

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

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APPEARANCES:

Ken Hoffman, Esquire, and Brian Armstrong, Esquire,
representing Florida Water Services.

Joe McGlothlin, Esquire, representing the City of
Keystone Heights and Marion Oaks Civic Association.

Mike Twomey, Esquire, representing Springhill Civic
Association, et al.

Senator Brown-Waite

Burt Miller

Harry C. Jones

STAFF RECOMMENDATION

Issue 1: In light of Southern States Utils., v. Florida Public Service Comm'n, should the Commission reconsider the portion of Order No. PSC-96-1046-FOF-WS denying intervention to the City of Keystone Heights, Marion Oaks Civic Association, and Burnt Store Marina?

Recommendation: Yes. The Commission should reconsider the portion of Order No. PSC-96-1046-FOF-WS denying intervention to the City of Keystone Heights, Marion Oaks Civic Association, and Burnt Store Marina. Intervention should be granted at this time. All parties should furnish copies of future pleadings and other documents that are hereafter filed in this proceeding to Joe McGlothlin, Esquire.

Issue 2: Should the petition to intervene filed by Senator Ginny Brown-Waite and Mr. Morty Miller be granted?

Recommendation: No. The petition to intervene should be denied.

Issue 3: Should parties be allowed to address the Commission at the August 5, 1997 agenda conference regarding Issue No. 4?

Recommendation: Yes. Participation should be limited to five minutes for each party.

Issue 4: Should the Commission allow parties to file briefs to address the appropriate action the Commission should take in light of the decision in Southern States Utils., Inc. v. Florida Public Service Comm'n?

Recommendation: Yes. The parties should have an opportunity to file briefs addressing the appropriate action the Commission should take in light of the decision in Southern States Util., Inc. v. Florida Public Service Comm'n within 20 days of the issuance date of the order. In the options identified in the analysis portion of staff's 7/24/97 memorandum.

P R O C E E D I N G S

1
2 CHAIRMAN JOHNSON: We are going to reconvene the
3 agenda conference with Item 34.

4 MS. JABER: Commissioners, in Item Number 34
5 staff's recommendation addresses the intervention
6 petitions and whether parties should file briefs in
7 light of the court's decision in the Southern States
8 versus PSC decision. We should proceed
9 issue-by-issue, but there are two modifications I need
10 to make.

11 In Issue Number 1, I need to clarify that the
12 Burnt Store Marina is represented by Darryl Carr. Mr.
13 McGlothlin's firm represents Keystone Heights and
14 Marion Oaks. In Issue Number 4, we would like to
15 modify our recommendation to require the utility to
16 provide staff and all of the parties information on
17 the impact of a refund and surcharge. Specifically
18 what we would like is an exact calculation done by
19 service area of the potential refund and surcharge
20 with and without interest as of June 30th, 1997.

21 In light of that, we would recommend that the
22 utility give everyone this information by August 29th,
23 and that the briefs be filed by September 30th. Just
24 so you know, this was a suggestion made by Vicki
25 Kaufman in her response, and staff agrees with it, and

1 recognizes that we need the information, as well.

2 Just a few minutes ago, I received a petition to
3 intervene filed by Mr. Twomey. I assume it was
4 filed.

5 MR. TWOMEY: That's correct.

6 MS. JABER: And it's on behalf of the Springhill
7 Civic Association, Sugarmill Manor, Cypress Village
8 Property Owners Association, Hidden Hills, Amelia
9 Island Community Association, Resident Condominiums,
10 Resident Property Owners Association, Amelia Surf and
11 Racket Property Owners Association, and Sandpiper
12 Association.

13 Staff's recommendation on this would be that the
14 parties haven't had an opportunity to respond, as it
15 was filed today, but if the parties waive their
16 response time, or if the Commission decides to
17 consider this, we would recommend that you take the
18 same action as in Issue Number 2. We can go forward
19 issue-by-issue if you would like.

20 MR. TWOMEY: Pardon me, Madam Chairman, Mike
21 Twomey. I would like to request that you consider
22 allowing me on behalf of my clients to address the
23 standing issue, and to address it in conjunction with
24 the substantive issues that the staff has addressed
25 here in terms of their recommendation as to whether

1 there should be a refund and interest and so forth.

2 It's my belief that the issue of whether these
3 additional parties are, in fact, entitled to standing
4 is best understood in the context of what you propose
5 to do in the remainder of this case. And so I would
6 be appreciative if you would let me go ahead and
7 address all of the issues at once.

8 CHAIRMAN JOHNSON: I'm going to --

9 COMMISSIONER CLARK: I was just going to ask a
10 question of staff, because in reviewing this and
11 looking at the language cited in the case, did staff
12 take the narrow view that it was only those parties we
13 were directed to allow to intervene, or did you look
14 at the broader principle of if an entity or a party
15 will be affected by the refund or a surcharge that
16 they should be allowed to intervene?

17 MS. JABER: We took the view that I think is
18 consistent with the opinion that the Commission needs
19 to reconsider whether potential surcharge payers are
20 entitled to intervention, and that's what --

21 COMMISSIONER CLARK: Just surcharge payers.
22 Well, I guess I looked at it from the standpoint that
23 I think what the court was saying is you sort of have
24 a new issue and these are parties who have a stake in
25 that issue. And I guess in my mind I was thinking,

1 well, the people who have a potential refund likewise
2 have a stake in how we go about reallocating the
3 money. And I think that's what the court was saying.

4 You know, these people had a stake in the outcome
5 of this that wasn't apparent early on and, therefore,
6 they should be allowed to intervene. And I took that
7 as their message. I'm concerned that if we don't
8 allow them to intervene we will go back up and they
9 will say you should have.

10 MS. JABER: I understand your view, and I will
11 tell you why I disagree with you based on the opinion.
12 The opinion indicates that the surcharge issue arose
13 right after the remand, in other words, that it could
14 not have arisen until the Commission ordered the
15 utility to make refunds without surcharge.

16 And then when the court came back and said that's
17 not fair and equitable, the people that did not pay
18 enough under uniform rates receive a windfall, that's
19 when the court says, you know, you've got this group
20 of people that could have never known what action the
21 Commission would take.

22 The refund people, on the other hand, rate
23 structure has always been an issue in this appeal, and
24 those are the people that paid too much under uniform
25 rates. And, you know, that issue has always been a

1 part of this docket.

2 COMMISSIONER KIESLING: And could I get a
3 clarification, too? I mean, it was my view that what
4 the court essentially did was said that you can't
5 order the refund without the surcharges, but they
6 didn't say that there was anything wrong with the
7 refund, it was just that you had to couple them
8 together for equity purposes.

9 MS. JABER: No, what they said was you needed to
10 be fair and equitable. See, I don't even go so far
11 today as to tell you they said you had to refund and
12 surcharge. I think what they said was be fair to
13 everyone.

14 COMMISSIONER DEASON: Well, then if you --

15 COMMISSIONER KIESLING: I'm sorry. But they did
16 not overturn the refund, per se.

17 MS. JABER: I agree.

18 COMMISSIONER DEASON: But you're saying that it's
19 possible that a resolution could be no refund, no
20 surcharge.

21 MS. JABER: We think that's an option, but it's
22 one of those options that we would like everyone to
23 brief. And that's why we also want information from
24 the utility on what the impact of each would be, you
25 know, in looking at windfalls and equity.

1 COMMISSIONER DEASON: Well, I understand, but is
2 that an issue then that these petitioners could have
3 foresaw? Sure, they knew that there was a rate
4 structure issue, and that money was being collected
5 subject to refund. But now is this the first time
6 that the issue has come up that perhaps they are not
7 under your interpretation as could be made that they
8 are not going to be entitled to refunds?

9 MS. JABER: My answer would have to go back to
10 the very beginning of what we said to you at the first
11 agenda. This is a rate structure issue and, you know,
12 traditionally the Commission does not order a refund
13 because of a change in rate structure. So in that
14 regard, you know, in answer to your question, no, they
15 could not have known, but then, again, no one would
16 have known.

17 COMMISSIONER DEASON: You know, it seems to me
18 that we are just in basically a new ballgame here. In
19 fact, I dissented from the original decision that
20 denied intervention to the parties which the court
21 addressed. But I think it's a broader question, and I
22 think that the court's opinion probably could be read
23 to be narrow or broader. I think that we should
24 interpret it in a more broader fashion, as
25 Commissioner Clark was indicating should be done.

1 COMMISSIONER CLARK: I have particular concerns
2 because of what you have identified as the possible
3 options, one of which is do not require refunds, do
4 not allow surcharges, or order refunds without
5 interest. And I think it strikes me that those people
6 who might get refunds have a stake in that decision.

7 MS. JABER: Which option have you identified that
8 concerns you?

9 COMMISSIONER CLARK: Well, you have listed five
10 options, and by the mere listing of them, you know,
11 one is more favorable in terms of refunds than the
12 other. And one is no refund.

13 MS. JABER: Correct.

14 COMMISSIONER CLARK: And to that extent, they
15 have a stake in the outcome.

16 MS. JABER: Right. But I think that where staff
17 is coming from, Commissioner, and also in light of
18 reading the opinion, the interest of the refund
19 people, the potential refund people, has always been
20 represented in contrast to the surcharge people, the
21 potential surcharge people. There are no intervenors
22 on the surcharge issue. We have always had
23 intervenors that represent the refund interests.

24 CHAIRMAN JOHNSON: And that, then, you believe is
25 the test that we apply to determine -- we look at --

1 MS. JABER: It's not a test. It's just in
2 looking at the circumstances of this case, and, you
3 know, coupled with reading the opinion.

4 COMMISSIONER CLARK: Excuse me. So I'm clear, is
5 there opposition to their intervention?

6 MS. JABER: Yes. The City of Keystone Heights --
7 well, I don't know that the City of Keystone Heights
8 really oppose their intervention. I think they really
9 just wanted to --

10 COMMISSIONER CLARK: Has Southern States opposed
11 the intervention?

12 MS. JABER: Yes.

13 COMMISSIONER CLARK: Okay.

14 CHAIRMAN JOHNSON: Ms. Jaber, you raised an issue
15 in your dialogue with Commissioner Deason regarding --
16 and if I'm wrong, correct me -- but I thought you said
17 that there may be issues or options that we could
18 consider in determining the rate structure issue that
19 those folks that would like to intervene could not
20 have anticipated.

21 MS. JABER: Well, I think even staff didn't
22 anticipate a change, nor did the court, that a change
23 in the rate structure would necessarily require a
24 refund. But once you ordered those refunds, what the
25 court said, you know, you have to treat everyone,

1 every party in a similar manner. And what I mean by
2 not anticipating the refund, I think that from the
3 very beginning they wanted a refund, but, you know,
4 from the very beginning this has been a change in rate
5 structure only, not a change in the revenue
6 requirement.

