

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

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

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SPECIAL AGENDA

PROCEEDINGS:

SPECIAL AGENDA

BEFORE:

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

DATE:

Wednesday, July 31, 1996

TIME:

Commenced at 1:15 P.M.
Adjourned at 6:50 P.M.

PLACE:

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

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P R O C E E D I N G S

1
2 CHAIRMAN CLARK: Call the hearing -- the agenda conference
3 back to order.

4 Commissioners, what I would like to do is go through the
5 rest of the items and at the last come back to the Issue 4 and
6 5. It occurred to me there may be some other issues that have
7 concern to Commissioners that we might want to all discuss when
8 we discuss the final return on equity and what would be
9 appropriate. So, that's my suggestion is how we proceed.

10 We're going to -- We need to get it done today. So, it's
11 just my suggestion we go through and get the ones out of the
12 way that we can and then spend the rest of the time on the ones
13 that need further discussion.

14 Let's begin with Issue 22.

15 MR. CROUCH: Commissioners, Issue 22 is discussion on what
16 is an acceptable level of infiltration and/or inflow. We have
17 a typo in the recommendation. Basically what the
18 recommendation should say is "Where populations are known with
19 reasonable accuracy and do not vary seasonally the
20 Environmental Protection Agency population based method is
21 appropriate."

22 And then the bottom three lines: "Where populations are
23 not known with reasonable accuracy or do vary seasonally, the
24 Water Pollution Control Federation methodology is appropriate."

25 These are two different engineering guidelines that we have

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1 for determining infiltration based either on population or on
2 the length of the pipes.

3 COMMISSIONER KIESLING: And with that correction, I'm
4 willing to move Issue 22.

5 COMMISSIONER GARCIA: Second.

6 CHAIRMAN CLARK: Without objection, Issue 22 is approved.

7 MR. CROUCH: Issue 23 follows along with that, if any of
8 the wastewater facilities have excessive --

9 COMMISSIONER GARCIA: I'll move that.

10 CHAIRMAN CLARK: Without objection, Issue 23 is approved.

11 MS. MERCHANT: Commissioners, also on Issue No. 23, those
12 adjustments were not followed through to the accounting
13 surplus.

14 CHAIRMAN CLARK: Okay.

15 MS. MERCHANT: They will be corrected.

16 CHAIRMAN CLARK: Issue 24.

17 MS. AMAYA: Commissioners, Issue 23 addresses the hydraulic
18 analysis that the utility --

19 COMMISSIONER GARCIA: I move Issue 24.

20 CHAIRMAN CLARK: Questions, Commissioners?

21 COMMISSIONER KIESLING: Second.

22 CHAIRMAN CLARK: Without objection, Issue 24 is approved.
23 Issue 25.

24 COMMISSIONER GARCIA: I move 25.

25 CHAIRMAN CLARK: Without objection, Issue 25 is approved.

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1 Issue 26.

2 MS. AMAYA: Issue 26 addresses the water plant capacity at
3 Burnt Store and staff is recommending that it be used as 3-- --

4 CHAIRMAN CLARK: Questions, Commissioners?

5 COMMISSIONER GARCIA: I move it.

6 CHAIRMAN CLARK: Without objection, Issue 26 is approved.

7 Issue 27.

8 MR. WALDEN: Issue 27 addresses the correct capacity to use
9 at Sugarmill Woods and staff recommendation is to use the
10 capacity as specified in the operating permit.

11 COMMISSIONER KIESLING: Move it.

12 CHAIRMAN CLARK: Without objection, Issue 27 is approved.

13 Issue 28.

14 COMMISSIONER KIESLING: I move it.

15 CHAIRMAN CLARK: Questions?

16 COMMISSIONER GARCIA: I agree. Yeah, I move it; I'm sorry.

17 CHAIRMAN CLARK: Without objection, Issue 28 is approved.

18 Issue 29.

19 COMMISSIONER KIESLING: I have a question. Wasn't this one
20 where we had to do Issue 45 before we do Issue 29?

21 MS. O'SULLIVAN: Issue 145, the legal issue?

22 MR. LOWE: Commissioner, I believe we've got to do 145 and
23 42 before we do this particular one.

24 MR. RIEGER: This issue, Commissioner, was an OPC
25 adjustment originally and basically --

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1 COMMISSIONER KIESLING: Well, then I'm --

2 CHAIRMAN CLARK: Well, wait a minute.

3 COMMISSIONER KIESLING: I'm really confused because I
4 thought that --

5 CHAIRMAN CLARK: What issue are we on?

6 COMMISSIONER KIESLING: 29.

7 MR. LOWE: 29.

8 CHAIRMAN CLARK: Okay.

9 MS. O'SULLIVAN: We have initially recommended that you
10 consider Issue 145 before Issue 42 which dealt with reuse. We
11 realized I think yesterday that Issue 29 also dealt with reuse
12 and that we should hold off on that until you decide 145.

13 CHAIRMAN CLARK: Okay.

14 COMMISSIONER KIESLING: Okay.

15 MS. O'SULLIVAN: So, we're on Issue 145 then? Okay. In
16 Issue 145 staff recommends that Sections 367.0817 and 403.064
17 do not require that reuse facilities be considered 100% used
18 and useful. Those statutes permit a utility to recover all
19 prudent costs but do not mandate 100% used and useful.

20 COMMISSIONER KIESLING: And I move staff on 145.

21 COMMISSIONER GARCIA: I have a great comfort level that
22 Commissioner Deason -- Kiesling --

23 COMMISSIONER KIESLING: I'm sorry; I can't hear you.

24 COMMISSIONER GARCIA: It's a great comfort to me that you
25 agree with staff on that because I think we're taking a new --

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1 COMMISSIONER KIESLING: Why would I not?

2 COMMISSIONER GARCIA: -- new approach. And I agree with
3 staff. I'll second.

4 CHAIRMAN CLARK: Further discussion, Commissioners?

5 COMMISSIONER KIESLING: I wonder how we're taking a new
6 approach. I mean, that concerns me more than anything. I
7 don't think this is a new approach. I think it's just carrying
8 out our statutory requirements to include within passing on
9 costs for reuse those that are prudent. And DEP's way of
10 suggesting it should be done did not allow for any prudence
11 review.

12 MS. O'SULLIVAN: I think this is the first time we've
13 considered this before the Commission. I believe it's right.
14 You have addressed it for the first time here.

15 CHAIRMAN CLARK: Well, wait a minute. You're basing it on
16 a prudence review, but this is the issue of used and useful.

17 COMMISSIONER KIESLING: Right, but the statute says that
18 use, that reuse facilities, when we do reuse facilities,
19 they're supposed to be 100% used and useful according to DEP.

20 CHAIRMAN CLARK: Correct.

21 COMMISSIONER KIESLING: And whereas the statute says 100% of
22 those costs that are prudently incurred. And I'm saying that
23 that's where the rub lies between us and DEP. They are not
24 including within their interpretation of the statute that there
25 is some responsibility on the part of the PSC to look at

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1 whether those costs were, really were for reuse before we call
2 them 100% used and useful.

3 COMMISSIONER GARCIA: But that is a change.

4 CHAIRMAN CLARK: That's a different --

5 COMMISSIONER GARCIA: It's not a change. I'm sorry. It's
6 a new.

7 CHAIRMAN CLARK: Well, let me just pursue that a minute. I
8 want to distinguish between prudent and used and useful,
9 because something may be prudent but it's not used and useful
10 and that's the issue here.

11 COMMISSIONER KIESLING: Yeah.

12 CHAIRMAN CLARK: Okay.

13 COMMISSIONER KIESLING: I don't think we're saying anything
14 different. I just didn't have the language in front of me. I
15 was just trying to reconcile why we differ from DEP on what
16 expenditures should be considered 100% used and useful in the
17 reuse arena.

18 CHAIRMAN CLARK: Okay. I guess what I want to sort of talk
19 about with regard to this issue and get some staff input on it
20 is that I see that there is a difference in the two statutes,
21 that one uses prudent, fully recover prudent costs, but it
22 doesn't make a reference to used and useful. Prudent to me is,
23 you know, should they have put it in. Used and useful is who
24 should pay for it.

25 MS. O'SULLIVAN: I guess it's a matter of where you put

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1 prudent and used and useful together. I think you can say that
2 to determine prudent costs, you have to figure out what
3 percentage of that costs is used and useful, what percentage of
4 the plant is used and useful.

5 CHAIRMAN CLARK: No. To determine what's used and
6 useful --

7 MS. O'SULLIVAN: Right.

8 CHAIRMAN CLARK: -- but you first have to determine it's
9 prudent.

10 MS. O'SULLIVAN: Right. I'm sorry.

11 MR. CROUCH: If it's prudent, then we decide how will they
12 pay for it. Is it used and useful? And existing ratepayers
13 pay for it or should it go into AFPI and future ratepayers pay
14 for it.

15 CHAIRMAN CLARK: All right. Well, let me pursue that just
16 a minute. If in this case we have some reuse that doesn't,
17 that has an adjustment for used and useful, what happens to the
18 rest of it? It goes into -- It's eligible for AFPI?

19 MR. CROUCH: AFPI.

20 MS. O'SULLIVAN: Right.

21 CHAIRMAN CLARK: Is there a limitation on how long we do
22 that?

23 MS. O'SULLIVAN: I can check the rule. I don't believe
24 there is.

25 MS. MERCHANT: On the AFPI?

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1 CHAIRMAN CLARK: What I'm getting at is as I understand the
2 AFPI, when a customer comes on board, they pay in cash when
3 they connect that AFPI charge; is that right?

4 MS. MERCHANT: They pay that -- If they have the AFPI
5 charge, they pay that in addition to the service availability
6 charge.

7 CHAIRMAN CLARK: So, that's the way they get their money
8 back and there is a carrying charge to that.

9 MS. MERCHANT: To the AFPI charge, there is.

10 CHAIRMAN CLARK: Right.

11 MS. MERCHANT: And it's time value of money.

12 CHAIRMAN CLARK: Right.

13 MS. MERCHANT: So the longer it's held, the more money they
14 get.

15 CHAIRMAN CLARK: Is there a time limit on that? For
16 instance, if they put in a reuse facility and we determine it
17 was prudent and the costs are let's say \$100,000, but we
18 determine that, you know, they're just at 50% capacity, that it
19 was prudent to do that because we expect growth to catch up to
20 it and that was the way it was prudent to decide the reuse
21 facility, what would happen -- Is there some point at which you
22 would move it into rate base because the growth hadn't been
23 there?

24 I guess what I'm trying to reach is some assurance that we
25 will meet the statute at some point, that we allow for full

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1 recovery of the prudent costs.

2 MS. MERCHANT: Well, if they never meet the growth, then
3 they wouldn't recover it unless you --

4 CHAIRMAN CLARK: They -- You need to be real clear:
5 Wouldn't or would?

6 MS. MERCHANT: If the growth just stops --

7 CHAIRMAN CLARK: Right.

8 MS. MERCHANT: -- and you had that disallowed through
9 current rates put into an AFPI charge, they would not collect
10 that money.

11 CHAIRMAN CLARK: All right. So, how do you reconcile that
12 with the statute that says if it was prudently done at the time
13 they did it, they are entitled to full recovery of that cost?

14 MS. O'SULLIVAN: I think the -- I'm looking at the rule
15 here -- 25-30.434(5) and (6) talks about the period of AFPI and
16 it says, "Unless utility demonstrates that a five-year period
17 is inappropriate, it's prudent for the utility to have and
18 invest in a future use plan for a period of no longer than five
19 years."

20 I think the rule kind of talks about prudence and prudent
21 investment.

22 CHAIRMAN CLARK: After five years, the growth isn't there,
23 they still have the investment; what happens?

24 MS. O'SULLIVAN: I think they can demonstrate, if it's
25 still prudent, to have it there. I think that --

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1 CHAIRMAN CLARK: Well, the question is was it prudent when
2 they put it in and if growth isn't there, are you now saying it
3 makes it imprudent and therefore they are not entitled to
4 collect it?

5 MR. CROUCH: We guaranteed them the opportunity to get the
6 rates. The same thing goes along with margin reserve. That's
7 calculated in based on growth. But if that growth does not
8 materialize, it's not, they don't get it that way, either.

9 So, we cannot guarantee the growth. We cannot -- We
10 estimate it and predicate the rates on that, but if it doesn't
11 happen.

12 CHAIRMAN CLARK: Have we looked at these reuse projects and
13 determined that they were prudent?

14 MR. CROUCH: Yes, we are examining each one to see if it's
15 a prudent investment.

16 CHAIRMAN CLARK: I have no problem with what you're
17 suggesting here, but I would suggest that further down the
18 road, even if that growth doesn't materialize, the statute may
19 require us to address it.

20 MS. O'SULLIVAN: I think the difficulty is the statute is
21 not clear. The statute should have been worded to say 100%
22 used and useful if that's what they intended and that's where
23 the difficulty lies.

24 MR. CROUCH: But that's a DEP statute.

25 CHAIRMAN CLARK: And to me it's still inequity between

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1 customers, that the statute says they're entitled to recovery
2 and it may be that at some later date we have to grapple with
3 that issue in the same way you grapple with that issue in
4 electric utilities where you forecasted growth, it doesn't
5 materialize, then what do you do. We may have to deal with
6 that.

7 But I think in this case, I want to make it very clear that
8 we've considered it to be prudent, but when we do a used and
9 useful adjustment, that's addressing how it should be paid for,
10 who should pay for it, not that it's not to be recovered. And
11 I agree with that conclusion.

12 MR. CROUCH: Well, Issue 42 goes hand in hand with that
13 then in that we are looking at each component and determining
14 is it a reuse component or is it just a normal wastewater
15 treatment plant component. If it is a reuse component, what
16 percentage used and useful should be assigned to it?

17 CHAIRMAN CLARK: What issue is that?

18 MR. CROUCH: Issue 42. So you had the legal question from
19 Issue 145 and then the component question for Issue 42.

20 MR. LOWE: That's page 160, Commissioners.

21 MR. CROUCH: And we had quite a bit of discussion from DEP
22 as to exactly what is or is not reuse components. Are perk
23 ponds reuse, for example. And we don't necessarily go along
24 with DEP's interpretation of what is a reuse component. So,
25 there's a lot of separation between our two theories on that.

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1 They say everything, perk ponds, everything else is considered
2 reuse.

3 CHAIRMAN CLARK: Well, I didn't -- I don't think they said
4 that. Some perk ponds are.

5 MR. CROUCH: Close to it.

6 CHAIRMAN CLARK: All right. Issue --

7 COMMISSIONER JOHNSON: I had a question, or maybe just to
8 get a clarification. Perhaps my interpretation of what DEP was
9 saying was not correct. But I had interpreted them to suggest
10 that you had full recovery of all prudently incurred costs and
11 that you didn't do a used and useful calculation. And our
12 statute and our process provides for this used and useful
13 analysis, that we don't or it's our interpretation that the
14 statute must have contemplated that and that would be implied,
15 whereas DEP was saying, no, uh-uh, if it was, if you find that
16 it was prudently incurred, then you have to give, provide for
17 it up front.

18 MR. CROUCH: Up front, the existing ratepayers pay for it
19 and we say no.

20 COMMISSIONER JOHNSON: Right. And, Commissioner or
21 Chairman Clark, are you suggesting that we further analyze that
22 and determine what the intent of the law was or --

23 CHAIRMAN CLARK: No. I guess I'm agreeing with staff that
24 it talks about recovery, full recovery of prudent costs. It
25 does not speak to who you recover it from. That's what used

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1 and useful speak to.

2 COMMISSIONER KIESLING: And what methods were used.

3 MS. O'SULLIVAN: Right.

4 CHAIRMAN CLARK: But I am concerned about what happens if
5 it's not recovered within a reasonable time. And I think we
6 may be faced with a suggestion that --

7 MR. CROUCH: DEP is trying to give the message to the
8 utilities to encourage them to go reuse. And, of course, the
9 utility doesn't want to invest a lot of money unless they're
10 guaranteed to get it back. We cannot guarantee they're going
11 to get it all back.

12 CHAIRMAN CLARK: Well, --

13 COMMISSIONER KIESLING: From these existing ratepayers.

14 MR. CROUCH: Right.

15 COMMISSIONER KIESLING: Yeah. I mean, that's where my
16 concern comes in is that DEP's view is build it and they will
17 come.

18 MR. CROUCH: Build a dream.

19 COMMISSIONER KIESLING: And, you know, our view is that if
20 it wasn't -- If your assumptions on what your growth was going
21 to be, et cetera, were not reasonable at the time you made
22 them, then you may not be able to recover --

23 CHAIRMAN CLARK: They weren't prudent.

24 COMMISSIONER KIESLING: -- fully recover from current
25 ratepayers for the portion of that reuse component that was

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1 going to address growth that never happened.

2 CHAIRMAN CLARK: Well, and I'm just sort of throwing out,
3 up a warning flag that I think because the statute talks about
4 full recovery of prudent costs, that at some point we may be
5 faced with the fact that the growth did not materialize and
6 they are, therefore, not recovering their prudent costs even
7 through the AFPI.

8 MR. CROUCH: Is it a prudent cost if it's based on
9 projected growth that doesn't materialize?

10 CHAIRMAN CLARK: Yeah.

11 COMMISSIONER KIESLING: Or growth projections that were not
12 reasonable.

13 CHAIRMAN CLARK: No, those are different things. If we
14 know at the time it happened that they were not reasonable,
15 then some of the costs they put in were not prudent. If at the
16 time it looked like all their figures were correct and they put
17 it in, then it seems to me you've sort of set the limit as to
18 what they recover.

19 MR. LOWE: And, Chairman Clark, we can always look at that
20 in any subsequent rate proceeding that this company files to
21 see whether or not in fact we are.

22 CHAIRMAN CLARK: Because if you put it off for too long, I
23 think it does impact the intent of that statute.

24 MR. LOWE: Yes, ma'am. And I think the Commission has sent
25 some direction out there with the AFPI rule in that we only

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1 allow the carrying costs to go on for five years. So, it may
2 be appropriate after five years to look and see whether or not
3 we're there are not.

4 CHAIRMAN CLARK: I'm sorry. Was there a motion on Issue
5 45?

6 COMMISSIONER KIESLING: I had moved it.

7 COMMISSIONER GARCIA: I second.

8 CHAIRMAN CLARK: Any other questions?

9 Without objection, Issue 45 is approved.

10 MR. CROUCH: Is that 145?

11 COMMISSIONER KIESLING: 145.

12 CHAIRMAN CLARK: Yes, 145.

13 MR. CROUCH: Okay. And then Issue 42 is what plant
14 component should be considered as reuse components. And our
15 staff recommendation is that we study each additional component
16 and see if it is truly a reuse component and assign used and
17 useful percentages to those on a case by case basis.

18 CHAIRMAN CLARK: We're on Issue 42.

19 MR. CROUCH: Page 160, Issue 42.

20 COMMISSIONER KIESLING: And I move staff. I'm sorry. I
21 move staff on Issue 42.

22 COMMISSIONER DEASON: Second.

23 CHAIRMAN CLARK: Let me ask a question before we call for
24 the vote on this. You indicate what should be considered.
25 What have you considered reuse in this case?

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1 MR. CROUCH: Right now reuse components are those
2 components that are put in specifically to bring the effluent
3 up to reuse standards, such as filters that were put in at
4 Marco Island; they were put in strictly to bring the effluent
5 up to reuse standards. The pumps that may be put in or storage
6 tanks for that, these are assigned specifically for effluent --
7 for reuse. They had no use in just normal effluent treatment.

8 CHAIRMAN CLARK: I guess my question is have you specified
9 in here which plant components are reuse?

10 MR. CROUCH: We do on down staff analysis and everything,
11 but basically we examined each component on a case by case
12 basis. For example, deep well injection, deep wells are not
13 reuse. They're effluent disposal period. They are not reuse.
14 Perk ponds would not be, in our opinion, would not be reuse,
15 whereas, storage tanks, filters, pumps and distribution lines
16 strictly for that reuse product would be, but it's a case by
17 case basis.

18 MS. AMAYA: If your question goes to what used and useful
19 we applied to reuse components based on staff's recommendation
20 in Issue 145, we have not segregated reuse components out. We
21 have applied a used and useful to wastewater treatment plant
22 effluent disposal.

23 CHAIRMAN CLARK: And there would be no need to do that if
24 you were doing used and useful?

25 MS. AMAYA: Correct.

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1 CHAIRMAN CLARK: There would be a need to segregate it out
2 if you were not doing used and useful?

3 MS. AMAYA: Correct.

4 CHAIRMAN CLARK: Okay. But have we identified them so that
5 if we have to deal with them otherwise that we know what they
6 are?

7 MR. CROUCH: Break them out into separate used and useful
8 chart to categorize them as reuse components separate from
9 wastewater treatment plant components.

10 CHAIRMAN CLARK: Let me just ask you a little bit more
11 about what you segregated as reuse and what's not reuse. What
12 standard did you use?

13 MR. CROUCH: We looked at what is necessary for normal
14 wastewater treatment. And that is necessary, whether it be for
15 reuse or just effluent going out into a deep well, wherever
16 they're going with the effluent.

17 CHAIRMAN CLARK: Is your standard that it's whatever needs
18 to be incorporated so the water can be used for irrigation?

19 MR. CROUCH: Yes, ma'am. That additional filtration, the
20 additional treatment to make it available for reuse.

21 CHAIRMAN CLARK: Okay. Is --

22 COMMISSIONER KIESLING: Well, then that -- I'm sorry.

23 CHAIRMAN CLARK: Go ahead.

24 COMMISSIONER KIESLING: That raises a question for me on
25 perk ponds, because if I recall correctly, there's some perk

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1 ponds that are designed specifically to have an aquifer
2 recharge component to their function. And it would seem to me
3 that for those that are specifically designed for aquifer
4 recharge, that that is a reuse component, whereas those that
5 were just designed for effluent disposal are not.

6 MR. CROUCH: We have to look at that in two different ways.
7 First off, how do you design a perk pond for one way or the
8 other? DEP even said if it's just one perk pond, it's not
9 reuse. If you've got two perk ponds, where you can dry one up
10 and just use them alternately, then they claim that's reuse.
11 We have not been convinced of that so far. Staff does not feel
12 that way because the perk ponds, even if they are recharging
13 the aquifer, if you will, they do not with just regular
14 effluent.

15 Now can they take -- If it's a holding pond and they can
16 take it back out of there and retreat it and use it as reuse,
17 that's one thing. That's a holding pond then. And those are a
18 particular type of perk pond, if you will, that they can take
19 it back out, they have pumps to withdraw it, treat it, and make
20 it reuse quality.

21 But we're saying so far that if they can make it reuse
22 quality for land application, for citrus groves, for parks,
23 whatever, if they can make it to the quality for reuse, any
24 components they needed to do that are reuse components. But if
25 it's just going out into a perk pond, it's like normal effluent

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1 where we have a hard time convincing ourselves that that should
2 be reuse.

3 COMMISSIONER KIESLING: Well, I have some theoretical
4 problems with that. And one of those would be that we
5 certainly know that there are areas in this state where there
6 is reasonably rapid interchange between surface water and the
7 aquifer. So, that in those areas where recharge is
8 geologically possible to a high degree, then I can understand
9 that a perk pond there that is placed there because of its
10 ability to recharge the aquifer is one thing, whereas a perk
11 pond that is built in one of the parts of the state where the
12 aquifer is 600 feet below the surface and there is no
13 interchange between surface water and ground water, then I can
14 see that that does not have a recharge, the ability to recharge
15 even if you call it recharge.

16 MR. FUCHS: Commissioner Kiesling --

17 COMMISSIONER KIESLING: So, that's where my problem comes
18 in is that it does seem to me that you can differentiate
19 between ones that are designed specifically for recharge and
20 ones that are designed solely for disposal.

21 MR. CROUCH: Here, again, on a case by case basis.

22 COMMISSIONER KIESLING: Yeah, pond by pond basis.

23 MR. FUCHS: Commissioner Kiesling, our stand in this, and
24 if the Commission agrees with this, then it will be our stand,
25 is that the main reason for reuse is to discourage withdrawal

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1 of water from the aquifer, to reduce the demand. And several
2 of the experts, if you'll recall during the hearing, testified
3 that that is the reason for reuse is because we're taking more
4 water out than we're putting in.

5 And in our way of thinking, if it doesn't contribute to the
6 reduction of the demand, then it really shouldn't be
7 contributing to or be classified as reuse. And perk ponds, as
8 I think Dr. York or Hartman or several of them said, do not
9 really contribute to customer, a reduction of customer demand;
10 whereas, if you have a golf course out there, for example, and
11 they have their own water well and their permits and they stop
12 using that and take reuse instead, they have reduced the demand
13 on the aquifer.

14 So, this is what our stand is: If it doesn't contribute to
15 reduction of demand, then we would not like to consider it to
16 be used.

17 COMMISSIONER KIESLING: And I understand that that is where
18 staff is. I'm suggesting that I'm not there, that I think
19 there are perk ponds that -- I think that recharge is another
20 component of reuse which we should recognize to the extent that
21 it is proven up to be recharge as part of a total reuse
22 program, because I think in the same way that we're trying to
23 reduce the withdrawals, if we are doing something that
24 increases the resource that is available for withdrawal, that
25 that also is a way of reusing effluent that is to the greater

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1 public benefit. And so I guess, you know, now that I hear that
2 you don't think that is, then I don't know that I can --

3 MR. CROUCH: Well, school is still out on reuse as far as
4 we're concerned as to what is and what isn't. And, like you
5 say, on a case by case basis, we'll have to examine each one.

6 MS. AMAYA: One thing I'd like to throw out just as a heads
7 up is if you start segregating the reuse components and the
8 wastewater components, then you will also need to segregate the
9 customer demand so that you can calculate separate used and
10 usefuls. What we have in this rate case is one aggregate
11 customer demand for both wastewater and reuse.

12 CHAIRMAN CLARK: Commissioner Kiesling, the discussion
13 about whether it's reuse or whether it's just part of the
14 disposal system may not be critical at this point because if it
15 is -- if it was prudently incurred for one purpose or another
16 when we are, because we are applying a used and useful, it's
17 going to get the same treatment.

18 It may become critical if we feel that we, that somehow a
19 reuse gets treated differently for ratemaking purposes. So, I
20 think we're all right currently.

21 COMMISSIONER KIESLING: I agree with that. Where I see the
22 problem potentially coming up or one area that could become
23 problematic is when we start to apply that portion of the
24 statute that allows us to allocate --

25 CHAIRMAN CLARK: Yes.

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1 COMMISSIONER KIESLING: -- the rates that go to pay for
2 that reuse between water and wastewater and reuse customers.
3 And I think that's the next, that's the next place that we'll
4 end up going with this.

5 And I just -- I guess I can go along with 42 as long as we
6 are not explicitly making it a determination that perk ponds
7 are not reuse and never could be, which is what I had a problem
8 with. It wasn't in the rec. It was in what was said here.

9 CHAIRMAN CLARK: Well, let me just ask: Staff's
10 recommendation is "Additional components required to achieve a
11 level of treatment qualifying for reuse." When you say that,
12 do you mean reuse to use as irrigation?

13 MR. CROUCH: Well, the next sentence then, "Reuse and what
14 is considered to be reuse components should be evaluated on a
15 case by case basis."

16 CHAIRMAN CLARK: So, you're not reaching a conclusion
17 that --

18 MR. CROUCH: We have not reached a firm conclusion yet.

19 CHAIRMAN CLARK: Okay.

20 COMMISSIONER KIESLING: That's why I'm saying I can go with
21 what's in the rec but I was troubled by what was said here.

22 CHAIRMAN CLARK: All right. Is there a motion on 42?

23 Any more questions?

24 COMMISSIONER JOHNSON: Uh-uh; move it.

25 CHAIRMAN CLARK: Without objection, Issue 42 is approved.

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1 Issue 29.

2 MR. RIEGER: Commissioners, Issue 29 is should an
3 adjustment be made to the used and useful wetlands for
4 Buenaventura Lakes.

5 Staff's recommendation is if appropriate adjustment to the
6 wetlands when it should be employed in used and useful issues
7 that we've already previously discussed.

8 COMMISSIONER KIESLING: And I can move Issue 29 without it
9 conflicting with anything that I said earlier because I don't
10 think that wetlands are the same as perk ponds or things that
11 are constructed for reuse.

12 COMMISSIONER GARCIA: Second.

13 COMMISSIONER DEASON: Let me ask a question. Your
14 recommendation is that if appropriate an adjustment should be
15 made, but you're not recommending any adjustment anywhere in
16 this case; are you?

17 MR. RIEGER: It will be applied in Issue -- in the used and
18 useful issues. Primarily an adjustment is made to Issue 45, I
19 believe. It's thrown in with the disposal facilities part for
20 this utility.

21 COMMISSIONER DEASON: What is that -- Do you know the used
22 and useful adjustment for this particular facility?

23 MS. AMAYA: Yes. If you look at page 190, the effluent
24 disposal, used and useful percentage with 18 months is 82.87%.

25 COMMISSIONER DEASON: I'm sorry. The percentage was what?

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1 MS. AMAYA: 82.87 with the Commission recommended 18 month
2 margin reserve.

3 COMMISSIONER DEASON: This is under which column?

4 MS. AMAYA: Buenaventura, page 190, the column to the
5 furthest right.

6 MS. MERCHANT: It's the next to the last section.

7 COMMISSIONER DEASON: I have 88.85%.

8 MS. MERCHANT: In the next section down, effluent disposal.

9 COMMISSIONER KIESLING: It's the next one, in the effluent
10 disposal.

11 COMMISSIONER DEASON: Oh, effluent disposal.

12 MS. AMAYA: You'll see that that's a different used and
13 useful percentage because the wetlands capacity has been added
14 into the effluent disposal capacity making it a higher capacity
15 than the plant.

16 COMMISSIONER DEASON: What's been the history of that
17 capacity of that wetlands?

18 MR. RIEGER: Well, it has changed over the years. I
19 believe we finally have a lock with the present operating
20 permit that has been issued. Before the present operating
21 permit, as I understand it, it's all been experimental, given
22 time to figure out what actually the disposal capacity is of
23 these wetlands. And it's been downgraded over the years. And
24 presently it's at 100,000 gallons per day.

25 COMMISSIONER DEASON: What was it originally permitted?

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1 MR. RIEGER: Oh, it was in the millions originally, but
2 that was just speculation, until they got their proper testing
3 time through.

4 The point is that the same acreage is being used. It is
5 considered necessary. It is designated by the DEP permit as a
6 wetlands reuse system. And as a backup facility, it is
7 considered necessary in case of the actual reuse system fails
8 at the golf course. They do need back up capacity, which was
9 pointed out by Mr. Terrero.

10 COMMISSIONER DEASON: Is it cost effective to utilize 169
11 acres of wetlands to have the capacity of 100,000 gallons of
12 effluent disposal?

13 MR. RIEGER: Is it cost effective?

14 COMMISSIONER DEASON: Yes.

15 MR. RIEGER: All I can tell you at this point is that
16 originally it was designed for more and this is the actual
17 number that it finally ended up as years later. As far as
18 being cost effective, that was not part of the evaluation at
19 this point.

20 MR. CROUCH: That area is extremely flat down there and
21 they were having great difficulty figuring out what to do with
22 the effluent. And so the wetlands discharge was one of their
23 experimental fields, waiting to see just how much that wetlands
24 could take care of, could dispose of. And, like Mr. Rieger
25 said, it started out at a very high capacity. Well, they found

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1 out the carrying capacity of that wetlands is not as great as
2 DEP originally thought. So they've decreased it.

3 It probably is not cost effective, but then they don't have
4 any other way to get rid of it.

5 MR. RIEGER: Right. I believe it's more importantly should
6 be considered as a backup facility rather than as a disposal
7 type facility. Right now it's carrying --

8 COMMISSIONER DEASON: It started off as primary disposal
9 facility; did it not?

10 MR. RIEGER: I'm not sure what came first, whether the
11 irrigation at the golf course and the wetlands as backup came
12 before the other consideration of whether it should be a
13 primary disposal. The point is it does serve a dual purpose.
14 And I believe, my personal take on it is that as a backup
15 facility, it is considered necessary. And that was pointed out
16 in the testimony.

17 CHAIRMAN CLARK: Further questions? Was there a motion?

18 COMMISSIONER KIESLING: Yeah, I thought there was.

19 CHAIRMAN CLARK: You moved 29. Without objection --

20 COMMISSIONER KIESLING: I don't remember who moved it.

21 CHAIRMAN CLARK: All right. Issue 29. All those in favor
22 say aye.

23 COMMISSIONER KIESLING: Aye.

24 COMMISSIONER GARCIA: Aye.

25 COMMISSIONER JOHNSON: Aye.

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1 CHAIRMAN CLARK: Aye.

2 Opposed nay.

3 COMMISSIONER DEASON: Nay.

4 CHAIRMAN CLARK: Issue 30.

5 MS. AMAYA: Commissioners, Issue 30 addresses the fire flow
6 requirement and whether that should be allowed in used and
7 useful calculations.

8 CHAIRMAN CLARK: Questions, Commissioners?

9 COMMISSIONER KIESLING: Move staff.

10 CHAIRMAN CLARK: Without objection, Issue 30 is approved.
11 Issue 31.

12 MS. AMAYA: Issue 31 is looking at whether a singular max
13 day should be used in calculating used and useful or the
14 average of five singular max days in one month. This is a
15 departure from Commission policy in that staff is recommending
16 using the singular max day.

17 CHAIRMAN CLARK: Questions, Commissioners?

18 COMMISSIONER DEASON: Yeah, I have a question. Is your
19 position that the single maximum day should be used if you're
20 confident that all known anomalies are excluded; is that
21 correct?

22 MS. AMAYA: That's correct. The reasoning for that is the
23 Commission had used the average of five high days in the past,
24 which would in effect smooth out any spikes due to anomalies
25 such as line breaks, but looking at a singular max day and

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1 excluding known anomalies such as line breaks, you should get
2 roughly the same, same answer, same approach.

3 COMMISSIONER DEASON: How confident are you that you are
4 going to be able, using this change in policy and this
5 methodology, how confident are you that you're going to know
6 that an anomaly exists to make an adjustment for that anomaly?

7 MS. AMAYA: Well, it goes directly to the heart of the
8 utility's filing and then the additional engineering
9 information. They have to file what are called monthly
10 operating reports. And that shows the plant flows on a daily
11 basis and the operators make notations in those logs, such as a
12 line break or, you know, tank over flowed or something unusual
13 had occurred. And they estimate those numbers.

14 It's in the record that, you know, if you know about an
15 anomaly, you can go ahead and subtract it. However, there
16 might be something unknown. That's just something we couldn't
17 account for.

18 MR. LOWE: Commissioner Deason, we can also use the average
19 five days as a benchmark to check against it to see whether
20 something exists that is a problem to make us look further.

