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August 22, 1997

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

Re: Docket No. 920199-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the following documents:

- ACK 1 1. Original and fifteen copies of Florida Water's Motion to
- AFA 1 C. Del; and
- APP 2. A disk in Word Perfect 6.0 containing a copy of the
- CAF document.

MU Please acknowledge receipt of these documents by stamping the
TR a copy of this letter "filed" and returning the same to me.

EAG Thank you for your assistance with this filing.

LEG 1

LIN 5

OPC

RCH

SEG 1

WAS

OTH

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

cc: All Parties of Record

Trib. 3

RECEIVED & FILED
[Signature]
FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE
08517 AUG 22 1997 04220
FPSC-RECORDS/REPORTING

FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of)
Southern States Utilities,)
Inc. and Deltona Utilities,)
Inc. for Increased Water and)
and Wastewater Rates in Citrus,)
Nassau, Seminole, Osceola, Duval,)
Putnam, Charlotte, Lee, Lake,)
Orange, Marion, Volusia, Martin,)
Clay, Brevard, Highlands,)
Collier, Pasco, Hernando, and)
Washington Counties.)
_____)

Docket No. 920199-WS

Filed: August 22, 1997

FLORIDA WATER SERVICES CORPORATION'S
MOTION TO COMPEL

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, hereby requests the Prehearing Officer to enter an Order compelling Intervenors Senator Ginny Brown-Waite and Morty Miller to produce color copies of the same two pictures distributed to Commissioners at the August 5, 1997 Agenda Conference with the names, addresses and service areas of the Florida Water customers whose residence is purported to be shown in each picture. In support of this Motion to Compel, Florida Water states as follows:

1. On August 5, 1997, the Commission considered the July 16, 1997 Petition to Intervene filed by Senator Brown-Waite and Mr. Miller and allowed oral argument on the Petition.

2. During the course of the oral argument, counsel for Senator Brown-Waite and Mr. Miller distributed two color pictures to each Commissioner purporting to show the residences of two Florida Water customers, one of whom is supposedly eligible for a refund and the other supposedly subject to a surcharge if refunds

DOCUMENT NUMBER-DATE

08517 AUG 22 1997

FPSC-RECORDS/REPORTING

6725

are ordered by the Commission. Color copies of the two pictures were not provided to counsel for Florida Water. No explanation was given by counsel for Senator Brown-Waite and Mr. Miller for failing to provide counsel for Florida Water with copies of documents, here, the two pictures, which counsel for Senator Brown-Waite and Mr. Miller viewed to be relevant to issues concerning potential refunds and surcharges and provided to the Commission. At the Agenda Conference, counsel for Florida Water requested copies of the pictures and the location and address of each residence shown in the pictures. Counsel for Senator Brown-Waite and Mr. Miller advised the Commission that he would provide copies of such pictures to counsel for Florida Water. See transcript from August 5, 1997 Agenda Conference, attached hereto as Exhibit A, at pp. 42-43.

3. The following day, counsel for Florida Water mailed a letter to counsel for Senator Brown-Waite and Mr. Miller confirming Florida Water's request that it be provided copies of the two pictures together with the name and address of the Florida Water customer whose residence is purportedly shown in each picture. See August 6, 1997 letter attached hereto as Exhibit B.

4. During the oral argument, counsel for Senator Brown-Waite and Mr. Miller described the two pictures as follows:

MR. TWOMEY: The O.J. Simpson look-alike place is located in Palm Valley in St. Johns County. It's one of the systems that you now have jurisdiction over.... (This) rather palatial looking estate picture is somebody that has received subsidies on the order of, I think, \$900 a year during the period that the uniform rates were in effect. We could refer

to the record to get more specifics. And the more modest housing is located in Citrus County, and it is federally subsidized income housing.

See Exhibit A, at pp. 42-43 (emphasis supplied).

5. Florida Water trusts that the Prehearing Officer will order Senator Brown-Waite and Mr. Miller to produce color copies of the two pictures together with the customer name, address and service area for each picture consistent with Florida Water's due process rights. However, the representations of counsel for Senator Brown-Waite and Mr. Miller raise more serious issues and implications which must be put to a halt in this proceeding. Counsel for Senator Brown-Waite and Mr. Miller advised the Commission that the picture depicting the "rather palatial looking estate" is a picture of a Palm Valley customer who would be subject to surcharges if refunds are ordered. That is a misrepresentation of fact. The Palm Valley customers in St. Johns County were not part of the rate case in this docket. Thus, the Palm Valley customers were not ordered to pay uniform rates approved by the Commission and subsequently reversed by the First District Court of Appeal in Citrus County v. Southern States Utilities, Inc., 656 So.2d 1307 (Fla. 1st DCA 1995) ("Citrus County").