7 CHAIRMAN JOHNSON: And I guess I'm just wondering
8 because -- and the way that you read the case, we have
9 more options than just surcharging and refunding. I'm
10 wondering if the parties that seek to intervene have
11 actually had the opportunity to truly advocate or to
12 even be represented on those particular issues. So it
13 gets a little murky.

14 MS. JABER: Right.

15 CHAIRMAN JOHNSON: But I understand how you got
16 to your logic, and the footnote does appear to be
17 pretty clear in the legal sense. When you just read
18 it, it looks pretty clear. But when you start
19 thinking about the practical aspects of it and then
20 the underlying policy decision that -- or the message
21 that I was kind of getting from them, you know, about
22 people not having the opportunity to be represented.
23 And indeed in this particular issue, we may be raising
24 issues or options that they would have never
25 anticipated, and then they could bring the argument,

1 well, we weren't represented, we didn't have an
2 opportunity to give our say on this particular issue.
3 So it's a tough one.

4 COMMISSIONER GARCIA: I think in this case we
5 have tried to be cautious, especially where we find
6 ourselves now. We want to make sure that we continue
7 that. And I think in an abundance of caution we
8 should try to look at the broader picture and the
9 reality, as Commissioner Deason stated, that he
10 dissented, he never expected us to be here, as I did
11 not, as staff did.

12 And so I think that the complexity of the issues
13 that we are looking at, having others comment on it,
14 and looking at it also in an abundance of caution can
15 only help this Commission in making its decision.

16 CHAIRMAN JOHNSON: The way this is crafted,
17 interested parties -- how does this work with Issue 1
18 and 2, Ms. Jaber?

19 MS. JABER: Okay. What we were recommending on
20 Issues 1 and 2 is that the persons whose petition --
21 who filed the petition should be allowed to
22 participate and the people that filed a response.
23 That's on 1 and 2.

24 CHAIRMAN JOHNSON: On Issues 1 and 2. Then
25 perhaps we should hear from the parties in Issue 1.

1 And we will just go issue-by-issue. Mr. Twomey.

2 MR. TWOMEY: You won't let me --

3 COMMISSIONER CLARK: Well, I can move -- I don't
4 think there is much debate on Issue 1. I believe the
5 court told us to allow their intervention, so I will
6 move staff on Issue 1.

7 COMMISSIONER DEASON: Second.

8 CHAIRMAN JOHNSON: There is a motion and a
9 second. Any further discussion?

10 COMMISSIONER DEASON: No, hold on just a second.
11 Mr. Twomey, did you want -- if you have intervenor
12 status or have standing or whatever the case may be,
13 did you want to address a position contrary to what
14 staff is proposing in Issue 1?

15 MR. TWOMEY: Well, I'll accept a victory, of
16 course. No, I don't need to say anything.

17 COMMISSIONER DEASON: I don't want to take any
18 action then give you intervenor status later and have
19 taken action on something that you wanted to say
20 something about. We are trying to go issue-by-issue,
21 but if you have a contrary position on Issue 1 and if
22 -- perhaps we need to take up your status to know
23 whether you are going to participate on these issues
24 or not.

25 MR. TWOMEY: Well, if I understand the motion,

1 you are going to grant the intervention.

2 COMMISSIONER DEASON: No, no. Issue 1 is
3 strictly on the entities enumerated there, which were
4 addressed specifically in the court decision.

5 MR. MCGLOTHLIN: I'll take a victory.

6 COMMISSIONER CLARK: I may have jumped the gun.
7 Did anyone oppose that intervention?

8 MS. JABER: Florida Water, the utility did. No,
9 wait, not on the surcharge. Issue 1 is fine. No one
10 protested.

11 CHAIRMAN JOHNSON: Mr. Twomey, I was assuming
12 your issues started at about Issue 2.

13 MR. TWOMEY: I'm sorry, one second there. I've
14 got it. We have no opposition to Mr. McGlothlin's
15 clients being made parties, and I think as
16 Commissioner Clark and others have said, the court
17 made it clear that they would -- it was explicit that
18 they would be granted intervention.

19 COMMISSIONER DEASON: My second stands.

20 CHAIRMAN JOHNSON: There is a motion and a
21 second. All those in favor signify by saying aye.

22 (Unanimous affirmative vote.)

23 CHAIRMAN JOHNSON: Show it approved unanimously.
24 Now, Issue 2. And, Mr. Twomey, you have an
25 outstanding petition that you would like to have that

1 entertained today, also?

2 MR. TWOMEY: Yes, ma'am.

3 CHAIRMAN JOHNSON: Are there any objections from
4 the parties to us entertaining Mr. Twomey's
5 intervention at this point in time?

6 MR. MCGLOTHLIN: That's limited to the
7 intervention issue, correct, because his petition
8 includes more than that? I do not object to the --
9 let me back up. We take no position with respect to
10 the intervention issue. We want to be heard if the
11 Commission takes up the rest --

12 CHAIRMAN JOHNSON: On the motion to compel refund
13 issue?

14 MR. MCGLOTHLIN: Right.

15 CHAIRMAN JOHNSON: Let's take it -- we will
16 include, then, your motion to intervene, that aspect
17 of this in this issue.

18 COMMISSIONER KIESLING: Wait a minute. I think
19 Southern States or Florida Water was trying to object.

20 MR. HOFFMAN: No. Madam Chairman, just for
21 clarification, I'm Ken Hoffman with Brian Armstrong on
22 behalf of Florida Water.

23 As I understand what we would be taking up, it
24 would be the petition that was filed on behalf of
25 Senator Brown-Waite and Morty Miller, and not the

1 other petition that was filed today.

2 CHAIRMAN JOHNSON: Oh, so you object to the
3 petition that was filed today?

4 MR. HOFFMAN: Yes. I haven't even read it.

5 MS. JABER: Madam Chairman, just to give you some
6 insight, we just received this as we were sitting down
7 at the table preparing for this item. Our rules
8 provide for parties to file a response to this. All I
9 was saying to you is if the parties waive their
10 opportunity to file a response and you agree to take
11 it up, that is something within your discretion.

12 But I did also want to tell you that staff hasn't
13 had the opportunity to verify that all of these
14 entities are customers. I don't anticipate a problem,
15 but that is one of the things we do when we get these
16 petitions to intervene, and I haven't had the
17 opportunity to do that.

18 CHAIRMAN JOHNSON: Okay. And I now understand
19 that we do have an objection to us taking this up at
20 this point in time.

21 COMMISSIONER GARCIA: Let's get this straight,
22 though. We don't have an objection to Issue Number 2?

23 CHAIRMAN JOHNSON: No, the new petition.

24 COMMISSIONER GARCIA: Right. But you do have an
25 objection to Issue 2, or did you say you did not have

1 an objection?

2 MR. HOFFMAN: Commissioner Garcia, I don't object
3 to taking up Issue 2. We substantively object to the
4 petition to intervene that is part of Issue 2.

5 MR. TWOMEY: We are still confused, and I
6 apologize because I'm responsible for a good part of
7 it. There are two petitions to intervene. There is
8 the petition that has been filed some time ago on
9 behalf of Senator Brown-Waite and Morty Miller.

10 CHAIRMAN JOHNSON: And that one is addressed in
11 the --

12 MR. TWOMEY: And that is addressed in the staff
13 recommendation. There is a second petition I filed on
14 behalf of another group of customers who are, in fact,
15 all customers. Some of them, in fact, intervened in
16 the last rate case. They, too, are seeking
17 intervention in this case because they are on the same
18 side as the others in that they stand to benefit by
19 any refunds that are ordered by this Commission.

20 So, you know, the best of all days I would like
21 to see the other people waive their responses and that
22 all of them can be addressed in the same kettle. But
23 I don't care about that particularly. If you want to,
24 let's stick with the first petition on Senator
25 Brown-Waite and Mr. Morty Miller. And I will proceed

1 as you direct, Madam Chair, in terms of standing or
2 the merits, the substance of the petition. Although I
3 have to address some of the substance so I can make my
4 point on why they should be granted standing.

5 CHAIRMAN JOHNSON: Okay.

6 MR. TWOMEY: Let me tell you --

7 CHAIRMAN JOHNSON: So, with respect to the
8 document that you passed out today, that will be
9 considered at a different date and time?

10 MR. TWOMEY: Yes.

11 CHAIRMAN JOHNSON: This particular intervention
12 for Springhill, Cypress Village, and --

13 MR. TWOMEY: Yes, ma'am. If they object, they
14 have the technical right to file a response, and
15 that's fine.

16 Let me tell you who I am. I'm Mike Twomey. I'm
17 here first appearing on behalf of a party of this
18 case, Sugarmill Woods Civic Association, Inc. And
19 members of that association are here today. They are
20 behind me. I'm not going to introduce all of these
21 people. Hopefully they will have just a second to say
22 hello. They have traveled some distance, and for that
23 we appreciate you all giving a time certain in
24 addition to accommodating the schedule of Senator
25 Brown-Waite.

1 I had started to say that these people are
2 elderly, but since I'm rapidly approaching 50, I'm
3 thinking more seriously by the day about suggesting
4 that anybody's old. Instead they are people of
5 substantial life experiences, and they appreciate the
6 guaranteed wake up time or a better wake up time.

7 I'm also here on behalf -- so I'm here on behalf
8 of Sugarmill Woods Civic Association, Senator
9 Brown-Waite, and Morty Miller, who is past president
10 of the Springhill Civic Association, and an individual
11 customer of SSU at its Springhill systems.

12 I have also, as I have indicated, filed a
13 petition on behalf of a number of other customer
14 groups throughout the state, Jacksonville, Amelia
15 Island. Mr. Buddy Jacobs who has joined me, is filing
16 on their behalf, and also some customer groups in
17 Jacksonville who were parties to the last rate case.

18 Commissioners, I have to tell you that consistent
19 with one of the views expressed by all of you
20 essentially, I think Commissioner Clark especially, I
21 find it difficult to believe that your staff is at
22 this point recommending to you that you take an
23 extremely narrow view of the First District Court of
24 Appeals opinion, and thereby exclude from
25 participation in this case customers of this utility.

1 That is something that the staff has been urging
2 upon you since the beginning of this case five years
3 ago. Exclusion of customers, exclusion of views,
4 exclusion of evidence, exclusion of opposing views.
5 It's not only wrong legally, but it's an incorrect
6 stance for the staff to take, and it's one that you
7 should avoid in every case that you sit on because, as
8 you all have said many times before, and Commissioners
9 before you, you all benefit by the presentation of
10 opposing views and the addition of evidence. You are
11 here to be educated in most of these cases, and that's
12 how you get educated. And that process helps you make
13 better decisions day in and day out.

14 The case -- the staff's position just doesn't
15 hold water. And the court said that essentially. It
16 doesn't hold water. These customers that I represent
17 today have a clear interest in whether or not the
18 other customers have to make surcharges. Now, I have
19 brought as a prop here these balance scales, and you
20 can see in the center here that it is centered up,
21 even though from the back it looks uneven. And I
22 looked for scales of justice without any success
23 around Tallahassee, and I had to come up with these
24 balance beams.