21 COMMISSIONER DEASON: Well, is this something that --

22 MR. CROUCH: If that one day is so far out of line, we're
23 going to go back and ask for additional information from them:
24 What happened on that day? Why is this one out of line?

25 COMMISSIONER DEASON: That was my next question: Is this

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1 something that we check or we just take the company's word that
2 this was the max day and there are no anomalies --

3 MS. AMAYA: Staff goes --

4 COMMISSIONER DEASON: -- excepted?

5 MS. AMAYA: Staff goes -- Excuse me. I'm sorry to
6 interrupt.

7 Staff goes through the monthly operating reports and checks
8 them line by line looking for things such as line breaks, tank
9 over flows, et cetera.

10 COMMISSIONER JOHNSON: And staff is convinced that this is
11 a more accurate methodology?

12 MS. AMAYA: I think based on the fact that all of these
13 water components have to be designed to treat the singular max
14 day, that that is an important factor and staff relies on that
15 factor in making its recommendation. I think the fact that the
16 utility has gone through and I believe made their best effort
17 to exclude any known anomaly, that in this case it's the right
18 way to go.

19 COMMISSIONER DEASON: But I guess what I'm wanting to
20 stress is that -- And you're doing the right thing by pointing
21 out to us that this is a change in policy. I guess what I want
22 to stress is that it's not blind acceptance of that one single
23 figure; that the idea is to still to get a representative
24 number. And to the extent there are anomalies, which the
25 averaging is designed to eliminate, but to the extent there are

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1 known anomalies, those amounts would be excluded from that
2 single max day figure.

3 MS. AMAYA: Correct. And staff has gone through this and
4 found some discrepancies where we did not agree with the max
5 day that the utility had requested to use and based on their
6 review of discovery, they've filed revised max days in at least
7 four instances.

8 MR. FUCHS: Commissioners, we just recently had this in
9 Barefoot Bay where they had one day that it was 900,000 gallons
10 or something. And it was because they had filled all of their
11 holding tanks to the max to prepare for a planned three-day
12 shutdown and the regular flows were in this 600,000 and
13 700,000. So we just threw that day out and went with the four
14 high average days. And that was just in Barefoot Bay. So, we
15 do look for those.

16 CHAIRMAN CLARK: Any other questions on 31?

17 Is there a motion?

18 COMMISSIONER KIESLING: Move it.

19 COMMISSIONER DEASON: Second.

20 CHAIRMAN CLARK: Without objection, Item 31 -- Issue 31 is
21 approved.

22 Issue 32.

23 COMMISSIONER KIESLING: I move it.

24 COMMISSIONER JOHNSON: I can second that.

25 CHAIRMAN CLARK: Without objection --

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1 COMMISSIONER DEASON: I have a question on 32. I
2 understand that utilization of the operating permits probably
3 gives more relevant data, but my question is do we have
4 situations where a facility is downgraded, that is, the amount
5 that is permitted under its operating permit is reduced from
6 the capacity that was originally constructed just because the
7 facility is not operating at that level and the DEP decides to
8 issue a permit that is more in line with how the system is
9 actually operating?

10 MR. FUCHS: Do we have a permit that the company has asked
11 for it or --

12 COMMISSIONER DEASON: No. My concern is this, and perhaps
13 it doesn't happen. But my concern is this: That a facility is
14 constructed at level X, the demand never materializes. It
15 consistently operates at a lower level, some portion of X. And
16 when it comes time to renew that permit, the DEP looks at where
17 it's been operating, disregards what it was constructed for and
18 says we're just going to give you an operating permit
19 consistent with the way you've operated this system, and issues
20 an operating permit at a lesser capacity than what the facility
21 was actually constructed to provide. Does that happen?

22 MR. FUCHS: To my knowledge, no, sir. DEP will usually go
23 with what the company requests unless they have evidence that
24 it's, you know, too much.

25 COMMISSIONER DEASON: Well, if DEP has an incentive to make

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1 sure that systems are not permitted above a reasonable
2 capacity, therefore they're going to be generally on the
3 conservative side, and that's no criticism of them. That's
4 probably the way they should operate and I assume that's the
5 way they do operate. My concern then, if a company for used
6 and useful purposes decides that, well, they're going to
7 request a smaller capacity for operating permit purposes to
8 boost up their used and useful percentage, I think that would
9 be inappropriate then to us that lower operating permit
10 capacity as opposed to what was constructed originally.

11 MR. FUCHS: Yes, sir. And we agree with that.

12 MS. AMAYA: We have a situation of about four different
13 wastewater plants where the operating permit capacity is
14 actually lower than the construction permit. And the reasons
15 behind that are in three of the cases due to limited capacities
16 on effluent disposal. What DEP has gone back and said that,
17 you know, this plan is sized to handle X capacity; however, the
18 plant can only dispose of, you know, a certain amount of that X
19 capacity. Therefore, DEP puts a limitation on the operating
20 capacity for that plant.

21 Then we have another situation where the plant has changed
22 mode of operation. It went from contact stabilization to
23 aeration, if I'm not mistaken. And based on the change in
24 operation, DEP has come back and re-rated the plant at a lower
25 capacity.

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1 COMMISSIONER DEASON: Was that a prudent decision to change
2 the mode of operation of that plant that you just cited?

3 MS. AMAYA: I believe in this instance it was, yes.

4 MR. CROUCH: The extended aeration gives a better quality
5 of effluent and it meets standards a lot better. Contact
6 stabilization is probably the most basic treatment you can
7 have.

8 COMMISSIONER DEASON: So, what you're telling me is that
9 whenever you find a situation where the operating permit
10 capacity is less than design capacity or construction capacity,
11 you review the circumstances of that?

12 MR. CROUCH: Exactly. And we are also looking at used and
13 useful almost by component now, not just plant in general. In
14 the past we used to do it just the wastewater treatment plant,
15 is X percent used and useful. Now we're starting to look at it
16 because they may have certain components of it that are greatly
17 oversized. If they have some weak link over here that reduces
18 their overall capacity, we don't want them to be able to come
19 in later on and just replace that weak link and all of a sudden
20 have a greatly expanded capacity. So we are starting to look
21 at it more and more by component and look at their permits.

22 CHAIRMAN CLARK: I think the concern is just that it not be
23 an avenue for manipulation of the used and useful, that it's
24 being done for reasons other than just manipulating the used
25 and useful.

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1 COMMISSIONER DEASON: I can move staff.

2 CHAIRMAN CLARK: Without objection, Issue 32 is approved.
3 Issue 33.

4 MS. AMAYA: Issue 33 addresses should firm reliable
5 capacities approach be used in determining used and useful in
6 certain components.

7 CHAIRMAN CLARK: Questions, Commissioners?

8 COMMISSIONER KIESLING: Yes. I don't have a problem with
9 what is stated as the staff recommendation on page 144, but the
10 synopsis recommendation doesn't say the same thing in my
11 mind. And so I found that to be confusing.

12 Is there any problem from staff's perspective of amending
13 the actual words of the recommendation to conform them to the
14 recommendation that's on page 144?

15 MS. AMAYA: That's not a problem whatsoever.

16 COMMISSIONER KIESLING: Okay. And that recommendation is
17 "That the Commission recognize and allow the utility to
18 calculate used and useful on wells, high service pumps and
19 water treatment components through the use of firm reliable
20 capacities for each as opposed to the total capacities for
21 these components or firm reliable capacity on only one
22 component." That way I understood it and I support it.

23 MS. AMAYA: I think the only reason the recommendation, the
24 synopsis portion is written as is is because the wells, the
25 high service pumps and water treatment is broken out and

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1 specified in the actual issue.

2 MR. CROUCH: But we can add that in and revise the
3 recommendation to show that paragraph that you just quoted.

4 COMMISSIONER KIESLING: Okay. I found it confusing. So,
5 maybe I'm the only one that was confused.

6 With that clarification, I can move 33.

7 CHAIRMAN CLARK: Other questions?

8 Without objection, 33 is approved.

9 34.

10 MS. AMAYA: Commissioners, Issue 34 addresses emergency
11 storage. And staff is recommending that for certain facilities
12 that the Commission recognize and allow an emergency storage of
13 8 hours of the average daily flow.

14 CHAIRMAN CLARK: Questions, Commissioners?

15 COMMISSIONER GARCIA: Move it.

16 CHAIRMAN CLARK: Without objection, 34 is approved.

17 35.

18 COMMISSIONER GARCIA: Move it.

19 CHAIRMAN CLARK: Without objection, Issue 35 is approved.

20 Issue 36.

21 MS. AMAYA: Issue 36 is, again, addressing storage and is
22 looking at 10% of the total storage capacity of ground storage
23 as being dead storage or unusable.

24 COMMISSIONER GARCIA: Move it.

25 COMMISSIONER DEASON: I have a question. The 10% dead

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1 storage, is it your position that that is a reasonable average,
2 that some tanks have more than 10% dead storage and some have
3 less?

4 MS. AMAYA: Yes. I calculated out just recently in a
5 different proceeding dead storage on two different ground
6 storage tanks and they were up around 23% for dead storage.
7 So, the 10% in this case looks conservative and okay.

8 CHAIRMAN CLARK: Without objection, Issue 36 is approved.
9 Issue 37.

10 MS. AMAYA: Issue 37 addresses the methodology for
11 determining used and useful on high service pumps. The issue
12 goes to whether it should be max day flows or peak hourly flows
13 in the numerator of that calculation.

14 Staff is recommending that based on circumstances it might
15 be either.

16 COMMISSIONER GARCIA: I move it.

17 CHAIRMAN CLARK: Without objection, Issue 37 is approved.
18 Issue 38.

19 COMMISSIONER KIESLING: Move it.

20 COMMISSIONER GARCIA: I second.

21 CHAIRMAN CLARK: Without objection, Issue 38 is approved.
22 Issue 39.

23 MS. AMAYA: Commissioners, Issue 39 is looking at what is
24 the appropriate flow data to use for calculating used and
25 useful on wastewater treatment plant and effluent disposal.

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1 Staff is recommending that when the flow data is known on
2 the operating permit that that is the flow to be used. It's an
3 apples to apples comparison.

4 CHAIRMAN CLARK: Without objection, Issue 39 is approved.
5 Issue 40.

6 COMMISSIONER KIESLING: Move it.

7 COMMISSIONER GARCIA: I second.

8 CHAIRMAN CLARK: Without objection, Issue 40 is approved.

9 I think staff has indicated that there is a mistake in the
10 analysis that Mr. Bidy was not SSU's witness, but that won't
11 affect the order; right?

12 COMMISSIONER KIESLING: Right.

13 CHAIRMAN CLARK: We've addressed Issue 41. We've addressed
14 Issue 42.

15 Issue 43.

16 MS. WEBB: Commissioners, Issue 43 is staff's
17 recommendation with regard to whether an adjustment should be
18 made to reflect non-used and useful lines constructed by Lehigh
19 Acquisition Corporation.

20 Our recommendation is that an adjustment should be made.

21 COMMISSIONER KIESLING: I move staff.

22 COMMISSIONER GARCIA: I second.

23 CHAIRMAN CLARK: Without objection, Issue 43 is approved.

24 CHAIRMAN CLARK: Issue 44.

25 MR. CROUCH: Issue 44 is a discussion of what happens if

1 the used and useful calculations in this rate proceeding result
2 in used and useful percentages lower than those allowed in
3 previous rate cases, which percentages should be used.

4 Staff goes into three scenarios where if, the first case,
5 if the customer demand is lower than the previous rate
6 proceedings, thus creating a lower used and useful percentage,
7 then we use the previous used and useful, because this is
8 through no fault of the utility.

9 The second scenario occurs when a plant component has been
10 added, thereby increasing the capacity of the plant. Used and
11 useful percentage on the new capacity would yield a lower
12 percentage than the last proceeding. In this case, the new
13 used and useful percentage is appropriate if the resulting
14 plant in service is greater than the plant in service granted
15 in the last proceeding.

16 And the third scenario is a little unique. It says if we
17 had an error in the previous Commission methodology or
18 calculation and we find that error now, then we go ahead and
19 correct it, use the new, even though it may be lower used and
20 useful proceeding. Just because we made a mistake last time
21 doesn't mean we continue on with that mistake.

22 So, under those three scenarios and three different
23 situations on what we would do, which used and useful we would
24 adopt.

25 COMMISSIONER GARCIA: What's the alternative? Who has got

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1 the alternative?

2 CHAIRMAN CLARK: Yeah, there is no alternative on 44 but
3 there is on 45. So there probably should have been one on 44.

4 MS. AMAYA: One thing I'd point out on Issue 44, on Issue
5 37 with the high service pumps and staff's analysis, staff went
6 into talking about how we believed there was an error in the
7 last rate proceeding and since the Commission moved staff on
8 that one, in essence you've kind of gone along with that. And
9 on 44, it's just kind of laying the ground work for Issue 45
10 for the primary and the alternate.

11 COMMISSIONER KIESLING: I can move 44, but I have I guess
12 one comment that I do have just a little bit of discomfort on
13 us lowering used and useful as it had been set in a previous
14 rate case unless there is a clear showing and that we can
15 clearly see that it was a mistake as opposed to, you know,
16 something that we did look at before but decided differently or
17 that just wasn't looked at before. I mean, I want to know that
18 there was a mistake.

19 MR. CROUCH: Very true.

20 CHAIRMAN CLARK: Let me ask you, Karen: You mentioned
21 something where we found an error in which issue.

22 MS. AMAYA: It was Issue 37 on the high service pumps on
23 page 153 in the second paragraph. In the last rate proceeding,
24 what the utility had proposed doing was peak hour plus fire
25 flow and peak hour is two times the max day demand. So what

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1 you have is max day demand plus max day demand plus fire flow
2 to determine used and useful.

3 What staff is recommending or has recommended in this rate
4 case is to use peak hour, which is the max day demand twice or
5 to use max day plus fire flow. And that's based on engineering
6 manuals.

7 CHAIRMAN CLARK: Well, that wasn't an error. It's a change
8 in the way we're recommending we do it; is that correct?

9 MS. AMAYA: It's a matter of interpretation. I believe
10 that using the peak hour plus the fire flow, my personal belief
11 is that was an error. It could certainly be argued that we're
12 just proposing a different methodology in this rate proceeding.

13 CHAIRMAN CLARK: Well, and what is its impact? Does it
14 lower or raise the -- Has it lowered the percentage for
15 anything based on what they've previously were allowing?

16 MS. AMAYA: I think, no, because what I have done is I've
17 looked at each particular service area and I've applied the two
18 methodologies for determining the high service pump used and
19 useful and used whatever was greater. And it was -- If that
20 turned out to be less than what they received in the last rate
21 proceeding, I used, I recommended the used and useful from the
22 last rate proceeding unless there was a change in the capacity
23 for that component.

24 CHAIRMAN CLARK: Okay. So, that isn't an error you've
25 corrected for?

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1 MS. AMAYA: No.

2 CHAIRMAN CLARK: Even though you think it's an error.
3 Okay.

4 Commissioner Kiesling, you have brought up the issue of
5 whether in fact it really was an error. My recommendation
6 would be that since it's not in this case, that it be left for
7 another day. I guess it depends to me on the genesis of the
8 error to some extent. And since we don't have to face that
9 issue here, I don't recommend we set policy on it.

10 I can tell you that I think if there is a clear error, it
11 ought to be adjusted, but I'm uncomfortable saying that in
12 every circumstance that may be the case.

13 And what I'd like to see is that there are different
14 scenarios that would account for lower used and useful
15 percentages. And for certain of those we don't think that you
16 should change what you have previously done.

17 And I guess I'm -- It seemed to me that we should just
18 limit it to that where they have been added, it's a changed
19 circumstance and the used and useful would change. I am
20 comfortable with that. I have no problem with that.

21 But where there has -- Where it's been a situation where
22 the customer demands have changed making it a lower used and
23 useful percentage, then you wouldn't change it. And I agree
24 with that.

25 I'd simply just like to not address where there has been an

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1 error.

2 COMMISSIONER DEASON: And the reason is because there have
3 been no errors identified?

4 CHAIRMAN CLARK: Yeah, I guess I'm just concerned that we
5 may be faced with a case where it depends on the genesis of the
6 error as to whether or not you would make an adjustment. And I
7 think it would be --

8 COMMISSIONER GARCIA: What error would you not adjust?

9 CHAIRMAN CLARK: I don't know. And that's what I am
10 saying, it would be more prudent. Let's wait until we have a
11 real case in front, case or controversy in front of us where we
12 have to decide it and make that decision.

13 MS. AMAYA: I think you'll get to do that in Issue 45.
14 Even though it's not addressed as an error, it's going to give
15 you the opportunity to look at something lower.

16 CHAIRMAN CLARK: Well, you all just told me you didn't have
17 any in here.

18 COMMISSIONER DEASON: Well, I have a question on Issue 44.
19 I take it your position is kind of premised on the assumption
20 that it's unfair and inequitable to penalize the company for
21 reductions in demand that perhaps are generated from
22 conservation?

23 MR. CROUCH: Exactly.

24 COMMISSIONER DEASON: Okay.

25 MR. CROUCH: That's the first scenario.

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1 COMMISSIONER DEASON: And I really, I don't have a problem
2 with that concept. But what about the concept we've had
3 testimony from customers who say the rates are getting so high
4 they can't afford to live in those subdivisions any more and
5 that if there is an increase, they may actually have to move
6 somewhere else. Now, I don't know, you know, it could be
7 customers just venting some frustration and maybe it's one that
8 line of an idle threat or maybe these folks are really serious
9 and if these increases come about they actually cannot afford
10 to pay the water and wastewater bills and they are going to
11 have to look at other avenues.

12 What happens if used and useful starts going down because
13 people can't afford to pay the bills and they move out and
14 nobody else wants to move in? That's not conservation. That's
15 a result of the company's costs escalating to the point -- And
16 may not even be their own fault. I don't know. Maybe it's
17 other reasons. But it's not because of conservation. It's
18 because customers can't afford to pay the bills and they move
19 away.

20 And I guess my question, then you get into this chain
21 reaction or domino theory or whatever that then you've got
22 fewer customers and if you're going to keep the used and useful
23 constant, then you've got more costs on fewer people and then
24 some of those perhaps can't afford to live there any more, they
25 move away, and then you get --

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1 MR. CROUCH: We had a case similar to that in Davie several
2 years ago where a utility lost part of its service area because
3 of a turnpike going through and it cut off part of their
4 service area. They were given a used and useful percentage in
5 a previous case. Their used and useful percentage was
6 definitely lower now because they had a lot smaller service
7 area, but we did not go back in and penalize them in that case.
8 Although their used and useful in the new case was considerably
9 lower, we used the old scenario.

10 CHAIRMAN CLARK: The reason for that being you judge
11 whether or not it was prudent based on the facts you knew at
12 the time it was built. And, you know, that's not just an issue
13 in water and wastewater. It's an issue in every utility
14 service. Well, maybe not so much communications.

15 MR. CROUCH: Social engineering at the rates as opposed to
16 what the facts say in the used and useful percentages, I don't
17 know how we mix that.

18 COMMISSIONER DEASON: It seems to me that part of the
19 theory is that you put the risk on the developer or the utility
20 or both that when a facility is designed and built, that they
21 will come and it may take some time. And that risk is there
22 upon them and there is this used and useful calculation. And
23 if the, and even if AFPI, if the demand never materializes,
24 there's even a limit on the AFPI. So there are some risks that
25 the company has.

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1 My question is should that risk work both ways in the sense
2 that once demand, people move in and then they move away,
3 that's also a risk of the business and a risk of the
4 development. Are you saying that that's not a proper risk to
5 be borne by the utility company, that's a risk the customers
6 have to bear?

7 MR. CROUCH: I think it could be a risk borne but
8 determined somehow other than used and useful. The used and
9 useful percentage is just calculations. How you would
10 determine the rates later on because of this is what I call
11 social engineering on that.

12 COMMISSIONER DEASON: It seems to me it just works one way.
13 That is, that if there's growth, used and useful goes up. If
14 there is declining growth, it stays. That doesn't seem to be
15 two-way to me.

16 MR. CROUCH: That's true.

17 MR. LOWE: Commissioner Deason, I don't know that I've ever
18 seen people actually move away from a system because of the
19 spiraling costs in the scenario you gave earlier. I know that
20 in one of these systems, before Southern States grew to be as
21 big as it is today, that there was one where they continuously
22 came in for rate increases and the people conserved every time
23 and we continued to raise the rates and the rates got to be in
24 the neighborhood of \$5 or \$6 per 1,000. And those people were
25 using like six and eight hundred gallons of water a month.

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1 They just conserved. They didn't move away. But I've never
2 seen them actually abandon their homes. They have always some
3 how or another found somebody to buy the home and leave the
4 area so that you had another customer.

5 COMMISSIONER DEASON: Well, I just, I don't want to get
6 into a death spiral situation. And I tend to agree with you.
7 I really don't think that people are actually going to abandon
8 their homes. They're going to try to find somebody. If they
9 can't afford the bills, they're going to try to sell their
10 homes to somebody else and they may have to do it at a
11 distressed price if a problem is the level of the water and
12 wastewater rate. Of course, I'm sure that's just one factor
13 along with property taxes and insurance costs and myriad of
14 other things that go through people's mind.

15 MR. CROUCH: You pose a good theoretical possibility,
16 though, that I don't know what the solution would be.

17 COMMISSIONER DEASON: Well, it just doesn't -- It didn't
18 seem to me that it went both ways. I mean, we're saying if you
19 got growth, fine, increase it. If you don't, it's not going to
20 ever go below a certain level. And maybe it's justified. I
21 don't know. It just strikes me as not having symmetry that we
22 normally try to provide.

23 CHAIRMAN CLARK: You know, I'm open to ideas of how to
24 effect that symmetry.

25 COMMISSIONER DEASON: Well, you know, the only other way to

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1 do it -- And perhaps it's not fair to the company. The only
2 other way to do it would be is that you just use current usage
3 and that you determine the used and useful based upon that.

4 MR. CROUCH: The figures speak for themselves in this case.

5 COMMISSIONER DEASON: The only concern I have with that is
6 that I think that would be taken as a disincentive to promote
7 conservation, which I think is probably contrary to general
8 public policy and public good to have anything that would be
9 considered a disincentive to conservation. That's why I'm
10 reluctant.

11 COMMISSIONER KIESLING: Well, if I could just add to that,
12 there's, again, been a lot of study and information gathering
13 put together on rate stabilization possibilities in the face of
14 conservation and that impact. So, while it's not here before
15 us today, I think there are some other ways to deal with it
16 beyond what's just in this particular issue.

17 COMMISSIONER DEASON: I guess I'd be more comfortable with
18 accepting this general policy statement but always realizing
19 that in a situation where there is a significant departure
20 between a previously determined used and useful and one that is
21 much less based upon current flows, that that is just, should
22 be a red flag that we need to look at. And if there is some
23 extraordinary circumstance that justifies a departure from this
24 policy, that we'd look at that if it were to happen, but just
25 not this be the general policy, but that if there are

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1 significant deviations, we'd look at the circumstances causing
2 it. And perhaps they're things that I can't, you know, sitting
3 here today envision that would justify some departure from this
4 general rule. I can't think of one right now.

5 But having said that, I suppose that I can accept staff's
6 recommendation.

7 CHAIRMAN CLARK: Is there a motion?

8 COMMISSIONER DEASON: I would move staff's, but I would
9 move it with the understanding that in those rare situations
10 that when we encounter these in the future that it would raise
11 a red flag and that we would look at the circumstances; ask the
12 question, well, why did this occur, but that this would be the
13 general rule that we're trying to, that is stated in response
14 to Issue 44. That's my motion.

15 COMMISSIONER KIESLING: And I would second that motion also
16 with the caveat that I raised earlier, that when it is based on
17 a mistake, that we look at the circumstances that led to that
18 mistake in determining what may be, what the equities are in
19 making that adjustment now.

20 COMMISSIONER DEASON: I have no problem with that
21 amendment.

22 CHAIRMAN CLARK: Okay. If that's the motion with those two
23 caveats, without objection, that's approved.

24 Issue 45.

25 MS. AMAYA: Commissioners, Issue 45 addresses the fallout

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1 used and useful percentages. There are two recommendations.
2 The primary recommendation just addresses the highlighted used
3 and useful percentages on Attachment B.

4 The alternate recommendation is pertaining to transmission
5 and distribution lines and collection system lines. This is
6 where the methodology is different in the last rate proceeding
7 versus this rate proceeding. In the last rate case, the
8 utility used and the Commission allowed ERCs to lots. In this
9 rate proceeding, Staff recommended and the Commission agreed
10 lots to lots. And it does result in several instances
11 significant lower used and useful percentages. And staff just
12 wanted the Commission to have the opportunity to vote either
13 way.

14 COMMISSIONER KIESLING: I move the alternate.

15 COMMISSIONER DEASON: I second the motion.

16 CHAIRMAN CLARK: Is that consistent with the vote on 44?

17 COMMISSIONER KIESLING: I think it is. If it isn't,
18 somebody better tell me because I thought it was.

19 COMMISSIONER DEASON: That's my understanding. That was
20 the basis of my second.

21 CHAIRMAN CLARK: Actually Issue -- No, it's not.

22 MS. AMAYA: Issue 44, I sort of regret the language "error"
23 in the Issue on 44, because Issue 45 I don't think the
24 alternate addresses an error. It's a different methodology.
25 And I think the methodology that staff is recommending on lines

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1 is the better methodology, but I personally wouldn't feel
2 comfortable considering the methodology in the past rate
3 proceeding an error.

4 CHAIRMAN CLARK: See, it says, the last sentence,
5 "Therefore, even though the Commission authorized a higher used
6 and useful in the last rate case proceeding due to calculating
7 used and useful for lines based on ERCs, staff recommends the
8 new lower used and useful percentage is appropriate."

9 That doesn't fall into the two categories that we
10 identified in Issue 44.

11 MR. CROUCH: Unless you considered our previous made an
12 error because it gave an unrealistic.

13 COMMISSIONER DEASON: Well, let me make one thing clear. I
14 in no way intended by moving Issue 44 to make the policy
15 statement that when this Commission decides to change a policy
16 issue or a methodology in calculating used and useful that
17 happens to be a lower used and useful that we lock ourselves in
18 to what was done five, ten, fifteen years ago. I don't support
19 that whatsoever.

20 I think this Commission has got to maintain the flexibility
21 to use the methodology which we think is the appropriate
22 methodology. And, if anything, I think that Issue 44 is silent
23 on that question. And I certainly wouldn't interpret the
24 decision in 44 to say that we are limiting ourselves and taking
25 away some of the flexibility that this Commission I think

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1 should have.

2 MR. CROUCH: There could be other situations other than the
3 three that we listed in 44.

4 COMMISSIONER KIESLING: That was my way of looking at it,
5 was that this was not covered in any of the three because there
6 is a new and updated methodology that now seems more
7 appropriate. And I think that that -- I didn't consider that
8 to be covered in any of those three options either.

9 COMMISSIONER GARCIA: Unfortunately, I see it the way
10 Commissioner Clark stated. And obviously with you narrowing it
11 to that focus, I'm fine with it and I, of course, would move
12 it.

13 CHAIRMAN CLARK: You have changed -- You have added another
14 way that you might change the used and useful percentage from
15 what it was. I mean, then we need to go back to Issue 44. It
16 is not the same in my opinion.

17 COMMISSIONER DEASON: Well, I agree then. 44 needs to be
18 clarified. I just didn't take 44 to be an all inclusive list.
19 This was just given as this could be a situation.

20 COMMISSIONER GARCIA: Well, that's why I asked if there was
21 an alternative.

22 CHAIRMAN CLARK: It says, the issue is "If the used and
23 useful calculations in this rate proceeding result in used and
24 useful percentages lower than those allowed in the previous
25 rate cases, which percentages should be used?"

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1 COMMISSIONER JOHNSON: Where are you reading from?

2 CHAIRMAN CLARK: I'm on 43.

3 COMMISSIONER DEASON: And, see, I was interpreting that
4 that it was the same methodology that the used and useful
5 differences came about due to a difference in the flow that
6 perhaps came -- In fact, I directed this question to staff --
7 came about through conservation, that you wouldn't want to
8 penalize the company to have a lower used and useful because
9 they promoted conservation and the customers responded and
10 conserved their usage.

11 CHAIRMAN CLARK: Now what you're saying is if you change
12 the methodology for determining used and useful, you can use
13 the lower percentage?

14 MR. CROUCH: In other words, basically add a fourth
15 scenario to Issue 44.

16 COMMISSIONER DEASON: To me, it's not unlike if in a
17 previous rate case we used one methodology to determine return
18 on equity and now in the future we want to use a different
19 methodology but we say, well, we can't have a lower return on
20 equity than what we determined with the previous methodology.

21 I mean, perhaps that's an absurd example, but to me changes
22 in methodology is something that this Commission always has the
23 flexibility, if there is a sound basis for it, to do,
24 regardless of the outcome, regardless if the outcome is higher
25 or lower with a different methodology from what was done in a

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1 previous case.

2 COMMISSIONER KIESLING: And let me say in moving 44, I was
3 not reading it as these are the only possible scenarios and no
4 others. I was reading it as here are three possible scenarios
5 that would fall under this but that any of the other authority
6 or power that we have under other sections of our statute to
7 look at new methodologies and apply them wasn't even affected
8 by 44.

9 CHAIRMAN CLARK: Here's the distinction I would make. And
10 I agree with Commissioner Deason with respect to cost to
11 capital. That's a forward looking, what is your cost to
12 capital.

13 What the impact here is is that in a previous rate case you
14 have said this is a prudent expenditure and it's used and
15 useful in serving those customers that are on line. And what
16 you're now saying is even if the customer base is the same,
17 there has been no change in who has been serving it, you are
18 now going to calculate it a lower way and now the previous
19 amount you said was used and useful is no longer used and
20 useful. And I think that's an inappropriate policy. I agree
21 if there is an error and --

22 COMMISSIONER DEASON: Well, I respect that, but I strongly
23 disagree.

24 CHAIRMAN CLARK: You know, you could manipulate that. All
25 you have to say it's a different way of calculating it and you

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1 come up, you can manipulate the used and useful. And you don't
2 give any stability to owners of utilities to know what they,
3 when they make an investment, they have a reasonable
4 opportunity to earn on it because you're going to manipulate
5 the used and useful percentage by calling it a change in
6 methodology.

7 COMMISSIONER DEASON: Well, I would disagree with the term
8 "manipulate." We are using what we consider to be the best
9 policy, the best methodology to determine what is the
10 appropriate used and useful.

11 CHAIRMAN CLARK: It's giving you the opportunity to go back
12 and change. It's destroying administrative finality in my
13 opinion.

14 COMMISSIONER JOHNSON: What if we -- I share Commissioner
15 Clark's concerns. I just want a little clarification. Are we
16 suggesting by moving the alternative that if next year or next
17 month we come out with another methodology and the company came
18 before us, that we could then apply that methodology? I mean,
19 where do you provide the predictability and where is there,
20 where do you draw and provide some consistency, because what I
21 understand here is even if the facts were the same, since the
22 methodology changed, we --

23 MR. CROUCH: Well, the hydraulic analysis, for example, is
24 a new methodology that the utility was sponsoring because it's
25 going to give them a higher used and useful.

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1 COMMISSIONER GARCIA: Commissioners, maybe I could ask
2 Commissioner Clark: If the company has the same option, why
3 can't we have the same options for ourselves?

4 CHAIRMAN CLARK: If the Commission has what same option?

5 COMMISSIONER GARCIA: Of using a different methodology. I
6 mean, clearly the company can come up with whatever methodology
7 it feels in a rate case is the best method to figure this out.
8 Likewise, we should have whatever we feel is prevalent as
9 policy at that moment to make that determination.

10 CHAIRMAN CLARK: But it goes back to administrative
11 finality. And what you're saying in one instance is you're
12 saying this investment at this point in time is used and useful
13 in providing utility service to these customers. If you have
14 no change in the customers and no change in the capacity of the
15 facilities but you have a different way of calculating it,
16 you're going back to the previous case, in effect, and
17 readjusting the used and useful. And that, you know, then
18 everything is again open to discussion and I mean everything is
19 open to discussion.

20 MS. AMAYA: I would just point out --

21 COMMISSIONER GARCIA: Commissioner Deason -- Hang on one
22 second -- could you sort of rebut that because I think
23 Commissioner Clark does have a point here.

24 COMMISSIONER DEASON: Well, if you follow that, what would
25 happen is that a decision that was made by a Commission twenty

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1 years ago would bind this Commission today, that we could not
2 change --

3 CHAIRMAN CLARK: That's not correct.

4 COMMISSIONER DEASON: -- the used and useful, because I
5 think what the result is that the decision is, and the
6 administrative finality is that based upon the methodology that
7 was used at that time, which was determined to be the
8 appropriate policy, X dollars of rate base was determined to be
9 used and useful. And I think the company can rely that that is
10 their used and useful amount. But it doesn't say that that's
11 going to be the dollars of used and useful for ever and ever
12 from that point forward.

13 I think the Commission is always free to determine what it
14 believes to be the best approach, the best procedure, the best
15 methodology of calculation and can apply that to the facts as
16 they exist in a case. And I don't think that that jeopardizes
17 the question of finality.

18 CHAIRMAN CLARK: Well, I guess I disagree. I think it
19 does. And what the courts have said with respect to -- I agree
20 with Commissioner Deason that you aren't, by making a decision,
21 you aren't bound forever, but you have to show changed
22 circumstances justifying a change in what you have previously
23 concluded.

24 And my concern is by simply deciding that you can use a
25 different methodology which lowers what you've previously found

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1 to be prudent in used and useful, no change in customer base,
2 no change in usage, then you have no finality to that and you
3 are not relying on a changed circumstance and it is
4 inappropriate.

5 COMMISSIONER DEASON: If you follow that, does that mean
6 then that the company then is always precluded from coming
7 forward with any other new approach in calculating used and
8 useful and that then the customers, they have administrative
9 finality and assurance that the used and useful is never going
10 to go up from what was determined in a previous period, in a
11 previous methodology?

12 CHAIRMAN CLARK: It will go up because if more is used and
13 useful.

14 MS. AMAYA: One thing I'd like to throw out is that this is
15 a methodology that was filed by the utility. They had the
16 conversion going from ERCs to meters, which can be considered
17 lots using the utility's methodology. And they calculated
18 these lower used and useful percentages.

19 What they didn't do was to go with those lower used and
20 useful percentages because in most cases they were higher in
21 the last rate proceeding. So they depended on those higher
22 used and useful percentages.

23 This is not a methodology that we just arbitrarily, you
24 know, pulled out of the air. This is a methodology that the
25 utility filed.