6. The Commission must confine its disposition of the refund and surcharge issues on remand from the First District Court of Appeal's decision in Southern States Utilities v. Florida Public Service Commission, 22 Fla.L.Weekly D1492 (Fla. 1st DCA, June 17, 1997) ("Southern States") to the relevant facts in the record. Misrepresentations of facts concerning which customers may receive

a refund or may be subject to surcharges should be met with sanctions.¹ Counsel for Senator Brown-Waite and Mr. Miller has repeatedly attempted to incite the emotions of Florida Water's customers and misdirect the Commission by making unsubstantiated and unsupportable allegations regarding the impact of uniform rates. For example, in the service hearings in the Docket No. 930880-WS uniform rate investigation, counsel for Senator Brown-Waite and Mr. Miller beckoned customers to oppose uniform rates on the grounds that:

[t]heir plan right now is to include places like Marco Island, which has got astronomical cost, really fat cat people live on Marco Island, million-dollar homes, this kind of thing. They have astronomical costs that aren't in your rates right now, but they plan to put them in. They plan to put them in. And when they do, the \$100-- the \$8 a month you may be getting can turn on you and you will be paying for those rich guys down there on Marco Island.

See portion of transcript from April 13, 1994 Deltona Service hearing in Docket No. 930880-WS, at pp. 18-19, attached hereto as Exhibit C.

7. Moreover, the two pictures presented by Senator Brown-Waite and Mr. Miller at the August 5 Agenda Conference have no relevance to this proceeding. In determining whether refunds should be ordered, the Commission should premise its decision on

¹Counsel for Senator Brown-Waite and Morty Miller similarly misrepresented facts in the July 16 Petition to Intervene concerning an alleged Commission denial of an alleged intervention request by Senator Brown-Waite. When confronted with the misrepresentation, counsel admitted he was "embarrassed by it" but suggested that the misrepresentation was "not of any consequence." See Exhibit A, at p. 33.

applicable principles of law and a reasoned, workable policy for resolving court reversals of Commission ordered rate structures which may occur in the future. The point that Senator Brown-Waite and Mr. Miller were apparently trying to make at the August 5 Agenda Conference is that Commission's disposition of the refunds and surcharge issues in this case should be premised on the relative affluence of Florida Water's customers.² This far-fetched principle certainly cannot be grounded in the GTE Florida Inc. v. Clark,³ the decision which formed the basis for the First DCA's reversal in the Southern States decision. Neither the GTE Florida nor the Southern States decision expressly or impliedly indicate that the reparation of the adverse financial impact of an erroneously entered Commission order on remand should be based, in any part, on whether a customer drives a Mercedes Benz or a motorcycle. The Commission should refrain from venturing into irrelevant evidentiary matters, such as the size and supposed value of a Florida Water customer's residence, in resolving the refund and surcharge issues on remand.

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that the Prehearing Officer enter an Order:

²The presentation of a picture of an alleged federally subsidized housing unit, allegedly located in Citrus County, the occupants of which allegedly would receive a refund, is similarly irrelevant. Also, since the Sugarmill Woods service area (out of the numerous service areas in Citrus County included in this docket) appears to be the only area in Citrus County where customers would receive refunds, a suggestion that such a federally subsidized housing unit is representative of housing in the Sugarmill Woods service area would be similarly misleading.

³668 So.2d 971 (Fla. 1996).

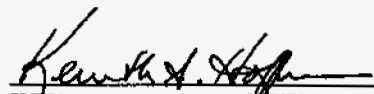
A) granting this Motion to Compel;

B) requiring Senator Brown-Waite and Mr. Miller to produce color copies of the two pictures distributed at the August 5, 1997 Agenda Conference, together with the name, address and service area of each Florida Water customer whose residence is purported to be shown in each picture;

C) requiring that the above-described pictures and information be produced within seven days of the date of issuance of the order granting this Motion to Compel; and

D) granting such other relief as the Prehearing Officer deems to be reasonable, just and proper.