25 I would urge you, Commissioners, in every case

1 you sit in from now on as long as you are on the
2 Commission to recall, visually recall these scales
3 every time you have a case that involves standing
4 before you. Because what I want to suggest to you is
5 that by statute this Commission's primary function is
6 economic regulation. It involves who pays and who
7 gets the money.

8 You are charged very explicitly with the
9 difficult process of balancing the interests typically
10 of a utility, a regulated utility, against the
11 interests of its customers. Economics, again. In the
12 somewhat rare cases in which you have to address rate
13 structure, you are involved in balancing the interests
14 of customer group against customer group.

15 I would submit to you that in no case, even
16 including your rulemaking cases, but explicitly and
17 especially those cases that involve the substantial
18 interests of a party or a person, you can't make a
19 decision that affects the substantial interests of one
20 party without necessarily and concurrently affecting
21 the substantial interests of the people on the other
22 side.

23 I think that is true in rulemaking decisions, but
24 by statute you have to observe these things in
25 120.57(1) and (2) proceedings. So I'm suggesting to

1 you when you have a revenue type case and you take
2 something off of one side of this scale, you affect
3 the other side. If you give the utility more money
4 and higher rates it affects the customers and
5 necessarily so. They have an interest in that. When
6 you have a rate structure issue and you decide that
7 one class of customers, be it the industrial class in
8 an electric class, pays less or more, that necessarily
9 means that the other classes of customers have to
10 correspondingly either pay more in support of the
11 revenues or less.

12 Your job, and it's difficult, is to try to get
13 these things in kilter. Now, with respect to this
14 case, you thought you had it right four years ago, or
15 five years ago, or however long it has been, and it
16 has been a long time. Mr. Jones back here can tell
17 you. Commissioner Clark will remember, he was here at
18 the beginning. He will say he was before the
19 beginning. You thought you got it right when you
20 passed uniform rates, those of you that were involved.
21 The Commission is responsible for it. You thought it
22 was right, and when we finally got to the court, the
23 First District Court of Appeals, the court said this
24 is out of kilter, it's out of balance, it wasn't
25 right, you didn't get it right.

1 Now, the same holds true in revenue and rate
2 structure, but we are talking rate structure here.
3 You didn't get it right on the rate structure. The
4 court said in reversing the uniform rates that the
5 rates were unlawful, illegal, call it what you want.
6 They were not good rates.

7 You folks said from the beginning that you would
8 protect my clients and the rest of the people that
9 were paying surcharges or subsidies under the uniform
10 rates in the unlikely event that we were to prevail.
11 We prevailed. It took us years to do it.

12 You promised us protection and you made the
13 utility take out a bond. You said we weren't going to
14 be left out in the cold as the utility now suggests
15 clearly, if I understand their pleading correctly, and
16 as your staff suggests might be an option, okay?

17 Senator Brown-Waite sought intervention shortly
18 after the decision approving uniform rates. We said
19 back at that time that there wasn't notice about this
20 concept. Be that as it may, she sought intervention.
21 The Springhill Civic Association sought intervention
22 and they were denied. The chief judge of the First
23 District later, upon an oral argument, admitted that
24 maybe it was a mistake that they didn't uphold our
25 request that intervention be granted back then. Be

1 that as it may, she sought, the Senator sought
2 intervention and so did the Springhill people, and it
3 was denied.

4 Now, as Commissioner Clark points out, we are in
5 a position where the court has clearly recognized and
6 explicitly so, the fact that the people that Mr.
7 McGlothlin is representing, who are faced with the
8 prospect of paying increased rates through surcharges,
9 have a substantial interest in this case.

10 If you would look at this scale, it necessarily
11 follows that the people that are on the other side
12 stand to benefit by getting the balance correct here,
13 likewise have a substantial interest in this case, and
14 that they too have to be given a point of entry on
15 this issue to defend and protect their substantial
16 interests.

17 It has nothing to do with the entry in this case
18 years ago, it has nothing to do with the notion that
19 there is somebody already on that side, ergo you
20 should deny standing to additional parties. There is
21 no such concept in the statutes, there is no such
22 concept in the case law that you can deny me standing
23 merely because there is someone else in the case that
24 takes a position.

25 It doesn't wash legally, it doesn't hold water.

1 And even if it was legally within your discretion, why
2 would you want to do it, Commissioners? Why do you
3 want to put the public out in this process by kicking
4 out customers? That's my point on the standing. I
5 will stop there. I still want to address the other
6 issues. These people clearly have a substantial
7 interest. If and when you force the people that
8 unduly benefitted through the uniform rate subsidies
9 to pay additional monies through a surcharge, you will
10 necessarily lighten the load on my clients through the
11 refunds they will receive.

12 It's two sides of the same coin, opposing
13 balances on the beam. So I would urge you to grant
14 Senator Brown-Waite intervenor party status, Mr.
15 Miller as well, and when it finally comes to you, the
16 other people that I presented the second position.
17 Thank you.

18 CHAIRMAN JOHNSON: Thank you. Mr. McGlothlin,
19 did you --

20 MR. MCGLOTHLIN: No position on the issue of
21 intervention.

22 CHAIRMAN JOHNSON: Mr. Hoffman.

23 MR. HOFFMAN: Thank you, Madam Chairman. I'll
24 try to be brief. First, Madam Chairman, in looking at
25 the ending portion of the Southern States decision,

1 which is now back before you on remand, the court
2 specifically limited intervention on the remand to the
3 City of Keystone Heights, the Marion Oaks Civic
4 Association, the Burnt Store Marina, and -- and I'm
5 quoting the court, "Other such groups subject to a
6 potential surcharge in this case." Those are the
7 court's words.

8 No party, including the Commission, asked for
9 rehearing or clarification of remand instructions,
10 which I would submit to you on their face are very
11 clear. Mr. Twomey represents the Sugarmill Woods
12 Civic Association. They were a party to this appeal,
13 but they did not ask for rehearing to get some type of
14 clarification which could have supported the position
15 they take before you today. Mr. Twomey participated
16 in this appeal. He did not ask for rehearing or
17 clarification.

18 I think the court's words are very clear, Madam
19 Chairman and Commissioners, they do not address the
20 interests of additional customers who seek refunds.
21 But maybe more importantly, as we all know, the
22 interests of those customers who desire refunds are
23 already represented in this proceeding.

24 COMMISSIONER CLARK: But they may be affected
25 differently. I mean, one group may feel the way a

1 refund is done is appropriate and another one may not.
2 Let me just -- I agree, I understand your reading of
3 the case, but I also think what the court has said,
4 and I think to some extent if we had put the question
5 to them directly, if we had known, first of all, that
6 they were going to say we were wrong on intervention
7 -- and I want to respond to you, Mr. Twomey, I think
8 we did what was the law at that time as I saw it.

9 And I certainly never intended to do anything
10 that -- I never knowingly do anything illegal or
11 immoral and I don't think our staff does.

12 MR. TWOMEY: I didn't mean to suggest that you
13 had.

14 COMMISSIONER CLARK: But you did, Mr. Twomey.
15 You suggested it was legally wrong and morally wrong
16 for them to deny intervention in this case. And I
17 know you don't mean that, but that is what your words,
18 the connotation of your words --

19 MR. TWOMEY: I didn't mean to suggest that you
20 had done anything wrong. What I did mean to suggest,
21 and I won't retreat from it, is that I think your
22 staff is giving you bad advice in this case.

23 Now, the --

24 COMMISSIONER CLARK: You disagree with their
25 advice. I accept that.

1 MR. TWOMEY: I disagree strongly, as I have.

2 COMMISSIONER CLARK: But you don't think they are
3 doing it for immoral or for illegal reasons.

4 MR. TWOMEY: No, no. And I don't think I said
5 that. I think the rates that resulted were illegal,
6 Commissioner. And if I said that, I apologize. What
7 I meant clearly is that I think they are giving you
8 bad advice that if you were to follow it subjects you
9 very clearly to reversal yet again in this series of
10 cases. And it's just a wrong thing, because the right
11 thing to do is let these people in.

12 COMMISSIONER CLARK: Well, I may agree with you
13 where we would wind up, and I just want to say that
14 sometimes your characterization of why we do it or
15 what we have done is troubling to me. And I accept
16 that people have disagreements, because we wouldn't
17 have lawyers if we didn't have disagreements.

18 But in this case it just seems to me that the
19 court is saying because there is a new group of people
20 or there is a group of people that have a stake in the
21 outcome, even though you are beyond the hearing, what
22 I thought the law was, five days, if you don't
23 intervene, the requirements of procedural due process
24 say you have lost your opportunity.

25 And I think what the court is saying is, wait a

1 minute, these people who need to get a refund -- I
2 mean, were potential people who could get a surcharge,
3 were not at the table, and they needed to be at the
4 table. And I think what the court is saying is you
5 better get everyone at the table.

6 MR. HOFFMAN: And I respect that, Commissioner
7 Clark, but I think it's more difficult to try to
8 ascertain what the court is not saying than it is to
9 read what the court is saying. And what I mean by
10 that is, if you go back in time, you have heard from
11 the parties time and again about the agenda conference
12 in November of '93 or December of '93, I don't recall,
13 where the issue of refunds and surcharges first came
14 up.

15 And it was after that time that Senator
16 Brown-Waite petitioned to intervene. And that was in
17 the early part of 1994 that the Senator petitioned to
18 intervene. And that was denied. And she didn't
19 appeal that. And that issue was never put before the
20 court.

21 And now in Mr. Twomey's petition and motions that
22 he has filed that are before you today, he has said on
23 Page 4 of his pleading that Senator Brown-Waite
24 petitioned to intervene again in the first remand
25 stage of this proceeding.

1 Now, I've got to tell you, I didn't know that.
2 Because if Senator Brown-Waite petitioned to intervene
3 a second time, I never received a copy of that
4 document. But I'm not doubting what Mr. Twomey has
5 alleged. And all I'm saying to you is if Senator
6 Brown-Waite petitioned to intervene a second time and
7 was denied as alleged in Mr. Twomey's papers, well,
8 the Senator didn't appeal that denial and that puts
9 the Senator in a different light than Mr. McGlothlin's
10 clients who, in fact, appealed the denial of their
11 intervention.

12 COMMISSIONER CLARK: I understand that, and I
13 guess I would respond to that in this way, that at the
14 time she -- as an intervenor you have to make a
15 choice, does it make sense to pursue this. And quite
16 honestly at that time as a lawyer I would not
17 recommend that you pursue it.