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1 Staff just wanted the Commission to be aware that there
2 were the two different ways of calculating the used and useful
3 and let you decide which way you wanted to go.

4 COMMISSIONER KIESLING: It sounds to me like it's one of
5 those have your cake and eat it, too. I mean, the utility came
6 in and said, here, we have a new proposed methodology for
7 calculating used and useful; use it where it's to our
8 advantage, but use the old one from the last rate case where
9 it's to our disadvantage. And that bothers me.

10 CHAIRMAN CLARK: Let me ask you a question: Which did you
11 use in calculating the used and useful percentages?

12 MS. AMAYA: In my primary recommendation, what I have
13 recommended is going with the percentages that were derived in
14 the last rate proceeding, which would not lower used and
15 useful. However, I wanted you to be aware that there was a
16 different methodology. And that's the whole reason behind the
17 alternate recommendation. There are some cases where it's a
18 very significant difference in used and useful percentages.

19 COMMISSIONER JOHNSON: Then let me ask another question.
20 Is this then standard practice then for the company or do they
21 have the ability and the right to come in and propose different
22 methodologies? Because to the extent that there is, you know,
23 quid pro quo here, to the extent that this is something -- To
24 me it seemed out of the ordinary. And I had thought it was a
25 methodology that we were imposing and that this was something

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1 new and a process that was different. To the extent that this
2 is something that has been applied in the past where we have
3 changed methodologies during a rate case, then there is
4 precedent for it.

5 MS. AMAYA: I think to answer that, it's going to take a
6 little bit because used and useful has been an evolving
7 creature and it hasn't been consistent. And I think different
8 utilities might come in with different approaches. For
9 example, the Commission has normally looked at used and useful
10 based on plant and lines, only two components in this rate
11 proceeding. And in SSU's previous rate proceeding, we're
12 looking at used and useful on a component by component basis,
13 which was a fairly new methodology at the time of the last rate
14 proceeding.

15 Going, the lots to lots is not a new methodology. What I
16 have found is that the Commission has done both methodologies,
17 both lots connected to lots available and ERCs connected to
18 lots available.

19 COMMISSIONER JOHNSON: Wait, then you just lost me again.
20 So, this alternative recommendation is something that we have
21 used in the past?

22 MS. AMAYA: Yes.

23 COMMISSIONER JOHNSON: And it is normal practice then for a
24 company, to the extent that one used and useful analysis was
25 applied in one case, perhaps in their next rate case they could

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1 come in and say that's not the methodology we should have
2 applied, we should have applied this methodology and in that
3 way changing the whole used and useful calculation?

4 MS. AMAYA: I don't think there is anything that would
5 preclude them from doing that. For example, they came in with
6 the hydraulic analysis methodology.

7 COMMISSIONER JOHNSON: Okay.

8 MR. WILLIS: Commissioner, if I could address that for a
9 minute. The utility and any party could come forth in a rate
10 case and propose a new methodology for anything, not just used
11 and useful. That's always been held that any party can do that
12 and it doesn't matter what the Commission proposed in the last
13 case, they're free to come forth and propose whatever they
14 desire to propose.

15 COMMISSIONER JOHNSON: And, in fact, are you suggesting
16 that in some cases, and perhaps you don't have to limit it to
17 used and useful but we are using this analysis, to the extent
18 that they do that, we have evaluated it and perhaps changed
19 our, what we once determined was used and useful and said,
20 well, no, under this new methodology that number has changed?

21 MR. WILLIS: That's correct. That's how regulation
22 evolves.

23 COMMISSIONER DEASON: Well, we just did it fifteen minutes
24 ago on issue 31. We changed the methodology.

25 MR. WILLIS: That's correct.

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1 COMMISSIONER DEASON: It just so happened in this situation
2 it went to the company's advantage. So what would have been
3 the situation if it had been policy to use the maximum day flow
4 and perhaps public counsel was coming in and saying, no, we
5 want to use five, the average of five highest because they're
6 anomalies out there, then would we be precluded from accepting
7 public counsel's position and saying, no, we agree with you but
8 because of administrative finality, we're stuck on using the
9 single maximum day because, otherwise, it would lower a
10 previous used and useful. I'd say no. We're free to make
11 these type of policy decisions in each and every case as they
12 come before us.

13 MS. AMAYA: There are no used and useful rules and I think
14 that's what leads to the different methodologies. The
15 utilities aren't prescribed a certain way of calculating used
16 and useful.

17 CHAIRMAN CLARK: Let me be more clear on my concern here
18 because I relate it back to what we do or I analogize it to
19 what we do in electric cases where we have a determination of
20 need and we allow a new plant to go in to rate base. Absent a
21 finding and make a determination at that time that it was a
22 prudent expense, I don't think that we can go back at a later
23 time and say using a different methodology it's no longer
24 prudent because we have to look at the facts and circumstances
25 at that time. Used and useful is an element of what goes into

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1 rate base.

2 MR. WILLIS: Commissioner, I draw a different analogy to
3 that. If you're dealing with something and trying to decide
4 whether it's prudent or not, you're trying to decide whether it
5 was appropriate to actually go out and build something of that
6 size at the time.

7 CHAIRMAN CLARK: Right.

8 MR. WILLIS: If you're looking at methodology, it's a
9 little different. It's a determination on how much of that
10 prudent asset you're going to include in this case and how best
11 to approach that.

12 CHAIRMAN CLARK: Then what you're suggesting to me is that
13 used and useful should be adjusted every rate case and what
14 happened before doesn't matter?

15 MR. WILLIS: No. What I'm saying is methodology is
16 different. I truly believe that methodology is different than
17 an error or a change related to the old used and useful
18 formula. I don't believe you should change used and useful.
19 If something happened as far as the utility customers conserved
20 and used and useful dropped using the same methodology, no, you
21 shouldn't.

22 CHAIRMAN CLARK: Which one are you supporting here?

23 MR. WILLIS: Well, I'm actually supporting 44. I'm
24 supporting for the recommendation in 44 because I sort of agree
25 with Commissioner Deason that I don't believe it goes to

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1 methodology.

2 CHAIRMAN CLARK: Well, what about 45?

3 MR. WILLIS: In 45 the alternate is the one I would
4 probably go with.

5 CHAIRMAN CLARK: I guess I just, I don't understand how
6 it's reconciled with 44 because 44 says, "Should an adjustment
7 be made" -- Well, wait a minute.

8 44 says, "If used and useful calculations in this rate
9 proceeding result in used and useful percentages lower than
10 those allowed in the previous case, which percentages should be
11 used?"

12 And the recommendation and what we voted on is there are
13 two circumstances under which you would change the percentages
14 to the lower percentages.

15 Now what's happening in 45 is by voting the alternative,
16 you've added to those circumstances under which you would
17 change it.

18 COMMISSIONER DEASON: Well, let me say this. I think
19 assumed within Issue 44 is using the same methodology, if used
20 and useful calculations result in different amounts, which do
21 you use. I think that's implicit in that. At least that's the
22 way I read the issue. And I did not read the recommendation to
23 be that these are the only situations in the whole universe of
24 things out there which would justify using a different used and
25 useful amount.

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1 COMMISSIONER KIESLING: And I concur with that. That's
2 where I think we have a difference over what we're reading into
3 44 because in your argument just now, Chairman Clark, you said,
4 you know, if it changes, then we have two scenarios that we
5 have to look to. And I don't think that what we've resolved in
6 44 is that there are two and only two.

7 CHAIRMAN CLARK: Well, but, I'm just looking at the issue.

8 COMMISSIONER KIESLING: Yeah.

9 CHAIRMAN CLARK: And it says --

10 MR. LOWE: And, Commissioners, our intent when we wrote
11 these issues, especially 44, was to box you in on those issues.

12 COMMISSIONER KIESLING: It was?

13 MR. LOWE: Yes, ma'am.

14 COMMISSIONER GARCIA: That's why we needed an alternative.

15 COMMISSIONER KIESLING: Tying the two together, you mean?

16 MR. LOWE: Yes, ma'am. That's why the --

17 COMMISSIONER KIESLING: So those were the only two ways?

18 MR. LOWE: -- primary on Issue No. 45 is consistent with
19 Issue 44; the alternate is not.

20 CHAIRMAN CLARK: Well, I brought this up with staff, when
21 we went through this and I pointed out to them that based on
22 the fact that they had an alternative in 45, they should have
23 had an alternative in 44.

24 COMMISSIONER GARCIA: Correct.

25 MR. LOWE: That's probably true, but the primary in 45 is

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1 consistent with what ya'll voted, what we wrote in Issue 44.

2 CHAIRMAN CLARK: The alternative is not.

3 MR. LOWE: But the alternative is not.

4 COMMISSIONER DEASON: That just shows how different people
5 can read issues differently because I interpreted it exactly
6 the opposite. Matter of fact, I was wondering why they're
7 recommending primary in 44 and not being consistent with their
8 recommendation in 45, but I said the alternate is consistent
9 with it, so I'm going to vote alternate.

10 COMMISSIONER KIESLING: I would suggest that maybe what we
11 need, since it was a unanimous passage on 44, is there to be
12 some vote to reconsider 44.

13 CHAIRMAN CLARK: Well, let's --

14 COMMISSIONER GARCIA: Well, can we just adjust what we
15 passed -- Well, you're right. We need to go back.

16 COMMISSIONER KIESLING: I would like to adjust.

17 COMMISSIONER GARCIA: I would like to reconsider.

18 CHAIRMAN CLARK: All right. Let's take up Issue 45 and
19 deal with 45 and then entertain a motion to reconsider 44.

20 COMMISSIONER KIESLING: Well, I already moved the alternate
21 on 45.

22 CHAIRMAN CLARK: All right. Was there a second?

23 COMMISSIONER DEASON: I believe I seconded that.

24 COMMISSIONER KIESLING: Yes, you did.

25 MS. AMAYA: Before you vote, could I make one correction:

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1 The schedules which show the maximum day demand and the average
2 five maximum day demand, when I initially set up these
3 schedules I had calculated peak hour as two times the average
4 five max day demand. That's misleading because that's not what
5 was voted on here today. And I would like to make a correction
6 to just ignore that line. The appropriate calculations have
7 been made where necessary. This line is extraneous information
8 and is not applicable.

9 CHAIRMAN CLARK: Okay. With that change --

10 COMMISSIONER JOHNSON: Let me ask one question just to be
11 abundantly clear and certain as to how this works. And I guess
12 I can address it to Mr. Willis.

13 Now, you've done several rate cases and with respect to
14 used and useful, help me understand what would happen. To the
15 extent that we were, a company came in for a rate case year one
16 and came back year five, and with respect -- and none of the
17 facts and circumstances had changed, but they wanted us to
18 consider a different methodology for the used and useful
19 calculation, you are saying that that's something that the
20 Commission does and in the past that we have taken into
21 consideration and perhaps made an adjustment based upon that?

22 MR. WILLIS: Of course.

23 CHAIRMAN CLARK: Have we ever lowered the percentages?
24 We've done it on many occasions where we've changed methodology
25 based on the utility coming forward and saying this is a better

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1 approach.

2 COMMISSIONER JOHNSON: Uh-huh. And it may, in that
3 instance, to the extent that there was a low used and useful
4 under one calculation and it would come out a higher used and
5 useful on the other calculation, even though you had the same
6 facts, that's something we would consider?

7 MR. WILLIS: I don't know that you want to consider the
8 outcome. The end result to me isn't a reason to do something.

9 COMMISSIONER JOHNSON: Sure.

10 MR. WILLIS: If you've determined that the methodology is
11 more appropriate and that that methodology, even though the end
12 result may end up in a higher or a lower outcome, if the
13 methodology truly is the right thing to do, that to me is the
14 determining factor, not the end result.

15 COMMISSIONER JOHNSON: Okay. Thanks.

16 CHAIRMAN CLARK: Have we ever lowered used and useful?

17 MR. LOWE: Oh, yes, ma'am.

18 CHAIRMAN CLARK: Based on what?

19 MR. CROUCH: When we look at the plant, and we used to
20 evaluate just distribution lines and plant, collection lines
21 and plant, for used and useful, we realized that sometimes
22 that's not consistent. So we went in and we started going by
23 component: storage tanks, high service pumps, et cetera, and
24 water. And whereas we may have given them 100% used and useful
25 in something, just overall plant in the last case, breaking it

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1 down into components, we could see where their storage tank is
2 only 80% used and useful. And so we have made adjustments.

3 CHAIRMAN CLARK: We have lowered overall percentages?

4 MR. LOWE: Yes, ma'am. We've lowered them, we've raised
5 them; we've done, you know, anything you want to describe as
6 far as used and useful from case to case. And that was part of
7 the intent of it.

8 And I said "boxed in" a minute ago and that was
9 inappropriate words. Part of our --

10 COMMISSIONER GARCIA: But you did.

11 MR. LOWE: Well, there is some of that intent there, but
12 part of what we're trying to do is establish a used and useful
13 policy that will eventually end up in a rule that we can, that
14 everybody will know the rules of the game for used and useful,
15 so that when a company files a case, that they'll know what to
16 file, they'll know what they're going to get based upon their
17 circumstances. But when the utility relies on used and useful
18 in one case and we come along in the next case and drastically
19 lower that, then all their budgeting and financial and what
20 they've told their banks and everything else as to how they
21 obtain their money, it's just gotten thrown out the window.
22 You keep the industry in a constant state of flux as far as
23 their ability to obtain capital. That's not the signal that we
24 need to be sending to the utilities.

25 CHAIRMAN CLARK: What cases have we done that in?

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1 MR. LOWE: Have we lowered used and useful?

2 CHAIRMAN CLARK: Uh-huh.

3 MR. LOWE: I can't give you a specific example off the top
4 of my head, but there are probably no telling how many of them
5 where it's been done.

6 CHAIRMAN CLARK: And how much did we lower it by? I mean,
7 I don't recall that.

8 MR. LOWE: In some cases it would be minor amounts, in some
9 cases it may be material amounts. It's been done a bunch of
10 times as to a specific case.

11 CHAIRMAN CLARK: And each time the staff has indicated to
12 us that this is a lower percentage than we have previously
13 done?

14 MR. LOWE: It would have been in the last few years. Prior
15 to that we may or may not have told you.

16 CHAIRMAN CLARK: And what was the basis for doing that?
17 Change in methodology? Mistakes?

18 MR. LOWE: We have had change in methodology. Just like
19 the example Mr. Crouch gave where we went to components as
20 opposed to just the two components, we went to many components.
21 And the fluctuation caused by that in some instances has
22 lowered the used and useful in certain plants. Some of them
23 it's raised it, but that's a methodology change. And once you
24 change the methodology, the used and useful, especially on a
25 company with this many --

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1 CHAIRMAN CLARK: What was your purpose then in suggesting
2 that we limit ourselves?

3 MR. LOWE: Because of what I just said about the end of it,
4 of the signal that we're sending out there to the utilities
5 that you invest in this plant, you get used to this return on
6 this amount of used and useful and then all of a sudden
7 somebody comes up with a new methodology and now you yank part
8 of it back away. Well, the company was dependent upon those
9 moneys when they went to the bank and borrowed money, as that's
10 part of their debt repayment or their payment to their
11 stockholders and that's how they obtain their funds and now you
12 just took it away in some future case and that company no
13 longer can rely on that, you've put them in a financial bind.

14 Unless there is -- What we were after is unless there was
15 an error, like the best one of those that comes to mind was a
16 flow meter was miscalibrated and we set a used and useful on
17 the data that came off that flow meter and in a subsequent case
18 we changed the used and useful based on an actual calibration
19 of that flow meter, then it seems to me the company made an
20 error. They were not calibrating their flow meter in a timely
21 manner and we relied on that data. That's an error. That's
22 the company's error and that's the company's fault, then we
23 ought to lower used and useful. They weren't being diligent in
24 their maintenance of their equipment. And in that case I think
25 that they should be penalized, not penalized, but their used

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1 and useful be lowered. But once they've started relying on a
2 certain amount of used and useful from this Commission, for us
3 to go back and drastically lower that used and useful, then
4 I've got a problem with that from a long-term financial
5 viability of the utility.

6 CHAIRMAN CLARK: There's been a motion on Issue 45 and a
7 second. All those in favor say aye?

8 COMMISSIONER GARCIA: Aye.

9 COMMISSIONER JOHNSON: Aye.

10 COMMISSIONER DEASON: Aye.

11 COMMISSIONER KIESLING: Aye.

12 CHAIRMAN CLARK: Opposed nay.

13 Nay.

14 I think we should go back to Issue 44.

15 MR. CROUCH: Could I make a suggestion then that we add a
16 phrase on Issue 44 that these are not the only situations that
17 might exist.

18 COMMISSIONER KIESLING: Well, I didn't see anywhere in it
19 that it said these were the only ones.

20 MR. CROUCH: No; I agree.

21 COMMISSIONER KIESLING: And so that's why -- I mean, to me,
22 that's --

23 MR. CROUCH: That was my intent when I wrote it, that these
24 were not the only. I could visualize three scenarios. There
25 could be many others.

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1 COMMISSIONER KIESLING: Well, then it was in that spirit
2 that I moved it. I guess my view, Madam Chairman, is that
3 since what Mr. Crouch is saying is consistent with the reason I
4 moved it and I believe the reason that Chairman Deason or
5 Commissioner Deason seconded it, that I'm not willing to be the
6 one that makes a motion for reconsideration.

7 COMMISSIONER GARCIA: Let me ask a question.

8 CHAIRMAN CLARK: Let me ask a question.

9 COMMISSIONER DEASON: Since we've already voted on 45 and
10 that is the substantive issue that affects this case, do we
11 even need to address 44 at this point?

12 COMMISSIONER JOHNSON: But we could in the order just make
13 it clear.

14 CHAIRMAN CLARK: No, and I think Commissioner Deason is
15 right; we ought not to do that.

16 COMMISSIONER JOHNSON: Okay. Good.

17 CHAIRMAN CLARK: I think we ought to just deal with what we
18 have to.

19 COMMISSIONER GARCIA: Do we still have to reconsider not to
20 vote for it?

21 CHAIRMAN CLARK: What we would do is move to reconsider
22 and --

23 COMMISSIONER JOHNSON: The vote.

24 CHAIRMAN CLARK: The vote, and then entertain a motion that
25 we not vote on 44 as not being necessary to dispose of this

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1 case.

2 COMMISSIONER DEASON: I don't have a problem with that, but
3 perhaps Commissioner Kiesling can enlighten why we don't want
4 to do that.

5 COMMISSIONER KIESLING: I can't think of any reason why we
6 don't want to do that.

7 CHAIRMAN CLARK: Is there a motion to reconsider the vote
8 on 44 ?

9 COMMISSIONER GARCIA: Yes.

10 CHAIRMAN CLARK: Without objection. Is there another
11 motion?

12 COMMISSIONER DEASON: I move that we simply take no action,
13 make no decision in regard to Issue 44; the substantive matter
14 has been addressed.

15 COMMISSIONER GARCIA: I'll second.

16 CHAIRMAN CLARK: Without objection, that motion is
17 approved.

18 Issue 46.

19 MR. WILLIS: Commissioners, before you go to Issue 46, I'd
20 just like to take a moment to let you know that this is Karen
21 Amaya's last agenda and, in fact, she has already taken
22 employment at another agency of the State and she is here out
23 of the graciousness of her heart because she really wanted to
24 attend this agenda.

25 MR. CROUCH: Even had to take personal leave to do it

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1 CHAIRMAN CLARK: Thank you for coming back, but I should
2 tell you we know where you're located.

3 MS. AMAYA: I hate to tell you I will be back.

4 CHAIRMAN CLARK: Thank you for coming back.

5 MS. WEBB: Commissioners, Issue 46 relates to the utility's
6 proposed adjustment to reverse depreciation taken on non-used
7 and useful.

8 COMMISSIONER KIESLING: I move it.

9 COMMISSIONER DEASON: Second.

10 CHAIRMAN CLARK: Questions?

11 Without objection Issue 46 is approved.

12 Issue 47.

13 COMMISSIONER KIESLING: I can move 47 also.

14 MS. WEBB: Okay. I would like to make one adjustment to
15 our recommendation statement at the beginning of the issue.
16 I'd like to add at the beginning, just for clarification, I
17 left out the part with regard to the utility's proposed
18 adjustment to accumulated depreciation, and we're going to make
19 a statement to that effect with the respective numbers for
20 water and wastewater.

21 COMMISSIONER DEASON: With that, I can move staff.

22 CHAIRMAN CLARK: Without objection, Issue 47 is approved.

23 MS. BINFORD: Commissioners, Issue 48 is, addresses the
24 imputation of CIAC on the ERCs included in the margin reserve.

25 There's a primary recommendation and an alternate

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1 recommendation. The primary recommendation is for the
2 facilities where a margin reserve is included in the used and
3 useful calculation, CIAC should be imputed as an offsetting
4 measure.

5 CHAIRMAN CLARK: Mr. Willis, didn't we -- Did we have a
6 discussion on this issue with respect to using average CIAC or
7 am I getting my issues mixed up?

8 MR. CROUCH: That's included in the alternative.

9 MR. WILLIS: Yes. We did actually have discussion on that
10 and it is included in the alternate recommendation.

11 COMMISSIONER JOHNSON: That's an alternative to the
12 alternative; right?

13 MR. CROUCH: Yes.

14 COMMISSIONER JOHNSON: Two different alternatives.

15 MR. CROUCH: A compromise within the alternative.

16 CHAIRMAN CLARK: Well, I guess -

17 COMMISSIONER DEASON: When you say average CIAC, you're
18 talking about over the margin reserve period determining what
19 would be the average balance of CIAC that would have been
20 collected during that period assuming growth materializes as
21 forecasted?

22 MR. CROUCH: That's correct. Instead of doing it as of day
23 one, when in effect that growth may not materialize and the
24 utility presented a strong argument saying that they, they lost
25 the opportunity to get that money period because the growth

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1 didn't materialize. And we set it as of day one.

2 In my alternative I'm saying do not impute CIAC but, if we
3 must, let's look towards averaging it out over the period of
4 time. And, here again, when we go to margin reserve in
5 December, I think this will be one of the arguments that the
6 utility will present.

7 CHAIRMAN CLARK: Well, and that was my question. While I
8 wasn't comfortable with the alternative recommendation in its
9 entirety, I saw merit to the notion of imputing CIAC on an
10 average, I guess it was an average basis; is that correct,
11 Mr. Willis? How do you do it to recognize you would receive it
12 over that period of time?

13 MR. WILLIS: To recognize, if you're using an 18-month
14 margin reserve, you just basically recognize that growth comes
15 on at equal levels over that period of time. And in essence
16 you'd be imputing half or somewhere close to that. It would be
17 an average.

18 CHAIRMAN CLARK: Does that make sense? Which makes more
19 sense in terms of what you would expect?

20 I understand the arguments that by imputing CIAC you in
21 effect do away with some of the margin of reserves. I think
22 they're arguments the other way, too, but what about taking
23 into account the timing of it?

24 MR. WILLIS: Well, if the Commission still wants to
25 continue imputing CIAC, I truly believe the averaging concept

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1 would be better because it does take into account that they're
2 not going to collect those contributions on day one, but the
3 plant is there on day one.

4 I think that in discussions we've also had I've told you
5 that it would be difficult to find probably a staff member who
6 still believes that imputation is still the correct thing to
7 do, but that has been the policy of the Commission for a while.
8 And that very issue is going to be workshopped very shortly.
9 And I'm not sure if this is the point in time in which you want
10 to change that, but the averaging concept to me would be a
11 better concept than full imputation.

12 COMMISSIONER DEASON: Well, let me say that I know it's
13 been a longstanding policy not to impute CIAC and we're going
14 to take a closer --

15 CHAIRMAN CLARK: No, to impute it.

16 COMMISSIONER DEASON: I'm sorry. Maybe that was a Freudian
17 slip. -- to impute CIAC and we're going to take a closer look
18 at that. But having listened to the testimony in this case, I
19 was concerned as a result of I believe it was Mr. Hartman's
20 testimony concerning economies of scale and the dilution that
21 imputation of CIAC has on the margin of reserve and a possible
22 negative impact on companies decisions as to whether they are
23 truly going to try to achieve economies of scale in their
24 planning and construction. And because of that testimony, I
25 started taking a very closer look at this situation.

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1 And I think that the averaging process makes sense, but,
2 having said that and having realized the discussion that we
3 have had over the last hour, I wouldn't want then, if that is
4 the decision of this Commission, that then that becomes the
5 vested right of the utility and some future Commission could
6 never then again come back and say, oh, we don't agree with
7 this non recognition of half of the imputed CIAC and we want to
8 change that policy.

9 I mean, this to me is another example of where the
10 Commission, as it is constituted today, should have the right
11 to change policies and the company doesn't have a vested right
12 that if a change in policy then goes against them that future
13 Commissions can't do that.

14 With that understanding, I think that, and given the
15 evidence that we have in this case, which is what we have to
16 base this decision on, I'm inclined to deviate from long-
17 standing Commission policy and to not impute the full amount of
18 CIAC, that is, the assumption that instantaneously you get the
19 full amount of CIAC associated with the margin of reserve, but
20 that you make the assumption that that CIAC would be collected
21 evenly throughout the margin of reserve period and that for
22 ease of calculation we simply impute half of the associated
23 CIAC.

24 I'm comfortable with that and I'm willing to move that, but
25 I certainly don't want to cut off any other discussion on the

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1 matter.

2 But it is a deviation from policy. Well, it's a strong
3 deviation from current Commission policy, but I think the
4 record in this case justifies it.

5 COMMISSIONER KIESLING: Let me go ahead and say I think
6 it's just fine to go ahead and move that, but I don't know that
7 I could support that because I would support the primary
8 recommendation recognizing that it's a big departure from what
9 we've been doing, but also -- Wait. No. Sorry.

10 I would move the alternate. That we not impute CIAC.
11 Which is which? Alternate?

12 MR. WILLIS: The alternate is that you do not impute CIAC.

13 COMMISSIONER JOHNSON: The alternate has both of them.

14 COMMISSIONER KIESLING: Yeah, I think --

15 CHAIRMAN CLARK: No, if you don't impute it, you don't have
16 to average it.

17 COMMISSIONER KIESLING: Right.

18 COMMISSIONER JOHNSON: Well, the alternate says don't
19 impute it, but if you do, then average it.

20 COMMISSIONER KIESLING: Right. And I go with don't impute
21 it, because I think that it completely dilutes what we do
22 margin of reserve for. And, for example, on the wastewater
23 ones where we didn't go with staff on 36 months but said 18
24 months is okay, if we even impute half of it, the average of
25 it, that means really 9 months.

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1 And I think that if we're going to continue to impute CIAC,
2 that we should, you know, recognize that all we're doing is
3 counteracting the margin of reserve and we're really not doing
4 anything that benefits the management and the financial
5 stability of the utility.

6 COMMISSIONER DEASON: Let me make one observation. Your
7 example of 18 months and then 9 months, that would only be in
8 the case when 100% of the capital expenditures is going to be
9 recovered through CIAC. And I don't think that's normally the
10 case.

11 MR. WILLIS: Commissioner, in most of the cases that I've
12 seen in the past, we usually wipe out the margin reserve with
13 the contributions that are imputed.

14 In this case, there may be effects on some. There may not
15 be effects on others. Some of their facilities do not have
16 service availability charges this time. There will be no
17 imputation. It really isn't that big of an impact in this case
18 as far as the imputation goes.

19 COMMISSIONER JOHNSON: I'm sorry; say that again.

20 MS. MERCHANT: I've got the numbers precisely and I went
21 and calculated that. There are 17. And when I count
22 facilities, I'm counting water and/or wastewater together. So
23 there's 99 total different names on my list. Seventeen of
24 those have an imputation of CIAC. For water, it's 494,000 and
25 for wastewater it's 602,000, for a total of about 1,100,000.

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1 So, that's, what, one-fifth; one-fifth of all the systems
2 have the capability of having an imputation of CIAC on the
3 margin reserve.

4 COMMISSIONER JOHNSON: And if we -- Say those numbers
5 again, Trish, if we did not impute. What were the numbers that
6 you were giving?

7 MS. MERCHANT: If you impute CIAC, the imputation of the
8 CIAC on the margin reserve for water is almost 500,000 and it's
9 600,000 for wastewater.

10 MR. WILLIS: And, of course, the magnitude is you'd have to
11 look at each facility.

12 COMMISSIONER JOHNSON: Individual systems.

13 MR. WILLIS: Right, because it may be material to one
14 system but not very material to another.

15 COMMISSIONER JOHNSON: Yeah.

16 CHAIRMAN CLARK: Let me just indicate --

17 COMMISSIONER DEASON: Back to your numbers, all right, the
18 CIAC imputation for water is basically 500,000 and for
19 wastewater 600,000. What is the margin of reserve that is
20 added to rate base for water and what is the margin of reserve
21 in terms of rate base dollars added for sewer?

22 MS. MERCHANT: See, I can't tell you that because that's a
23 much more difficult calculation for me to do. The situation
24 that Southern States is in right now is if they don't have a
25 margin reserve, you don't impute CIAC. If they do have a

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1 margin reserve but they don't have a service availability
2 charge, then you can't impute CIAC. So that the second
3 scenario takes out the majority of the plants.

4 And then the third is if you have margin reserve and you
5 have a service availability, then you limit it to the amount of
6 plant that's included in the margin reserve, so you're never
7 going to go over the amount of --

8 COMMISSIONER DEASON: I guess the point I'm trying to make
9 is that in this case when you impute CIAC, you don't 100%
10 negate the effect of the margin reserve.

11 MS. MERCHANT: Not for all the plants.

12 COMMISSIONER DEASON: Okay. Right.

13 MS. MERCHANT: And it's separated between treatment and
14 facility and effluent disposal. So you may have a margin
15 reserve on treatment plant and you may not have one on lines
16 and you actually may have a charge on line but not one on
17 treatment plant. So, it depends on the circumstances for each
18 individual plant, but the majority of the --

19 COMMISSIONER DEASON: But we know it's not 100%?

20 MS. MERCHANT: That's correct.

21 COMMISSIONER DEASON: We know that the rate base effect of
22 margin of reserve for water is something in excess of 500,000;
23 how much, we don't know. And it is in excess of 600,000 for
24 sewer because you just indicated that in some situations there
25 would be no imputation whatsoever but there would be rate base.

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1 dollars associated with the margin of reserve.

2 MS. MERCHANT: That's correct.

3 CHAIRMAN CLARK: I see this as different than change in
4 methodology. I don't see it's a change in methodology because
5 we do consider it. I think we need to look at the broad
6 picture of margin of reserves as we have indicated that we're
7 going to do in rulemaking in the change to 36 months. We are
8 uncomfortable with changing that. And I think going along with
9 that is the idea of do you or do you not impute CIAC. I'd like
10 to look at that all at once.

11 But I have been persuaded by the notion that even if you
12 include it, if you want to continue that policy, you would
13 average it because you would recognize that it would come in
14 over time. And that's why I'm comfortable with doing that. I
15 see it as being different than what we did with respect to used
16 and useful because a change in methodology, where you go back
17 and apply that methodology has an impact on rate base and what
18 you have recognized as the utility's investment on which
19 they're allowed to earn a return.

20 I think you can change the methodology on a going forward
21 basis and make those adjustments, but I think for the reasons
22 Mr. Lowe outlined and I think it may amount to a confiscation
23 of property, that you will have difficulties in the stability
24 of, the long-term stability of this industry and how people
25 view it as an investment and that in the long run that's a poor

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1 policy.

2 COMMISSIONER DEASON: Well, let me say that I certainly
3 respect your opinion but I wholeheartedly disagree with it. I
4 think this is a prime example of a change in policy that we are
5 doing here and that this is a change in methodology. In this
6 situation it just works to the company's advantage, but that it
7 is the type situation where this Commission should have the
8 discretion to make these type changes if we think that it is
9 the appropriate action to take.

10 CHAIRMAN CLARK: But as I under --

11 COMMISSIONER DEASON: And I don't see where this is
12 different from the change in the policy of calculating used and
13 useful. This will affect the amount of investment dollars
14 which goes into rate base, just like the decision on the used
15 and useful. In fact, this is directly related to used and
16 useful in my opinion.

17 CHAIRMAN CLARK: But it won't take away dollars previously
18 allowed in rate base. That's my only -- That's my concern.

19 COMMISSIONER DEASON: Well, now are you saying then that if
20 we do this, that in the future, if we're going to, if we're
21 going to accept the position of averaging and we're only going
22 to impute half of the CIAC, that in the future this Commission
23 would be precluded and could not make the policy decision to
24 impute 100% CIAC?

25 CHAIRMAN CLARK: No, that's not what I'm saying. That's

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1 not what I'm saying. I'm saying you can change your policy on
2 a going forward basis. I see this as different because what we
3 have said in the change in methodology with respect to the used
4 and useful, we are saying what we previously found appropriate
5 to include in rate base is no longer appropriate to include in
6 rate base. And that's what I see is the difference.

7 Is there a motion on Issue 48?

8 COMMISSIONER JOHNSON: I have another question. Do we have
9 any information or is there any way that we could determine
10 what impact this could possibly have on rates? Is that too
11 specific for us to -- Because I recognize this as a change in
12 policy.

13 MS. MERCHANT: I can't possibly tell you how it would
14 impact rates because that was -- I could tell you how it could
15 impact revenues, because ya'll aren't doing rates at this
16 point. I could give you on an individual, that's a rate base
17 effect. I could multiply that times the rate of return and
18 give you a revenue number on a total, for all these totals. If
19 you wanted to do it separately, I'd have to take some time and
20 do that.

21 COMMISSIONER JOHNSON: My only concern, and I don't know if
22 it's something that we could resolve at this point in time, but
23 personally I know we have the proceeding that we will conduct
24 in December that will address these particular issues. One of
25 the things, when I'm making a decision, particularly as it

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1 relates to the impact on customers, I always find some comfort
2 in knowing what that will be as we apply a particular policy.

3 Now, Trish, the numbers that you gave me, what do those
4 relate to?

5 MS. MERCHANT: That's the amount of CIAC that has been
6 imputed for those facilities where the circumstances warrant,
7 that I was giving you the situations that would have to occur
8 before you would impute CIAC: Did they have a margin reserve?

9 COMMISSIONER JOHNSON: That did have margin reserve.

10 MS. MERCHANT: If they had a margin reserve, if they had a
11 charge, and then you would compare it to the limit, you would
12 max it out at the amount of plant included in the margin
13 reserve.

14 COMMISSIONER JOHNSON: Okay. And if we went with the
15 average formula, we would take these numbers, the numbers would
16 be the same, they would just be averaged out?

17 MS. MERCHANT: Just divide it by two.

18 COMMISSIONER JOHNSON: Okay.

19 MS. MERCHANT: I assumed that was the methodology, that
20 they were -- That's the only reasonable way I could think of
21 it.