Respectfully submitted,


KENNETH A. HOFFMAN, ESQ.
RUTLEDGE, ECENIA, UNDERWOOD,
PURNELL & HOFFMAN, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
Florida Water Services Corporation
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

Attorneys for Florida Water Services
Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Florida Water Services Corporation's Motion to Compel was furnished by U. S. Mail to the following this 22nd day of August, 1997:

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Charles J. Beck, Esq.
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Tallahassee, FL 32399-1400

Lila Jaber, Esq.
Division of Legal Services
Florida Public Service
Commission
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Ms. Anne Broadbent
President, Sugarmill Woods
Civic Association
91 Cypress Boulevard West
Homasassa, Florida 34446

Michael S. Mullin, Esq.
P. O. Box 1563
Fernandina Beach, Florida 32034

Larry M. Haag, Esq.
County Attorney
111 West Main Street #B
Inverness, Florida 34450-4852

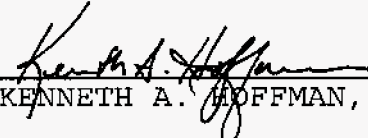
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Assistant Attorney General
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Tallahassee, FL 32399-1050

By: 
KENNETH A. HOFFMAN, ESQ.

Giga.compel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by SOUTHERN STATES UTILITIES, INC.; Collier County by MARCO SHORES UTILITIES (Deltona); Hernando County by SPRING HILL UTILITIES (Deltona); and Volusia County by DELTONA LAKES UTILITIES (Deltona).

DOCKET NO. 920199-WS



BEFORE:

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

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

34**

DATE:

August 5, 1997

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(904) 379-8669



1 intervene, and specifically I'm talking about the
2 allegation which confirms that the Senator was a
3 customer of this utility from September of 1993
4 through October of 1994, that I think her standing
5 would be limited to requesting a refund for that
6 specific period of time and for none of the other
7 issues which are raised in the other motions in this
8 pleading. Thank you.

9 CHAIRMAN JOHNSON: Mr. Twomey.

10 MR. TWOMEY: I want to give Senator Brown-Waite
11 some time, but I want to say real quickly, I thought I
12 said Mr. Morty Miller individually, and that I was
13 here for the other folks, the Springhill Civic
14 Association on the second petition.

15 Now, either I said that or I didn't, but that is
16 the fact, and Mr. Hoffman is right, I made a drafting
17 mistake in that first petition. It's not of any
18 consequence. I'm embarrassed by it, but where I said
19 that the petitions were denied, I didn't mean hers. I
20 meant Mr. McGlothlin's client. So that's an error,
21 but there is no relevance to it, and I would like you
22 to hear Senator Brown-Waite, please.

23 CHAIRMAN JOHNSON: Senator Brown-Waite, would you
24 like to speak to the motion?

25 SENATOR BROWN-WAITE: Certainly. Thank you very

1 MR. ARMSTRONG: Madam Chair, before we move
2 along, could I just make a request? I believe a
3 couple of copies of pictures were handed out, we
4 didn't get a copy of those pictures. I was wondering
5 if I could get a copy, as well as find out what the
6 location and addresses were for the pictures, where
7 they were taken.

8 COMMISSIONER KIESLING: I only got one of them,
9 so --

10 CHAIRMAN JOHNSON: Mr. Twomey.

11 MR. TWOMEY: I will make sure they get copies.
12 I'm not sure if I had the addresses.

13 COMMISSIONER CLARK: Which was which, again?

14 MR. TWOMEY: Pardon?

15 COMMISSIONER CLARK: Which was which?

16 MR. TWOMEY: The O.J. Simpson look-alike place is
17 located in Palm Valley in St. Johns County. It's one
18 of the systems that you now have jurisdiction over.

19 COMMISSIONER CLARK: And they get a refund?

20 MR. TWOMEY: Pardon me. I didn't mean that
21 guffaw.

22 COMMISSIONER CLARK: Oh, these are just
23 customers.

24 MR. TWOMEY: The rather palatial looking estate
25 picture is somebody that has received subsidies on the

1 order of, I think, \$900 a year during the period that
2 the uniform rates were in effect. We could refer to
3 the record to get more specifics. And the more modest
4 housing is located in Citrus County, and it is
5 federally subsidized income housing. And I will get
6 copies of those for Mr. Armstrong.

7 CHAIRMAN JOHNSON: Thank you. In one of the
8 petitions, someone raised the issue of notice. It was
9 in conjunction with the intervention and how would we
10 give other parties notice and how we would proceed. I
11 can't put my hand on it.

12 MS. JABER: In Florida Water's response to
13 Senator Ginny Brown-Waite's petition and Mr. Miller's
14 petition, I think Mr. Hoffman raised the question of
15 if you are going to -- how are you going to open up
16 the opportunity for potentially surcharged customers
17 to intervene? Are you going to require a notice, and
18 that's what you're talking about, I think. It's Page
19 4 of the utility's response.