18 But this case in my mind has set a different
19 standing, a different standard for standing. The
20 question is is it limited to people who may be
21 surcharged. And I just have a concern if we limit it
22 in that way, and then upon appeal they take issue with
23 the way we have refunded or somehow the rights of the
24 people who have potential refund are affected. And I
25 certainly think with what we have set out as the

1 possibility they will be affected, that they may send
2 it back to us again and say, you know, they had a
3 stake in it, too, you should have heard them.

4 MR. HOFFMAN: Commissioner Clark, the only -- I
5 guess I would say two things in response to that.
6 There is some possibility, and I think the law is a
7 little bit unclear on this, as to whether someone who
8 is denied intervention today could take an
9 interlocutory appeal of that matter.

10 Secondly, I think I have given you my arguments
11 in opposition to the petition to intervene. I would
12 only ask that you consider a few additional things if
13 you are inclined to grant the petition. And that is
14 that Mr. Twomey stated he was here this afternoon on
15 behalf of the Springhill Civic Association, and that
16 may very well be, but the petition to intervene was
17 filed by an individual, Mr. Miller, who I think admits
18 in the petition that he is not the president of that
19 association. And I did not understand that petition
20 to be on behalf of the association.

21 Secondly, with respect to the Senator, I believe
22 that if the Senator is permitted to intervene, her
23 intervention should be limited to her individual
24 capacity and not on behalf of any of the customers.
25 And based on the allegations in the petition to

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 much, Commissioners. My name is Senator Ginny
2 Brown-Waite, and I represent Senate District 10. And
3 in particular I represent the people in the Springhill
4 area who are customers of the utility which everybody
5 tends to revert to calling SSU. I guess old habits
6 are hard to break.

7 I think it's very important that this group --
8 that you grant the petition to intervene on my behalf,
9 slash also on behalf of the customers of SSU in
10 Springhill and Mr. Miller. And the reason for that is
11 that I represent -- and Mr. Miller, when he was the
12 president of the civic association -- represented
13 people who have obviously continued to be the victims
14 of some decisions that were made.

15 I don't think that those decisions -- as I said
16 before, I don't think they were made with any malice
17 or any intention to harm. It happened and we are here
18 today to -- as we have been here before trying to
19 solve a problem which was created. And I want to
20 commend you all for trying to work toward that
21 solution.

22 My constituents in the Springhill area, and also
23 those up in Sugarmill Woods, those are the people who
24 have continuously paid more than their fair share and
25 are not willing to pay more than their fair share.

1 They are willing to pay their share. In order for a
2 decision to be made, I think that you need to
3 certainly have this group, myself and Mr. Miller
4 representing them, have our side actually be heard.

5 If anything, it's kind of a David and Goliath
6 fight that we have undertaken here. And a long time
7 ago, long before I was ever elected, I learned that
8 you don't tilt at windmills and you don't take on
9 issues that would seem to be tilting at windmills.
10 This isn't tilting at windmills. This is tilting at
11 -- trying to tilt at that scale the way that it
12 belongs.

13 One of the reasons why we are seeking to have
14 this intervention is a question of -- and I know this
15 almost looks like Rockingham, O.J. Simpson's estate,
16 but it's not. It could be. This is a group of the
17 potential surcharge payers. And I will pass these up.
18 I will ask Mr. Twomey to pass them up.

19 This very humble abode is very similar to the
20 residence that my grandchildren -- I brought my
21 grandchildren up today -- that they live in. And it
22 is in the SSU area of coverage. This home would
23 benefit from the refund. I really think that if we
24 are considering, if you all are considering the issue,
25 we need to have the intervention of the people like my

1 grandchildren who live in a home probably a little
2 smaller than this one.

3 And while the utility company is willing to offer
4 scholarships to young children, they are at the same
5 time in a position of seeing that their parents are
6 denied funding to maybe get them through high school.

7 I don't live in Springhill any longer. I did
8 until the date that's in there, October of '94. But
9 it's very important that you hear both sides, because
10 I really don't want to be back here saying, and not
11 having my constituents say, wait a minute, we were
12 never heard on that issue. And that's the reason why
13 I asked Mr. Twomey to file the motion that he filed
14 before you all.

15 COMMISSIONER CLARK: Senator, are you asking for
16 status as an individual or as a representative of
17 Springhill?

18 SENATOR BROWN-WAITE: Commissioner Clark, with
19 all due respect, I think that if I received the refund
20 and the others didn't, I would be run out of town on a
21 rail. But I think that obviously for my intervention
22 it would also end up also representing the people of
23 Springhill.

24 COMMISSIONER CLARK: But you are seeking status
25 in your own right, and to the extent you advocate

1 something that is consistent with what other people
2 want, that is up to you. Okay. And is the civic
3 association part of this group?

4 MR. TWOMEY: Is that the second?

5 COMMISSIONER CLARK: Yes.

6 MR. TWOMEY: Yes, ma'am.

7 COMMISSIONER CLARK: Okay.

8 CHAIRMAN JOHNSON: Any other questions? Thank
9 you, Senator. Any other comments?

10 COMMISSIONER CLARK: Well, I have been most vocal
11 on this, I guess, I -- well, now I just want to say
12 that I voted for the motion to deny the intervention.
13 I thought it was correct then, it was in compliance
14 with our rules and what the law was at that time. And
15 I would only point out that we have procedural rules
16 to ensure fairness. It seems to me a lot of times
17 people suggest that the procedural rules are there for
18 or are used for unfair purposes, and I don't think we
19 intended to do that.

20 And I think many times in this Southern States
21 case we have had decisions that have been at odds with
22 what we thought our authority was. Certainly the
23 majority of the Commission thought we had no authority
24 for a surcharge, and the court has now said, well, you
25 do. And not only do you, but you have to.

1 So it has been a series of decisions that have
2 brought about different principles than I thought were
3 applicable. But in this case what the court seems to
4 be saying, I think, is make sure you have everybody
5 who is potentially affected and who wants to come in
6 at the table so they can argue their view. And for
7 that reason, I would deny staff. And to the extent
8 they are entitled to standing as being a customer and
9 they meet the other requirements, that they be allowed
10 to intervene.

11 COMMISSIONER DEASON: Let me say that, as I
12 indicated earlier, of course, I was in the minority at
13 the time, but I voted to allow intervention of the
14 City of Keystone Heights, Marion Oaks Civic
15 Association, and Burnt Store Marina, and that matter
16 was addressed by the court. And I agree with you,
17 Commissioner Clark, that our procedural rules
18 generally should apply, but I think they should be a
19 help to us and should not unnecessarily dictate to us
20 or take away our flexibility in addressing a situation
21 where we think equity dictates that we take a
22 different action.

23 That was the basis of my decision and my vote at
24 that time. I think that the same underpinning applies
25 here, the same rationale applies here in that -- so

1 that we can get all sides and input from the various
2 parties that intervention should be granted. And that
3 I think that it is a situation where we basically are
4 addressing the issues which could not reasonably have
5 been -- could not have been forecasted or predicted
6 would be issues that we are addressing at this time.

7 And to put a burden on a party to say that you
8 should have intervened within five days, not knowing
9 that we were going to be at this particular juncture
10 at this time addressing these particular issues is an
11 unreasonable burden to expect. And, therefore, I
12 think that the parallel in this case is very similar
13 to the situation that the court has already addressed,
14 and that the court's decision should be interpreted
15 broadly, and that intervention should be granted. So
16 I would second your motion to deny staff on Issue 2.

17 CHAIRMAN JOHNSON: There is a motion and a
18 second. Any further discussion?

19 COMMISSIONER KIESLING: I just need a
20 clarification. If I understood correctly, the motion
21 was made to allow intervention by Senator Brown-Waite
22 and Mr. Miller because they are customers, and I have
23 some concern if we grant intervention to Senator
24 Brown-Waite as a representative of her constituents.
25 I have no problem if we grant it as a customer.

1 And I'm not in any way trying to restrict what
2 she can say once she is a party, but technically I
3 think we have a problem if we grant intervention as a
4 representative of a particular constituency that has
5 not been -- I see it differently when it's the
6 president of a homeowners association or something,
7 but Senator Brown-Waite is no longer a customer, and
8 while she had been elected to public office by these
9 people, that is a different mandate in my mind than a
10 mandate to the president of your homeowners
11 association to go forward and represent you on a
12 particular issue.

13 And I just am afraid we are going to a run afoul
14 of some other principles if we explicitly grant
15 intervention as a representative although not trying
16 to restrict what might get said afterwards. I'm
17 trying to frame the order as opposed to the content.

18 MR. TWOMEY: Madam Chair, let me just address
19 that briefly. I appreciate Commissioner Kiesling's
20 concerns entirely, and I would think her concerns can
21 be addressed by this resolution. That is I don't
22 think I asked for Senator Brown-Waite to be a
23 representative of anybody but herself as a party. And
24 if I did, I was mistaken.

25 She only wants to have party status herself.

1 Even though she is not presently a customer, she has a
2 substantial interest, of course, in the fact that she
3 would stand to get a refund, which Commissioner
4 Kiesling recognizes.

5 So the fact that we could just -- senator is a
6 title that she possesses by virtue of her constituents
7 putting her in office. We can strip off senator if
8 you want to, or pretend that she is not a senator, but
9 she seeks intervention just like Morty Miller, who is
10 just a mister.

11 COMMISSIONER CLARK: I think that is
12 clarification, that she is seeking it as her status as
13 a customer.

14 COMMISSIONER KIESLING: Then I'm fine. That's
15 all I need.

16 SENATOR BROWN-WAITE: Madam Chairman, just so the
17 record can be reflective of my comments, I am seeking
18 it solely as Ginny Brown-Waite, a former customer of
19 the utility formerly known as SSU.

20 CHAIRMAN JOHNSON: There is a motion and a
21 second. Any further discussion? Seeing none, all
22 those in favor signify by saying aye.

23 (Unanimous affirmative vote.)

24 CHAIRMAN JOHNSON: Show it approved unanimously.
25 Or show staff denied, and the intervention granted.

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

1 and open up intervention in that regard, but that if
2 anybody sought intervention it seemed pretty clear
3 that they were entitled to it if they were a potential
4 surcharge payer.

5 CHAIRMAN JOHNSON: Okay. So there will be no
6 further action required by the utility or the
7 Commission, but to the extent that parties become
8 aware they can petition to intervene.

9 MS. JABER: That's our view.

10 CHAIRMAN JOHNSON: Okay. Thank you. Issue 3.

11 MS. JABER: Issue 3, Commissioners, we recommend
12 that parties be allowed to have five minutes to
13 comment on Issue 4.

14 COMMISSIONER KIESLING: I'm confused. Just so
15 that I'm clear, they are all going to get five minutes
16 to say whether or not they think we should brief this?
17 I mean, that's what Issue 4 is.

18 MS. JABER: That was our recommendation in Issue
19 3.

20 CHAIRMAN JOHNSON: Is there a motion?

21 COMMISSIONER KIESLING: That's why I was
22 confused.

23 COMMISSIONER CLARK: Yes. Is there anyone who
24 believes that we shouldn't open this up for briefing?

25 MR. TWOMEY: In effect, yes. And we have some

1 comments on that point.