22 COMMISSIONER JOHNSON: What was it averaged over?

23 MR. WILLIS: Commissioner Johnson, just calculating it
24 through my head, which hopefully is somewhere near close -- I
25 think not my head, but the calculation -- I think it would be

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1 about, right around 200 to \$210,000 in revenue impact.

2 MS. MERCHANT: I came up with 175.

3 MR. WILLIS: So we're close.

4 COMMISSIONER KIESLING: That's pretty close.

5 COMMISSIONER DEASON: That's the impact of imputing half?

6 MR. WILLIS: No, that's the impact -- She asked what the
7 impact would be on revenues.

8 COMMISSIONER JOHNSON: On revenues, yeah.

9 MR. WILLIS: Of the implementation itself and that's
10 basically it. That would be removal --

11 COMMISSIONER DEASON: Total reduction in current
12 recommended revenue requirements would be in the neighborhood
13 of 200,000?

14 MR. WILLIS: Right.

15 COMMISSIONER DEASON: So, if you imputed half, it would be
16 about 100,000?

17 MS. MERCHANT: A hundred thousand.

18 MR. WILLIS: That's taking into account the rate of return
19 that you have removed from rate base, plus depreciation that
20 would be getting.

21 CHAIRMAN CLARK: Do we have a motion on Issue 48?

22 COMMISSIONER DEASON: I thought Commissioner Kiesling moved
23 it.

24 COMMISSIONER KIESLING: No.

25 COMMISSIONER DEASON: I'm sorry. You didn't make a motion?

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1 COMMISSIONER KIESLING: No, I didn't because I wanted to
2 not impute any CIAC and to the extent that the alternate rec
3 has two alternates in it, I don't think mine is going to be the
4 prevailing one.

5 COMMISSIONER DEASON: Well, how is there two alternatives
6 within the alternative? Explain that.

7 COMMISSIONER KIESLING: Well, I believe in the body of the
8 rec it says that staff recommends that CIAC not be imputed, but
9 if we decide to impute some then go for the average. And
10 that's contained in the body of the rec.

11 COMMISSIONER JOHNSON: So, in fact, the average is not
12 being recommended. It would have to be a motion from a
13 Commissioner to accept that particular proposition.

14 COMMISSIONER KIESLING: Right.

15 COMMISSIONER DEASON: Well, I don't know if it's primary or
16 alternative: I am moving that the Commission impute CIAC
17 associated with margin of reserve, but under the assumption
18 that it would be collected pro rata over the life, that we only
19 impute half of the associated CIAC for the given margin of
20 reserve.

21 CHAIRMAN CLARK: Is there a second?

22 COMMISSIONER JOHNSON: No, I can second that motion. And
23 I'm seconding it based upon several things. I think
24 Commissioner Deason is right with respect to the evidence that
25 was presented in the record. And to the extent that we change

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1 our policy, this looked like a good set of facts.

2 The one issue that concerned me was the revenue impact.
3 And to the extent that staff is close and we are averaging, I
4 find some comfort in that and in that policy in applying this
5 methodology.

6 CHAIRMAN CLARK: There's been a motion and a second. All
7 those in favor say aye.

8 Aye.

9 COMMISSIONER GARCIA: Aye.

10 COMMISSIONER JOHNSON: Aye.

11 COMMISSIONER DEASON: Aye.

12 CHAIRMAN CLARK: Opposed nay.

13 COMMISSIONER KIESLING: Nay.

14 CHAIRMAN CLARK: All right. It's just been pointed out to
15 me that we've been at this for two hours. We'll take a break
16 until 3:30 and we'll come back on item 49.

17 (Brief recess.)

18 CHAIRMAN CLARK: We'll call the agenda back to order.

19 Item -- Issue 49.

20 MS. WEBB: Commissioners, Issue 49 addresses whether the
21 Commission should impute CIAC associated with those assets
22 constructed by Lehigh Corporation.

23 Both staff and utility agree that no adjustment should be
24 made.

25 At this time we would like to make one minor correction to

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1 our recommendation. On page 216, there's only one paragraph on
2 that page. About four or five lines down, the sentence
3 beginning with "likewise." It ends about three lines later.
4 That entire sentence should be deleted and it will not be
5 included in the final order.

6 We are prepared to continue on if you have any questions.

7 CHAIRMAN CLARK: Questions, Commissioners?

8 COMMISSIONER KIESLING: I move staff.

9 COMMISSIONER GARCIA: Second.

10 CHAIRMAN CLARK: Without objection, Issue 49 is approved.

11 Issue 50.

12 COMMISSIONER GARCIA: Move staff.

13 COMMISSIONER KIESLING: Second.

14 CHAIRMAN CLARK: Without objection, Issue 50 is approved.

15 Issue 51.

16 MS. WEBB: 51 addresses whether CIAC should be increased
17 to reflect the cost share funds for the Marco Island ASR
18 project.

19 Staff recommends that the Commission should increase CIAC
20 by that dollar amount of those funds.

21 CHAIRMAN CLARK: Questions?

22 COMMISSIONER KIESLING: Move it.

23 CHAIRMAN CLARK: Without objection, Issue 51 is approved.

24 Issue 52 is stipulated.

25 Issue 53.

1 MS. KAPROTH: Issue 53 addresses whether the Commission
2 should recognize any negative acquisition adjustment in rate
3 base for facilities purchased at less than book value.

4 Staff recommends that no adjustments are necessary.

5 CHAIRMAN CLARK: Questions, Commissioners?

6 COMMISSIONER KIESLING: I move staff.

7 CHAIRMAN CLARK: Are you ready?

8 COMMISSIONER DEASON: I'm not going to prolong the
9 discussion here, but I will be voting in the minority it
10 appears.

11 CHAIRMAN CLARK: All those in favor say aye?

12 Aye.

13 COMMISSIONER GARCIA: Aye.

14 COMMISSIONER JOHNSON: Aye.

15 COMMISSIONER KIESLING: Aye.

16 CHAIRMAN CLARK: Opposed nay.

17 COMMISSIONER DEASON: Nay.

18 CHAIRMAN CLARK: Issue 54 is stipulated.

19 Issue 55 was moved to 86.

20 COMMISSIONER KIESLING: It was actually moved, yes.

21 CHAIRMAN CLARK: Issue 56.

22 MS. KAPROTH: Commissioners, Issue 56 is staff's
23 recommendation to reduce total company working capital to
24 account for overstated preliminary survey and investigation
25 charges.

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1 COMMISSIONER KIESLING: Move it.

2 CHAIRMAN CLARK: Without objection, Issue 56 is approved.

3 Issue 57 was dropped.

4 Issue 58.

5 MS. JEANNE CLARK: Commissioners, Issue 58 is staff's
6 recommendation to reduce working capital and expenses in order
7 to reflect reduced costs associated with Keystone Heights
8 aquifer performance testing.

9 CHAIRMAN CLARK: Questions, Commissioners?

10 COMMISSIONER KIESLING: I can move it.

11 CHAIRMAN CLARK: Without objection, Issue 58 is approved.

12 Issue 59.

13 COMMISSIONER KIESLING: I can move that one.

14 CHAIRMAN CLARK: Without objection, Issue 59 is approved.

15 60 is a stipulation.

16 61.

17 COMMISSIONER KIESLING: I can move that one.

18 CHAIRMAN CLARK: Without objection, Issue 61 is approved.

19 Issue --

20 MS. JEANNE CLARK: Commissioners, Issue 61 is a fallout

21 issue.

22 CHAIRMAN CLARK: Right. Okay.

23 COMMISSIONER DEASON: It could be impacted by other

24 decisions.

25 COMMISSIONER KIESLING: So the dollar amount that's in the

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1 rec now may not necessarily be the final total dollar amount,
2 but theoretically we understand the ballpark.

3 MS. JEANNE CLARK: Correct. I just wanted to point that
4 out.

5 CHAIRMAN CLARK: Issue 62.

6 MS. MONIZ: Commissioners, in Issue 62 staff is
7 recommending that the costs related to the failed attempts to
8 require a raw water source for the Marco Island, for Marco
9 Island be allowed, but amortized over 25 years.

10 CHAIRMAN CLARK: Questions, Commissioners?

11 COMMISSIONER KIESLING: I move it.

12 COMMISSIONER DEASON: Well, I have a question.

13 COMMISSIONER KIESLING: Okay.

14 COMMISSIONER DEASON: If we make the assumption that these
15 costs are appropriate, why is it that the costs are being
16 delayed until this rate case to begin the amortization as
17 opposed to beginning amortization at the time the costs were
18 incurred. Or, in some cases, as some parties represent, that
19 they were costs of a nature that should have been expensed in
20 the year that they were incurred.

21 MS. MONIZ: There's testimony that the utility was waiting
22 until they were able to secure a raw water source and that was
23 not until 1995. And that, that's the main reason for not
24 starting the amortization until '96.

25 COMMISSIONER DEASON: Do we have the information to make

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1 the adjustment to begin amortization on a five-year period
2 beginning with the first year costs were incurred?

3 MS. MONIZ: So you want to amortize it over five years?

4 COMMISSIONER DEASON: Amortize it over five years beginning
5 with the first year costs were incurred.

6 MS. MONIZ: Well, the costs are different for each. You
7 know, it varies over -- I think they started in '92 and some
8 went through '95 and some, you know, were just for like '92,
9 '93. So, it's different for all the -- We probably have the
10 information, but I'm not sure if we have the breakdown for
11 every, you know, every cost, when it started and when it ended.

12 COMMISSIONER DEASON: Commissioners, I'm concerned that
13 these costs were delayed for recovery to put in a rate
14 proceeding to begin amortization. And it appears to me that
15 normal procedure would be such expenses, if they are not normal
16 recurring, it's common Commission practice to allow the
17 amortization over a five-year period. And I see no reason to
18 delay that amortization to the beginning of a rate proceeding.
19 The amortization should begin in the period in which the costs
20 were incurred.

21 Therefore, I would oppose staff's recommendation. I would
22 propose that the amortization be on a five-year period
23 beginning with the first year that the costs were incurred.
24 And what impact it has on this rate proceeding, I don't know,
25 because staff's recommendation is a 25-year amortization, which

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1 minimizes the impact on this particular rate case, but there is
2 going to be a recurring impact on future rate cases for the
3 next 25 years. I think these costs are for projects which
4 while the costs may have been prudently incurred were for
5 projects which never materialized for one reason or another and
6 these are the type costs which need to be gotten off of this
7 company's books, so that it is not continually burdening the
8 customers and that it is appropriate to allow five-year
9 amortization beginning with the first year that costs were
10 incurred, not delaying recovery until the first year of a test
11 year of a rate proceeding.

12 MS. MONIZ: Would you want to begin with like if they
13 started in '92, begin in that year and amortize all the costs,
14 even though some of them didn't, were not incurred until '95?

15 MS. MERCHANT: I think if you were going to do that, I
16 think you would have to start amortizing at the time that the
17 costs stopped incurring, when they decided to abandon the
18 project and they went away from it. That would be the point in
19 time. You wouldn't start it when they first started incurring
20 the charges.

21 COMMISSIONER DEASON: I think you're correct. I guess what
22 I'm trying to say is that at the time it's determined that that
23 project was completed in the sense that it was not going to be
24 pursued any further, from that point forward amortization
25 should begin.

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1 MS. MONIZ: And most of these, that did happen on most of
2 them in '95. A few were '94, but I think the majority of them
3 were '95.

4 CHAIRMAN CLARK: Let me ask a question. If you had, if
5 they had come to fruition, if they had in fact been the source
6 that was used, we would have put them into the land.

7 MS. MERCHANT: Rate base.

8 CHAIRMAN CLARK: Land. But it's appropriate if it's
9 abandoned, at the point you know it's abandoned, then you take
10 the costs and you amortize them over the five years.

11 MS. MONIZ: If it's prudent and we believe that the costs
12 were prudent because we were trying to find the cheapest source
13 or the best source.

14 CHAIRMAN CLARK: So, when would the amortization begin?

15 MS. MERCHANT: Ideally it should begin at the following
16 year or I guess if you closed your books like at the end, like
17 in December --

18 CHAIRMAN CLARK: In this case which year would it start?

19 MS. MONIZ: It would probably be '96 because I think, I
20 believe that the Collier property did not, they didn't stop
21 incurring costs until '95. I'm not -- I would have to check on
22 that. I'm not sure.

23 MS. MERCHANT: If the costs stopped being incurred in 1995,
24 it would be appropriate to start the amortization in 1996. If
25 it stopped, if it ceased in 1994, then you should start

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1 amortizing it in 1995.

2 CHAIRMAN CLARK: Because you know you're not going to go
3 through with that --

4 MS. MERCHANT: That's correct.

5 CHAIRMAN CLARK: -- and you ought to begin writing it off
6 your books.

7 MS. MERCHANT: Right. And I certainly don't believe it's
8 appropriate for the company to hold on to it until they have a
9 rate case. And I know that we had that issue in some other
10 deferred debits that you just previously voted on.

11 COMMISSIONER DEASON: Well, is it your opinion these costs
12 were held on until the rate proceeding or is it your opinion
13 that it was not?

14 MS. MERCHANT: Honestly, we'll have to check on the date,
15 but I think that most of these they abandoned, substantially
16 abandoned these projects in 1995, and should be amortized in
17 1996. We can certainly check on that and get back with you.

18 MS. MONIZ: We don't believe it was an intent of the
19 utility to -- It doesn't appear to be that they held on to it
20 until a rate case. I think it just happened that way.

21 COMMISSIONER DEASON: Well, Commissioners, what we need to
22 realize is that it minimizes the impact on this rate case to do
23 it over 25 years, but you're going to have those costs
24 burdening the customers and the unamortized balance is going to
25 be in rate base if you make the determination that these costs

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1 were prudently incurred. Seems to me that is a pretty heavy
2 burden on the long term on the customers. It may be a little
3 bit of a heavy burden on the customers in the immediate case,
4 but it seems to me these are the type costs which don't need to
5 be on the company's books for 25 years.

6 CHAIRMAN CLARK: And I understood your rationale was just
7 that it should be similar to whatever long-term source -- It
8 related to securing a long-term source. While it wasn't this
9 particular source, it makes sense to include it in that effort
10 and that was the only reason for your 25 and you don't have an
11 objection to a shorter amortization?

12 MS. MERCHANT: Well, the rule says you can use five -- The
13 rule is five years unless a shorter or longer period can be
14 justified.

15 CHAIRMAN CLARK: What does the rule relate to?

16 MS. MERCHANT: If you have non recurring costs, the
17 amortization period to be used is five years unless, and these
18 are non recurring costs.

19 CHAIRMAN CLARK: We can either characterize them as non
20 recurring costs or costs associated with acquisition of the
21 land, in which case you would --

22 MS. MERCHANT: You can't call it --

23 CHAIRMAN CLARK: Wasn't that your rationale for making it
24 25?

25 MS. MONIZ: They were failed attempts, the land, it never

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1 materialized; so they cannot be associated with the land costs.

2 MS. MERCHANT: Right, you can't call it land.

3 CHAIRMAN CLARK: So then why are you suggesting 25 years?

4 MS. MERCHANT: Closer ties to the life. Well, land really
5 is perpetual, but it's a long-term asset. It would have been a
6 long-term asset.

7 CHAIRMAN CLARK: I read your rationale as sort of being
8 that -- This is in connection with acquiring a long-term
9 source. It wasn't this particular source; we acquired another
10 one, we'll just spread it out at the same period of time. But
11 I think it is correct, it continues to have an impact and
12 it's -- I think it could be treated either way.

13 MS. MERCHANT: It certainly can. You have that
14 availability in the record.

15 COMMISSIONER DEASON: Commissioners, it's a judgment call.
16 And the problem I'm having is that these are projects which did
17 not go through to fruition for whatever reason but we're
18 treating them as if they're basically a project of a long-term
19 nature. It seems to me that these are the type costs which do
20 not need to be burdening the company's books for a 25-year
21 period. That's my viewpoint.

22 Now, I understand another viewpoint is that these are
23 capital-related items and that these were items that would have
24 resulted in capital items if they had been carried forth to
25 fruition and that the period of time associated with that, had

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1 they gone through to fruition, would have been 25 years. And I
2 don't know what the impact is. I don't know if staff has done
3 the calculation. It most probably is going to increase revenue
4 requirements for this case --

5 MS. MERCHANT: It will.

6 COMMISSIONER DEASON: -- because you're doing it on a five-
7 year amortization as opposed to 25, but you're going to be
8 minimizing the impact on customers in the long term and
9 minimizing the working capital effect of the unamortized
10 balance associated with that.

11 MR. WILLIS: Commissioners, I think the impact can be shown
12 on page 254 and it would increase amortization expense by
13 \$239,000, because I believe that was the utility's request was
14 to amortize this over five years.

15 COMMISSIONER DEASON: I'm sorry. What, Marshall?

16 MR. WILLIS: It would increase the annual amortization
17 or --

18 MS. MONIZ: Test year expenses by 239.

19 MR. WILLIS: Test year expenses by \$239,341.

20 MS. MONIZ: Marco Island. It's on page 254 at the bottom.
21 But the utility asks for five; that's what they included in the
22 MFRs was five years.

23 COMMISSIONER DEASON: So it is a very significant impact on
24 this case. The question is do we want to swallow that pill now
25 and not have this hanging on the customers' heads for 25 years,

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1 since these were projects which never went through to fruition?

2 Now, I would want to make it clear that my position would
3 be to begin the amortization beginning at the time that the
4 project was canceled.

5 MS. MONIZ: Right. And some of them were cancelled, I
6 believe they were in '94.

7 COMMISSIONER DEASON: Which you would already go at -- That
8 would already be at least one or two years' amortization before
9 we get to the '96 test year, but it would still be that full
10 amount in this test year upon which you're basing rates, but
11 hopefully by the time the next rate case comes around
12 everything will be fully amortized and be off the books.

13 That's the dilemma, Commissioners. I want to make it fully
14 clear. It would be increasing revenue requirements.

15 CHAIRMAN CLARK: So, what would be included in the rates?

16 MS. MONIZ: Excuse me?

17 CHAIRMAN CLARK: What would be included in the rates? How
18 much would be included in rates?

19 MS. MONIZ: It would increase revenues by 239,000 for Marco
20 Island.

21 MS. MERCHANT: And then the deferred debit would be
22 reduced, which is in rate base. And then I was just looking
23 through one of them, the Wellfield ended in 1993, but all
24 parties agreed to remove that. The City of Naples ended in
25 December of '94. So, that should have been started in 1995.

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1 The Dude property finished in 1994.

2 MS. MONIZ: I believe the Collier was '95, but that was
3 only \$60,000.

4 MS. MERCHANT: And Collier was 1995.

5 COMMISSIONER KIESLING: I want to be sure that I'm clear.
6 I had thought that for some of the ones you just mentioned for
7 December of '94, that that was the period in which they
8 reported having incurred expenses but the actual decision to
9 abandon it did not occur until '95.

10 MS. MONIZ: I think securing the new property, the Collier
11 property, that they actually acquired was not until '95.

12 COMMISSIONER KIESLING: Yeah.

13 MS. MONIZ: And that was their rationale for waiting until
14 '96.

15 COMMISSIONER DEASON: Well, see, I don't agree with the
16 rationale that you keep all of these costs in abeyance until
17 you determine what the final resolution is going to be. Once
18 you've incurred those dollars and you know you're not going to
19 pursue that alternative any more and that project is closed
20 out, amortization should begin and probably begin the very next
21 month, one sixtieth.

22 MS. MONIZ: I think the majority of the money was in
23 '94-'95. I think there was a very minor amount.

24 COMMISSIONER DEASON: Do we have any -- Marshall, do we
25 have any standard procedures that we issue, accounting

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1 bulletins or whatever, concerning these type items and how they
2 should be accounted for?

3 MR. WILLIS: No, Commissioner, we do not. We do not have
4 any kind of staff bulletin out there that describes when
5 amortization of an expense should occur. That usually is left
6 up to the Commission. We have had some utilities who have held
7 back and tried to have those amortized as of a rate case
8 because of the extraordinary nature of those costs. And in
9 those cases, I can only think of a few, and I think that
10 amortization, staff recommendation, I think the Commission went
11 with was to amortize from the point upon which --

12 COMMISSIONER DEASON: I'm sorry. Was to do what?

13 MR. WILLIS: I believe the amortization in those cases
14 started at the point in which the item basically was determined
15 that it should be amortized.

16 COMMISSIONER DEASON: At the point the project was
17 cancelled?

18 MR. WILLIS: Basically the project close out date.

19 COMMISSIONER DEASON: Sorry?

20 MR. WILLIS: Basically the project closeout date.

21 COMMISSIONER DEASON: Do you agree that's proper
22 accounting, that that should be done that way?

23 MR. WILLIS: I believe that's true. I don't believe that
24 you should be holding things forward to rate case. And there
25 are several items in this case that you will find where they've

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1 asked for that.

2 COMMISSIONER DEASON: And it's a matter of judgment as to
3 where -- Five years is the normal rule but for some reasons it
4 could be shortened or lengthened, but normally five years is
5 what we --

6 MR. WILLIS: That's correct. We went ahead and codified
7 that in a rule and basically said five years is the normal
8 practice for amortization unless circumstances would dictate
9 otherwise. And a circumstance that I could think of would be
10 the impact upon the ratepayers. If you have an extremely heavy
11 amortization of costs, you certainly wouldn't want to put that
12 over five years and burden the ratepayers for five years with
13 astronomical rates, especially when it might double the rates.

14 COMMISSIONER DEASON: Now, if you began the amortization
15 earlier, that is, following project termination, the
16 unamortized balance which is rate base would be less than
17 what's shown on this schedule; wouldn't it?

18 MR. WILLIS: That's correct.

19 MS. MONIZ: But on this you probably wouldn't have but one
20 year and I'm not sure what that amount is.

21 COMMISSIONER DEASON: What you would do is for your
22 adjustment you would include the past amortizations plus the
23 test year amortization; would you not?

24 MS. MERCHANT: That's correct.

25 COMMISSIONER DEASON: Well, Commissioners, I'm just

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1 throwing it out as an alternative.

2 CHAIRMAN CLARK: Let me ask you a question. If we do go to
3 the longer one, is there -- Suppose later on we decide that
4 they should write it off sooner; can we do that? I mean, I
5 assume we'd have to do a rate base, a rate case, but --

6 MR. WILLIS: It would have to be done during a rate case.
7 If at some point in time you decide the write off should be
8 quicker, you could take the unamortized balance and amortize it
9 over a shorter period of time at that point. At that point
10 you'd still be offering full recovery and that would be the
11 point there would be confiscation of that particular deferred
12 debit and not allowing them a return on it and recovery of it.

13 COMMISSIONER KIESLING: Let me -- I may have missed it just
14 then and I'm sorry that I had a call, but if we were to agree
15 that they acted improperly in holding it until a rate case and
16 we agree that we wanted to amortize it over five years, what
17 would that actually do in reality? Would the part that should
18 have been amortized in '94 just be gone?

19 MR. WILLIS: That's correct.

20 COMMISSIONER KIESLING: I mean, what happens?

21 MR. WILLIS: If we determine that a portion of it should
22 have been included in '94 and '95, that portion will be gone.
23 It should have already been expensed. What you will be left
24 with would be the recovery of the remaining amount in this rate
25 case.

10649

1 MS. MONIZ: It would be removed from rate base; the
2 expenses stay the same.

3 COMMISSIONER DEASON: The unamortized balance would be
4 reduced for prior period's amortization.

5 MR. WILLIS: That's correct.

6 MS. MERCHANT: And the recovery would be gone. I think
7 that's where you're coming from.

8 COMMISSIONER KIESLING: Yes.

9 MS. MERCHANT: The recovery would be lost for that year.

10 COMMISSIONER KIESLING: But the recovery would not just be
11 lost, it also would have been all taken out of rate base?

12 MS. MERCHANT: That one year, or whatever period of time.

13 COMMISSIONER KIESLING: Well, I certainly withdraw the
14 motion that I made when we started this item.

15 COMMISSIONER JOHNSON: What motion was that?

16 CHAIRMAN CLARK: What was that?

17 COMMISSIONER KIESLING: I moved staff, but now I'm having
18 the similar thoughts about the five years and whether holding
19 it that long was prudent.

20 CHAIRMAN CLARK: I think that it's still going to be a
21 problem in terms of, even if they, if we have it done at the
22 appropriate moment, that there is still going to be a larger
23 amount in rate base that if we --

24 COMMISSIONER DEASON: Not in rate base.

25 CHAIRMAN CLARK: No, no. The shorter amortization makes it

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1 larger every year.

2 COMMISSIONER KIESLING: Right.

3 MS. MERCHANT: But lower in rate base.

4 COMMISSIONER KIESLING: Higher in expense.

5 MS. MERCHANT: The shorter the amortization period, the
6 faster the customers are going to pay for it.

7 COMMISSIONER JOHNSON: And you stated that the company's
8 preference was the shorter amortization period?

9 MS. MERCHANT: That's correct.

10 MS. MONIZ: They went with five years in their MFRs.

11 COMMISSIONER KIESLING: I'm sorry. Sally, I couldn't hear
12 you. They went with five years?

13 MS. MONIZ: They went with five years in their MFRs. Now
14 Bencini, Mr. Bencini did testify ten years, but in actuality
15 the MFRs said five years. They amortized it over five years in
16 the MFRs.

17 COMMISSIONER JOHNSON: And on the issue of whether or not
18 they deliberately held this until this particular rate case,
19 Trish, did I hear you say that there was nothing in the record
20 to indicate that or what was --

21 MS. MONIZ: They said that they were waiting until they
22 secured their raw water source. And in reality, most of them
23 did not end until '94 or '95 anyway.

24 COMMISSIONER JOHNSON: I'm sorry; I didn't hear you.

25 MS. MONIZ: Most of the failed attempts, the costs were not

10651

1 concluded until either '94 or '95.

2 MS. MERCHANT: Looking at the information, it looks like
3 most of them stopped incurring costs in 1994.

4 COMMISSIONER KIESLING: Okay.

5 COMMISSIONER KIESLING: December.

6 MS. MERCHANT: I just am getting '94.

7 COMMISSIONER KIESLING: Okay.

8 MS. MONIZ: I don't know if that's even in the record, the
9 exact date.

10 MS. MERCHANT: Now, the lease, the Collier lease expired on
11 December 1994. That was one of them. So I think that would be
12 reasonable to assume that that's when those costs expired.

13 COMMISSIONER KIESLING: Should have been then in '95?

14 MS. MERCHANT: Right.

15 MS. MONIZ: But that's only 60,000.

16 COMMISSIONER KIESLING: Right. I mean, that's what I'm
17 doing is going through each one of them and looking at when it
18 was that it actually --

19 MS. MERCHANT: On page 249, on the Dude property, in the
20 third paragraph, utility witness Teasley says that the costs
21 were incurred from 1990 to 1994, first and second lines. And
22 the Wellfield everybody agreed to take out, so that's really
23 not. City of Naples, on the fourth line down, it says October
24 1992 to December 1994. So, it looks like it's pretty safe to
25 assume that 1994 was the end for all three of these remaining.

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1 MS. MONIZ: So you have one year removed from rate base.

2 COMMISSIONER DEASON: So, it would be one year of
3 amortization that was not booked that we would impute for
4 regulatory purposes?

5 MS. MONIZ: Right. That's correct, if you decide.

6 COMMISSIONER DEASON: Now what then would we do -- That
7 would be one year's amortization. Then would we also, for
8 purposes of determining the unamortized balance for working
9 capital--

10 MS. MONIZ: You'd average it for '96.

11 COMMISSIONER DEASON: You would recognize '95's
12 amortization?

13 MS. MONIZ: Right.

14 COMMISSIONER DEASON: Would you recognize '96 amortization?

15 MS. MONIZ: It would a 13-month average.

16 COMMISSIONER KIESLING: A what?

17 MS. MONIZ: You'd take out, remove the portion for each
18 month and then amortize it.

19 COMMISSIONER DEASON: Why wouldn't we recognize a full year
20 for '96? Rates won't go into effect until almost the end of
21 '96 and we know there's going to be another year's heavy hit in
22 amortization in '97 and '98; seems to me with this rapid write
23 off, we need to recognize more of that by having a lesser
24 amount in working capital.

25 MS. MERCHANT: We've amortized all of them by month to.

10653

1 stick with the 13-month average in rate base for all of the
2 adjustments for working capital. And that would be consistent
3 with that. Rate case expense, assuming that it's an even
4 amortization per month, it's a test year concept. Even though
5 rates will go into effect at the end of this year, most likely,
6 that's the assumption that we have applied is the test year
7 concept, one month amortization.

8 COMMISSIONER DEASON: So the effect would be one year's
9 amortization, plus basically a half year's amortization in '96
10 and all the remainder would be in working capital as
11 unamortized balance?

12 MS. MERCHANT: That's correct.

13 MS. MONIZ: And you would have a larger test year expense
14 amount.

15 MS. MERCHANT: Actually, this would be only go -- This
16 would be specifically identified to Marco Island. It wouldn't
17 actually go into working capital, but it would have the same --

18 MS. MONIZ: It has the same effect.

19 COMMISSIONER DEASON: It would be Marco Island's rate base.

20 MS. MERCHANT: Marco Island only, specifically line item
21 for Marco.

22 COMMISSIONER DEASON: Well, Commissioners, that's the
23 dilemma. I think it's the proper accounting but it's a pretty
24 heavy hit in this rate proceeding. I want you to be fully
25 aware of that, but I'm convinced it's the proper accounting.

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1 CHAIRMAN CLARK: Is there a motion?

2 COMMISSIONER DEASON: Well, I would move that -- First of
3 all, I want to make staff, you know, if you have any problems,
4 if there are some problems with this other than the impact on
5 this specific rate case, if there are some things that I'm
6 overlooking that you need to bring out, you know, you're not
7 going to hurt my feelings. Let me know why it's not the proper
8 accounting to go ahead and amortize it over five years and get
9 it off the books.

10 MS. MERCHANT: I think it's an interpretation call. I
11 don't think -- We're not holding anything back certainly. The
12 rule allows you to amortize it over five years and if you
13 believe that's a more appropriate period, then certainly --

14 COMMISSIONER DEASON: And we do have the option if we
15 wanted to say make it ten?

16 MS. MERCHANT: Certainly.

17 COMMISSIONER DEASON: It's our discretion?

18 MS. MERCHANT: Certainly. Certainly. That's in the
19 record, too.

20 COMMISSIONER GARCIA: I would be willing to second ten.
21 And the whole point is I agree with what you're saying, but
22 it's a big hit and I thought that staff --

23 CHAIRMAN CLARK: Do you want to move ten?

24 COMMISSIONER DEASON: Well, I haven't made a motion yet.

25 COMMISSIONER GARCIA: No, no, but I'm just giving you an

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1 indication that I'm not going to second five, if that's helpful
2 to you at all.

3 I'll move it. I'll move it over ten years. The company
4 spoke on ten and it's there in the record and, at the same time
5 we're giving people a little bit way out of the heavy burden.
6 I understand your thinking on it, Commissioner, and I
7 appreciate it. I just want to try to lighten the load as much
8 as possible.

9 COMMISSIONER DEASON: Well, I understand that, and I have
10 that concern as well. And I do want to emphasize that the
11 nature of the motion, as I understand it, is that we would
12 begin recognizing the amortization at the conclusion of those
13 projects or by the time those projects were terminated. So, in
14 essence, there would be one more year's of amortization which
15 would not be in the rate base of Marco Island. I think that
16 goes along with the motion, but instead of five it would be
17 ten. And if that's the motion, I can second the motion.

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

20 Aye.

21 COMMISSIONER GARCIA: Aye.

22 COMMISSIONER DEASON: Aye.

23 COMMISSIONER KIESLING: Aye.

24 CHAIRMAN CLARK: Opposed nay.

25 COMMISSIONER JOHNSON: Nay.

10656

1 Just let the record reflect I would have stayed with the 25
2 year, the staff recommendation.

3 CHAIRMAN CLARK: Issue 63, that's a fallout; right?

4 COMMISSIONER KIESLING: Yes.

5 MS. MERCHANT: Yes, and it will change.

6 CHAIRMAN CLARK: Issue 64 is a stipulation. Issue 65.

7 COMMISSIONER KIESLING: Move it.

8 COMMISSIONER DEASON: Second.

9 CHAIRMAN CLARK: Without objection, Issue 65 is approved.

10 Issue 66.

11 COMMISSIONER KIESLING: Again, I would move that.

12 CHAIRMAN CLARK: Without objection --

13 COMMISSIONER JOHNSON: What was it? She moved it?

14 CHAIRMAN CLARK: Yeah.

15 COMMISSIONER JOHNSON: Okay.

16 CHAIRMAN CLARK: Without objection, Issue 66.

17 Issue 67.

18 COMMISSIONER DEASON: Now, I guess we need to make sure
19 that obviously previous issues are still pending as to what
20 return on equity is going to be utilized for revenue
21 requirement calculation.

22 COMMISSIONER KIESLING: Yeah, I assume that. We have not
23 made any adjustments to return on equity?

24 MS. MERCHANT: The midpoint. No, you have not.

25 MR. WILLIS: I think you have the basis --

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1 COMMISSIONER KIESLING: Or to the range?

2 MR. WILLIS: Excuse me. I didn't intend to interrupt.

3 CHAIRMAN CLARK: No, we have discussed the range.

4 MR. WILLIS: I think you have to make this finding before
5 you can do any kind of adjustment to the return on equity.

6 COMMISSIONER DEASON: I just was clarifying, though, that
7 those other issues were still pending, but this has to be done
8 before.

9 CHAIRMAN CLARK: Issue 67.

10 COMMISSIONER KIESLING: I need to just understand it. I
11 think from asking staff to try to help me understand this
12 before now, I think I do understand, but just so I'm clear.
13 When I look through all of the schedules back in the back, on a
14 system by system basis, it looked like there were, you know,
15 there were a lot of large adjustments in this category. But if
16 I also understood your explanation, if you added up all of the
17 adjustments, both positive and negative, they would come out to
18 essentially 0?

19 MS. ROMIG: Exactly.

20 COMMISSIONER KIESLING: It's an accounting thing and not a
21 real dollar thing?

22 MS. MERCHANT: It's a real dollar thing on a per plant
23 basis.

24 CHAIRMAN CLARK: Chris, the light has to be off. I wonder
25 if that microphone does not pick up as well as the other ones.