20 CHAIRMAN JOHNSON: Okay. And do we have any
21 comments on that?

22 MS. JABER: We took the view that -- it was
23 something we considered in our first issue. We took
24 the view that, you know, the court didn't mandate that
25 we go ahead and formally require the utility to notice

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

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GOVERNMENTAL CONSULTANTS

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August 6, 1997

Michael B. Twomey, Esq.
P. O. Box 5256
Tallahassee, FL 32314-5256

Re: Docket No. 920199-WS

Dear Mike:

I send this letter to follow-up and confirm your agreement to provide me with the two pictures that you distributed to Commissioners at the August 5, 1997 Agenda Conference in this docket. Along with the pictures, I ask that you provide the name and address of the Florida Water Services Corporation customer whose residence is shown in each picture. I would appreciate the pictures and information within the next seven days.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: Brian P. Armstrong, General Counsel
Mr. Lester Abberger



6736

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 930880-WS
:
Investigation Into the :
Appropriate Rate Structure for :
SOUTHERN STATES UTILITIES, INC. :
for all Regulated Systems in :
Bradford, Brevard, Citrus, Clay :
Collier, Duval, Hernando, :
Highlands, Lake, Lee/Charlotte, :
Marion, Martin, Nassau, Orange, :
Osceola, Pasco, Putnam, :
Seminole, St. Johns, St. Lucie, :
Volusia, and Washington :
Counties. :

PROCEEDINGS: DELTONA SERVICE HEARING

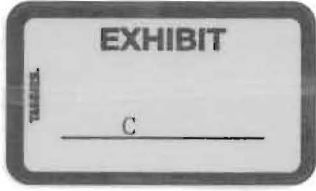
BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER LUIS J. LAUREDO
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING

DATE: Wednesday, April 13, 1994

TIME: Commenced at 9:30 a.m.
Concluded at 1:17 p.m.

PLACE: Deltona Civic Association
Community Center
980 Lakeshore Drive
Deltona, Florida

REPORTED BY: SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter



DOCUMENT NUMBER-DATE

04721 MAY 17 8

REC'D RECORDS/REPORTING

1 They contacted our legal department; our legal
2 department worked with the environmental permitting
3 area; we defeated that plan.

4 That plan would have relegated us to the
5 deepest and given commercial interests and farmers
6 access to the shallow and the surface water, the
7 cheapest water supplies and the best water. The cost to
8 our customers would have been significant if we had got
9 relegated to those deep aquifers. We don't have --

10 CHAIRMAN DEASON: Mr. Armstrong, you've
11 exceeded your time. I'm going to ask you to wrap it up.

12 MR. ARMSTRONG: I'll wrap it up, thank you,
13 Mr. Chairman.

14 We recognize everybody needs water.
15 Commercial interests, farmers, they're doing what -- we
16 expect them to do what they can and not just have our
17 customers bound to higher rates and higher levels of
18 scrutiny in terms of water conservation. Because of our
19 size, we can assure that that is happening.

20 We support uniform rates not just for us, but
21 for our customers. And we look forward to hearing from
22 you today.

23 Thank you.

24 CHAIRMAN DEASON: Mr. Twomey.

25 MR. TWOMEY: Thank you, Mr. Chairman.

1 Commissioners, ladies and gentlemen, my name is Mike
2 Twomey, I'm an attorney representing the Citrus and
3 Hernando Counties and two homeowners associations that
4 are opposed to the uniform rates. And let me tell you
5 why.

6 First, let me address some of the things that
7 Mr. Armstrong said. My clients, the reason they're
8 opposed to this thing is they're losing someplace
9 between \$2.2 and \$2.5 to \$2.6 million a year in monies
10 they're having to pay to support other people's water
11 and sewer service. People that live far away from them,
12 across to the other side of the state, and they don't
13 like that. So that's why I'm here on their behalf
14 trying to fight this decision.

15 Some of the folks that are getting the money
16 from my clients, let's just take some of the widows that
17 I represent in Sugarmill Woods in Citrus County, are
18 having taken from them by this Commission and through
19 this utility \$300 a year. Many of them are in the same
20 condition I think you may be, retirees, fixed incomes,
21 and that kind of thing. They're taking \$300 a year from
22 these good people above what it costs to provide them
23 service -- including profit to this company, a
24 meaningful, generous profit. And they're taking that
25 money and in one case they're giving it to some people

1 in a utility called Burnt Store, which is a marina
2 community, condominiums, expensive condominiums where
3 the cost to provide them service for water is \$1,400,
4 almost \$1,500 per customer per year. It's very, very
5 expensive. And one of the reasons it is expensive is
6 because they have total reverse osmosis. They have to
7 take unpotable water and turn it into potable water with
8 expensive equipment and lots of operating costs and
9 electricity.