2 CHAIRMAN JOHNSON: Okay.

3 COMMISSIONER GARCIA: Wouldn't that be how your
4 participation would be limited to is briefing on this
5 issue, or am I mistaken?

6 MR. TWOMEY: Commissioner Garcia, I expect that
7 you are going to order briefs. I wanted to comment on
8 what I think is the underlying lack of necessity for
9 having briefs on this issue, and then if given just a
10 moment, discuss some of the elements that are
11 suggested for briefing that I don't think are
12 appropriate.

13 COMMISSIONER CLARK: But if we don't set it for
14 briefing, how are these people going to participate?

15 COMMISSIONER GARCIA: Exactly.

16 MR. TWOMEY: Oh, you're right. To get a say they
17 have to have a brief. At the appropriate time I can
18 give you the whole -- and it's probably better done at
19 one piece.

20 CHAIRMAN JOHNSON: I guess then we need to
21 just --

22 MS. JABER: Let me tell you where staff was
23 coming from with Issue Number 3. I think that the
24 opinion is clear that if you ordered refunds and
25 surcharges you are probably just fine, that's fair and

1 equitable. We are not right away recommending that
2 you take action. We wanted parties to be able to
3 provide you further input in the form of a brief.

4 I suppose that some parties would take the view
5 that the opinion is real clear and why not order some
6 sort of action today. Staff is also sympathetic to
7 that. And because of those two views, we took the
8 view that today you should allow parties to comment on
9 whether or not briefs are necessary, you know, and
10 appropriate.

11 COMMISSIONER GARCIA: Maybe I'm missing
12 something. Explain again why you -- I did miss it.
13 Why is it that you wanted to have us discuss this
14 issue? I believe that the only way they can
15 participate is through briefs.

16 MS. JABER: But you could have also let them just
17 participate today and based on what they said today
18 take some action.

19 COMMISSIONER KIESLING: But it's not noticed that
20 way.

21 COMMISSIONER GARCIA: Exactly.

22 COMMISSIONER KIESLING: So if we haven't noticed
23 this as making a decision today, then how could we do
24 that?

25 MS. JABER: I understand. And, again, our

1 recommendation is that you allow them to participate
2 and that you allow the parties to file briefs.

3 COMMISSIONER KIESLING: Let me try to clarify it
4 this way, I have to get linear here. It seems to me
5 that we have two options; one, let everybody brief
6 everything, or, two, let nobody brief anything and
7 just have staff come back with a recommendation that
8 we vote on, and their input would be in the form of
9 argument the day that we did that. I mean, is there
10 some other option that I'm missing?

11 MS. JABER: Not that I can think of right now,
12 no.

13 COMMISSIONER KIESLING: Okay.

14 COMMISSIONER CLARK: That is your recommendation?

15 COMMISSIONER KIESLING: That we brief instead of
16 making a decision --

17 MS. JABER: Right, exactly.

18 COMMISSIONER KIESLING: -- at a time certain.

19 CHAIRMAN JOHNSON: Mr. Twomey, you were
20 suggesting that you would prefer us to just not have
21 the briefs, but to come back and make oral argument?

22 MR. TWOMEY: Forgive me, I was talking or
23 listening.

24 CHAIRMAN JOHNSON: When Commissioner Clark asked
25 if there was anyone here that would object to the

1 briefing, I thought you stated that you did object.
2 So what that would mean is that you would just like
3 for us to come back at a subsequent agenda with
4 staff's recommendation and then you argue before we
5 vote?

6 MR. TWOMEY: Well, really what I would like for
7 you to do is, as Ms. Jaber suggested, is give us a few
8 minutes to discuss how we feel about this
9 recommendation. What I want to tell you in a more
10 organized fashion is I don't think that several of the
11 options that are contained in staff's recommendation
12 in Item 4 that they want the parties to brief are
13 viable options. That's what I want to tell you.

14 COMMISSIONER CLARK: I think I may agree with
15 you.

16 MR. TWOMEY: And I want to have a chance to do
17 that. My general expectation is that in an abundance
18 of caution you are going to decide to have us brief
19 these things, but I would like in very short order to
20 tell you why we think that there is a very limited
21 course. I mean, this has been going on a long time.
22 We are getting into a corner where there are fewer and
23 fewer options. And that's what we want to do.

24 Very briefly, some of the people from Sugarmill
25 and Hernando traveled here just to say hello to you

1 and give their brief comments. So I'm ready to go
2 when it's my turn.

3 COMMISSIONER KIESLING: But the reason I'm
4 confused is that while I may completely agree with you
5 that some of those suggested options are not options,
6 it seems to me that if we are going to allow briefing,
7 that we can't -- I mean, it would be sort of prior
8 restraint on what people can argue in their brief to
9 tell them that they can't argue for one of those
10 options or for another one that they may come up with
11 that isn't included. I mean --

12 MR. TWOMEY: Well, you're right.

13 COMMISSIONER KIESLING: So --

14 MR. TWOMEY: And I'm not opposed -- I'm sorry, go
15 ahead, Commissioner.

16 COMMISSIONER KIESLING: So why not just get the
17 briefs and let everyone make their argument in that
18 brief?

19 MR. TWOMEY: Because I want to suggest to you
20 that while you may not want, and it may not be prudent
21 to limit the arguments that some parties can make, you
22 may want to reconsider whether you are going to tell
23 me that I have to address all of those issues. And --

24 COMMISSIONER KIESLING: Wait a minute. Where in
25 this recommendation does it say you have to address

1 all of those five options?

2 MR. TWOMEY: If you put those things up there,
3 what do the staff say, it says --

4 COMMISSIONER CLARK: Page 11.

5 COMMISSIONER KIESLING: It's on Page 11.

6 MR. TWOMEY: I'm trying to find the part that
7 says that there should be -- you should direct us to
8 brief those issues.

9 COMMISSIONER CLARK: Page 11.

10 MR. TWOMEY: Isn't that what it says?

11 COMMISSIONER CLARK: Yes. It lists five things
12 that should be briefed.

13 COMMISSIONER KIESLING: But it doesn't say that
14 you have to brief them if you think they are
15 inapplicable.

16 MR. TWOMEY: Maybe I'm splitting hairs here,
17 Commissioner. I understand where you are coming from,
18 and what I would like to do -- well, I would
19 appreciate, and I know that my clients would
20 appreciate is to spend just a few minutes discussing
21 why we think the staff is awry a bit on this
22 recommendation, instead of taking that same amount of
23 time and discussing whether we should discuss it. I
24 mean that respectfully. I understand where you are
25 coming from. I would like to take a few minutes, if

1 the Chair would allow and the Commission, and tell you
2 where we think we are and why some of these purported
3 options aren't.

4 COMMISSIONER GARCIA: Shouldn't we just do that
5 when we get to that issue?

6 CHAIRMAN JOHNSON: That's Issue 3, that's where
7 we are.

8 COMMISSIONER GARCIA: No, we are on Issue 4. I
9 mean, what Mr. Twomey is talking about is Issue 4.

10 MR. TWOMEY: Right.

11 COMMISSIONER GARCIA: Mr. Twomey, what you found
12 here, I would assume by all the comments, is that we
13 are all in agreement that you have to brief it,
14 because I don't know what else we could find. And if
15 you want to discuss some of the elements in Issue 4,
16 that's fine, but you are sort of mixing them both
17 together and I don't think it's necessary.

18 I think we can vote out 3, and then if you want
19 to talk about how we have broken out 4, and you have a
20 problem with it, I think that would be the proper time
21 to discuss it.

22 MR. TWOMEY: Yes, sir, you're right. What I'm
23 saying is please vote affirmatively on 3 to let me
24 talk on 4.

25 COMMISSIONER KIESLING: But the place that my

1 confusion came up, Commissioner Garcia, is that staff
2 said that the purpose of five minutes of argument per
3 party in 3 was to discuss whether or not they should
4 brief.

5 MS. JABER: That's one thing, Commissioner. If I
6 can just clarify. That's one thing, but the other
7 thing, also, and whether you agree or not was to allow
8 participation on Issue 4. I now, though, understand
9 your concern rather than arguing the merits of the
10 options, he is going to put that in a brief. I
11 understand that.

12 But I have to be -- I would be remiss in not
13 telling you that our intention was two-fold; whether
14 or not briefs were necessary at this time and also a
15 discussion on Issue 4.

16 COMMISSIONER KIESLING: On the options that you
17 have proposed.

18 MS. JABER: On anything in Issue 4. We did not
19 -- we attempted not to limit participation in any
20 manner today.

21 COMMISSIONER CLARK: Madam Chair, I would move
22 staff on Issue 3, and I would just suggest to the
23 parties that having looked at Issue 4, I see that 2
24 and 3 are not options. I mean, I just don't think
25 they are options. You've got to refund with interest

1 and I don't -- we have been through whether or not you
2 have to refund.

3 My view is if you don't refund you are thumbing
4 your nose at the decision of the court, and saying,
5 okay, we will take it into account next time. I think
6 the court said you can't do uniform rates and you've
7 got to go back and credit. So I would move staff on 3
8 and allow parties to address 4.

9 CHAIRMAN JOHNSON: Is there a second?

10 COMMISSIONER GARCIA: I will second.

11 COMMISSIONER DEASON: With a five minute
12 limitation, is that correct?

13 COMMISSIONER GARCIA: Yes. I will second, but I
14 don't know why we are limiting what we can hear from
15 the parties. I mean, I will argue the other side.

16 COMMISSIONER CLARK: I just think it's a waste of
17 time to brief it.

18 COMMISSIONER GARCIA: It may very well be, but --
19 all right, let me just second it so we can move on.

20 CHAIRMAN JOHNSON: There is a motion and a
21 second.

22 COMMISSIONER KIESLING: I thought (inaudible).

23 COMMISSIONER DEASON: No, I just asked if the
24 five minute limitation was part of the motion.

25 COMMISSIONER KIESLING: Oh, I thought you said

1 the second with the five minute -- okay, I apologize.
2 I misunderstood.

3 CHAIRMAN JOHNSON: Any further discussion?
4 Seeing none, show it approved unanimously. And all of
5 the parties will be limited to five minutes.

6 Mr. Twomey, would you like to go first?

7 MR. TWOMEY: Yes, ma'am, thank you.

8 The objective, Madam Chair and Commissioners, is
9 to get the balance beam right. It is out of kilter
10 yet. It was placed out of kilter when the uniform
11 rates were put into effect as determined by the court.
12 No motive impugned.

13 There is only one way to get it back. You all
14 tried a way that I would have loved to have seen
15 succeed, and that is making the utility pay for it.
16 You tried that, and the court -- and that would be the
17 best result. You tried that, you said make the
18 refunds within 90 days. The utility appealed it. The
19 court looked at it, and they said, understandably, I
20 suppose, when you look at the way the uniform rates
21 worked, the utility didn't keep any of the money.
22 They used it to the advantage of lowering rates for
23 other groups of customers. The customers that have
24 now been identified as those who may have to pay
25 surcharges.