10658

1 We always seem to have a problem with who is --

2 MS. ROMIG: Can you hear me now?

3 COMMISSIONER KIESLING: Yeah.

4 CHAIRMAN CLARK: That's better.

5 MS. ROMIG: Yes, it's just a reallocation of dollars from
6 one rate base to another.

7 CHAIRMAN CLARK: Questions?

8 Is there a motion?

9 COMMISSIONER JOHNSON: Move it.

10 CHAIRMAN CLARK: Without objection, Issue 67 is approved.
11 Issue 68.

12 COMMISSIONER JOHNSON: Move it.

13 CHAIRMAN CLARK: Without objection, Issue 68 is approved.
14 Issue 69.

15 COMMISSIONER JOHNSON: Move it.

16 CHAIRMAN CLARK: Without objection, Issue 69 is approved.
17 Issue 70.

18 MS. MERCHANT: Commissioners, I wanted to point out on
19 Issue No. 70 I had passed out to you yesterday some corrected
20 capital structure schedules. And I apologize. I have got to
21 do it again today. And they should be coming around now. It
22 doesn't change the bottom line, but there were some -- It's
23 still the same problem that we had yesterday, but I think we
24 got it fixed now. And it has to do with formatting in Lotus.
25 But the bottom line never did change. It affected both -- It

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1 affected the dollar amount in the fourth column, the capital
2 reconciled to rate base. And that was a, just a typo,
3 essentially. It didn't -- Those numbers, the ratios stayed the
4 same, cost rates stayed the same. So the weighted cost to
5 capital remained the same, but I just wanted to give you the
6 appropriate schedule. And this schedule still goes to the
7 bottom of the range. So if you make that change to bring it
8 to -- If you don't make the 100 basis points change, this
9 schedule will change to whatever. If you make that adjustment
10 that you're talking about in Issue No. 5 or Issue No. 3 --

11 CHAIRMAN CLARK: If you make any adjustment.

12 MS. MERCHANT: Any adjustment to the range on equity, this
13 schedule will reflect that as a fallout.

14 CHAIRMAN CLARK: To the range or the rate we set it at?

15 MS. MERCHANT: You just a few minutes ago voted for the
16 midpoint on the cost of equity. That will still be -- That's
17 still going to be 11.88. But whatever you choose as far as an
18 adjustment to the return on equity in the range, it will be a
19 fallout. If you choose 50 basis points, this number, this 9.74
20 will change accordingly. If you make 100 basis points, it will
21 change accordingly. This is still subject to change for that
22 adjustment if you make one.

23 CHAIRMAN CLARK: Okay. Questions, Commissioners?

24 Was there a motion?

25 COMMISSIONER KIESLING: Yes, I think I moved it.

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1 CHAIRMAN CLARK: Without objection, Issue 70 is approved.
2 Issue 71 is a stipulation.

3 Issue 76 and 75 should be considered first.

4 MR. GROOM: Commissioners, Issue 76 concerns a test year
5 revenue adjustment to --

6 COMMISSIONER KIESLING: I can't hear you at all.

7 COMMISSIONER GARCIA: Hang on. Let me see. I move 75.

8 MR. GROOM: I thought we were on 76.

9 COMMISSIONER KIESLING: I thought we were on 76 myself.

10 MR. GROOM: 76 would come before 75.

11 COMMISSIONER GARCIA: I'm sorry. They're both the same;
12 right? To be considered -- I'm sorry. You're right. Well,
13 let me try that. We're on 76?

14 MR. GROOM: Yes, sir.

15 COMMISSIONER GARCIA: I move 76.

16 COMMISSIONER DEASON: Second.

17 CHAIRMAN CLARK: Okay. I just had to catch up. There has
18 been a motion and a second on 76. All those in favor say aye?

19 Aye.

20 COMMISSIONER KIESLING: Aye.

21 COMMISSIONER DEASON: Aye.

22 COMMISSIONER JOHNSON: Aye.

23 COMMISSIONER GARCIA: Aye.

24 CHAIRMAN CLARK: Opposed nay.

25 Issue 75.

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1 COMMISSIONER GARCIA: I move it.

2 MR. GROOM: Commissioners, before we take up Issue 75, I
3 think we need to take up Issue 73 and 74 and then go from that
4 order. 75 depends on 73 and 74.

5 COMMISSIONER KIESLING: So we need to do 73, 74, 75 and
6 then 72?

7 MR. GROOM: That's correct. And then we'll be in the
8 normal flow.

9 COMMISSIONER GARCIA: All right. I move 73, it is, that
10 you said?

11 MR. GROOM: That's what we're on right now.

12 COMMISSIONER GARCIA: Okay. I move 73.

13 CHAIRMAN CLARK: Without objection, 73 is approved.

14 7- --

15 COMMISSIONER KIESLING: Let me just be sure, that's the
16 one, that's where we're dealing with their proposed weather
17 normalization clause and we're saying no?

18 COMMISSIONER DEASON: No, this is an adjustment proposed by
19 public counsel.

20 COMMISSIONER KIESLING: Oh, it is?

21 COMMISSIONER DEASON: Yes.

22 COMMISSIONER KIESLING: Wait a minute. I need to find out
23 where I am then.

24 MS. LINGO: Commissioner Kiesling, the weather
25 normalization clause will be addressed at the next agenda.

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1 This issue deals with a proposed adjustment to revenues and
2 expenses associated with rainfall and weather.

3 In Issue 73 we're --

4 COMMISSIONER KIESLING: Okay. It was going the other way.
5 Okay. Okay. I got my notes straight.

6 CHAIRMAN CLARK: No problem?

7 COMMISSIONER KIESLING: No problem.

8 CHAIRMAN CLARK: Without objection, 73 is approved.
9 74.

10 MS. LINGO: Commissioners, Issue 74 deals with SSU's
11 proposed repression adjustments, which are based on SSU's
12 proposed revenue requirement. So, for purposes of this agenda,
13 we're recommending that all of SSU's proposed repression
14 adjustments be reversed. It's just to back them out.

15 Any staff recommended repression adjustments will be
16 dependent on the appropriate revenue requirement that you
17 decide at this agenda. So this issue will be revisited in our
18 subsequent rate that's on recommendation.

19 COMMISSIONER GARCIA: Then I move it.

20 COMMISSIONER KIESLING: Second.

21 CHAIRMAN CLARK: Without objection, 74 is approved.
22 75.

23 MR. GROOM: Commissioners, Issue 75 is staff's
24 recommendation regarding what are the appropriate --

25 COMMISSIONER GARCIA: I move staff.

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1 MR. GROOM: I'm sorry.

2 COMMISSIONER GARCIA: I move staff.

3 CHAIRMAN CLARK: Without objection, staff is approved.

4 Issue 72.

5 MR. GROOM: Commissioners, Issue 72 is staff's
6 recommendation regarding whether SSU has correctly calculated
7 the Marco Island's 1996 water revenues.

8 COMMISSIONER GARCIA: I move staff.

9 CHAIRMAN CLARK: Without objection, Issue 72 is approved.
10 Now we go to 77; right?

11 MR. GROOM: That's right.

12 Commissioners, Issue 77 is staff's recommendation regarding
13 whether --

14 COMMISSIONER GARCIA: I move staff.

15 COMMISSIONER KIESLING: Second.

16 CHAIRMAN CLARK: Without objection, Issue 77 is approved.

17 Issue 78 and 79 are stipulations.

18 Issue 80.

19 MS. JEANNE CLARK: Commissioners, Issue 80 is --

20 COMMISSIONER GARCIA: I move 80.

21 COMMISSIONER KIESLING: I have questions and I don't know
22 that I can go along with that.

23 COMMISSIONER GARCIA: Okay.

24 COMMISSIONER KIESLING: I think -- I think that increases
25 of 5.75% in the current economy and considering all of the

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1 other factors that we know are too high. I would probably
2 split it and give them no more than 3%. And I think I
3 understand that -- that -- Wait a minute.

4 I think that I understand that anything between 0 and 5.75
5 is supported by evidence that's in the record. So it's just a
6 judgment call on what the right percentage is. And I think
7 State employees get 3%. I think 3% is a common raise amount
8 and I don't see any reason to go to 5.75.

9 CHAIRMAN CLARK: There's been a --

10 COMMISSIONER GARCIA: I've got a motion. If no one seconds
11 it, it dies of loneliness.

12 COMMISSIONER KIESLING: I would move 3%.

13 CHAIRMAN CLARK: Wait a minute.

14 COMMISSIONER KIESLING: Oh, okay.

15 COMMISSIONER CLARK: I'll second that. It seems to me that
16 there are two components of that. As I understood it, it was,
17 what was in '82 was to bring it up to market and then recognize
18 roughly at 3%. So I think it accomplishes what you're
19 recommending.

20 MS. JEANNE CLARK: They're actually four components: 3% is
21 for merit increases; 1% --

22 COMMISSIONER CLARK: You need to speak loud.

23 MS. JEANNE CLARK: 3% is for merit increases; 1% is for
24 promotional increases; .25% is for license attainment and
25 there's also a 1.5% increase for merit -- excuse me -- equity

10665

1 and market adjustments.

2 COMMISSIONER GARCIA: I was under the same impression that
3 it broke out that way and I thought that that was reasonable.

4 COMMISSIONER CLARK: I think staff has appropriately
5 recognized increases for various factors.

6 COMMISSIONER JOHNSON: Could you explain that again?

7 MS. JEANNE CLARK: Sure. There are --

8 COMMISSIONER JOHNSON: And I see -- Go ahead.

9 MS. JEANNE CLARK: Okay. 3% is for merit increases.
10 There's a 1% adjustment for promotional increases; for license
11 attainment --

12 COMMISSIONER JOHNSON: Now, what are the difference between
13 those two things, the merit and the promotional?

14 MS. JEANNE CLARK: Well, merit would be for doing a good
15 job, not necessarily promoting to a higher position, but --

16 COMMISSIONER JOHNSON: So the 1% is more like what we
17 consider the reclassification?

18 MS. JEANNE CLARK: Correct.

19 COMMISSIONER JOHNSON: And the 3% is just like more of the
20 costs of living/merit, what State employees get?

21 MS. JEANNE CLARK: Right.

22 COMMISSIONER JOHNSON: And then the .25 is just when you --

23 MS. JEANNE CLARK: License attainment for the operators.

24 COMMISSIONER JOHNSON: Getting a CPA -- Okay. Okay.

25 COMMISSIONER CLARK: There is a motion and a second.

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1 All --

2 VICE-CHAIRMAN DEASON: Commissioner, I'm sorry.

3 COMMISSIONER CLARK: Excuse me.

4 VICE-CHAIRMAN DEASON: I've got the (indicating).

5 COMMISSIONER CLARK: You should have used that hammer.

6 COMMISSIONER GARCIA: It's the first time he's smiled so
7 wide, too.

8 VICE-CHAIRMAN DEASON: I'll give it back shortly.

9 There's been a motion and a second. All in favor say aye.

10 COMMISSIONER CLARK: Aye.

11 COMMISSIONER JOHNSON: Aye.

12 COMMISSIONER GARCIA: Aye.

13 VICE-CHAIRMAN DEASON: All opposed nay.

14 COMMISSIONER KIESLING: Nay.

15 VICE-CHAIRMAN DEASON: Nay.

16 Motion carries.

17 CHAIRMAN CLARK: Issue 82. 81 is a stipulation. 82.

18 COMMISSIONER GARCIA: I'll move it.

19 COMMISSIONER KIESLING: Well, then I really need to
20 understand the interplay between 82 and 80, because if I
21 understood correctly, the 5.75 in 80 now has been set and this
22 is in addition to that?

23 MS. JEANNE CLARK: That's correct.

24 COMMISSIONER KIESLING: Based on the Hewitt study?

25 MS. JEANNE CLARK: That's correct.

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1 COMMISSIONER KIESLING: Okay. Then let me just give you my
2 perspective. I thought that the Hewitt study was incomplete
3 and I personally did not want to rely on it. And since that's
4 what this one is based on, I cannot support staff
5 recommendation. And that's where I am.

6 COMMISSIONER GARCIA: Let me ask a question then. Is this
7 in addition to what we just voted on?

8 MS. JEANNE CLARK: Yes, it is.

9 COMMISSIONER GARCIA: And this was the whole argument that
10 he made in terms of trying to get them, get their people at the
11 levels that they should be?

12 MS. JEANNE CLARK: Correct.

13 COMMISSIONER GARCIA: No, I'll keep my motion.

14 CHAIRMAN CLARK: Wait a minute.

15 COMMISSIONER KIESLING: You didn't make one.

16 COMMISSIONER GARCIA: Yeah, I did.

17 CHAIRMAN CLARK: Did you make a motion on 82?

18 COMMISSIONER GARCIA: Yes, I did.

19 CHAIRMAN CLARK: And what did you move?

20 COMMISSIONER GARCIA: I moved staff.

21 COMMISSIONER JOHNSON: Could staff go through and explain
22 what this 2.7 represents? Now is this the inflationary kind of
23 adjustment? I'll let you explain it.

24 MS. JEANNE CLARK: What happened, what the Hewitt study
25 said was that they went in and compared the salaries for the

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1 operations and maintenance positions as well as customer
2 service, everything except the executive level. And it turned
3 out that they were 17.3% below the market.

4 OPC had a problem with that. And they -- Well, one of the
5 points that was brought out at the hearing was that the 17.3%
6 was calculated based on only those positions that were found to
7 be below the market, which did not include the salaries that
8 were also above the market, did not need an increase.
9 Factoring in those higher level, the higher paid positions, it
10 brought it down to I believe it was 10.8% or close to 10.7,
11 10.8%.

12 Also, there was evidence in the record that the rate
13 department positions were skewing the results of the studies,
14 so they were excluded. That brought it down to 2.7%.

15 Am I saying that wrong?

16 COMMISSIONER JOHNSON: This was all based -- This is
17 staff's analysis?

18 COMMISSIONER GARCIA: 2.07.

19 MS. JEANNE CLARK: Let me find that in my recommendation.

20 COMMISSIONER JOHNSON: I don't see that.

21 COMMISSIONER KIESLING: It was 2.07, wasn't it, or is it
22 2.7?

23 MS. JEANNE CLARK: Okay. Excluding the rate department
24 positions, it dropped it down to 7.8%. There's also evidence
25 in the record, the Hewitt study said that salaries within 5%

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1 above or below the market were fully competitive. So,
2 excluding that 5% brought it down to 2.7%. And what the
3 utility has requested in this proceeding was a 4.77% increase.
4 What we did was we went along with the 2.7% and decreased their
5 request by a 2.07%.

6 COMMISSIONER JOHNSON: Okay. And not to --

7 MS. JEANNE CLARK: We recognized that there were problems
8 with the Hewitt study and that's how we factor that in.

9 COMMISSIONER JOHNSON: Through your analysis, you seem to
10 make in my mind appropriate adjustments, but let me make sure I
11 understand what this goes to. This issue goes to whether or
12 not, for lack of a better comparison, a rate analyst was being
13 adequately compensated as compared to other rate analysts?

14 MS. JEANNE CLARK: That's correct.

15 COMMISSIONER JOHNSON: Okay. And to the extent that SSU's
16 employees -- In order to recruit better individuals, in order
17 to perhaps rectify or remedy some of their problems, you're
18 saying in some areas they were paying less and you're just
19 making it, based on your corrections with the study, you have
20 stated that 2.7 would be appropriate to bring those salaries up
21 to market?

22 MS. JEANNE CLARK: That's correct.

23 COMMISSIONER JOHNSON: Okay.

24 CHAIRMAN CLARK: Let me be clear that I understand what
25 staff is recommending. As I understood Issue 80, you're saying

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1 the total increase for projected salary increases should be
2 5.75; is that correct?

3 MS. JEANNE CLARK: Only for merit and promotion. They're
4 two separate issues.

5 CHAIRMAN CLARK: Well, that's not the way I read it.

6 MS. MERCHANT: You add 82, Issue No. 82, on top of the
7 percentage increases in Issue No. 80. Issue No. 82, the Hewitt
8 study adjustment, is above and beyond.

9 CHAIRMAN CLARK: Yeah, look what you said in 80, though.
10 The recommendation is "The utility's 1996 projected salary
11 increases totaling 5.75% are prudent and reasonable."

12 I took that to mean that was the total figure you were
13 recommending.

14 COMMISSIONER KIESLING: Well, I originally had that
15 question and after talking to staff, that's why I took the
16 positions I did because --

17 CHAIRMAN CLARK: What is the total figure that you're
18 recommending?

19 MS. JEANNE CLARK: On a compound basis, it would probably
20 be about 8.6%, compound increase.

21 CHAIRMAN CLARK: Did you understand that, Commissioner
22 Garcia?

23 COMMISSIONER GARCIA: No. No, I didn't.

24 MS. MERCHANT: What happened in their projections, the 5.75
25 was built into their projected test year. The Hewitt study is

10671

1 a specific adjustment to that projected test year. So that
2 might simplify it.

3 CHAIRMAN CLARK: All right.

4 COMMISSIONER GARCIA: Although I understood it a different
5 way, in reading through this, I still understand what staff did
6 and we heard testimony about trying to keep good people and
7 trying to keep the right people at the right job to go forward.
8 And I guess this is part of our ability to later say there are
9 no excuses, we did what the study showed. We looked into the
10 study. Staff did I think a very thorough job of going through
11 that study. And I think staff is the first to tell you that
12 staff, that the study was not the greatest thing on earth but
13 it provided a basis from which we made determinations.
14 Therefore, I'm going to stick with my motion.

15 COMMISSIONER JOHNSON: Second.

16 CHAIRMAN CLARK: There has been a motion and a second on
17 Issue 82. All those in favor say aye.

18 Aye.

19 COMMISSIONER GARCIA: Aye.

20 COMMISSIONER JOHNSON: Aye.

21 CHAIRMAN CLARK: Opposed nay.

22 COMMISSIONER DEASON: Nay.

23 COMMISSIONER KIESLING: Nay.

24 CHAIRMAN CLARK: Issue 83.

25 COMMISSIONER GARCIA: I move staff.

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1 COMMISSIONER JOHNSON: Second.

2 CHAIRMAN CLARK: Without objection, Issue 83 is approved.
3 Issue 84.

4 COMMISSIONER GARCIA: Move staff.

5 COMMISSIONER JOHNSON: Second.

6 CHAIRMAN CLARK: Without objection, Issue 84 is approved.
7 Issue 85 is a stipulation.
8 Issue 86.

9 COMMISSIONER GARCIA: Move staff.

10 CHAIRMAN CLARK: Without objection, Issue 86 is approved.
11 Issue 87.

12 COMMISSIONER KIESLING: 86a.

13 CHAIRMAN CLARK: I'm sorry.

14 MS. JEANNE CLARK: Commissioners, 86a is staff's
15 recommendation to reduce test year expenses for operations
16 and --

17 COMMISSIONER GARCIA: That's fine. 86a, I move staff.

18 COMMISSIONER KIESLING: Second.

19 CHAIRMAN CLARK: Without objection, 86a is approved.
20 87.

21 Questions?

22 COMMISSIONER GARCIA: I move it.

23 CHAIRMAN CLARK: Without objection, 87 is approved.
24 Issue 88.

25 COMMISSIONER GARCIA: Move staff.

10673

1 CHAIRMAN CLARK: Without objection, Issue 88 is approved.
2 Issue 89 is a stipulation.
3 Issue 90.

4 MS. MONIZ: Commissioners, in Issue 90 staff is not
5 recommending an adjustment be made to reduce A&G Expenses for
6 Shareholders Expense. We believe the utility -- Excuse me.
7 That's all.

8 COMMISSIONER KIESLING: I just -- I'm sorry.

9 CHAIRMAN CLARK: Mr. Lowe, I apologize to you. I
10 completely forgot that you had told me that I needed to take a
11 break between 71, when we got to 71 to change staff, but it
12 looks like we accomplished it. I just wanted to let you know
13 I'm sorry.

14 MR. LOWE: That's all right. We got through it.

15 CHAIRMAN CLARK: All right. We're on Issue 90; is that
16 correct? Is that the one you had questions on?

17 COMMISSIONER KIESLING: Yes, it is.

18 CHAIRMAN CLARK: Okay.

19 COMMISSIONER KIESLING: And, again, this is one of those
20 ranges of, where reasonable minds can differ, but I think that
21 the level of Shareholder Service allocations that they pay is
22 exorbitant and I would grant them only half of it or \$104,388.
23 And since I haven't, don't know if there is any support for
24 that motion, I'll wait and see.

25 COMMISSIONER DEASON: Second.

10674

1 COMMISSIONER KIESLING: Oh, good.

2 CHAIRMAN CLARK: There has been a motion and a second on
3 Issue 90. All those in favor say aye.

4 COMMISSIONER KIESLING: Aye.

5 COMMISSIONER DEASON: Aye.

6 CHAIRMAN CLARK: Opposed nay.

7 COMMISSIONER GARCIA: Nay.

8 COMMISSIONER JOHNSON: Nay.

9 CHAIRMAN CLARK: Nay.

10 Is there another motion?

11 COMMISSIONER GARCIA: Move staff.

12 COMMISSIONER JOHNSON: Second.

13 CHAIRMAN CLARK: All those in favor say aye.

14 Aye.

15 COMMISSIONER GARCIA: Aye.

16 COMMISSIONER JOHNSON: Aye.

17 CHAIRMAN CLARK: Opposed nay.

18 COMMISSIONER DEASON: Nay.

19 COMMISSIONER KIESLING: Nay.

20 CHAIRMAN CLARK: Issue 91 is a stipulation.

21 Issue 92.

22 MS. LINGO: Commissioners, in Issue 92, staff recommends
23 that you approve conservation expenses in the amount of
24 \$343,412. I apologize for the typo for the number in the
25 recommendation statement. The recommendation statement says,

10675

1 \$343,712 but should be \$343,412.

2 COMMISSIONER GARCIA: With that, I move staff.

3 COMMISSIONER KIESLING: Well, I've got questions on that
4 one, too.

5 MS. LINGO: And, in addition, Commissioners, I believe
6 Mr. Zhang has something he'd like to add to the issue.

7 MR. ZHANG: Yeah. I would like to point out omission by
8 staff. Staff made adjustment to remove \$2,150 associated with
9 employing newsletter in the bulletin, but it didn't address
10 this in the body of the recommendation. It does include it in
11 the revenue requirement calculation.

12 CHAIRMAN CLARK: So you have removed that expense
13 additionally related to newspaper advertising?

14 MR. ZHANG: No, the employee newsletter and the bulletin.

15 COMMISSIONER KIESLING: Newsletter.

16 MS. MERCHANT: Employee, key; not customer.

17 CHAIRMAN CLARK: And that was the basis for taking it out?

18 MR. ZHANG: No. The basis --

19 MS. MERCHANT: It was for shareholders and employees. It
20 was a newsletter generated and they were deeming that to be
21 conservation.

22 CHAIRMAN CLARK: Okay. Got you.

23 MS. MERCHANT: That was left out of the verbiage. It was
24 included in the schedule on page 358.

25 That might be part of your problem that you had,

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1 Commissioner Kiesling, reconciling the numbers to be adjusted
2 on those last three pages of the issue.

3 COMMISSIONER KIESLING: Yeah, and I had resolved that. My
4 question still goes on page 355, the second paragraph under the
5 heading of Statewide Conservation Program. About two-thirds of
6 the way down, the recommendation says that SSU, it says that
7 "Based on the testimony provided by Ms. Dismukes and the fact
8 that SSU did not provide any testimony to support the need for
9 the increase, staff believes the costs related to the
10 conservation education program should be decreased by \$20,351."

11 Well, I have a problem if SSU, who has the burden of proof,
12 did not provide any testimony to support the need for the
13 increase, then I don't understand why we're giving them any.

14 MS. MONIZ: Commissioner, I apologize. When I'm speaking
15 of increase, I'm talking about the increase for '96, which was
16 the difference in, from the 18,000 that they had for the prior
17 year to 38, which is the \$20,351. That's the increase that I'm
18 speaking of.

19 COMMISSIONER KIESLING: So, are you telling me that there
20 was evidence in the record that supported the \$18,000 for 1995,
21 but there was no evidence in the record that supported the
22 \$20,351?

23 MS. MONIZ: Correct. The 18,000 was actual for '94 and
24 then they projected through '96 20,350 more and they did not
25 support their projection, but there is evidence on what, on the

10677

1 18,000.

2 COMMISSIONER KIESLING: Okay.

3 MS. MONIZ: And the same is true for the labor, too, if you
4 have got a question about that one, too.

5 COMMISSIONER KIESLING: And then in the next paragraph,
6 where they're dealing with the 30,300, we say at the third
7 line, "SSU did not provide any support for these costs, nor did
8 it provide testimony as to why they should not be reduced" and
9 yet we give them half of it.

10 And, again, my same concern is there: If they didn't give
11 us -- If they provided no support for these costs and no
12 testimony as to why they should not be reduced, why are we
13 giving them any of it?

14 MS. MERCHANT: Commissioners, I think it's kind of a
15 circumstance where we recognize that they need to have a
16 conservation program. The evidence is -- There's a lot of
17 evidence in the record from the Water Management District
18 employees stating that they need to have an aggressive
19 conservation program. And I think that to be able to do that
20 they have to have at least some personnel. And I think that
21 that's within our discretion to be able to allow a certain
22 level. And Ms. Dismukes for OPC had recommended taking out
23 half of it. And I think in our opinion that half of it is
24 reasonable, recognizing that some employee labor needs to be
25 afforded for conservation efforts.

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1 COMMISSIONER KIESLING: Well, then I think you need to say
2 that in your recommendations because when you say there is no
3 evidence to support it, then I've got nothing to hang my hat on
4 if I vote for it. And what I see in the recommendation doesn't
5 say that. It says they provided no evidence, no testimony to
6 support it, and yet we're giving them half of it.

7 MS. MERCHANT: And I agree that that was an oversight on
8 our part and I think that we can certainly add some language
9 similar to that in the order to make sure -- We have that
10 language in the rate case expense issues, very similar to that.
11 We can certainly add that in for this issue, too.

12 CHAIRMAN CLARK: Further questions?

13 Did you make a motion?

14 COMMISSIONER GARCIA: I thought I had, but if not, I'll do
15 it again. I'll move staff.

16 COMMISSIONER JOHNSON: Second, with the explanations being
17 provided in the order.

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

20 COMMISSIONER GARCIA: Aye.

21 COMMISSIONER JOHNSON: Aye.

22 CHAIRMAN CLARK: Aye.

23 COMMISSIONER DEASON: Aye.

24 CHAIRMAN CLARK: Opposed nay.

25 COMMISSIONER KIESLING: Nay.

10679

1 CHAIRMAN CLARK: Issue 93.

2 COMMISSIONER DEASON: Madam Chairman, at an appropriate
3 time I need to make a motion to reconsider our vote on Issue 66
4 in light of our vote on Issue 89.

5 COMMISSIONER GARCIA: Issue 89 was a stipulation.

6 COMMISSIONER DEASON: I'm sorry, Issue 90. And the reason
7 that I'm making that motion is that if you'll notice staff
8 analysis on page 339, the first full paragraph under that
9 analysis, the majority of these expenses, which have been
10 included by the majority, relate to shareholder related
11 activity, such as transfer agent, registrar, SEC filings, board
12 fees, proxy statements, shareholder inquiries, things of that
13 nature.

14 And if you'll notice on page 263 of staff's recommendation
15 concerning return on equity, staff's recommending a 25 basis
16 point addition to the market cost of equity for the fact that
17 Florida utilities do not have ready access to the public debt
18 and equity markets.

19 I think we're paying both ways. We're paying with our 25%,
20 25 basis point addition to the equity costs and we're paying
21 \$208,000 in stockholder related expenses. And I don't think it
22 should be both. And that's the reason I'm moving that we
23 reconsider our position in return on equity in Issue 66.

24 COMMISSIONER KIESLING: Commissioner Deason, I agree with
25 you, however, I think there is a problem. You and I were the

1 two dissenting votes and we cannot make a motion to reconsider.

2 COMMISSIONER DEASON: No, on Issue 66 I was in the
3 majority.

4 CHAIRMAN CLARK: Let me ask you a question. The way the
5 issue is worded, it indicates that the leverage formula does
6 that. And I know we did use, although they presented other
7 information, we did base our recommendation on the leverage
8 formula; is that correct?

9 MR. LESTER: That's correct.

10 CHAIRMAN CLARK: Okay. There's been a motion to reconsider
11 our vote in 66. Is there a second?

12 COMMISSIONER GARCIA: I'll second.

13 CHAIRMAN CLARK: All those in favor say aye.

14 COMMISSIONER DEASON: Aye.

15 COMMISSIONER GARCIA: Aye.

16 CHAIRMAN CLARK: Opposed nay.

17 COMMISSIONER KIESLING: Nay.

18 COMMISSIONER JOHNSON: Nay.

19 CHAIRMAN CLARK: Nay.

20 Well, even -- I'm not sure. You can vote on
21 reconsideration?

22 COMMISSIONER KIESLING: Oh, if we're on 66, yeah, I was in
23 the majority on that. I think I made the motion.

24 CHAIRMAN CLARK: That's what we were reconsidering.

25 COMMISSIONER KIESLING: Right.

1 COMMISSIONER DEASON: I move that we reconsider the vote on
2 Issue 66.

3 CHAIRMAN CLARK: Well, then it doesn't matter either way.
4 I was just thinking that --

5 COMMISSIONER KIESLING: I can vote. I just can't make the
6 motion, even if I had voted in the negative.

7 CHAIRMAN CLARK: Okay. Either way it doesn't matter
8 because it didn't pass. Okay. You voted nay.

9 COMMISSIONER KIESLING: No, I voted aye.

10 COMMISSIONER GARCIA: No, she voted aye. The only ones who
11 voted nay right now were myself and Commissioner Deason.

12 CHAIRMAN CLARK: No.

13 COMMISSIONER DEASON: No, I want to reconsider the vote.
14 What I'm trying to do is let's reconsider the vote on Issue 66;
15 that's what I want to do.

16 COMMISSIONER GARCIA: That's what I'm voting for.

17 CHAIRMAN CLARK: And you moved it and you seconded it.

18 Now, I had understood you said you were not in the majority
19 on 66.

20 COMMISSIONER KIESLING: No, it was on 90.

21 CHAIRMAN CLARK: Okay.

22 COMMISSIONER KIESLING: When Commissioner Deason brought 90
23 into it, I thought he was talking about 90 needed to be
24 considered. I was in error.

25 CHAIRMAN CLARK: Okay. All right. There has been a motion

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1 to reconsideration -- reconsider the vote on 66.

2 All those in favor say aye.

3 COMMISSIONER GARCIA: Aye.

4 COMMISSIONER DEASON: Aye.

5 CHAIRMAN CLARK: Opposed nay.

6 Nay.

7 COMMISSIONER KIESLING: Nay.

8 COMMISSIONER JOHNSON: Nay.

9 CHAIRMAN CLARK: All right. The motion fails.

10 Now where are we?

11 COMMISSIONER GARCIA: Yeah, that was my question.

12 COMMISSIONER KIESLING: Yeah. Let me just say I think the
13 place to fix that is still in 90, but since I was not in the
14 majority on that, I can't move to reconsider that.

15 COMMISSIONER JOHNSON: Have we voted on 90?

16 COMMISSIONER KIESLING: Oh, yeah.

17 CHAIRMAN CLARK: Yes.

18 COMMISSIONER KIESLING: That's the one where I said we
19 should cut it in half.

20 COMMISSIONER JOHNSON: I want to have the opportunity to
21 hear Commissioner Deason's concern why he thinks this is kind
22 of double dipping.

23 COMMISSIONER GARCIA: That's why I was voting for it.

24 COMMISSIONER JOHNSON: But I think this is the place, if
25 we're going to --

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1 COMMISSIONER KIESLING: 90.

2 COMMISSIONER JOHNSON: -- hear it to hear that

3 particular --

4 COMMISSIONER GARCIA: I made the motion on 90.

5 COMMISSIONER JOHNSON: And I was in the majority.

6 COMMISSIONER DEASON: Well, I was one -- I made the motion
7 to --

8 CHAIRMAN CLARK: But Commissioner Deason can't make the
9 motion on 90.

10 COMMISSIONER JOHNSON: I can.

11 COMMISSIONER DEASON: I made the motion to reconsider the
12 vote on 66. I was in the majority on 66 and that's what I was
13 doing.

14 COMMISSIONER GARCIA: You can on 90.

15 COMMISSIONER JOHNSON: Okay. I move that we reconsider 90.

16 CHAIRMAN CLARK: That was the three to two vote?

17 COMMISSIONER KIESLING: Uh-huh.

18 CHAIRMAN CLARK: All those in favor say aye.

19 COMMISSIONER GARCIA: Aye.

20 COMMISSIONER JOHNSON: Aye.

21 COMMISSIONER KIESLING: Aye.

22 CHAIRMAN CLARK: Aye.

23 COMMISSIONER DEASON: I can vote on it?

24 CHAIRMAN CLARK: Yes.

25 COMMISSIONER DEASON: Yes, I'll reconsider it.

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1 CHAIRMAN CLARK: We will reconsider the vote on 90.

2 COMMISSIONER JOHNSON: Now, I would like to hear, before I
3 decide the second time around, the arguments that Commissioner
4 Deason was making and the way you related it to 66.

5 COMMISSIONER DEASON: The concern that I have is that
6 within Issue 90, we are allowing the recovery of stockholder
7 related expenses, which may be appropriate, but we're also
8 making an addition to return on equity of 25 basis points to
9 recognize the fact that water, the typical water and wastewater
10 company in Florida does not have access to debt and equity
11 markets, which means that there's a certain perhaps risk
12 associated with that and there's a certain amount of costs
13 associated with that.

14 It appears to me that perhaps we are allowing recovery of
15 costs associated with the cost of being a publicly traded
16 utility, but we're not recognizing the benefits of that when it
17 comes to determining the cost of equity; in fact, we're adding
18 25 basis points to the otherwise determined cost of equity
19 because of that. And it seems to me there is a disparity or an
20 inconsistency there and that's why I want to reconsider it.

21 COMMISSIONER GARCIA: Could staff give us the other side of
22 that argument?

23 MR. LESTER: Well, there's testimony in the record that the
24 company be viewed as a stand-alone entity, that you not
25 consider the fact that it's owned by Minnesota Power and Light.

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1 I know that they're bond issues. They have several bond
2 issues, they're privately placed, and that's consistent with
3 allowing the private placement premium.

4 Now privately placed debt means you don't sell it on the
5 market. You go to a particular buyer and that person buys it.
6 They usually, it's an illiquid investment, you just can't,
7 because it's not marketable, you can't sell it. The leverage
8 formula recognizes that privately placed debt probably has a
9 premium and therefore costs more.

10 I think one of the problems may be -- I'm really talking
11 off the top of my head here, but I'm trying to give you some
12 background. I think one of the problems may be that you're
13 looking behind the corporate shield there to the particular
14 shareholder and saying, you know, who owns this company and how
15 does that affect the costs.

16 CHAIRMAN CLARK: Well, I think what is being brought up is
17 a consistency of rationale in that if you are, in your leverage
18 formula you make an adjustment because most water and
19 wastewater companies are not publicly traded.

