling. So  
3 although I've only made it verbally here, an order  
4 will follow, so we'll accept that as no longer  
5 necessary to be ruled on.

6 Anything else from anyone?

7 **MR. HADEED:** Yes, Commissioner; Flagler  
8 County. I will be asking the Commission to grant a  
9 pro hac vice motion on behalf of someone who will  
10 assist me in the presentation of the case; an attorney  
11 who is not a member of the Florida bar -- that is the  
12 reason for the pro hac vice -- but who has experience  
13 in the area of utility regulation; Mr. Arthur Sirikin,  
14 for the notice to the parties, but I believe they  
15 already are aware.

16 **COMMISSIONER KIESLING:** Anybody got a  
17 problem with that? Will he be there for the whole  
18 hearing?

19 **MR. HADEED:** Yes.

20 **COMMISSIONER KIESLING:** Do you know if he's  
21 bringing his wife? I know Arthur, so ---

22 **MR. HADEED:** If it will help.

23 **COMMISSIONER KIESLING:** No, no, no. If he  
24 was bringing his wife, I was going to invite them out  
25 to dinner, since I know them from another life that



1 STATE OF FLORIDA)  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )

4 I, H. RUTHE POTAMI, CSR. RPR, Official  
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Prehearing  
7 Conference in Docket No. 951056-WS was heard by  
8 Commissioner Kiesling, the Prehearing Officer, at the  
9 time and place herein stated; it is further

10 CERTIFIED that I stenographically reported  
11 the said proceedings; that the same has been  
12 transcribed under my direct supervision; and that this  
13 transcript, consisting of 114 pages, constitutes a  
14 true transcription of my notes of said proceedings.

15 DATED this 24th day of June 1996.

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H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporter  
(904) 413-6732