1 So they said, taking into consideration the
2 factors enumerated by the Florida Supreme Court in the
3 GTE v. Clark decision, you can't make the utility pay
4 that money. They did say, I believe, rather
5 explicitly, as I think Commissioner Clark for one
6 believes, that you have to make refunds. As noted by
7 Commissioner Kiesling, I think, earlier this
8 afternoon, the court didn't in any way suggest that
9 the requirement for refunds was overruled or reversed.
10 They did no such thing. They merely said you can't
11 take it out of the hide of the utility.

12 And they said at Page 7 of the opinion, the
13 court's opinion, we are unable to discern any logic in
14 the PSC's contention that SSU having merely acted
15 according to the terms of the order establishing
16 uniform rates assumed the risk of refunds yet is
17 precluded from recouping charges from customers who
18 underpaid because of the erroneous order. Customers
19 who, I repeat, underpaid because of the erroneous
20 order.

21 And the court went on, "As the Supreme Court
22 explained in Clark, equity --" and that is the GTE
23 decision -- "equity applies to both utilities and
24 ratepayers when an erroneous rate order is entered,
25 and it would clearly be inequitable for either

1 utilities or ratepayers to benefit thereby receiving a
2 windfall from an erroneous PSC order. Contrary to
3 this principle, the PSC in this case has allowed those
4 customers who underpaid for services they received
5 under the uniform rates to benefit from its erroneous
6 order adopting uniform rates. As a legal position
7 this will not hold water." So said the First DCA.

8 So in the balancing beam concept, the utility has
9 been taken off the balance, and we are faced with
10 opposing groups of parties. The court has very
11 clearly indicated that one group of customers has
12 underpaid, the other group has overpaid. If there is
13 to be justice in this case to my clients and the
14 others that are similarly situated, they have to have
15 refunds. Irrespective of the time period over which
16 they are received, they have to have refunds. The
17 court has so dictated, I think, and as Commissioner
18 Clark has so correctly observed, if you make refunds
19 and people have lost the value of their money for four
20 years or more, there has to be interest. It's
21 required by the statutes, it's required by your own
22 Commission rules.

23 Therefore, the only thing that you can do,
24 Commissioners, in order to rectify this situation, as
25 difficult and as painful as it might be in the coming

1 months, is to require the surcharges, make the refunds
2 to my clients, and thereby bring the public interest
3 and your trust into balance. The only way you can do
4 it is through refunds and with interest.

5 So, as observed by Commissioner Clark, of the
6 five options listed by your staff on Page 11 of the
7 recommendation, 2 and 3, in my view, are clearly out.
8 You have to make the surcharges, you have to make the
9 refunds. If you do so, you have to do it with
10 interest. I would suggest to you that briefing those
11 issues is a total waste of time and invites further
12 opportunity to challenge the court.

13 I would respectfully suggest to you that whether
14 the utility can collect the surcharges from the
15 customers as required over longer periods of time to
16 ease the burden on them is something that should be
17 considered. At the same time, I would suggest to you
18 that you my clients and those similarly situated have
19 been without their money in some cases going on five
20 years now. That is a long time. Especially for
21 people with substantial life experiences.

22 They want the money back now. They deserve the
23 money back now. In your last order you ordered the
24 utility to make the refund within 90 days. I would
25 suggest to you that the briefs should be limited to

1 the conditions under which surcharges would be made on
2 the customers who have benefitted improperly and
3 unduly from the uniform rates, and that my clients and
4 the others receive their refunds within 90 days of the
5 final order in this case.

6 Now, I thank you very much for your
7 consideration. There are people from Sugarmill and
8 others here, but I think I have taken all of our time.
9 But if you wanted to hear from them, they are back
10 here, and they have traveled at some length. But we
11 would urge you to limit the issues for briefing to
12 those that are, in fact, rational and exist. Thank
13 you.

14 CHAIRMAN JOHNSON: Thank you. Senator, would you
15 like to speak now or --

16 COMMISSIONER CLARK: Does anyone disagree with
17 that?

18 MR. ARMSTRONG: Yes.

19 COMMISSIONER CLARK: Oh.

20 COMMISSIONER KIESLING: Well, why don't you take
21 your five minutes and tell us about that.

22 MR. ARMSTRONG: Do you want me to go next? His
23 clients are here.

24 CHAIRMAN JOHNSON: We will listen to the
25 gentleman. Sir, are you going to speak?

1 UNIDENTIFIED SPEAKER: If I'm allowed to.

2 CHAIRMAN JOHNSON: Turn on the microphone, I
3 think Mr. Twomey turned it off.

4 MR. MILLER: My name is Burt Miller, I'm going to
5 try to make this brief, as I have been advised to do.
6 Less there be any confusion, I'm not related to Morty
7 Miller. We don't represent the same communities, but
8 I think we have the same purpose.

9 I have been a resident of Sugarmill Woods, I am,
10 and I have been a customer, a reluctant one most of
11 the time, of Southern States Utilities since 1982. I
12 really didn't have a choice, as you know.

13 I speak for six members of our community who are
14 here today and for the Sugarmill Woods Civic
15 Association, which represents the interests of over
16 2,600 households. Four of my associates are former
17 presidents of the civic association, and one is the
18 current president.

19 Most of us in Sugarmill Woods are retired people.
20 Retired, Mike, not elderly. And we are on fixed
21 incomes. I suppose retirement carries with it a
22 certain amount of patience, because Lord knows we have
23 been patient.

24 The plain fact is that Southern States Utilities
25 owes us money. You all know why. The uniform rate

1 structure that took money out of our pockets for 28
2 months just did not stand up in court. So in October
3 '95, you ordered SSU to make refunds with interest to
4 us and to those other communities that were similarly
5 overcharged.

6 You gave SSU 90 days following issue of the final
7 order in this case in which to comply. Then SSU made
8 creative use of various legal options at its disposal.
9 The 90 days went by, nothing happened. Then in
10 February '96 you, again, ordered SSU to make refunds
11 and you did it again in August '96. Still nothing.
12 So here we are again in August '97.

13 As I said, I know you know all of this. I will
14 not abuse your patience by reiterating all the
15 arguments and catalog all the developments that
16 contributed to the long record in this case.

17 I cite this litany of delay to emphasize why our
18 patience is wearing thin and so are our resources. We
19 sometimes wonder if it's SSU's strategy to wear us
20 down emotionally and financially to deny us our money.
21 Unlike SSU, we cannot pass along most of our legal
22 expenses to our ratepayers.

23 How long is this going to go on? Time is of the
24 essence. Consider this. In a retirement community
25 such as ours, people die in greater numbers than they

1 do here in Tallahassee. Others move away. And this
2 is as true for communities due a refund as it is for
3 communities that would be assessed a surcharge.

4 If SSU is allowed to delay and obfuscate this
5 nonissue long enough at some time in the relatively
6 near future SSU will be home free. Many of the
7 original overcharged customers will no longer be alive
8 nor will any of the undercharged be with us. Either
9 way, SSU comes out the winner and the overcharged are
10 the losers.

11 Several years ago, in 1990 to be exact, the
12 Sugarmill Woods Civic Association intervened at
13 considerable expense to us when SSU filed for a rate
14 increase. The request was denied by the late
15 Commissioners Gerald Gunter and Betty Easley, whose
16 name is on this building. SSU went to the First
17 District Court of Appeals and lost. And since we had
18 been paying interim rates, we were due refunds. How
19 long did it take SSU to honor its obligation? And
20 there was no consideration for any of those who have
21 undercharged, only overcharged. 17 months, that's how
22 long it took us to get a refund in that situation.

23 Using the same interval now we might not get our
24 current refund in November 1998, exactly five years
25 and two months after the overcharges began. Five

1 years and two months to get made whole. And do you
2 know when SSU got made whole? Instantly. The moment
3 it was told that it did not have to finance the
4 refund, that it would be paid for by those who had
5 been overcharged.

6 We did not admire SSU's business practices in
7 1990, and we think even less of them now. Its tactics
8 in this situation are unconscionable. If this were
9 the open market, if we were not captive customers, we
10 would take our business elsewhere. Who but a monopoly
11 could get away with this? We often wish will
12 competition ever come to the water utility industry as
13 it has to the electric utility industry?

14 Over the years I personally think that SSU began
15 to sense that its customers held it in very low
16 esteem. Probably the public relations -- they hired a
17 public relations firm to suggest how the company's
18 image might be improved. So what happened? Merely a
19 name change to Florida Water Services, as if the
20 positive connotation in the word services could undo
21 the customer abuse that had gone on for years.

22 Recently you know about the Florida Power
23 situation. Florida Power didn't have to change its
24 name, it made a refund. Well, the name change isn't
25 working. Better the PR firm had told SSU to conduct

1 its business in a more ethical and forthright manner.
2 Better the PR firm had told SSU to stop denying
3 thousands of households what is rightfully theirs.

4 Our position is simple. We do not consider
5 Option 2 an option. We respectfully ask you to bring
6 this shameful matter finally to a close by ordering a
7 prompt refund with interest to all affected parties.
8 Thank you very much.

9 CHAIRMAN JOHNSON: Thank you, Mr. Miller.
10 Senator.

11 SENATOR BROWN-WAITE: Members of the Commission,
12 this is Mr. Morty Miller of Springhill.

13 MR. M. MILLER: I would like to make my position
14 clear. When the uniform rate issue first came up, the
15 Springhill Civic Association with then Chairman Gordy
16 Coven (phonetic) and I, as co-chairman, tried to enter
17 the court action as a friend of the court, and
18 unfortunately when our lawyer and Ms. Susan Fox, their
19 lawyer, got together it was too late. So we have been
20 in it from the word go.

21 I have been president of the Springhill Civic
22 Association for a little over two years. I had to
23 step down because of a heart attack, but I am still a
24 board member and my job is SSU and the utility, so I
25 represent Springhill Civic Association as well as

1 Morty Miller.

2 We have two different situations here. When you
3 instituted uniform rates, Sugarmill Woods and Citrus
4 County appealed this ruling. Rightfully, a stay was
5 put in place. The utility asked you to lift the stay,
6 and you, ill advisedly, at least in my opinion, did
7 so. Now we have this mess.

8 We have been grossly overcharged so that others
9 could pay for less than their stand-alone rates. We
10 were unfairly penalized. This much the court has
11 ruled. Now you have to decide how this can be
12 rectified. A surcharge, no doubt.

13 The situation with us in Springhill is that we
14 are owed the same as the rest of the subsidizing
15 customers. Plus, when you instituted modified
16 stand-alone rates, we were left on uniform rates, so
17 we are paying \$3.2 million a year over stand-alone
18 rates. This money is not a subsidy. This money goes
19 directly to SSU.