20 MR. LESTER: That's true.

21 CHAIRMAN CLARK: You're making some adjustment there. And
22 then in 90 you're allowing expenses that relate to expenses
23 that are necessary because the parent is a publicly traded
24 company.

25 MR. LESTER: Yeah, I see what you're saying. In one issue

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1 we're not looking at who owns the company and in the other
2 issue we are. Really, I'm not familiar with Issue 90.

3 CHAIRMAN CLARK: To me the real question is while there may
4 be, there is discrepancy in rationale, how to -- what is the
5 dollar amount to sort of adjust for that, if appropriate?

6 When you say there is a 25% basis adjustment in the
7 leverage formula, is that, you just take whatever the leverage
8 formula produces and you add 25% or is it a -- Is it a --

9 MR. LESTER: It is added on, yes.

10 COMMISSIONER DEASON: And just by coincidence, 25 basis
11 points is equal to some \$225,000.

12 MS. MERCHANT: Right. I just did it. Real close to what
13 they ask for, 208,000 on a rate base of 135 million.

14 MR. LESTER: They get some credit support from Topeka Group
15 that allows them to borrow money. I don't know if that's in
16 Issue 90 or not.

17 COMMISSIONER JOHNSON: So, your analysis is on Issue 66?

18 MR. LESTER: Commissioners, if you just strike --
19 I'm sorry.

20 COMMISSIONER JOHNSON: Your analysis was on Issue 66 and
21 you're, for those that analyzed 90, because I understand you to
22 say you aren't really responding to what happened in Issue 90,
23 could you respond to Commissioner Deason's concern?

24 COMMISSIONER GARCIA: Who are you asking, Commissioner
25 Johnson?

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1 COMMISSIONER JOHNSON: I think it was -- I don't know.
2 Whoever did 90. Was it Trish?

3 COMMISSIONER KIESLING: I thought it was Sally.

4 MS. MERCHANT: We did it.

5 COMMISSIONER JOHNSON: Sally?

6 MS. MONIZ: Yes.

7 COMMISSIONER JOHNSON: Okay.

8 MS. MONIZ: Commissioner, I do have an order here. It's
9 United Florida Telephone, United Telephone Company of Florida,
10 excuse me, where shareholders' ownership costs were reduced by
11 50% as being duplicative of other costs. So we do have the
12 order where we could maybe reduce them by 50%.

13 COMMISSIONER JOHNSON: You said there's an order where we
14 reduced shareholders expense by 50% --

15 MS. MONIZ: Right.

16 COMMISSIONER JOHNSON: -- because we felt they were
17 duplicative?

18 Do they provide any rationale?

19 MS. MONIZ: It just says "Certain ownership costs, such as
20 corporate, board of directors' expenses are duplicative of
21 costs incurred directly by the telephone operating companies."

22 COMMISSIONER JOHNSON: How do you feel about the comment
23 that Commissioner Deason made with respect to these particular
24 expenses being duplicative and being, or, at a minimum we're
25 saying one thing in 66 and saying, using the rationale the

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1 other way in 90?

2 MS. MONIZ: We have a list here of 14 items and there's
3 not -- Credit support is not included in here. There's like
4 labor costs for shareholder services, proxy and annual
5 meetings, utility investor group assessments, annual
6 stockholder meetings, stock purchase plan, but it doesn't say
7 anything about credit support.

8 MS. MERCHANT: We do have -- That order that she just
9 mentioned was the order that Ms. Dismukes mentioned in her
10 testimony to disallow 50% of the shareholder expenses.
11 Actually, and regarding the issue that Commissioner Deason
12 brought up, we've never been faced with that issue before. In
13 fact, I hadn't ever thought of it and it's an enlightening
14 thought.

15 COMMISSIONER DEASON: Well, thank you.

16 MS. MERCHANT: At this point, I just hadn't considered it,
17 but it does seem like that if the leverage formula has that
18 built into it, that there could be some --

19 CHAIRMAN CLARK: You either do one or the other?

20 MS. MONIZ: Right.

21 MS. MERCHANT: But I'm not as familiar with the leverage
22 formula financial considerations going into it.

23 CHAIRMAN CLARK: Well, let me ask you this: If it's an
24 input into the formula, it might be one thing. You can't
25 equate a dollar figure to it. But as Pete indicated, it's a

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1 straight add on.

2 MS. MERCHANT: It seems reasonable, it seems plausible that
3 could be double recovery.

4 CHAIRMAN CLARK: Not necessarily double recovery but
5 certainly inconsistent logic.

6 MS. MERCHANT: Yeah.

7 COMMISSIONER DEASON: Let me -- I'm sorry. Let me, on page
8 339, which deals with Issue 90, the same paragraph under which
9 I was reading earlier, the very last sentence of that talks
10 about Mr. Vierima's contention that "SSU benefits from the
11 financial strength and reputation of Minnesota Power by
12 guaranteeing the debt which in turn reduces debt costs."

13 And I think he's justifying the 208 because that's one of
14 the benefits that SSU gets by paying that 208,000 in allocated
15 expenses. But then at the same time, we're adding 25 basis
16 points to the return on equity for the fact that most water and
17 wastewater utilities in Florida cannot avail themselves of the
18 benefits of the public debt and equity markets.

19 COMMISSIONER KIESLING: And let me just say that the reason
20 that I wanted to cut it in half before wasn't based on these
21 kind of technical level things, but they were more based on
22 just in general what was in the paragraph that Commissioner
23 Deason just read. And that is when I look at what they get
24 back from Minnesota Power and Light in exchange for what they
25 pay, it just seemed like unless, unless we consider this thing

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1 on the benefits of their debt costs, that it just, it didn't
2 seem like they were getting their money's worth. I mean, I
3 don't see where they're getting services from Minnesota Power
4 and Light that are worth \$208,000 to the ratepayers in Florida.

5 COMMISSIONER DEASON: Well, let me make my position clear.
6 Given that we really didn't have any debate on the cost of
7 equity and I think any time you can avoid debate on cost of
8 equity everybody is ahead. So, when that motion was made and
9 it passed, I was satisfied with that, but I had concern when we
10 got to this Issue 90.

11 It seems to me that if we're going to ask SSU customers to
12 pay \$208,000 in allocated shareholder related expenses to the
13 parent, then we have no business then asking them to pay 25
14 basis points more in cost of equity. The two concepts are
15 inconsistent. And I would be willing to do one or the other.

16 I'm perfectly content with allowing the \$208,000 in
17 expenses, but I think we need to eliminate the 25 basis points
18 or vice versa. And it may just be coincidence in this
19 particular situation, but I would note that 25 basis points on
20 equity is very roughly equal to the amount of allocated
21 shareholder expenses.

22 When we got to the motion and Commissioner Kiesling
23 recommended half, in all honesty I could live with that and
24 wouldn't have to raise up this other issue, but given that
25 we're allowing 100% of shareholder and all of the 25 basis

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1 points in equity, I think that's just too much of an
2 inconsistency to ignore.

3 MS. MERCHANT: Well, you certainly have the record support
4 to do 0, 50%, or all of it on the shareholders.

5 COMMISSIONER DEASON: So, we're on reconsideration of Issue
6 90?

7 COMMISSIONER JOHNSON: We have started over.

8 CHAIRMAN CLARK: Right.

9 COMMISSIONER DEASON: So we're free for anybody to make a
10 motion at this point. I don't want to cutoff discussion, but I
11 would move that -- For purposes of my first motion, I would
12 move that we would disallow the entire amount of allocated
13 shareholder service expenses, recognizing 25 basis points
14 allowance which we have already granted in return on equity in
15 Issue 66.

16 COMMISSIONER JOHNSON: Second.

17 Susan.

18 CHAIRMAN CLARK: There has been a motion.

19 COMMISSIONER JOHNSON: And a second.

20 CHAIRMAN CLARK: And a second. All those in favor -- And
21 this is to remove the total amount?

22 COMMISSIONER KIESLING: The whole 208,000.

23 CHAIRMAN CLARK: All those in favor say aye.

24 COMMISSIONER GARCIA: Aye.

25 COMMISSIONER JOHNSON: Aye.

10692

1 CHAIRMAN CLARK: Aye.

2 COMMISSIONER DEASON: Aye.

3 COMMISSIONER KIESLING: Aye.

4 CHAIRMAN CLARK: Opposed nay.

5 MS. O'SULLIVAN: Commissioners, to aid staff in drafting
6 the order, I believe you explained the basis for your motion.
7 Would it also be based upon the decision in the United
8 Telephone case where they removed duplicative costs for the
9 same purposes.

10 CHAIRMAN CLARK: Uh-huh.

11 COMMISSIONER DEASON: Well, I think any time you have
12 duplicative costs, that is a basis. It's just that we're
13 recognizing those duplicative costs by a different mechanism
14 and that is not direct costs but an imputation to return on
15 equity to compensate for the fact that this is not a publicly
16 traded utility.

17 MS. O'SULLIVAN: All right. Thank you.

18 COMMISSIONER KIESLING: Where are we?

19 CHAIRMAN CLARK: Issue 93, that's a fallout issue.

20 MS. MERCHANT: No, Commissioners, that's a rate case
21 expense. Issue 93 is the staff's recommendation regarding
22 current amount of rate case expense. The utility had requested
23 a revised estimate of 1.6, 1.6 million -- \$1,628,065. Staff is
24 recommending that we allow \$1,328,816. It results in an
25 increase of \$333,000 above the original estimate in the MFRs

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1 and a decrease of about 300,000 to the revised estimate.

2 COMMISSIONER KIESLING: I have two questions. I'm sorry.
3 I didn't realize you weren't through.

4 MS. MERCHANT: There is also the Commission should decline
5 to entertain utility's request for reconsideration of the
6 Chairman's rulings on Exhibits 257 and 258.

7 COMMISSIONER KIESLING: Well, in what order shall we do
8 this?

9 MS. MERCHANT: I can go through and discuss the things that
10 we did or you can ask specific questions.

11 COMMISSIONER KIESLING: I meant in terms of --

12 CHAIRMAN CLARK: A motion to reconsider; right?

13 COMMISSIONER KIESLING: Right. I mean, I can go ahead and
14 dispose of that I think. I move that we not reconsider the
15 Chairman's ruling on those two exhibits.

16 COMMISSIONER DEASON: Second.

17 COMMISSIONER JOHNSON: Second.

18 CHAIRMAN CLARK: Without objection.

19 COMMISSIONER KIESLING: Okay. Then that brings me to at
20 least I just have two areas of question out of that whole
21 \$1,328,000.

22 My first one is on page 367, last full paragraph on that
23 page regarding staff's belief that it's reasonable to allow
24 travel expenses in the amount of \$45,000. The sentence before
25 that says, "However, without supporting documentation for the

10694

1 estimate to complete, staff cannot make a determination as to
2 the reasonableness of the total request."

3 And so I'm trying to understand if you couldn't base it on
4 that, what do you base the \$45,000 on?

5 MS. MERCHANT: Well, they incurred, as of March 31, they
6 incurred \$23,013. That was supported by invoices in Exhibit
7 255. The estimate, the revised estimate in the MFRs, I don't
8 believe that they changed that amount, was \$56,583. There was
9 no documentation to support that revised request, but just by
10 evidence of the number of witnesses that SSU had; these are for
11 SSU employee travel expenses. These are not the consulting
12 travel expenses. They would be on their individual billings.

13 But we know that there were a lot of SSU employees at the
14 hearing. It was a two-week hearing. So they were at a hotel
15 here in Tallahassee. So, I mean, it's evident to us that there
16 was an additional amount above the 23,000 incurred.

17 COMMISSIONER KIESLING: But we don't know whether that was
18 45,000 or another 23,000 or 10,000? We have no idea how much
19 that was?

20 MS. MERCHANT: That's correct.

21 COMMISSIONER KIESLING: So we pulled, if I understand, then
22 staff kind of just of pulled the amount of 45,000 out of --

23 MS. MERCHANT: It just seemed reasonable.

24 COMMISSIONER KIESLING: But you didn't pull it out of
25 anything that was evidence in this case?

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1 MS. MERCHANT: That's correct.

2 COMMISSIONER KIESLING: Well, Commissioners that causes me
3 some concern. And my feeling is that if the utility doesn't
4 prove it up with some supporting documentation, that we ought
5 not to be filling in the evidence in their case for them as it
6 relates to items like this. So, I told you where I am on that
7 one. Let me just address my other question.

8 On page 369, second to the last full paragraph, where we
9 say, "Accordingly, rate case expense of \$67,100 for Lehigh,
10 \$852,601 for 199, 103 for Marco Island should be approved" and
11 they should be specifically allocated to each specific plant or
12 group. I guess I'm still having some concern about how much of
13 the expense from 199 and the Marco cases and Lehigh they ought
14 to still be getting in this case. And I'm concerned about what
15 I perceive to be the company's attempt to bring all those
16 forward in this case and stretch out the period over which
17 they're going to be making this recovery. So, I have two
18 concerns there.

19 MS. MERCHANT: Okay.

20 COMMISSIONER KIESLING: Could you explain to me both of
21 those?

22 MS. MERCHANT: Certainly. First I want to give you a
23 little bit of history. There was a four-year rate reduction
24 statute for rate case expense, automatic four-year rate
25 reduction that went into effect about five or six years ago.

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1 Prior to that time if a utility had a rate case before their
2 prior amortization was expired, what SSU did in this case was
3 common Commission practice: You took the unamortized balance,
4 added it to the current amount and re-amortized that over the
5 next four years. That was Commission practice before the
6 statute came into effect.

7 Once the statute came into effect, things changed because
8 you have to allow the utility to recover that annual expense
9 for that four-year period because those rates are going to go
10 down regardless at the end of that period. So, you want to
11 make sure that they are kept whole for the prior case, the
12 approved rate case expense. So, you have to keep it in at the
13 same annual expense that you kept it in the last rate case.
14 That would be for Marco, 920199 and Lehigh.

15 This is not any additional amount. These are the amounts
16 that were approved in the orders.

17 Mr. Ludsen I assumed did not understand this on the stand.
18 We felt, staff felt or believed that it was important to keep
19 that whole and to keep the annual expense for each of those
20 individual system dockets and then re-amortize current rate
21 case expense without it over the next four years because
22 current rate case expense is going to drop in four years, too.

23 So in two years from now you're going to have the 920199
24 rate case expense is going to drop. So is Marco Island and so
25 is Lehigh. They're all going to drop within months of each

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1 other.

2 Essentially that's why I'm pulling it out here, but I'm
3 putting it back in and spreading it to the Marco Island rate
4 case to only Marco Island customers, the 920199 prior expense
5 only to those customers and the Lehigh prior rate case expense
6 to the Lehigh customers.

7 COMMISSIONER KIESLING: And only for the period of time
8 remaining on the four years?

9 MS. MERCHANT: For the two remaining years for each one of
10 those, each of those three dockets. It sounds very technical,
11 but it's important to do that so that you don't short the
12 company on their rate case expense recovery for the prior rate
13 case. If you included it and re-amortized it over the next
14 four years, rates would still be reduced in two more years, but
15 you'd only be giving them one half of their annual expense for
16 the prior cases.

17 COMMISSIONER KIESLING: So the lesson to be learned is you
18 ought to wait four years in between each case so we don't have
19 this complicated problem.

20 MS. MERCHANT: I believe that Mr. Ludsen thought that the
21 four-year rate reduction wouldn't occur because they had
22 another rate case going on, but that's not staff's
23 interpretation of what the statute entails. So the reduction
24 will occur regardless.

25 COMMISSIONER DEASON: Is that the way we've consistently

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1 interpreted the statute?

2 MS. MERCHANT: Ever since we've had -- It only has come
3 into play in the last year or so because you haven't had that
4 many utilities coming in after that rule went into effect shy
5 of their four-year amortization period. So you don't see it
6 that often but that's how we've done it when that has happened
7 in the last year or so.

8 MR. WILLIS: You have seen that, Commissioners, before you
9 before. I can -- The ones I can think of that come to mind are
10 Florida cities who have had rate cases about every two years,
11 especially in our Lee County systems.

12 CHAIRMAN CLARK: Further questions, Commissioners?

13 COMMISSIONER GARCIA: Has anybody made a motion?

14 COMMISSIONER KIESLING: No, I'm willing to make one.

15 CHAIRMAN CLARK: I still have questions.

16 COMMISSIONER KIESLING: Oh, okay. I'm sorry.

17 CHAIRMAN CLARK: You have a -- On page 367, you talk about
18 disallowing the fees for Mr. Sandbulte and Mr. Gagnon?

19 MS. MERCHANT: That's correct.

20 CHAIRMAN CLARK: I was curious. I guess my rationale was
21 when you have employees that are providing these services with
22 respect to a rate case, you don't add that to rate case
23 expense; you're recovering that in your salaries?

24 MS. MERCHANT: These are not employees of SSU.

25 CHAIRMAN CLARK: I know. But isn't -- Aren't those

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1 salaries somehow allocated to the companies owned by Minnesota
2 Power and Light? I mean, I'm sort of asking why they asked for
3 it in the first place.

4 MS. MERCHANT: It confuses me as to why specifically
5 Mr. Sandbulte's salary or his fees were in there because you
6 would assume that the Chairman of the Board would be filtered
7 through related party or management fees coming down through
8 charges not obvious up front.

9 CHAIRMAN CLARK: My confusion was that it seemed to me they
10 were just -- They're just like employees in the sense that you
11 are otherwise paying for their services through these fees and
12 it's --

13 MS. MERCHANT: Well, Mr. Gagnon is different. He is
14 specifically charged -- He is not allocated -- Well, according
15 to the evidence in the record, he specifically bills SSU for
16 the services that he does.

17 CHAIRMAN CLARK: But he is still an employee of the parent;
18 right?

19 MS. MERCHANT: That's correct. And I guess my philosophy
20 on this is they should have certainly, number one,
21 Mr. Sandbulte I think is a different circumstance, but with
22 Mr. Gagnon, they had plenty of time to provide supporting
23 documentation. As a related party they could have gotten the
24 information down to us. A lot of the charges were incurred
25 prior to March 31st. Obviously he traveled down to the

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1 hearing. So some were incurred after that, but we didn't get
2 kind of supporting documentation whatsoever from Minnesota
3 Power for those employees.

4 CHAIRMAN CLARK: Let me --

5 COMMISSIONER GARCIA: I just -- I would remind, and it's
6 just a question: I mean, these are Minnesota Power employees;
7 right?

8 MS. MERCHANT: That's correct.

9 COMMISSIONER GARCIA: And clearly if they were in a rate
10 case in the State of Minnesota and they were doing work for the
11 State of Florida, we clearly wouldn't -- they clearly wouldn't
12 want their rate bearers to pay for that type of work. So, I
13 would understand them trying to allocate that differently.

14 MS. MERCHANT: That's correct, but I think I'm not
15 necessarily -- I'm not saying that they didn't incur the costs
16 or Mr. Gagnon, I'm not saying that his fees -- It might have
17 been appropriate to charge his fees specifically to the rate
18 case.

19 CHAIRMAN CLARK: But even if it was appropriate we didn't
20 have the information?

21 MS. MERCHANT: That's correct. And the burden is greater
22 because they are a related party to justify those costs and
23 they had the time to do it, at least the original amounts
24 incurred before March 31st and a revised estimate to complete.

25 CHAIRMAN CLARK: Let me ask on --

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1 COMMISSIONER GARCIA: Staff is saying that had they
2 included them, staff would probably have put them in here?

3 MS. MERCHANT: We would have considered them for
4 Mr. Gagnon, but I think the issue is different for
5 Mr. Sandbulte because a lot of his charges are coming down
6 through the management fee.

7 CHAIRMAN CLARK: Let me ask you on page 366, you comment
8 that appellate expense, the Court has indicated that reasonable
9 appellate expenses are allowed only if the appellant prevails
10 on the appeal. Is that what that case says?

11 MS. CAPELESS: The Sunshine order?

12 CHAIRMAN CLARK: Right.

13 MS. CAPELESS: That's if the utility appeals, right, that
14 you would have to look to see how many issues there are in the
15 appeal and how many of those issues the utility prevailed upon,
16 if indeed the utility is the appellant.

17 CHAIRMAN CLARK: Does that case stand for the proposition
18 that if you appeal it, you only get your fees if you win?

19 MS. CAPELESS: I don't think it says that.

20 CHAIRMAN CLARK: See, that's my concern. And I guess what
21 I'm concerned about this case is I think it's probably going to
22 be appealed. And you have essentially said no expenses now for
23 that appeal.

24 MS. CAPELESS: What we're primarily saying, Madam Chairman,
25 is that we think it's premature for them to request them now.

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1 CHAIRMAN CLARK: Okay. When can they get them?

2 MS. MERCHANT: In the Sunshine case, they filed a motion
3 for additional expenses because of rate case expense.

4 CHAIRMAN CLARK: And did we subsequently adjust the rates
5 to take care of that?

6 MS. MERCHANT: Yes, we did, in the Sunshine case. They
7 prevailed on some and lost on some. I think we allowed a
8 portion of it.

9 CHAIRMAN CLARK: So we would go back and readjust the rates
10 based on that?

11 MS. MERCHANT: We did in that case. And, also, in this
12 case today we are, SSU's requested additional costs for Docket
13 920199 and Docket 830 -- 930880 for appeal costs. So, that's
14 where they're asking for recovery of additional costs.

15 CHAIRMAN CLARK: And what did we allow? What are we
16 recommending we allow?

17 MS. MERCHANT: For 920199?

18 CHAIRMAN CLARK: Those appeals, yeah.

19 MS. MERCHANT: That's in Issue No. 96 and we're
20 recommending \$100,000. In Docket No. 880, we're recommending,
21 that's Issue No. 95. Excuse me. That's Issue No. 94 and we're
22 recommending \$416,000. That's for the whole proceeding,
23 though. That's for the uniform rate investigation plus appeals
24 with adjustments.

25 Another thing, they also didn't provide any supporting

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1 documentation behind this amount.

2 CHAIRMAN CLARK: Behind the 100,000?

3 MS. MERCHANT: That's correct.

4 CHAIRMAN CLARK: Did they provide supporting document for
5 other appeals?

6 MS. MERCHANT: That's part of the problem in both of the
7 other cases. In Issue No. 94, there was more documentation for
8 appeals. In Docket No. 920199, they -- I mean, we can discuss
9 that when we get there in 96 -- but there was very little
10 information to support that, those additional costs.

11 CHAIRMAN CLARK: Let me ask a question. You have a
12 paragraph in here that Mr. Ludsen admits that if SSU received
13 recovery of legal fees from intervenors, it would constitute
14 double counting of rate case expense to include this.

15 Are you suggesting that one of your reasons for not
16 allowing appellate expense is that they will get it from
17 intervenors?

18 MS. MERCHANT: No, that was Issue b, Issue b. I just put
19 that in there because just in case the Commission gave recovery
20 of those costs in Issue No. b to SSU, then they shouldn't get
21 them in rate case expense. So I wanted to make sure that that
22 was covered through staff's analysis, but I'm not making
23 that --

24 CHAIRMAN CLARK: Oh, I see. In Issue b. Okay. I see.

25 MS. MERCHANT: I'm not making that jump that the other fee

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1 should be disallowed because of that.

2 CHAIRMAN CLARK: And reiterate for me with respect to costs
3 for the appeal, it would be your position they would come back
4 in and ask that those fees be allowed?

5 MS. MERCHANT: That's correct.

6 CHAIRMAN CLARK: As we did in Sunshine Utilities?

7 MS. MERCHANT: That's correct. They could do that either
8 through a separate proceeding after the appeal or through their
9 next rate case.

10 CHAIRMAN CLARK: Okay.

11 MS. MERCHANT: Essentially deferring judgment on it.

12 COMMISSIONER DEASON: Or they have the option not to file
13 an appeal?

14 MS. MERCHANT: That's correct.

15 COMMISSIONER DEASON: And not incur any expense.

16 CHAIRMAN CLARK: Well, I don't know that they will file an
17 appeal but they may have to defend one.

18 MS. MERCHANT: That's correct.

19 CHAIRMAN CLARK: And that was my concern.

20 Issue 93.

21 COMMISSIONER GARCIA: I move staff.

22 CHAIRMAN CLARK: Is there a second?

23 COMMISSIONER JOHNSON: Second.

24 CHAIRMAN CLARK: All those in favor say aye.

25 COMMISSIONER GARCIA: Aye.

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1 COMMISSIONER JOHNSON: Aye.

2 CHAIRMAN CLARK: Aye.

3 COMMISSIONER DEASON: Aye.

4 CHAIRMAN CLARK: Opposed nay.

5 COMMISSIONER KIESLING: Nay. I would remove the \$45,000 in
6 travel expense that is not supported by any documentation.

7 COMMISSIONER DEASON: Show my vote in the negative. It
8 would be consistent with Commissioner Kiesling.

9 CHAIRMAN CLARK: Okay. My voting for it is with the
10 understanding that appellate fees can be taken care of,
11 otherwise, if in fact they're incurred, because I do think they
12 will be incurred.

13 Commissioners, we've been going at it again for about,
14 getting close to two hours. Let's take a 10-minute break or a
15 15-minute break and we'll come back at 5:25.

16 (Brief recess.)

17 CHAIRMAN CLARK: Call the agenda back to order.

18 Item 94. Issue 94.

19 MS. MERCHANT: Commissioners, Issue 94 is the expense
20 associated with Docket No. 930880-WS. That's the uniform rate
21 investigation docket.

22 Staff is recommending that the utility be allowed to
23 recover \$416,502 amortized over five years. It should be
24 considered a regulatory Commission expense other as opposed to
25 rate case expense and it should be allocated to those

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1 facilities that were included in Docket No. 930880, not the
2 customer, not the customers in this current docket.

3 COMMISSIONER GARCIA: I move staff.

4 CHAIRMAN CLARK: Any questions, Commissioners?

5 COMMISSIONER DEASON: Yes, I have a question. It's your
6 recommendation to classify this as regulatory Commission
7 expense, amortize it over five years. My question is when
8 should the amortization begin?

9 MS. MERCHANT: Well, I think the costs, they're still costs
10 being incurred today on that. So, I think if you amortized it
11 today, starting with the effective date for these, for the 1996
12 test year, consistent with rate case expense.

13 COMMISSIONER DEASON: Well, now that's having your cake and
14 eat it, too. If costs are still being incurred, let's don't
15 have any amortization or if we're going to start, why don't we
16 begin with day one when the first dollar was expensed?

17 I mean, this is the very best scenario you possibly could
18 offer to the company is for them to accumulate all the costs,
19 even though the cases aren't over yet, but once there's a rate
20 case, then we're going to start allowing amortization. I don't
21 think that's the proper thing to do.

22 MS. MERCHANT: I don't know when you could measure a
23 stopping point in this case, though, because it is on appeal
24 right now.

25 COMMISSIONER DEASON: Well, if it's not over and they're

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1 still accumulating costs, why should we begin amortization now?

2 MS. MERCHANT: I guess the same argument could be compared
3 to the Docket 920199; it's not over yet. It's being amortized
4 in the prior docket and in this we're recommending, in
5 Issue 96, to be amortized in that, the additional costs.

6 COMMISSIONER DEASON: But rate case expense itself is a
7 separate creature and is specifically identified in the statute
8 where there is going to be recovery, it's guaranteed and the
9 customers aren't going to under or over pay.

10 In this situation, there's no guarantee that once
11 amortization starts that then we're going to reduce rates when
12 the amortization period is over. So, you can run the risk of,
13 if you put it in rates right now and there's not a rate case,
14 amortization ends, or, if there is another rate case and you
15 still include it in that and sometime before the next case is
16 filed, you don't, you're not going to be adjusting expenses
17 downward. So, you're putting the customers at risk that
18 they're going to have it in their rates, continue to pay it
19 even after the amortization is over, but you're guaranteeing
20 the company there is not going to be any amortization
21 whatsoever until they get rates specifically designed to
22 recover that amortization. And you're putting a double
23 jeopardy on the customers. I don't think it's fair.

24 Do you see my point?

25 MS. MERCHANT: I understand where you're coming from. I

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1 don't particularly agree.

2 COMMISSIONER DEASON: Well, do you agree then that -- Do
3 you agree that if you put it in rates, there is no guarantee
4 that once the amortization period is over that rates are going
5 to be reduced?

6 MS. MERCHANT: I think that if they come in for another
7 rate case in about four years that it would be reduced at that
8 point, or five years. It's very similar to the Marco Island
9 costs, the deferred debits there. The same premise, if you
10 amortized it over five years, this is no automatic reduction in
11 rates because of that.

12 There is also the argument --

13 COMMISSIONER DEASON: Yes, but we started the amortization
14 before this rate case.

15 MS. MERCHANT: That's correct. But, I mean, every year
16 that the utility does not have a rate case, they could be
17 incurring costs that won't be recovered. Particularly with
18 that Marco Island deferred debit, they lost recovery of that
19 first year.

20 COMMISSIONER DEASON: That's right. And how much expenses
21 are currently in rates right now of a regulatory nature that
22 customers are already paying for that perhaps have already been
23 amortized off and customers are still paying for?

24 MS. MERCHANT: I know in Issue No. 95 there's the
25 jurisdiction docket. That was a non recurring cost that we

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1 allowed for regulatory Commission expense other.

2 I believe looking at their MFRs, and I'm saying this from
3 my memory, but the only other costs incurred in regulatory
4 Commission expense other were index passthroughs, minor items,
5 not anything major compared to jurisdiction docket and the
6 uniform rate investigation.

7 But I do believe that in the next rate case that this will
8 come out and the rates will be adjusted accordingly. I think
9 it's a moving target, the test year concept. Rate case expense
10 happens to be the one item that goes down automatically but
11 they don't get automatic increased rates because some other
12 item goes up in the next year.

13 COMMISSIONER DEASON: And I agree with that wholeheartedly.
14 What we're doing here is guaranteeing dollar for dollar
15 recovery of this when that's not normally the technique. These
16 type expenses, when they're incurred and the costs are finally
17 finalized, they should start amortizing those once it's all
18 finalized, just like with those projects that we discussed
19 earlier for -- what was that-- Marco Island?

20 MS. MERCHANT: Right.

21 COMMISSIONER DEASON: Amortization should begin and they
22 shouldn't -- Amortization shouldn't be triggered by a rate
23 proceeding.

24 MS. MERCHANT: And I agree with you on that. I think,
25 though, that these costs are substantially close to the end. I

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1 can't remember exactly what point the appeal is in right now,
2 but I think this is pretty much towards the end of the costs to
3 be incurred for the uniform rate investigation. I think that
4 the Docket 920199 will continue on, but I think that the
5 uniform rate investigation will probably -- And that's just my
6 opinion on how that will proceed. But I still think that it's
7 reasonable to recognize that they will cease in 1996
8 substantially and that they should be amortized starting now.

9 MR. WILLIS: Commissioners, an update on that, the status
10 of the 880 docket, the uniform rate docket and the
11 jurisdictional docket, they still are in the appeal courts.

12 COMMISSIONER KIESLING: Still what?

13 MR. WILLIS: They are still in the appeal courts at this
14 point, both dockets are, the uniform rate docket and the
15 jurisdictional docket. And we have no idea when that will come
16 down, the decision in those cases.

17 CHAIRMAN CLARK: Any other questions? Any other questions
18 on 94?

19 Is there a motion?

20 COMMISSIONER JOHNSON: I just wondered what Commissioner
21 Deason thought would be the better approach here. Are you --

22 COMMISSIONER DEASON: Well, the first thing that strikes me
23 is if the company is still wanting to run this tab and keep
24 charging it to the ratepayers, don't start amortization until
25 it's all finalized and we know what the number is. That's my

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1 first reaction.

2 Now, if they're willing to stipulate they're not going to
3 charge any more to the customer and start amortization with
4 this rate proceeding, I'd be open to that, but I don't think
5 they're in a position to be stipulating at this point. The
6 record's closed.

7 I don't see how they can have it both ways. Normally you
8 begin amortization after the project is completed. You know
9 the costs. You start your amortization period. Here, we want,
10 we didn't start amortization before, until we start the rate
11 case, but we want to start it with the rate case, but we want
12 to continue to let them add to the tab. I don't think that's
13 the fair thing to the customer.

14 CHAIRMAN CLARK: Any further questions?

15 COMMISSIONER DEASON: I think it needs to be one way or the
16 other. So, I would move that we disallow any amortization of
17 these expenses in this rate proceeding.

18 CHAIRMAN CLARK: There has been a motion. Is there a
19 second?

20 COMMISSIONER JOHNSON: Second.

21 CHAIRMAN CLARK: All those in favor say aye.

22 COMMISSIONER DEASON: Aye.

23 COMMISSIONER JOHNSON: Aye.

24 CHAIRMAN CLARK: Opposed nay.

25 COMMISSIONER KIESLING: Nay.

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1 COMMISSIONER GARCIA: Nay.

2 CHAIRMAN CLARK: Nay.

3 Is there another motion?

4 COMMISSIONER GARCIA: I move staff.

5 COMMISSIONER CLARK: I second the motion.

6 VICE-CHAIRMAN DEASON: Motion has been made and seconded to
7 approve staff's recommendation.

8 All in favor say aye.

9 COMMISSIONER GARCIA: Aye.

10 COMMISSIONER KIESLING: Aye.

11 COMMISSIONER CLARK: Aye.

12 COMMISSIONER DEASON: All opposed nay.

13 COMMISSIONER JOHNSON: Nay.

14 COMMISSIONER DEASON: Nay.

15 CHAIRMAN CLARK: Issue 95.

16 MS. MERCHANT: Commissioners, Issue 95 is the costs
17 incurred in the jurisdiction docket, 930945-WS. They're
18 estimated to be \$95,530 total. They expensed these in 1996 and
19 we believe that they should be amortized as non recurring.
20 This results in a reduction test year expenses of \$29,404 and
21 they should be allocated to all the customers, the total
22 customers of SSU, not just the customers in this docket.

23 CHAIRMAN CLARK: Questions, Commissioners?

24 COMMISSIONER DEASON: I move staff.

25 CHAIRMAN CLARK: Is there a second?

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1 COMMISSIONER KIESLING: Second.

2 COMMISSIONER CLARK: I second it.

3 CHAIRMAN CLARK: All those in favor.

4 COMMISSIONER KIESLING: I seconded it.

5 CHAIRMAN CLARK: All those in favor say aye.

6 Aye.

7 COMMISSIONER KIESLING: Aye.

8 COMMISSIONER GARCIA: Aye.

9 CHAIRMAN CLARK: Opposed nay.

10 COMMISSIONER DEASON: Nay.

11 COMMISSIONER JOHNSON: Nay.

12 CHAIRMAN CLARK: Issue 96.

13 MS. MERCHANT: Commissioners, this is the additional rate
14 case expense incurred subsequent to the final order in Docket
15 No. 920199-WS, which is the prior rate case for SSU systems.