10 Now, those of you that have water service here
11 from Deltona, I'm not sure if you're aware of it or not
12 but you're paying a subsidy. Okay? You're helping to
13 pay for these people down there who get a \$900-a-year
14 subsidy coming out of your pockets. Okay? Now, these
15 are rich people, okay? Or I think they are. Down there
16 in Burnt Store, they get \$900 a year; it means they only
17 pay 34% of the cost of their service. Okay?

18 Other of the subsidy money is going to truck
19 stops where the cost of service for each customer is
20 astronomical. They get \$4,500 a year in subsidies to
21 support their water and/or sewer service. They didn't
22 ask for it, okay, but they're getting it, and it's
23 coming out of the pocketbooks of retirees like
24 yourselves.

25 Now, I have a difficult task here. My clients

1 were some of the ones that asked for this investigation
2 and we appreciate the fact that the Commission granted
3 it. The task is difficult because the uniform rates are
4 a done deal, it's already in place. We think they're
5 illegal, unconstitutional, that there wasn't sufficient
6 evidence to support the Commission's order and findings
7 and we're on appeal now, okay? And hopefully we're
8 going to win that.

9 The task is difficult because it was a
10 horrible decision and somebody made it. Now, I have
11 been criticized -- part of what I have got to do, ladies
12 and gentlemen, is I've got to convince them to change
13 their minds about something that's already in place.
14 Now, that's difficult for anybody to do. And part of
15 what I have to do is I have to point out that four of
16 these people had nothing to do with that decision; the
17 fifth one did, Commissioner Clark here. And this is not
18 a criticism of her, it is just to point out.

19 And the rest of the Commissioners rightfully
20 support Commissioner Clark in this decision, but I have
21 got to educate them on what happened, okay? And I don't
22 blame Commissioner Clark for what happened on this
23 thing. She and another Commissioner who is no longer
24 with the Commission made this decision.

25 My spin on this, my view is that the

1 Commission Staff misled Commissioner Clark on the facts
2 and the law in this case and that they made the wrong
3 decision based on that. Now, the Commission, all of
4 them rightfully are obliged to defend their Staff. I
5 would ask them to look deep and find out what the Staff
6 actually did before they continued their support of
7 this, okay? But they should support them properly now.

8 Now, I think my clients were denied their due
9 process of notice and property rights intentionally by
10 the Staff from the get-go on this thing. I can't find
11 out about that because I've tried to take the -- these
12 folks didn't have anything to do with it. They're Staff
13 generically. It's some other people, I think. I've
14 tried to ask them questions under oath at depositions,
15 okay, and the Commission has prohibited me from taking
16 those depositions, can't do it. Okay?

17 Now, how does uniform rates affect you? If
18 you have water and sewer out there, my figures show that
19 you are getting a subsidy of \$100 a year, okay? Which
20 is about 8 bucks a month, I think, someplace in that
21 neighborhood. That can turn on you. Their plan right
22 now is to include places like Marco Island, which has
23 got astronomical cost, really fat cat people live on
24 Marco Island, million-dollar homes, this kind of thing.
25 They have astronomical costs that aren't in your rates

1 right now, but they plan to put them in. They plan to
2 put them in. And when they do, the \$100 -- the \$8 a
3 month you may be getting can turn on you and you will be
4 paying for those rich guys down there on Marco Island.

5 CHAIRMAN DEASON: Mr. Twomey, your time has
6 expired. I'm going to ask you to wrap it up.

7 MR. TWOMEY: I will wrap it up.

8 Those of you who are paying water only are
9 currently subsidizing your neighbors that have sewers
10 cost. Now, I'll just ask you: I assume if you don't
11 have sewer, you have septic tanks. If your septic tank
12 fails, who's responsible for the cost there? Can you go
13 to your neighbors? Can you go to these people that have
14 sewer service from Deltona and say, "Hey, this is a big
15 impact financially, help me out?"

16 I would suggest that you can't. I would say,
17 ask these people, ask the Staff, ask the Company what
18 they're really doing to you and what they're going to do
19 down the road.

20 Thank you for your time. (Applause)

21 CHAIRMAN DEASON: Mr. Shreve.

22 MR. SHREVE: Thank you, Mr. Chairman, I will
23 be very brief.

24 Quite a few of you have been here before, I
25 welcome the opportunity to come back and talk to you