20 In a recent SSU or water management meeting, Mr.
21 Tracy Smith informed me this money goes to corporate.
22 That was his words, not mine. No poor customer has to
23 pay a subsidy to get this money back for us in one
24 lump sum. One lump sum payment.

25 From your own order -- and if you want me to go

1 through all the numbers, I will gladly do it -- you
2 said that Springhill is owed \$7.964 million. The
3 other 14 utilities put together are \$5.8 million. So
4 I think this is reason enough to say that we should be
5 represented and allowed to intervene in this action
6 because we are the major subsidizers. I don't want to
7 be corny, but this sounds like taxation without
8 representation. Thank you.

9 CHAIRMAN JOHNSON: Thank you.

10 SENATOR BROWN-WAITE: Thank you, Madam Chairman
11 and Commission members. As I looked over the
12 recommendation, the staff recommendation, and I
13 believe that's what you want me to address during this
14 time period.

15 CHAIRMAN JOHNSON: Did you want this gentleman
16 to --

17 CHAIRMAN JOHNSON: Go ahead.

18 SENATOR BROWN-WAITE: I would just indicate that
19 when I read them over, I know that staff's job is to
20 come up with some alternatives, but as Mr. Twomey
21 indicated, I sure don't hope -- I sure hope that
22 rather you don't consider Option Number 2 or Option
23 Number 3.

24 The refunds are due. The court indicated that an
25 overpayment by the customers who are due the refund

1 did take place. We can't say, we can't go back and
2 say we are just not going to do any refunds at this
3 time. So while you are considering the options, and
4 as you receive the briefings or the briefs on the
5 options, you need to remember that you can't erase
6 that fact.

7 And I love Mr. Twomey's phrase of those with
8 substantial life experiences. I guess that he is
9 approaching 50, I'm a little bit on the other side of
10 50, and I can just tell you that five years for the
11 people to wait and then have the court say -- the
12 court clearly acknowledged that an overpayment did
13 take place and that surcharges are due. We need to be
14 kind of following the Nike charge of just do it. And
15 we need to also just do it in a fair and equitable
16 manner, spacing over a period of time the surcharge.

17 But in a perfect world what I would like to see
18 is I would like to see the company make the payment
19 now to the people who have been affected, who the
20 courts have pretty much determined that there should
21 be a rebate to. Have them make that now and collect
22 it over a period of time from those people who
23 previously this group subsidized.

24 So, in looking at the five options, I beg to
25 offer to you that you really only have three that will

1 continue this panel's recent history of fair decision
2 making. Thank you.

3 CHAIRMAN JOHNSON: Sir, I think you just turned
4 the microphone off. If you can --

5 MR. JONES: Thank you. My name is Harry C.
6 Jones. I have been here a few times before starting
7 back in 1989. I represent the Cypress Village
8 Property Owners Association, 4,800 property owners,
9 all of whom live within Sugarmill Woods or whom own
10 property in Sugarmill Woods.

11 The purpose of my coming, the primary purpose was
12 to make sure that we were considered as an intervenor,
13 which we had requested back in the very early case, I
14 think, in 1982. I do believe that you denied that,
15 but I couldn't be absolutely certain because sometimes
16 the words get away from you.

17 Anyway, since we are not considered an
18 intervenor, then my only purpose is to remind you that
19 the property owners association wanted to intervene
20 and didn't really appreciate the fact that we had to
21 stick our nose into every one of these cases that came
22 up where we were represented by the civic association.

23 Be that as it may, we are very much opposed to
24 the options, if you want to call them that, and I
25 don't really feel that they are reasonable options, we

1 are in favor of the 90 day refund and however the
2 other people who have been subsidized for these
3 periods of time have to make up the difference, that
4 is up to someone else's decision. Thank you.

5 CHAIRMAN JOHNSON: Thank you.

6 COMMISSIONER KIESLING: Could I just make
7 something clear? Mr. Jones. Mr. Jones, I'm right
8 here.

9 MR. JONES: Oh, hi. I'm sorry.

10 COMMISSIONER KIESLING: Your intervention was not
11 denied.

12 MR. JONES: Oh, it wasn't?

13 COMMISSIONER KIESLING: No.

14 MR. JONES: Good.

15 COMMISSIONER KIESLING: We just have to take it
16 up later after there is an opportunity for others to
17 respond, because it was just filed today.

18 MR. JONES: All right. The last time I was
19 here --

20 COMMISSIONER KIESLING: I just wanted to make
21 clear to you that you were not denied.

22 MR. JONES: All right. I've got you now. The
23 last time I was here, I talked to Mr. Hoffman, who was
24 the legal eagle for the water company. And I said I
25 probably won't see you again because you will still be

1 on this case when I'm long gone. Well, I beat him. I
2 had open-heart surgery in February and I'm back.

3 COMMISSIONER CLARK: I just have a question. Do
4 we need to keep this case open so we keep all of you
5 around, is that what is keeping you going? I really
6 don't want to, but I'm glad to see all of you back.

7 MR. TWOMEY: Madam Chair, one thing that Mr.
8 Miller brought out that I don't think I touched on
9 explicitly enough is -- Mr. Morty Miller -- and you
10 may want to include in your briefing is the issue
11 about whether and how Southern States Utilities should
12 pay the surcharged dollars that they owe directly to
13 their customers at Springhill that had nothing to do
14 with the transfer of monies to other customer groups
15 through the uniform rates.

16 In case it's not clear, you will recall that the
17 monies that are now identified for refund through
18 surcharge ceased at the time the uniform rates ceased.
19 And that was I think in January of -- I want to say
20 '96, when you approved the interim rates in SSU's last
21 rate case, which were on a modified stand-alone basis.

22 For the purposes of this case, the subsidies
23 stopped being taken and stopped flowing to other
24 customer groups with the imposition of those rates.
25 You will recall that Springhill ultimately was not --

1 that system was not included in the case.

2 COMMISSIONER CLARK: Mr. Twomey, I think that's
3 in the recommendation, that the staff is aware that
4 there is a different treatment there because it is a
5 different period of time.

6 MR. TWOMEY: Okay. I just wanted to make --
7 thank you.

8 CHAIRMAN JOHNSON: Mr. McGlothlin.

9 MR. MCGLOTHLIN: My name is Joe McGlothlin, I
10 represent the City of Keystone Heights and the Marion
11 Oaks Civic Association.

12 One of the Commissioners used the term prior
13 restraint in characterizing what was about to unfold,
14 and while I thought I heard Mr. Twomey disavow any
15 intent to do that, for you to take the action he
16 suggests would be just that, to foreclose the parties'
17 opportunity to recommend and support the action which
18 the party believes the Commission should take in view
19 of the order of the First District Court.

20 I believe that Issue Number 2 and Issue Number 3
21 are very much alike, and I want to just take less than
22 five minutes to tell you preliminarily why you should
23 keep an open mind on that and direct that they be
24 included in the items to be briefed.

25 In the opinion of the court, after its analysis

1 of the substantive issues, after it had reversed the
2 Commission with respect to the Commission's
3 interpretation of GTE Florida, and after it was clear
4 that the matter was going to be remanded for further
5 action, and after it turned then to our appeal of the
6 order denying intervention as a separate stand-alone
7 issue, it said, "Accordingly on remand, we direct the
8 PSC to reconsider its decision denying intervention by
9 those groups and to consider any petitions for
10 intervention that may be filed by other subsequent
11 groups subject to a potential surcharge in this case."

12 So the court contemplated that even in light of
13 its opinion on remand, the issue was a potential
14 surcharge, not a surcharge that had been ordered by
15 the court. Now, when the Commission first ordered a
16 refund in this case, at the time it believed that a
17 surcharge -- it had no authority to impose a
18 surcharge. And I think that had a bearing on its
19 decision to -- the decision made at that time.

20 Now that the court has indicated that it has --
21 that the interests of the utility have been taken into
22 account, and that a surcharge is not foreclosed by the
23 GTE Florida decision, that changed the dynamics and
24 very possibly changes the equities of whether a refund
25 should be provided at all.

1 That is why we suggested that to make a decision
2 on that issue now or at the time you would consider
3 briefs without having more information regarding the
4 impact on customers would be to make a decision in a
5 vacuum. And we are pleased to see that the staff has
6 included a recommendation that the utility file that
7 type of information in time for the parties to
8 incorporate it in the briefs in this case. But by no
9 means do we believe that the opinion of the court
10 precluded the outcome suggested by the staff as one of
11 the options in Option Number 2 or 3, and we intend to
12 brief you on that subject.

13 CHAIRMAN JOHNSON: Thank you. Mr. Hoffman.

14 MR. HOFFMAN: Thank you, Madam Chairman. As we
15 said in our response to Mr. Twomey's petition, the
16 company believes that appropriate procedural
17 requirements for notice and customer intervention
18 needs to be established in this case.

19 We believe that all of the customers,
20 particularly in light of your ruling earlier today,
21 should be given notice of the possibilities which may
22 result from this proceeding, including no refunds, or
23 refunds and surcharges.

24 We have thought about this and we think that the
25 situation here is somewhat similar to what we had in

1 our last rate case where the Commission required us to
2 provide customer notices and hold a new round of
3 customer service hearings to advise customers of
4 potential rate outcomes depending on which rate
5 structure the Commission approved in our rate case.

6 In this particular instance there are a number of
7 different scenarios and rate or rate structure
8 outcomes which could result. We certainly would not
9 object to providing notices to customers and holding
10 service hearings to allow an opportunity for all of
11 the customers to be given an opportunity to air their
12 views on the structure of a refund and/or a surcharge
13 mechanism.

14 And I can tell you, Commissioners, that in light
15 of the fact that we have heard from customers today
16 who obviously support refunds, I think that it is
17 fundamentally the right of the other customers, the
18 potentially surcharged customers, to also be given
19 their right to be heard before this Commission.

20 COMMISSIONER DEASON: Isn't that what Mr.
21 McGlothlin just did? He exercised that right on
22 behalf of his clients who have intervened in this
23 case.

24 MR. HOFFMAN: Yes, sir, he did. But my point to
25 you is we have heard from other people today beyond

1 those who are technically in the case at this time,
2 and I think -- and even beyond that, Commissioner
3 Deason, I think that in a somewhat unique situation
4 such as this it would make sense to let all airs be
5 viewed by both sides.

6 You have already ruled that both sides ought to
7 be heard, and we just believe that there is some
8 consistency in doing that when you compare it to what
9 the Commission ordered us to do, albeit over our
10 objection, in the last rate case.

11 Now, I should point out, Commissioners, that we
12 are willing to provide the information that the staff
13 has requested us to provide. We anticipate that you
14 will order us to do that and we intend to do so. I
15 would point out that in --

16 COMMISSIONER CLARK: You anticipate what?

17 MR. HOFFMAN: Putting together the information on
18 the potential refunds and surcharges with or without
19 interest that Ms. Jaber went into in the very
20 beginning of this agenda, Commissioner Clark.