16 In their MFRs, SSU requested recovery of additional costs
17 of \$284,231. In Exhibit 255 they asked for additional costs of
18 \$175,000, for a total estimated costs of \$459,231.

19 These costs were made up of legal fees for the appeal, for
20 petition for reconsideration, other expenses that they said
21 needed to be trued-up from what was not allowed in the last
22 order, the final order in the docket.

23 Staff is recommending that -- There wasn't a lot of support
24 in the record for this. In fact, there was very little support
25 in the record. Exhibit No. 255, which was the rate case

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1 expense exhibit, came in and it just had the estimate of
2 \$284,231. And it showed the remaining 175, 175,000. It didn't
3 have any supporting invoices whatsoever.

4 The day of the supplemental hearing they tried to get --
5 the utility requested that 255a and 255b be entered into the
6 record and those were denied. They were identified as Exhibits
7 257 and 258.

8 What was allowed was some invoices out of 257, which were
9 invoices supporting Docket No. 920199. It was not nearly
10 substantial. They were for the firm Greenberg and Traurig and
11 some Cullen and Dykman law firm invoices. It certainly, it
12 didn't have any invoices supporting the Messer Vickers or the
13 Rutledge firm. There was no support whatsoever for the Mognif
14 Seibels. And I'm not sure if that's correct pronunciation.
15 But the witness, SSU's witness couldn't even say what those
16 were for. There certainly wasn't any support for the true-up
17 of expenses not allowed in the last docket.

18 Staff recognizes that costs have been incurred for that
19 docket subsequent. We know that there was a petition for
20 reconsideration. We know that it was appealed. We realize
21 costs have been incurred, but the record support is lacking.

22 Also, the argument is there that of the invoices that were
23 there, they were relatively high in the hourly rate: \$500 for
24 the Greenberg firm and, I can't remember exactly, 290 for the
25 Cullen Dykman firm.

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1 So as we discussed in Issue 93, we thought those billing
2 rates were excessive. So, taking all this together, we wanted
3 to allow some amount for the utility. We came up with
4 \$100,000. \$100,000 really doesn't come from any -- It's not a
5 magical number. It's not a percentage of anything. We could
6 do some type of analysis comparing the billing rate of
7 Mr. Hoffman at \$160 an hour, multiplying that times the number
8 of hours on those individual invoices that we have in Exhibit
9 No. 257 and come up with somewhere close to \$100,000. That's
10 about as close as I can get to the \$100,000 as far as solid
11 record support for that number. But essentially we don't think
12 that they met the burden to support that full requested rate
13 case expense and we've recommended that only \$100,000 be
14 allowed.

15 COMMISSIONER KIESLING: Well, Commissioners, I have the
16 same concern that I have expressed before, which is there is no
17 hard evidence in the record to support this number. And,
18 absent that, I'm not willing to find a particular number as
19 being appropriate. And, for that reason, I would not approve
20 any of the -- I guess it was 284,000 or something in the second
21 request. The numbers are running together. But I wouldn't
22 give them anything out of the request that you're proposing to
23 give them 100,000 out of.

24 COMMISSIONER GARCIA: Commissioner, while I would like to
25 agree with you, I don't. And while I would like to agree with

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1 staff, I don't either.

2 I think that we can extrapolate from the experience of this
3 Commission and what we've done before and what the Commission
4 has in its possession. It may not be precise. It may not be
5 exact, but I think we can draw on what exactly these costs were
6 in a ballpark. And I think staff has tried to do it with
7 100,000.

8 My honest opinion is that staff is undershooting, after I
9 read the recommendation. And I think that we extrapolate when
10 we're cutting downwards and we should also use the same logic
11 in the other direction when we think what's fair is fair. And
12 I think that's what staff tried to do. If I had to synthesize
13 what the \$100,000 represents is we were trying to be fair with
14 the parties here.

15 In all honesty, and I'd like to hear some discussion on
16 this, I may get swamped, but I'd like to hear some discussion
17 on this because I think that we should shoot for somewhere
18 about half of what they asked at the very minimum. And I
19 understand that perhaps the company made an error in not filing
20 these documents but taking this all away is pretty severe
21 punishment for a process that I think --

22 CHAIRMAN CLARK: If I can state what you're saying another
23 way is there is evidence to support there are expenses there.
24 And my, what I have a problem with was going with 0. That's in
25 effect saying there are no expenses. We know there are

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1 expenses.

2 MS. MERCHANT: There's evidence for about \$170,000,
3 invoices, invoice support.

4 CHAIRMAN CLARK: But those 175 include the \$500 rate;
5 doesn't it.

6 MS. MERCHANT: That's correct, and the \$290 rate. Those
7 are the invoices out of the total \$459,000.

8 COMMISSIONER GARCIA: Madam Chairman, I want to be clear
9 when I say this. I don't want to come off as here is a
10 Commissioner giving away other people's money. Under no
11 circumstance would I want that to happen. But I think we have
12 enough experience and we have enough information before us that
13 we can make a determination of more or less what the costs here
14 was. When we don't think it's right, we've been cutting and we
15 have been cutting I think for most of the day.

16 In this particular case I think that we also have a good
17 idea of where this more or less stands and I think staff took a
18 stab at it. If that number would be acceptable, I think, what
19 was the -- What was the total that you stated a second ago on
20 this?

21 MS. MERCHANT: \$459,231, that's the total revised estimate
22 that they have asked for.

23 COMMISSIONER JOHNSON: And they submitted invoices for 170,
24 but that included some numbers that we thought were quite high
25 with respect to fees for Greenberg and the other law firm.

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1 Commissioner Garcia, I agree with you generally. And I do
2 believe that there is at least evidence in the record that
3 suggests that expenses were incurred and I think staff did a
4 fine job of trying to reach a number that was reasonable and
5 still, too, conservative with respect to the fact that we were
6 working with estimates. I feel comfortable with the staff
7 recommendation.

8 MS. CAPELESS: If I might just add very briefly, I think,
9 Commissioner Garcia, that your position is supported by case
10 law. The Florida Crown case specifies that the Commission
11 enjoys a broad discretion with respect to allowance of rate
12 case expense. The Meadowbrook case adds to that so long as you
13 make a finding of prudence.

14 Some of the costs, for example, the \$28,000 for the appeal
15 bond is in the record.

16 And, you know, you are charged with determining the
17 reasonableness of the request regardless of, you know, whether
18 the utility met it's burden or not, it's still within your
19 discretion to determine whether the costs are reasonable.

20 COMMISSIONER GARCIA: I just know that beyond that, and I
21 think staff would probably agree with me here, that we know
22 what this costs and this is no -- This is a huge case. And
23 when we thought they've been wrong -- In fact, we've revisited
24 things and cut out. Whether this was an error in judgment by
25 the company or not, it's certainly not reasonable for us to

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1 think that this cost nothing.

2 If the majority wants to go with 100,000, I guess, you
3 know, if that's as high as we want to go, I'd feel more
4 comfortable at least sticking with precisely what we have out
5 there, which is 175 did you say?

6 MS. MERCHANT: About 170.

7 COMMISSIONER GARCIA: 170. And I'll be honest, I think
8 that going to that number at least we know for a fact that it's
9 out there. And I don't think we're in any position to judge --
10 When we get into judging the fees on these things, we might as
11 well start all over this whole process. I mean, that's
12 something that I wouldn't feel comfortable doing.

13 So, it would -- I guess you made a motion, Commissioner
14 Johnson; did you not?

15 COMMISSIONER JOHNSON: No, but I will.

16 COMMISSIONER DEASON: Commissioner Kiesling made a motion
17 and I'll second her position.

18 COMMISSIONER JOHNSON: Oh, did you?

19 COMMISSIONER GARCIA: Okay.

20 CHAIRMAN CLARK: Commissioner Kiesling, your motion was?

21 COMMISSIONER KIESLING: My motion was to, or at least what
22 I thought my motion was, was to take what was in the MFRs that
23 they proved up and subtract out their estimated projected
24 additional amount of \$175,000; wasn't that --

25 MS. MERCHANT: That's not what happened. They never proved

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1 up what was in the MFRs.

2 COMMISSIONER KIESLING: They never proved up any of it?

3 MS. MERCHANT: They never put any of that in. That was --
4 I assume that that was put in the exhibit that didn't get
5 entered into the record.

6 COMMISSIONER GARCIA: And why didn't that get entered into
7 the record out of curiosity?

8 MS. MERCHANT: By an oversight by the utility. It came in
9 and they -- I can't tell what happened with the utility, but --

10 CHAIRMAN CLARK: Here's what happened: We had, the rate
11 case was going. We got near the end and we were, the utility
12 produced that big huge exhibit and asked for it introduced as a
13 late filed exhibit on rate case expense.

14 MS. MERCHANT: It was not in there.

15 CHAIRMAN CLARK: There was no opportunity for anyone to
16 look at that again. So we postponed looking at it to give
17 everyone the opportunity. And when we did that, the next thing
18 we know there were two extra exhibits introduced at the
19 subsequent proceeding, the day before or at the proceeding.

20 MS. MERCHANT: One was the Monday before and the other one
21 was the day before, I believe.

22 CHAIRMAN CLARK: It gets to the issue at what time do you
23 cut off the ability to present evidence. And my feeling at
24 that time for not allowing the evidence in, there has to be a
25 time that you cut it off. And we had indicated at the final

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1 hearing that they would have the opportunity, we would allow
2 that exhibit in and we would take it up at a subsequent
3 proceeding. And then they tried once more to keep updating it.
4 They should have gotten it right at the right time.

5 MS. MERCHANT: And the information supporting these
6 additional costs never made it in 255. They put it in to 257.
7 That's the one that didn't get introduced into the record.

8 CHAIRMAN CLARK: But some of it got in.

9 COMMISSIONER GARCIA: \$179,000 got in.

10 MS. MERCHANT: But only in 259. I may have my exhibit
11 numbers wrong here.

12 MS. CAPELESS: 259 is correct.

13 COMMISSIONER GARCIA: Commissioners, if we want to send a
14 message, I mean, clearly, even if we gave them 179 or 100,000,
15 it's still over \$300,000 of a message that you're sending. And
16 it's not like this work wasn't done. I mean, we've been
17 flooded with this work and our staff has been also. If our
18 staff could bill by the hour, there would be no way to pay us,
19 anyone at this Commission. So, I just think it was reasonable.
20 I'm sorry. I don't have anything to add to that. There's a
21 motion.

22 COMMISSIONER KIESLING: And to the extent that the motion I
23 thought I was making isn't the right motion, I withdraw it, but
24 I need some clarification because my understanding was the
25 total amount they asked for in both the MFRs and in their

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1 additional, estimated additional appeal costs came to a total
2 of --

3 MS. MERCHANT: 459,231.

4 COMMISSIONER KIESLING: Thank you. That's the one. And of
5 that, I thought that they did prove up some, such as the
6 \$28,000 for the appeal bond, et cetera.

7 MS. MERCHANT: That's correct. That was not supported by
8 invoices, but we felt that that was, based on the testimony,
9 that the appeal bond was reasonable.

10 COMMISSIONER GARCIA: But you said they proved up, gave us
11 receipts -- just to make sure where Commissioner Kiesling is
12 headed -- of 179,000; are we using that number?

13 MS. MERCHANT: About 170,000, those were for the two law
14 firms, the Greenberg firm and the Cullen Dykman firm.

15 COMMISSIONER GARCIA: I've got you. I'm sorry. I just
16 didn't want to mix it up.

17 MS. MERCHANT: But the additional costs to true up, none of
18 those were supported. I certainly have never seen those costs
19 and don't know if those were specifically disallowed costs in
20 the last order or not. So the \$100,000 for those costs I
21 certainly would question. The 15,000 --

22 CHAIRMAN CLARK: For which costs, the 100,000 for which
23 costs?

24 MS. MERCHANT: They asked for \$100,000 in additional costs
25 that weren't approved in the final order and last case and they

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1 said that it was a true up from the budget to actual for the
2 last final order. So, and beyond the testimony in the record,
3 I am not sure as to whether those could have been disallowed
4 costs from the last, and there were some disallowed costs in
5 the last order. So, I don't know what those costs were, but
6 that was about \$100,000 of the \$459,000.

7 COMMISSIONER KIESLING: But that's just coincidental to the
8 fact that you used 100,000 in your recommendation?

9 MS. MERCHANT: Just coincidence.

10 COMMISSIONER KIESLING: It's not the same 100,000?

11 MS. MERCHANT: No, no. But that's one -- That's a lump sum
12 100,000 that I would recommend first off take out. The, you
13 know, the 15,000 for the Mognif Seibels, the witness couldn't
14 even explain what that was for.

15 COMMISSIONER KIESLING: I agree.

16 CHAIRMAN CLARK: 15,000 for what?

17 MS. MERCHANT: Mognif, M-o-g-n-i-f.

18 CHAIRMAN CLARK: Okay.

19 MS. MERCHANT: Seibels. It was some firm and it was
20 questioned whether was even a law firm.

21 CHAIRMAN CLARK: A law firm, right.

22 MS. MERCHANT: Now, there was testimony saying that or
23 OPC's position was that Mr. Hoffman's fees should be allowed,
24 they should be reasonable, but anything above and beyond
25 Mr. Hoffman's fees should not be allowed. And Messer

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1 Vickers -- And we lumped Messer Vickers and Hoffman, I mean,
2 and Rutledge Ecenia together. Messer Vickers was 21,000 and
3 Rutledge was 81,000. Those amounts are shown in the testimony
4 in the record but not supporting documentation behind those
5 amounts.

6 COMMISSIONER KIESLING: Well, see, that's why I'm having
7 trouble dealing with this in dollars instead of breaking it out
8 into what they proved and what they didn't, because I agree
9 that the 81,686 for Rutledge Ecenia, I don't think there can be
10 any dispute and I don't think there was any dispute from public
11 counsel or anybody else that that was an expense that was
12 reasonable and was incurred.

13 MS. MERCHANT: That's correct.

14 COMMISSIONER KIESLING: And I don't think there is any
15 doubt that the \$28,000 for the appeal bond was an expense that
16 was incurred.

17 MS. MERCHANT: That's correct.

18 COMMISSIONER KIESLING: But then when I start looking at
19 the Cullen and Dykman for 76,158 and the Greenberg Traurig for
20 \$89,187 and I can't even figure out what services it was that
21 they provided with specificity, and I see that their rate, one
22 of them was \$500 an hour, see, I just can't go along with that.

23 So, that's why instead of coming up with a number that we
24 pulled out of some place, I want to come up with a number that
25 really bears a relationship to what the facts are.

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1 MS. MERCHANT: You could take the without document support,
2 if you believe that the amount, that the Messer Vicker firm and
3 the Rutledge Ecenia firm, that would be about \$100,000, a
4 little bit over. You could add in the amount for the appeal
5 bond. And I guess that would be about 130 something thousand,
6 if you thought that was reasonable. I don't think that's
7 objectionable either.

8 CHAIRMAN CLARK: You know, I think you're heading in the
9 right direction and I would agree with that. But I would also
10 add in the hours for the two other firms but I wouldn't add it
11 in at the rate they charged.

12 COMMISSIONER KIESLING: Exactly.

13 CHAIRMAN CLARK: I would add it in at the rate for Ecenia.

14 COMMISSIONER KIESLING: That Rutledge Ecenia charged. And,
15 see, I feel the same way.

16 MS. MERCHANT: That would be about another \$100,000. So
17 you're at 230 now.

18 CHAIRMAN CLARK: The reason -- Commissioner Garcia, I
19 understand your concern about getting into rates and that sort
20 of thing, but I understand why the company might want to hire
21 someone like Art England, but then you have to get to the issue
22 of what should the customers bear. And I'm not sure that they
23 should be asked to bear that premium for that attorney. But I
24 do recognize the fact that I think, I don't think time would
25 have allowed them to use the same attorney to do that.

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1 MS. MERCHANT: And I think the evidence supports that, too.
2 There is evidence to say that Mr. Hoffman didn't have
3 sufficient resources. At one point they said they weren't sure
4 and then they came back, Mr. Ludsen came back and said, well,
5 no, he didn't have enough resources.

6 COMMISSIONER GARCIA: Commissioner, Commissioner Kiesling
7 has had some experience in private practice. Maybe if you want
8 to use Mr. Hoffman's figure, I would assume that at least
9 that's better than where we're at.

10 COMMISSIONER KIESLING: Yeah. And I agree. I mean, that's
11 why -- I'm not trying to cut it down to 0. I don't want to
12 even settle for 100,000. I want to give them whatever there is
13 that there's proof of. And that's why I'm trying to do, I
14 mean, as painful as it is at 6:00 o'clock at night to have to
15 go through this item by item, you know, I don't see any other
16 way to do it.

17 COMMISSIONER GARCIA: No, I agree. In no way am I
18 disagreeing with what you're saying.

19 COMMISSIONER KIESLING: Okay. So Cullen and Dykman and
20 Greenberg Traurig, we can take the number of hours that they
21 proved up, however do it at the Ecenia, Rutledge Ecenia rate,
22 and whatever that dollar amount comes out to we can add it.

23 COMMISSIONER GARCIA: Which is a compliment to Mr. Hoffman,
24 not derogatory statement about Mr. England.

25 COMMISSIONER KIESLING: No, I'm not intending any of that.

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1 It's just we have to give reasonable attorney's fees. When you
2 calculate it, it's got to be reasonable. I would give them the
3 \$28,000 for the appeal bond.

4 COMMISSIONER GARCIA: Is someone adding this up?

5 COMMISSIONER KIESLING: I hope somebody is because I'm not.

6 MS. MERCHANT: It's been added up by a non accountant.

7 \$102,774 for Rutledge Ecenia, Messer Vickers; 28,000 for the
8 appeal bond. And then if you wanted to assume \$100,000, which
9 would be real close to \$160 an hour times the number of hours,
10 and I don't have that exact number, but 100,000 would be a
11 ballpark, if you wanted to do that. Adding that in would be a
12 total of \$230,774.

13 COMMISSIONER KIESLING: And these are actually incurred
14 expenses, not requested estimated additional appeal costs;
15 right?

16 MS. MERCHANT: Honestly, on Mr. Hoffman's, I can't tell you
17 that because I don't know. I don't have his invoices to be
18 able to tell you that. But the Greenberg Traurig and Cullen
19 and Dykman would be the actual invoices that we have. So, I
20 hope that answers your question.

21 COMMISSIONER KIESLING: Yeah, it does. And there was also
22 a request for miscellaneous expenses of \$4,714. Do we have any
23 documentation to support part or any of that?

24 MS. MERCHANT: Can you point me to what page that is?

25 COMMISSIONER KIESLING: I'm looking at page 380, the first

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1 full paragraph, the second to the last line: "SSU also
2 requested additional miscellaneous expenses of \$4,714 and
3 34,000 estimated for other projected expenses."

4 MS. MERCHANT: I don't know what those are other than the
5 testimony in the record, the statement just like that.

6 COMMISSIONER KIESLING: Okay. Are you aware of any other
7 items included within this issue for which there is record
8 evidence?

9 MS. MERCHANT: Okay. We -- Excuse me. We just calculated
10 the rate for the Greenberg Traurig and Cullen Dykman to be
11 \$76,374 at the \$160 an hour.

12 COMMISSIONER KIESLING: That sounds more like it.

13 And you're not aware of any other expenses for which there
14 was any record evidence of support --

15 MS. MERCHANT: No, ma'am.

16 COMMISSIONER KIESLING: -- whether it was in the form of
17 testimony or documents?

18 MS. MERCHANT: No, ma'am.

19 COMMISSIONER KIESLING: All right. Then I would move --
20 What's the total?

21 MS. MERCHANT: I'll have to re-add. \$207,148.

22 COMMISSIONER KIESLING: Then that's how much I move that we
23 grant in additional rate case expense subsequent to the final
24 order in the 199 docket.

25 COMMISSIONER GARCIA: With the understanding, and I don't

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1 want to be repetitive, that this is not that it's a giveaway;
2 it's just that we in our opinion think that those are just,
3 fair, and reasonable. So I second it.

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

6 COMMISSIONER GARCIA: Aye.

7 COMMISSIONER JOHNSON: Aye.

8 CHAIRMAN CLARK: Aye.

9 CHAIRMAN CLARK: Opposed nay.

10 COMMISSIONER DEASON: Nay.

11 CHAIRMAN CLARK: Issue 97.

12 COMMISSIONER GARCIA: Move staff.

13 COMMISSIONER KIESLING: Second.

14 CHAIRMAN CLARK: Without objection, Issue 97 is approved.

15 Issue 98.

16 COMMISSIONER GARCIA: Move staff.

17 COMMISSIONER KIESLING: Second.

18 CHAIRMAN CLARK: Without objection, Issue 98 is approved.

19 Issue 99.

20 COMMISSIONER KIESLING: Move it.

21 COMMISSIONER GARCIA: Is there any discussion? If there's
22 no discussion, I'll second it.

23 CHAIRMAN CLARK: Without objection, Issue 99 is approved.

24 Issue 100.

25 COMMISSIONER KIESLING: I move staff.

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1 CHAIRMAN CLARK: Without objection, Issue 100 is approved.
2 101 was dropped.
3 102.

4 MS. MONIZ: Commissioners, 102, Issue 102 relates to an
5 attrition adjustment proposed by -- The utility wanted to
6 increase his attrition factor from 1.95 that he used in his
7 MFRs to 2.49%.

8 COMMISSIONER KIESLING: I move staff to deny that request.

9 CHAIRMAN CLARK: We're using a 1.95?

10 COMMISSIONER KIESLING: Right.

11 CHAIRMAN CLARK: Okay. Without objection, 102 is approved.
12 Issue 103.

13 COMMISSIONER KIESLING: I move staff.

14 This is FAS 106.

15 COMMISSIONER DEASON: Second.

16 CHAIRMAN CLARK: I think I have a question. We're on the
17 FAS 106.

18 COMMISSIONER GARCIA: I'm sorry?

19 CHAIRMAN CLARK: We're on Issue 103; right? I'm trying to
20 read my notes.

21 COMMISSIONER GARCIA: Why don't you take a second because
22 you said 106.

23 CHAIRMAN CLARK: Well, I meant FASB 106.

24 MS. MERCHANT: The witness supporting this additional cost
25 was stricken from the record.

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1 CHAIRMAN CLARK: Okay. My question is, though, should
2 actual '95 -- All right. What did we consider? What did we
3 have?

4 And this goes to the notion of, as I understood what we did
5 and the utility did, they took budgeted '95 and projected a '96
6 test year; right?

7 MS. JEANNE CLARK: That's correct.

8 CHAIRMAN CLARK: And staff has taken the position that it's
9 inappropriate to make actual adjustments based on actual?

10 MS. JEANNE CLARK: Correct.

11 MS. MERCHANT: You should adjust the projection as opposed
12 to going in and specifically --

13 CHAIRMAN CLARK: Adjusting for what happened in '96?

14 MS. MERCHANT: Right.

15 CHAIRMAN CLARK: We did do some adjustments to '95?

16 MS. MERCHANT: That's correct.

17 CHAIRMAN CLARK: Have we gotten to the slippage one?

18 MS. MERCHANT: Oh, yes. This was a '95. It's still a
19 projection. It's still a basis used to project 1996.

20 CHAIRMAN CLARK: Are there expenses? Did they include
21 expenses in '95 for FASB 106?

22 MS. JEANNE CLARK: There are expenses included. What they
23 have in the record is they're based on their '94 actuarial
24 valuation report.

25 CHAIRMAN CLARK: And that's what they budgeted for '95?

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1 MS. JEANNE CLARK: Correct.

2 CHAIRMAN CLARK: And then they attempted to correct the
3 '95; right?

4 MS. JEANNE CLARK: Correct.

5 CHAIRMAN CLARK: Okay. And that involved the issue of
6 allowing to supplement the record?

7 MS. JEANNE CLARK: That's correct.

8 CHAIRMAN CLARK: Okay. All right. There has been a motion
9 on 103. Without objection, 103 is approved.

10 104 has been dropped.

11 105.

12 MS. KAPROTH: Commissioners, Issue 105 addresses whether
13 there should be any gains or losses on the sale of SSU plants
14 above the line income.

15 Staff --

16 COMMISSIONER KIESLING: I move -- Oh, I'm sorry. I move
17 staff to be consistent with how we've dealt with this on past
18 occasions.

19 CHAIRMAN CLARK: Questions? Further comment?

20 Without objection, Issue 105 is approved.

21 Issue 106.

22 Do we have to deal with this?

23 MS. MERCHANT: Yes, ma'am.

24 COMMISSIONER KIESLING: It doesn't seem that we do have to
25 if we're not going to --

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1 MS. MERCHANT: Well, we recommended that a few gains be
2 amortized but they had been included in rate base or in rate
3 previously.

4 COMMISSIONER KIESLING: Well, do we need to vote on 106?

5 MS. MERCHANT: Yes, I believe we do.

6 COMMISSIONER KIESLING: I move staff on 106.

7 CHAIRMAN CLARK: Without objection, 106 is approved.

8 107.

9 COMMISSIONER GARCIA: I move staff.

10 COMMISSIONER KIESLING: Second.

11 COMMISSIONER GARCIA: I move 108.

12 CHAIRMAN CLARK: Wait a minute. Without objection, 107 is
13 approved.

14 108.

15 COMMISSIONER KIESLING: Are you in a hurry?

16 I'll second that.

17 COMMISSIONER GARCIA: I just know we've got a big
18 discussion to come up.

19 CHAIRMAN CLARK: Issue 108 is approved.

20 109.

21 COMMISSIONER GARCIA: It was a stipulation.

22 CHAIRMAN CLARK: 110.

23 COMMISSIONER GARCIA: I move it.

24 MS. MERCHANT: It will be a fallout based on previous rate
25 base.

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1 CHAIRMAN CLARK: What does the asterisk mean in there?

2 MS. MERCHANT: That's a typo. I should have put a number
3 in there. See that dollar sign?

4 CHAIRMAN CLARK: Well, I kept looking for what the asterisk
5 meant and I figured, well, I missed it, I could ask later.

6 MS. MERCHANT: But it is a fallout. It's not going to be
7 whatever that number would have been anyway because the rate
8 base changed.

9 CHAIRMAN CLARK: Okay. All right. It's a fallout?

10 MS. MERCHANT: Yes, ma'am.

11 CHAIRMAN CLARK: Issue 111.

12 COMMISSIONER GARCIA: I move it.

13 MS. MERCHANT: Also a fallout.

14 CHAIRMAN CLARK: So, without objection, 111 is approved,
15 and it should be adjusted as appropriate from the votes on
16 other issues.

17 110 -- 112. It's getting late.

18 MS. ROMIG: Same thing, fallout.

19 CHAIRMAN CLARK: It's approved with the understanding it
20 will change with respect to other votes.

21 113.

22 COMMISSIONER KIESLING: That's the same thing.

23 CHAIRMAN CLARK: Issue 113 is approved.

24 Issue 114.

25 COMMISSIONER KIESLING: That's another fallout issue.

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1 MS. MERCHANT: That's correct.

2 COMMISSIONER KIESLING: And I move it.

3 CHAIRMAN CLARK: Without objection, 114 is approved.

4 115.

5 MS. MERCHANT: It's not a fallout.

6 COMMISSIONER KIESLING: No, it's not.

7 CHAIRMAN CLARK: But everybody agrees it should be done?

8 MS. MERCHANT: That's correct.

9 COMMISSIONER KIESLING: Yes. I move it.

10 CHAIRMAN CLARK: Without objection, Issue 115 is approved.

11 Issue 116.

12 COMMISSIONER KIESLING: That's another fallout and --

13 CHAIRMAN CLARK: Without objection.

14 COMMISSIONER KIESLING: Yes.

15 MS. MERCHANT: 141.

16 COMMISSIONER KIESLING: Still have 141 to do.

17 MS. MERCHANT: 141 is essentially a resurrection of a
18 stipulation. And the only reason why is because the rate had
19 to be voted on. It was on the flip side of this schedule that
20 kept getting corrected that I gave you. It's a fallout, also.

21 CHAIRMAN CLARK: Without objection, 141 is approved.

22 We have dealt with 145?

23 MS. MERCHANT: That's correct.

24 CHAIRMAN CLARK: Are we back to Issue 5 and Issue 4?

25 COMMISSIONER JOHNSON: Yes.

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1 CHAIRMAN CLARK: Let me ask staff a question. I was
2 looking through my notes from the hearing and I remember a
3 discussion with -- I thought I remembered a discussion with
4 Mr. Sandbulte and also a discussion with Mr. Sweat about the
5 utility's acquisition policy.

6 What I recall is, when we asked, you know, what's your
7 policy, what do you look at when you acquire utilities and they
8 said they basically had no policy, as I recall.

9 Does anyone -- Is that consistent with what staff
10 remembers?

11 MS. JABER: If I answer that question, I would be guessing
12 from reading the transcript a few weeks ago. So you might want
13 to give us a little break and we'll refresh our recollection.

14 CHAIRMAN CLARK: Yeah. I think it would be under Mr. Sweat
15 or Mr. Sandbulte.

16 MS. JABER: It was Sandbulte.

17 COMMISSIONER KIESLING: I mean, again, I didn't review
18 this, you know, last night, but I certainly did go back and
19 review it. And if I recall correctly, it was -- Ask your
20 question again because I knew it when I started to say that and
21 now I can't even remember the subject.

22 CHAIRMAN CLARK: That there was -- I think I inquired about
23 what was their acquisition strategy or policy with regard to
24 acquiring other utilities.

25 COMMISSIONER KIESLING: And my understanding was that

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1 essentially they said they didn't have any established policy,
2 they did it on a case by case basis by evaluating each
3 potential purchase.

4 CHAIRMAN CLARK: Okay. Let me ask another question. Is
5 there -- This company has a new president now, Mr. Cirello.
6 When did he come on board? Is that in the record?

7 MS. MERCHANT: It is somewhere. Summer '95. There's a
8 stipulation on his salary I believe being adjusted. It's in
9 there somewhere.

10 CHAIRMAN CLARK: When was the rate case filed?

11 COMMISSIONER KIESLING: June of '95.

12 MS. MERCHANT: It was after the rate case was filed, I
13 believe.

14 CHAIRMAN CLARK: That he came on board; right? And prior
15 to that time is there any -- So his salary is in the test year?

16 MS. MERCHANT: Yes, projected, and we made an adjustment
17 for it, a stipulated adjustment.

18 CHAIRMAN CLARK: Okay. Prior to Mr. Cirello becoming
19 president, who was president?

20 MS. MERCHANT: Mr. Vierima was the acting president.

21 CHAIRMAN CLARK: How long was he acting president?

22 MS. MERCHANT: I'm guessing, about maybe a year and a half,
23 two years.

24 CHAIRMAN CLARK: Okay.

25 MS. MERCHANT: It escapes me who was the man before.

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1 COMMISSIONER KIESLING: Burt, Burt Phillips.

2 MS. JABER: But we really are guessing as to the time
3 periods that these people --

4 MS. MERCHANT: It's in the record, though.

5 CHAIRMAN CLARK: Is it in the record?

6 MS. MERCHANT: I'm sure it is.

7 CHAIRMAN CLARK: Okay. All right. I just wanted to ask
8 those questions.

9 Commissioners, we can go back to Issue 5. I think there is
10 a possibility, I don't -- We may want to consider them
11 discretely. We may want to entertain a motion that is a
12 combination of them.

13 COMMISSIONER GARCIA: Go back to where?

14 CHAIRMAN CLARK: I would suggest that we just -- We are now
15 on Issues 4 and 5.

16 COMMISSIONER KIESLING: Well, just to give us some place to
17 get started, because I think we certainly discussed this to
18 death, I am willing to make a motion that the actions of
19 Southern States do not rise to the level of being
20 mismanagement.

21 And I base that among other things on something that I
22 didn't bring up earlier but which I am going to bring up now
23 and that is going and looking at the definition of misconduct.
24 And the definition of misconduct, which is considered a synonym
25 for mismanagement is a transgression of some established and

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1 definite rule of action, a forbidden act, a dereliction of
2 duty, unlawful behavior, willful in character, improper or
3 wrong behavior.

4 And when I look at the totality of those definitions, I
5 believe that there is more required than just poor judgment or
6 stupidity for us to consider that to be the level of
7 mismanagement and misconduct to which an adjustment should be
8 applied. So, that's the purpose of my motion.

9 CHAIRMAN CLARK: On Issue 5?

10 COMMISSIONER KIESLING: On Issue 5.

11 COMMISSIONER JOHNSON: I wanted to discuss some issues
12 but --

13 CHAIRMAN CLARK: Your motion is to deny staff?

14 COMMISSIONER KIESLING: Well, I was trying to break it out.

15 CHAIRMAN CLARK: Then state it in the form of a motion.

16 COMMISSIONER KIESLING: Okay. My motion is to find that
17 the improper actions of Southern States, which I don't think
18 any of us disagree occurred, do not rise to the level of
19 misconduct or mismanagement for which an adjustment is
20 required.

21 CHAIRMAN CLARK: That discrete incident?

22 COMMISSIONER KIESLING: Yes.

23 CHAIRMAN CLARK: Is there a second?

24 COMMISSIONER JOHNSON: Do we need to second it before we
25 discuss it, because I'll just wait on somebody else to second

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1 it.

2 COMMISSIONER GARCIA: I may second it but I won't vote for
3 it, if you want to discuss it.

4 COMMISSIONER CLARK: Well, I think we can discuss it. Let
5 me go -- I'll go ahead and second that. And I want to be clear
6 that I'm dealing with that, whether or not that discrete
7 action, it rises to the level of misconduct such that we
8 should, that we can take action with respect to the rate of
9 return. But I ask those questions having to do with
10 acquisition policy and having to do with Mr. Cirello because I
11 think what happened with respect to that letter and some other
12 things that have surfaced in this proceeding with respect to
13 customers being concerned about responsiveness does indicate to
14 me that for some period of time there was not, there was
15 something lacking in the management in terms of focusing on
16 providing quality utility service to these customers. And
17 while the specific conduct is not in and of itself misconduct,
18 I think it's an indication of some problems with the top
19 management of this company, or, for that matter, the lack of
20 management because there was a long time when you had, you
21 didn't have president and chief executive officer; you had one
22 that was acting.

23 And I think that what happened was you were not getting a
24 cohesive, comprehensive management that would have allowed,
25 that would have avoided some of these problems.

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1 I think the fact that there was a fiasco with those letters
2 is an indication of that, the fact that there were problems
3 with customer responses.

4 By the same token, there were other things going on that I
5 think the utility had no control over that affected their
6 ability to manage well.

7 I'm comfortable with not adjusting their rate of return to
8 the amount recommended for this particular comment, conduct,
9 but that doesn't mean that I wouldn't support setting the rate
10 of return at something below the midpoint to recognize that I
11 don't think the management has been where it should be. They
12 haven't been concentrating on providing good quality of
13 service, being responsive to their customers and taking the
14 steps that they needed to take to avoid some of the problems I
15 think we encountered. And, as I say, the letter to me is sort
16 of just indicative of that.

17 I will acknowledge there were things going on that were
18 beyond their control, such as the appeal of the uniform rate
19 and the overturning of that rate. That wasn't entirely their
20 responsibility. They didn't ask for it in that case. I'm the
21 only Commissioner left on the Commission that voted for that.
22 But I think there were some -- Because there wasn't, you know,
23 they didn't move quickly to get a new executive officer in
24 there and there wasn't a concentration on managing the utility
25 well, you had some problems that need to be addressed. I think

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1 they are being addressed. I mean, they have hired somebody who
2 has extensive experience in this arena and I would look for
3 them to improve that.

4 COMMISSIONER GARCIA: Madam Chairman, I likewise agree with
5 you and I think there is an unfortunate fact that has happened
6 here. And, of course, I don't disagree with staff bringing
7 this up as a primary issue, that something, something went
8 awry. I don't think that what went awry is the letter. I just
9 think the letter lends itself to today's world of --

10 COMMISSIONER CLARK: It's a symptom of.

11 COMMISSIONER GARCIA: Exactly. It's a symptom of what was
12 going wrong, but I think that the letter becomes such a central
13 issue because it's easy to publish in a newspaper or talk about
14 in short way and it's proof and I think everybody associated
15 with that letter from this Commission has suffered because we
16 got the letter, not because we did anything. And I think the
17 Lieutenant Governor was a victim of that letter. And I think
18 the company itself has suffered in terms of that letter. And I
19 think the public consciousness was affected by the letter.

20 While I agree with you that perhaps this is a symptom, I
21 don't think we should turn it away. And I would put it in
22 terms of mismanagement and what was going wrong. And I would
23 try to put it as the same thing that we're trying to address in
24 Issue 4, which, yes, by statute precisely in terms of what they
25 are meant to meet for their customers, yeah, they met the water

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1 quality standards of other agencies, but what is meant by
2 providing good service they didn't meet and it wasn't
3 acceptable service.

4 And I do think that there are a lot of factors to be put in
5 here: the fact that they acquired so many companies so
6 quickly, sometimes to the benefit of this state, in all
7 honesty, because you needed someone to do something.

8 COMMISSIONER CLARK: If I can just interject there. That
9 was one of the things that sort of is a further evidence to me
10 of not, management not focusing on the impact of what the
11 decisions may have in terms of their ability to provide quality
12 of service. I found it very troubling that there was no
13 acquisition policy, you know. If it looked good, we did it.

14 COMMISSIONER GARCIA: Precisely.

15 COMMISSIONER CLARK: And, but it's not that in isolation.
16 It's -- Those things sort of are symptomatic to me of some
17 failure of the management in this case.

18 COMMISSIONER GARCIA: I, again --

19 COMMISSIONER JOHNSON: I would agree with what both of you
20 have stated. And I guess that's why I was -- There was
21 hesitation when we first considered the issue because I had
22 some concern with respect to just pinpointing this particular
23 conduct. There was hesitation with respect to the quality of
24 service issue because I thought if you just looked at, or as I
25 interpreted the strict reading of the law, they did indeed meet

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1 those requirements. But at the same time I wanted to make sure
2 we weren't closing any doors.

3 One of the reasons why I asked whether or not there was
4 authority, even if we found that a company met, had marginally
5 satisfactory quality of service, could we still impose or have
6 the adjustment. Underlying all of that was just the concept
7 and for me it seemed as if we were narrowed by our issues and
8 that perhaps the issue should have been framed differently with
9 respect to have there been or have the actions of SSU or any of
10 their actions arisen to the level of mismanagement thereby
11 meriting, I'm using, just throwing out terms, an adjustment.
12 And in my mind some of the comments made by Commissioner Deason
13 and Commissioner Garcia with respect to the quality of service
14 issues to me could constitute mismanagement with respect to --

15 COMMISSIONER KIESLING: I agree.

16 COMMISSIONER JOHNSON: Excuse me.

17 COMMISSIONER KIESLING: I agree.

18 COMMISSIONER JOHNSON: Oh, yeah. And some of the other
19 issues that we've discussed throughout this process constitutes
20 mismanagement, but I thought it would be very important that we
21 focus the issue in a way to address those mismanagement issues,
22 clearly delineate what the action is/was that we are
23 recommending the adjustment for and proceeding in that manner.

24 COMMISSIONER CLARK: Let me just throw a caution out here
25 and we may get to the same place but by different reasoning.

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1 And I want to talk about the notion of mismanagement, because I
2 don't think that this is mismanagement in the sense of what I
3 found very problematic in the Gulf case, that not only there
4 was mismanagement that directly affected or more directly
5 affected the customers, and, quite frankly, other things going
6 on in terms of criminal allegations having to do with Gulf
7 Power. That was far more egregious in my opinion, but what
8 Gulf Power says to us is the Court has recognized our ability
9 to recognize efficient management. And I think in this case we
10 can recognize inefficient management. And that's really where
11 I'm coming from was they needed to -- And if I could pinpoint
12 what I think was probably the problem, it's the failure to have
13 somebody at the top who was in there permanently to manage this
14 utility, look at the big picture and to make sure all those
15 little decisions, such as hiring a bus to get people to a
16 customer hearing, whether or not it was appropriate to have
17 those customer hearings, thinking about what would the impact
18 be and have we gotten the message out right, more conscious
19 concern for how are they managing this company so it is
20 perceived as an efficient company, so they might avoid some
21 misunderstandings that would cause them to incur costs. And I
22 don't think that's happened here.

23 COMMISSIONER KIESLING: And since I made the motion, let me
24 just say I completely agree with you. I was still trying to
25 and I'm still trying to deal with the words that are actually

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1 in this recommendation on Issue 5, because I think under Issue
2 4, within the range of making an adjustment for marginally
3 satisfactory quality and value of service, that we can take
4 into account those things.

5 I was just looking at what I think we finally synthesized
6 down as the action for which mismanagement was being
7 recommended in Issue 5 and that was -- You had it written down
8 that it involved the solicitation and the timing.

9 COMMISSIONER JOHNSON: Improper solicitation of a
10 utility --

11 COMMISSIONER KIESLING: And things like that.

12 COMMISSIONER JOHNSON: -- for the purpose of influencing a
13 commission given the time, yeah, we got it.

14 COMMISSIONER KIESLING: That was it. And if that's what we
15 were synthesizing out of Issue 5, I don't believe that arises
16 to mismanagement.

17 COMMISSIONER CLARK: All right. Can we --

18 COMMISSIONER KIESLING: It's not to say that other things
19 they did taken in totality don't justify some adjustment
20 downward to make sure we get the message to them that this is
21 not acceptable. But, you know, so that was the reason for my
22 motion. It was based solely on the letters and the
23 circumstances surrounding the letters.

24 COMMISSIONER GARCIA: I just want to make sure, though,
25 because I don't want to close it out. The reasoning that I

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1 didn't second your motion is because that's where I found that
2 that issue applied to some degree. If you think that the issue
3 applies to mismanagement, we can apply it to Issue 4 or craft
4 Issue 4 to address that issue.

5 COMMISSIONER CLARK: I think we can, but I think what we
6 might want to do is dispose of this issue as the motion has
7 been made.

8 VICE-CHAIRMAN DEASON: A motion has been made and seconded,
9 but my question about that motion is that to me it does not
10 fully answer the question which constitutes Issue 5. It may be
11 a step in answering that question, but I don't think in my
12 opinion that one lone, that single motion and the second does
13 not answer Issue 5.

14 As I understand the motion, it simply says that that one
15 incident which has received so much attention in this case does
16 not in and of itself rise to the level of constituting
17 mismanagement, but it doesn't answer the question as to whether
18 there has been misconduct or mismanagement to the extent that
19 there should be some type of action taken by the Commission.

20 COMMISSIONER KIESLING: You're absolutely right. And that
21 was my intent. I was trying to get us focused on what it is
22 that we think the mismanagement was or the misconduct was --

23 VICE-CHAIRMAN DEASON: Okay. But you fully realize --

24 COMMISSIONER KIESLING: -- that we can support.

25 VICE-CHAIRMAN DEASON: -- that this one motion and second

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1 does not fully address Issue 5?

2 COMMISSIONER KIESLING: Absolutely; that's why I was
3 framing it solely as to the letters.

4 COMMISSIONER GARCIA: Because in truth, Commissioner, I'm
5 reading it one more time. It may very well be that it's simply
6 not the way that SSU, excuse me, that staff answers this
7 question that suits our opinion and that it may behoove us to
8 answer Issue 5 the way the Chairman I think has so properly
9 addressed it. Perhaps that's where we should do it as opposed
10 to --

11 COMMISSIONER CLARK: Do you want to withdraw your motion
12 and see if we can --

13 COMMISSIONER KIESLING: No, I don't because I still think
14 we have to deal with the component of Issue 5 that is in the
15 staff recommendation that we synthesized down to be the letter,
16 the timing of the letter.

17 COMMISSIONER CLARK: I think what Commissioner Garcia is
18 suggesting is we could get to that quicker if we go to 4 and
19 craft it the way we would feel comfortable with and then come
20 back to 5. Is that what you --

21 COMMISSIONER GARCIA: Either that, Commissioner, or simply
22 deal with 5 directly at this point as opposed -- I understand
23 what -- And let me see if I understand Commissioner Kiesling
24 because perhaps I'm confused. The Commissioner is addressing
25 staff recommendation solely, not necessarily the issue as it is

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1 presented before us?

2 COMMISSIONER KIESLING: Actually, I'm not even addressing
3 whether there is some level of misconduct for which there
4 should be, even though the word "sanction" is here, there
5 should be an adjustment to rate of return on equity because I
6 still think there are things in the record that might justify
7 that. All I'm saying is as to the very, what is in the rec,
8 that the letter and what surrounded it, I don't think is
9 enough.

10 COMMISSIONER GARCIA: Okay. So Issue 5 remains before us
11 after that vote?

12 COMMISSIONER KIESLING: Absolutely. I'm trying to narrow
13 the issues.

14 COMMISSIONER GARCIA: I would be unamenable to that.

15 MS. JABER: May I ask a clarifying question before you make
16 the vote for purposes of the order?

17 Commissioner Kiesling, I want to make sure that I
18 understand so that we don't have to revisit this. Are you
19 saying that for purposes of Issue 5, what staff has described,
20 there is no misconduct, not enough evidence to support
21 mismanagement?

22 COMMISSIONER KIESLING: Yes.

23 MS. JABER: Would you agree with me that by framing your
24 motion "does not rise to the level of mismanagement for which
25 an adjustment is required" almost implies that there is

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1 mismanagement and I don't think that's what you want to do. I
2 think you want to deny staff.

3 COMMISSIONER KIESLING: I'm trying not to even approach yet
4 the question of whether there is mismanagement in other areas.

5 MS. JABER: Well, then don't you just want to say for
6 what's in Issue 5 you want to deny staff?

7 COMMISSIONER KIESLING: No, because the recommendation is
8 in two parts. The recommendation says the Commission should
9 find that there has been some level of misconduct by SSU for
10 which some adjustment may be made. And I'm not approaching
11 that question yet.

12 All I'm saying is the letter and what went on around the
13 letter, while I think it was stupid and poor judgment and any
14 other number of terms that I could use, it does not rise to the
15 level of a transgression of some established and definite rule
16 of action or forbidden act, a dereliction of duty, unlawful
17 behavior, et cetera. And I think it has, would have a chilling
18 effect on other utilities in the future.

19 I still want to get to the question of are there other
20 things that this company did or didn't do that are misconduct
21 or mismanagement for which we want to make an adjustment. And
22 if the Commissioners say, yes, there is, then it will be up to
23 us to tell you what those are so you can put them in an order.

24 COMMISSIONER GARCIA: Commissioner, let me -- I'm sorry.
25 Let me go back on what I said because I said I agreed with you

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1 and now after listening to you restate it I don't. And let me
2 explain why.

3 I think this is part of the problem and it is a symptom of
4 the problem. And while I don't agree that this is the whole
5 reason, I think we're forgetting the whole discussion we had at
6 the beginning of this, which after sitting through the entire
7 hearing, I've come to sort of agree, the fact that, you know, I
8 agree with you, this was stupid. This was ill timed, but it's
9 part of mismanagement.

10 And I don't -- I don't necessarily think that it rises to
11 the level of a criminal act and I don't think it rises to the
12 level of a needed sanction as the staff used here.

13 What I do believe is that that is one of the many things
14 that would find me in a position to require an adjustment to
15 the company.

16 COMMISSIONER JOHNSON: I think I agree with Commissioner
17 Garcia. And as I look at the issue, which I hadn't looked at,
18 the framing, for quite a few hours, the way it's framed, "has
19 there been misconduct or mismanagement on the part of SSU and,
20 if so, what is the appropriate" -- I would strike "sanctions"
21 and leave "remedy." I think that our discussion and our
22 delineation of those actions that constitute mismanagement
23 should be addressed here.

24 And I would also agree that the actions as it related to
25 the conduct in the letter could be, would be one of those

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1 particular actions, but one among a number; not to say that
2 just doing the one thing caused us to adjust the return on
3 equity, but the totality. And as we list those things, I think
4 they each have important meaning and that would be one that I
5 would want to include in that listing. So that we could vote
6 this issue and combine Issue 4 elements into it and then not
7 have to deal with Issue 4.

8 COMMISSIONER CLARK: Can I ask staff a question? In Gulf
9 Power, you indicated it was 50 basis points for how long?

10 MS. JABER: Two years.

11 COMMISSIONER GARCIA: Give us a figure because when we
12 speak of basis points, I don't think anyone except those who've
13 been here awhile understand that.

14 COMMISSIONER KIESLING: Didn't we calculate that earlier?

15 MR. WILLIS: It came out to be two million two -- let's see
16 if I got this right -- \$2,243,000.

17 COMMISSIONER GARCIA: That was for Gulf Power; right?

18 MR. WILLIS: A year. Yes, for Gulf Power.

19 COMMISSIONER GARCIA: A year. So it was, in total it was
20 four million plus?

21 MR. WILLIS: Right.

22 COMMISSIONER CLARK: And what is a 100 basis points a year
23 for this utility?

24 MR. WILLIS: This utility, it is \$856,473.

25 COMMISSIONER JOHNSON: And in this two-part question, to

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1 the extent that we can delineate the conduct and then determine
2 the remedy, I think we need to break them out in just that way.
3 I don't think we -- because both need to be discussed
4 separately.

5 VICE-CHAIRMAN DEASON: Well, where we are right now is we
6 have a motion and a second. And that's the only --

7 COMMISSIONER CLARK: I'm going to withdraw my second.

8 I would like you to keep that because I would like to make
9 a motion.

10 VICE-CHAIRMAN DEASON: Okay. Gladly.

11 COMMISSIONER CLARK: I would like to make this motion:
12 That we deny staff on Issues 4 and 5, but that we make an
13 adjustment -- that we set the rates based on an equity that is
14 25 basis points below the mid range, and that this adjustment
15 be in recognition of what I would term less than efficient
16 management.

17 Gulf recognizes, and specifically in the Gulf case we have
18 rewarded particularly efficient management. And in that case I
19 think we can adjust for inefficient management.

20 And my basis for suggesting that the management has been
21 less efficient are some of the symptoms I think that were
22 evidenced in this rate case. I specifically mentioned my
23 concern about acquisition policy, that they didn't seem to have
24 any acquisition policy. And that demonstrated to me that the
25 utility was not paying enough attention to what impact the

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1 acquisition was going to have on their ability to deliver
2 quality service, and that that should have been a
3 consideration.

4 Likewise, we had evidence about customer meetings and
5 confusion on the part of the customers as to what information
6 they were getting, and the number of people who spoke to us
7 about that confusion and being concerned that the value of the
8 service that they were receiving was not commensurate with what
9 they were paying.

10 This to me again evidences a failure to take into account
11 an overall picture of where you should be going as a utility to
12 insure that your customers do have good information, that you
13 are not confusing them and that they have confidence in your
14 ability to effectively manage that.

15 I think if they had paid attention to that, we might have
16 avoided some of the confusion that we had to deal with in the
17 rate case that caused extra expense, I think.

18 I would indicate that, you know, I think there are some
19 level of confusion that they are not responsible for, that it's
20 just the way things happened. And I understand and take some
21 responsibility for that confusion, having been the Commissioner
22 that has dealt with this for a long time. And I would point
23 out that there were, they should have been aware of the
24 concerns that develop from acquiring this many utilities and
25 trying to put them together.

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1 But, as I say, it boils down to more inefficient than
2 mismanagement. And what Gulf says is if you can do one, you
3 can do the other. I don't -- I think in Gulf the conduct was
4 more egregious, and for that reason I don't recommend 50 basis
5 points --

6 COMMISSIONER JOHNSON: What about a time limit?

7 COMMISSIONER CLARK: -- as we did in Gulf.

8 COMMISSIONER JOHNSON: What about a time limit?

9 COMMISSIONER CLARK: And I would recommend that it be two
10 years as we did in Gulf.

11 COMMISSIONER KIESLING: Can we have some discussion on that
12 before I decide whether I'm going to second it or not?

13 COMMISSIONER CLARK: Yes. Let me point out there are other
14 things staff has put in their discussion that I think would
15 also suggest inefficiencies.

16 COMMISSIONER GARCIA: You would include the Sharkey letter,
17 though, in an overall?

18 COMMISSIONER CLARK: Well, to me, that's another thing. If
19 you were managing well, you kind of understand the impact of
20 that and you evaluate whether that is an appropriate way to go.
21 And I just don't have confidence that -- I have more confidence
22 now, I will say. I think they have -- They've gotten someone
23 in there. They will have that appropriate leadership and
24 direction they need, but it wasn't there.

25 COMMISSIONER KIESLING: I agree with everything you said

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1 and were it not for some other thoughts, I would readily second
2 it. However, I also still have some concern about the areas
3 that we talked about in Issue 4 as to the marginal satisfaction
4 of the quality and value of services.

5 COMMISSIONER CLARK: I think that certainly is a symptom of
6 inefficiency.

7 COMMISSIONER KIESLING: Well, and I think that it, while
8 it's a symbol of that, I also, I would I guess offer a friendly
9 amendment to, in addition add a point, I mean 25 basis points
10 for those quality of service and value of service problems that
11 were identified.

12 COMMISSIONER CLARK: Well, I would not accept that. It's
13 at a level I feel comfortable with. And it's in contrast to
14 what we have done in Gulf that I want to feel some consistency
15 of policy in that arena.

16 VICE-CHAIRMAN DEASON: We have a motion. Is there a
17 second?

18 COMMISSIONER GARCIA: Hang on. I may very well second
19 this.

20 I have a problem, though, Commissioner, because I go down
21 and I was -- If I'm not mistaken, I tried to pass the
22 alternative, which was 50 basis points for that quality of
23 service. And I was -- I may be mistaken -- but 4 is a fallout
24 of that. And I want to make sure that we're addressing these
25 in their totality.

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1 Do you understand what I'm saying? It may be legal I
2 should be asking.

3 COMMISSIONER CLARK: Yes, and I think that then you may not
4 want to support it but you may want to support a motion. It
5 sounds like your reasoning is more in line with Commissioner
6 Kiesling.

7 COMMISSIONER GARCIA: No, no, no. I agree that the 25 is
8 adequate. What I'm worried about is in the continuity of that
9 being a fallout of Issue 3 and that I had to vote something.
10 And maybe Lila could answer it for me.

11 Do we need to get to Issue 4 or is Commissioner, Chairman
12 Clark's motion sufficient to cover Issue 4?

13 MS. JABER: I understand Chairman Clark's motion to include
14 her concerns with respect to quality of service in the sense of
15 the management has been inefficient and that rises, and that
16 causes those quality of service problems.

17 COMMISSIONER CLARK: Yes.

18 MS. JABER: It's my understanding that her motion includes
19 that.

20 COMMISSIONER CLARK: It does.

21 COMMISSIONER GARCIA: All right. Then let me say this. I
22 will, and give my explanation. I will second Chairman Clark's
23 motion. And let me say why. I think that in that case, and
24 I'm glad she brought up that case because, again, I think that
25 when you look at the amount of that case and the amount of

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1 money that you are talking about and what had gone on was
2 clearly far worse than what happened in this case. And we have
3 to be a little bit balanced here and not for the heat of the
4 moment and the aggravation that some of the things that this
5 company has done to us, to this Commission, not effect our
6 decision, just like some of the things that the parties
7 involved have done, whether it be from the nasty letters we get
8 in our offices to the praising, glowing letters about uniform
9 rates to those who benefit. There's a lot of things here and
10 we can't allow the heat of that moment to affect us.

11 The truth is that when it was done to Gulf Power it did
12 create changes and probably by the time it was over it was a
13 much better company because of it. And for that reason, I
14 think that 25 basis points after consideration is correct. So
15 I'll second the Chairman's.

16 COMMISSIONER JOHNSON: And that's 25 basis points, two
17 years. What happens after the two years? Do the rates go up
18 by whatever the amount?

19 MR. WILLIS: That's my understanding, that if the vote goes
20 through, that the rates would then increase at the end of that
21 two-year period.

22 MS. JABER: That would be correct.

23 COMMISSIONER CLARK: That would be the purpose of my
24 motion.

25 Let me point out one other thing that I should probably

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1 indicate to staff that has been involved in my thinking. When
2 Mr. Sandbulte was testifying with regard to Florida and
3 acquiring utilities, I was struck by the fact that he did not
4 appear to understand the differences between regulations of
5 electric utilities and water and wastewater utilities,
6 specifically the used and useful. And I was very troubled by
7 the fact that there wasn't an understanding of that. That
8 seems to me would be, you know, you would need to know what you
9 were getting into and need to know the need to have somebody in
10 there that knew about regulation. And it was just troubling to
11 me that you wouldn't have had a better understanding so that
12 you could manage well.

13 MS. JABER: Chairman Clark --

14 COMMISSIONER CLARK: And I realize he came from Minnesota
15 Power and Light, but they're the parent company. They're
16 responsible in a sense for hiring the person to head up that
17 subsidiary.

18 MS. JABER: Chairman Clark, for the record I think it would
19 be better to reflect that what you are recalling is indeed the
20 evidence in the record transcripts cites from 163 to 169. I
21 represented to you earlier that I didn't recall that, but we
22 found it.

23 COMMISSIONER CLARK: Okay. But you have seconded my
24 motion?

25 COMMISSIONER GARCIA: Yes, ma'am.

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1 COMMISSIONER JOHNSON: I'm just having problems with the
2 25%. And I wanted to know from staff -- I'm probably not close
3 enough to the microphone.

4 COMMISSIONER KIESLING: It's not 25%. It's 25 basis
5 points.

6 COMMISSIONER JOHNSON: 25 basis points. What does that
7 mean with respect -- What's the impact there?

8 MR. WILLIS: The impact?

9 MS. MERCHANT: It's about \$230,000.

10 COMMISSIONER GARCIA: So it's almost half a million
11 dollars, \$460,000 over a two-year period.

12 MS. MERCHANT: That's right. That's a rough estimate.

13 MR. WILLIS: \$214,000 roughly.

14 COMMISSIONER JOHNSON: And how does that relate to the --

15 COMMISSIONER CLARK: Well, they can become real efficient
16 in their management and what they do and make that up. You
17 know, it's not -- I mean, that's one of the reasons I think for
18 dealing with your rate of return.

19 MR. WILLIS: I want to make that clear it's \$214,000 a
20 year.

21 COMMISSIONER JOHNSON: Per year?

22 MR. WILLIS: Per year.

23 COMMISSIONER JOHNSON: And how does that relate -- We were
24 kind of comparing it to what was in the Gulf Power case where
25 it was 50 basis points, but what did that mean in fact or can

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1 you make --

2 MR. WILLIS: In real dollars in the Gulf case, 50 basis
3 points were equivalent \$2,243,000.

4 COMMISSIONER CLARK: Per year?

5 MR. WILLIS: That's a year, per year.

6 COMMISSIONER JOHNSON: But it's still hard --

7 COMMISSIONER KIESLING: But that doesn't take into account
8 the different revenue streams of these two very different
9 companies.

10 MR. WILLIS: Exactly.

11 COMMISSIONER JOHNSON: And that's what I'm trying to figure
12 out. And I guess we don't have that information on the
13 revenue. We can do a revenue requirement and look at the real
14 percentage with respect to the 25 and what real impact that had
15 on SSU, but do we have any information regarding the Gulf case
16 and what that meant?

17 MR. WILLIS: I'm sure we could get that from the Division.

18 COMMISSIONER CLARK: No, you do have it. You just gave it.
19 You compared --

20 MR. WILLIS: I gave the impact. I gave the dollar impact.

21 COMMISSIONER CLARK: You compared the impact per -- I guess
22 I don't --

23 COMMISSIONER JOHNSON: No, I was trying to determine --

24 MS. JABER: You're asking about the impact, comparing the
25 two utilities, like \$800,000 to Gulf could be equivalent to the

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1 \$200,000 to SSU is what you're asking?

2 COMMISSIONER JOHNSON: Right, right.

3 MR. WILLIS: And I don't have that information.

4 COMMISSIONER JOHNSON: Okay. I mean, I do think we need to
5 send a message and I'm just trying to get a gauge and get some
6 comfort with what number, what adjustment would really send
7 that message. I understand it in absolute dollars this is very
8 different, but I'm not, but when you are making a comparison, I
9 don't know if you can just compare the --

10 MR. WILLIS: Well, I think if you're making a comparison,
11 you really have to look at the different ratios of equity, but
12 if you're trying to do a true comparison, you can look at the
13 Gulf was an actual 50 basis point reduction on the equity
14 ratio, the equity dollars in that company. And what's been
15 proposed here is a 25% reduction. So, common sense would tell
16 me it's less. If you're looking at a ratio between Southern
17 States and Gulf and the revenue streams of this company and the
18 equity levels in those companies, common sense would tell you
19 it's probably less.

20 COMMISSIONER JOHNSON: And 50 basis points would be
21 probably more?

22 MR. WILLIS: 50 basis points would be more in the range
23 with what -- I'm sorry --

24 COMMISSIONER GARCIA: More close to.

25 MR. WILLIS: Pardon?

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1 COMMISSIONER GARCIA: What did you say? More what?

2 MR. WILLIS: If you chose a 50 basis point penalty, that's
3 the same penalty that Gulf --

4 COMMISSIONER KIESLING: It's not a penalty. It's an
5 adjustment.

6 MR. WILLIS: I'm sorry. Adjustment, it would be more in
7 the range with the adjustment that Gulf received, yes.

8 COMMISSIONER JOHNSON: And I agree with Commissioner Clark,
9 in that the activities here, while they are egregious, they
10 don't appear to rise to the level of the conduct that occurred
11 in the Gulf Power case where we were dealing with a lot of
12 criminality and we were dealing with quality of service,
13 quality of service issues of a different magnitude.

14 Okay. I'm fine.

15 VICE-CHAIRMAN DEASON: We have a motion and a second.
16 Before we take the vote, let me express some opinion.

17 I am going to vote against the motion because I believe 25
18 basis points is insufficient. There has been a lot of
19 discussion about how this relates to the Gulf Power case and
20 relying on the precedent that's been set by that case.

21 I think that there is a big distinction that we need to
22 realize. The statement has been made that the allegations, the
23 actions, the improprieties were much more egregious in the Gulf
24 Power case. I don't necessarily disagree with that. But what
25 we had in the Gulf Power case is we did not have the quality of

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1 service problems which we had for this company.

2 Before all of those allegations came out, the customers
3 were not even aware that those things were going on. It did
4 not affect their day-to-day service that they received from
5 this company. Customers were not at the customer hearings
6 complaining about excessive outages or voltage frequencies
7 fluctuating improperly or unresponsive management or improper
8 billing or improper meter readings, all of the whole myriad of
9 things that we've gotten from customers in relation to this
10 utility company.

11 Therefore, I think that when you take into totality of all
12 of the symptoms which have been described by Chairman Clark,
13 which I agree with, by the way, but I don't think we're giving
14 enough weight to the lack of customer satisfaction and all of
15 the manifestations of the lack of that customer satisfaction
16 which have been repeatedly stressed by customers throughout the
17 customer hearings in this case.

18 So, for those reasons I think it would be more appropriate
19 to have a higher adjustment to return on equity than 25 basis
20 points.

21 COMMISSIONER JOHNSON: Well, I was under the impression --
22 I'm going to let you finish -- that the Gulf Power was a
23 quality of service, that those issues were at issue, too?

24 MS. JABER: No.

25 COMMISSIONER JOHNSON: Which case dealt with --

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1 MS. JABER: No. Gulf Power is the one that talked about
2 corrupt practices. Gulf Power Company admitted that corrupt
3 practices took place at Gulf between 1980 to 1988. They were
4 using company employees for personal matters, there was theft,
5 use of property and equipment.

6 COMMISSIONER JOHNSON: Okay. It's getting late and I'm
7 confusing the Ocean Reef case which was quality of service.
8 Okay.

9 VICE-CHAIRMAN DEASON: So --

10 COMMISSIONER GARCIA: Commissioner, may I ask you a
11 question just before you finish?

12 VICE-CHAIRMAN DEASON: Certainly.

13 COMMISSIONER GARCIA: I mean, one would like to strike a
14 chord that this Commission comes together on the final decision
15 here and this is the last issue. What would strike you as
16 correct, as an adjustment in this case?

17 VICE-CHAIRMAN DEASON: I would support Commissioner
18 Kiesling's motion that I think was never seconded.

19 COMMISSIONER KIESLING: I offered it as a friendly
20 amendment, which was declined.

21 VICE-CHAIRMAN DEASON: Oh, that's what it was. I'm sorry.
22 That's correct.

23 I think it would bring it in line with the Gulf decision,
24 which was 50 basis points. I think that there are more
25 reasons, the customer dissatisfaction and all the reasons for

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1 that customer dissatisfaction which did not exist in the Gulf
2 case does exist in this case, and that coupled with the other
3 symptoms of mismanagement which Chairman Clark indicated I
4 think would rise to the level of equating it to the Gulf of 50
5 basis points.

6 And I'd like to add one other thing. I think that Chairman
7 Clark did an exceptional job in framing her motion and I agree
8 with everything that she stated. I would have one other
9 concern as well.

10 And that is the impression throughout this entire
11 proceeding which I received is that this company is not as
12 concerned, top management is not as concerned with cost
13 containment as it should be. Now, I know that situations in
14 the water and wastewater utilities may be different from the
15 other utilities that we regulate and I try to take that into
16 consideration. But we know that the other utilities we
17 regulate have been down sizing. They have been cutting costs
18 and probably because of the threat of competition, but it shows
19 that it can be done with the right management, the right
20 vision. And I'm thinking -- I just get the impression that
21 there is not the concentration on cost containment and trying
22 to minimize customer bills that this management should be
23 attuned to. That's one thing I would add to the already long
24 list which Chairman Clark has enumerated.

25 So, we have a motion and a second.

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1 COMMISSIONER KIESLING: I have a question. Is that an
2 offer of a friendly amendment to Chairman Clark's motion that
3 we include that?

4 COMMISSIONER CLARK: I'd like to go ahead and vote on the
5 motion.

6 VICE-CHAIRMAN DEASON: Okay. We have a motion and a
7 second.

8 All in favor say aye.

9 COMMISSIONER GARCIA: Aye.

10 COMMISSIONER CLARK: Aye.

11 VICE-CHAIRMAN DEASON: All opposed nay.

12 COMMISSIONER KIESLING: Nay.

13 COMMISSIONER JOHNSON: Nay.

14 VICE-CHAIRMAN DEASON: Nay.

15 The motion fails, and I can return this.

16 CHAIRMAN CLARK: I'll entertain another motion.

17 COMMISSIONER KIESLING: All right. I'll try to make my
18 friendly amendment into the form of a motion. I adopt
19 everything that Chairman Clark said in hers. However, I would
20 also recognize a 25 basis point adjustment based on the
21 marginal quality of service. And in doing that I'm looking at
22 the Ocean Reef case where we found that or this Commission,
23 even though I wasn't here, found that the quality of service
24 was only marginally satisfactory and in that case they reduced
25 the utility's return on equity by 50 basis points. And if we

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1 did it there for 50 basis points for marginal satisfactory
2 quality of service, I'm comfortable with 25 here. So it would
3 be for a total of 50.

4 COMMISSIONER GARCIA: And, of course, you would adopt also
5 the statements made by Commissioner Deason?

6 COMMISSIONER KIESLING: Yes, yes.

7 CHAIRMAN CLARK: There has been a motion.

8 Is there a second?

9 MR. LOWE: Commissioners, two years, also?

10 COMMISSIONER KIESLING: Two years, yes.

11 COMMISSIONER JOHNSON: Second.

12 COMMISSIONER GARCIA: I would second.

13 CHAIRMAN CLARK: All those in favor say aye.

14 COMMISSIONER JOHNSON: Aye.

15 COMMISSIONER GARCIA: Aye.

16 COMMISSIONER DEASON: Aye.

17 COMMISSIONER KIESLING: Aye.

18 CHAIRMAN CLARK: Aye.

19 Opposed nay.

20 I want to indicate that that's not my first position. I
21 still think my motion was correct, but I still think something
22 needs to be done and I'm willing to vote with the majority on
23 it.

24 COMMISSIONER GARCIA: I want to also -- I know we're not
25 all the way through this, but I want to thank staff for the

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1 thorough analysis and research. There was always someone that
2 you could turn to to find the information and I greatly
3 appreciate that.

4 CHAIRMAN CLARK: I appreciate the staff's hard work. I
5 know you have some more in front of you and we will see you all
6 in two weeks. Is it two weeks?

7 COMMISSIONER KIESLING: Something like that. It's the 8th.
8 8th? Right, August 8th?

9 CHAIRMAN CLARK: Yeah, it's two weeks; isn't it?

10 COMMISSIONER KIESLING: No, August 18th. 15th?

11 MR. WILLIS: 15th.

12 COMMISSIONER KIESLING: Thank you. I didn't know when this
13 one started, so.

14 MR. WILLIS: August 15th.

15 COMMISSIONER KIESLING: Are we adjourned?

16 CHAIRMAN CLARK: We are adjourned.

17 (Agenda hearing concluded at 6:50 P.M.).

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PROCEEDING CERTIFICATE

STATE OF FLORIDA

COUNTY OF LEON

I, Cathy H. Webster, Registered Professional Reporter,
certify that I was authorized to and did stenographically
report the foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

DATED this 5th day of August, 1996.



Cathy H. Webster
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