21 COMMISSIONER CLARK: By way of briefing it.

22 MR. HOFFMAN: No, ma'am.

23 COMMISSIONER CLARK: You are putting it out to
24 your customers?

25 MS. JABER: No, Commissioner. In the very

1 beginning, I modified Issue 4 to recommend that the
2 utility provide staff and the parties with that
3 information by August 29th.

4 MR. HOFFMAN: Before briefs were filed,
5 Commissioner Clark. What I would ask that you
6 consider is that we believe it will take us
7 approximately 60 days to put that information
8 together. And rather than an August 29 date, we would
9 ask that we be given until September 30th to put that
10 information together.

11 Now, Commissioners, it has been our position, as
12 you know, from the very beginning, and continues to be
13 our position that the Commission should not order this
14 utility to pay refunds. Throughout this docket we
15 have always charged the rates that have been approved
16 by the Commission. In the most recent appeal, which
17 resulted in the reversal of the Commission's refund
18 order, neither the Commission nor any intervenor could
19 cite the First District Court of Appeal to a case
20 where a utility was required to make refunds as a
21 result of a reversal of a Commission approved rate
22 design.

23 We believe that the approach that you should
24 establish is that where a court reverses the rate
25 design that you have approved, that the new rate

1 design should take effect on a prospective basis only
2 with no refunds. And I think that the language in the
3 court's opinion, as Mr. McGlothlin emphasized to you,
4 leaves that option open.

5 Now, I will tell you, Commissioners, we are very
6 concerned that a precedent of refunds and surcharges,
7 while it may be workable in this case, may be less
8 workable in future cases. And I'm referring
9 specifically to our most recent rate case where you
10 approved a cap band rate structure. There is not one
11 witness in our last rate case who testified in support
12 of a cap band rate structure. The words cap band may
13 not even be in the record until the staff
14 recommendation.

15 If that rate design is appealed and reversed, we
16 believe it is going to be very difficult to figure out
17 who the underpayers are and who the overpayers are and
18 how much they underpaid or overpaid. And that is an
19 example of why we believe that the policy that you
20 should proceed on is no refunds.

21 Now, as Mr. Twomey alleges in the pleading that
22 he has filed, and again before you today, he takes the
23 position that Florida Water should have to pay out of
24 its own hide, as he puts it, for the refunds to the
25 Springhill customers for the period of January 1996

1 through June of 1997, and that we should not be
2 allowed to recover the cost of that refund from the
3 potentially surcharged customers.

4 We believe that that is a notion that you should
5 swiftly reject. And I would say, first of all,
6 Commissioners, that is a very critical issue that we
7 intend to brief.

8 COMMISSIONER CLARK: Yes, it's an issue you
9 should brief.

10 MR. HOFFMAN: And we will. And I would say to
11 you, Commissioners, that that principle directly
12 conflicts with the law of the case that was
13 established in the Southern States decision. And that
14 is that the cost of any refunds that is ordered by the
15 Commission for one group of ratepayers are to be
16 recovered from the other group of ratepayers, and that
17 the company's revenue requirement approved by the
18 Commission and affirmed by the court is not to be
19 impaired.

20 In the GTE Florida and the most recent Southern
21 States decision, we think those two cases make it
22 clear that principles of equity and utility ratemaking
23 apply to us, the utility, as well as to the customers.
24 The company did not overearn on a total company basis
25 in 1996. We have been underearning on our

1 Hillsborough and Polk County facilities, and we
2 recently filed a rate case in Hillsborough County
3 based on a 1996 test year.

4 Our most recent rate filing in Hernando County,
5 which resulted in a settlement and the implementation
6 of stand-alone rates effective in June of this year,
7 established that our 1996 revenue requirement for
8 Springhill is greater than the revenue derived under
9 the old uniform rates.

10 Maybe most importantly, Commissioners, the staff
11 recommendation -- and we will brief you on this issue
12 -- but the staff recommendation ignores the fact that
13 there was an automatic stay in effect of the
14 Commission's August 1996 refund and rate structure
15 order which remained in effect throughout the appeal.
16 And that automatic stay was triggered by the filing of
17 the notice of appeal by a public body, the City of
18 Keystone Heights.

19 It is a very similar situation to the automatic
20 stay that was triggered when Citrus County filed the
21 first appeal of this rate case. Like that situation,
22 in this situation the stay was never modified in
23 scope. No party sought to modify it while the August
24 1996 order was on appeal. And everyone, all the
25 counsel here are familiar with the automatic stay

1 provision, and that has been raised and enforced not
2 only in this rate case, but in our jurisdictional
3 docket.

4 As a matter of fact, parties have asked this
5 Commission and the First District Court of Appeal to
6 fine this utility and penalize this utility for
7 allegedly ignoring the automatic stay. But as you
8 know, we did not ignore it then and we don't think it
9 can be ignored now.

10 So we don't think that we did anything wrong.
11 With respect to the Springhill customers, the only
12 rates available to us were the uniform rates. We did
13 not violate any orders, we exercised our procedural
14 rights to pursue lawful remedies, and moreover there
15 has been an automatic stay in effect by virtue of the
16 City of Keystone Heights appeal.

17 Commissioners, let me just conclude by saying
18 that we believe that ultimately the outcome in this
19 case should be no refunds. We will provide the data
20 requested by staff, if you order us to, and we
21 recommend that you do. We will provide notice to
22 customers and participate in customer service hearings
23 on a refund or surcharge mechanism and submit briefs.
24 Thank you.

25 CHAIRMAN JOHNSON: Thank you. Any questions?

1 COMMISSIONER CLARK: Well, I had indicated I
2 didn't think 2 and 3 needed to be briefed, but I think
3 Commissioner Kiesling is probably right, you know,
4 that parties ought to have an opportunity to address
5 what they think are the issues in the case. And Mr.
6 McGlothlin and Mr. Hoffman have brought up some
7 different views of the case, and I think it ought to
8 be briefed.

9 But with respect to the suggestion that we
10 provide notice, you know, I know we did it
11 subsequently and required them to give the notice, but
12 I'm just not sure that we should be doing that in this
13 case.

14 MR. TWOMEY: May I address that, Madam Chair,
15 very briefly? Mr. Hoffman, as he pointed out, the
16 company was required to give notice in a 120.57
17 hearing that involved substantial interests and was an
18 evidentiary hearing. And that's right and proper to
19 put people on notice.

20 The case that is before you now doesn't
21 comprehend another hearing. It doesn't comprehend an
22 evidentiary hearing. What is at heart here in a
23 nutshell is a decision based upon law. Questions of
24 law as to who has to pay and so forth.

25 Clearly what the utility intends is that you have

1 them put out notice that would incite, and I don't
2 think it's required. This is a question of law. Both
3 sides are before you -- actually there are three sides
4 before you. There is the utility, the people that Mr.
5 Jacobs and I represent, and Susan Fox, and Mr.
6 McGlothlin and his able law firm. All sides are
7 represented.

8 And we don't need the information that the
9 company wants to put out and wants to take an
10 additional 60 days to have. We have delayed enough in
11 this case.

12 The question before you, quite simply, I think,
13 is a legal one, and the decision you have to make
14 ultimately is independent of the numbers that SSU
15 would give you. Thank you.

16 MR. ARMSTRONG: Madam Chair, if I could also
17 respond briefly to the comments just made.

18 Number one, we obviously take extreme exception
19 to the comment that we would be doing anything to
20 notify customers to incite. Our notices are always
21 approved by the Commission and we would expect that
22 they would be so in this case.

23 But, in addition, the proposition that this is no
24 more than a question of law also is not an accurate
25 statement. This is no more a question of law than the

1 issue of what rate structure was appropriate during
2 our rate case. Here it is a question of design and
3 how the surcharge would be designed if there is to be
4 a surcharge.

5 Now, it is true that there are three customer
6 groups who are potentially surcharged represented by
7 counsel, but I don't believe that there has been
8 notification to the other 100 and some odd customer
9 groups potentially to be surcharged yet.

10 And as you are very well aware over the two sets
11 of service hearings that we held in each one of those
12 service areas during the rate case, we at the utility
13 are consistently held accountable for notifying
14 customers of events such as these. And we have made
15 it clear on the record that we believe that service
16 hearings would be an appropriate venue for customers
17 to come in and make the same kind of comments
18 regarding the rate design proposal in the rate case as
19 the surcharge mechanism would look like in this case.
20 That would be the focus of their testimony.

21 MS. JABER: Commissioners, may I? Let me start
22 by saying that we agree with Mr. Twomey that there is
23 no need for service hearings, and we don't need to do
24 that type of notice, and just to bring everyone back.
25 We all are in agreement, I think, that we need some

1 sort of resolution in this case, and to have service
2 hearings in the utility's service area would delay the
3 resolution of this matter.

4 Notice at this point for staff is not a grave
5 concern, you know, as Mr. Hoffman characterized,
6 because now we do have all interested persons in this
7 case that have sought intervention. If it continues
8 to be a concern, staff can certainly work with the
9 Commissioners on reaching some sort of solution for
10 the notice, but it certainly does not require opening
11 up intervention for an extended period of time or
12 having service hearings. That is the first point.

13 I think that if the utility has opinions on how
14 the surcharge should be designed, we would certainly
15 want to see that in a brief. I think that what we
16 wanted the Commissioners to keep in mind is in Issue 4
17 the options that are set forth here by staff are just
18 options that have been preliminary identified. We do
19 not mean to limit what the parties include in briefs,
20 and if there is another option that we haven't yet
21 thought of, we would certainly like to see it in the
22 briefs.

23 With respect to asking for more time to provide
24 us with the information on the refund impact and the
25 surcharge impact, we want to clarify for the utility

1 that we are asking for this information by service
2 area, and staff is of the opinion that that is
3 something that they can compile by August 30th.

4 And, again, what we are sensitive to is moving
5 this case along and resolving it as fast as we can.
6 If they have until September 30th, it would only delay
7 the briefs by that same amount of time.

8 CHAIRMAN JOHNSON: Commissioners.

9 COMMISSIONER DEASON: I move staff on Issue 4.

10 COMMISSIONER KIESLING: As modified.

11 COMMISSIONER DEASON: As modified, as we began
12 this discussion.

13 COMMISSIONER KIESLING: Yes. I second that.

14 CHAIRMAN JOHNSON: There is a motion and a
15 second.

16 COMMISSIONER CLARK: Let me just -- what is the
17 modification?

18 COMMISSIONER KIESLING: It was that SSU provide
19 certain information to staff and the parties by
20 August --

21 MS. JABER: 29th, and briefs be filed by
22 September 30th.

23 CHAIRMAN JOHNSON: There is a motion and a
24 second. Any further discussion? Seeing none, all
25 those in favor signify by saying aye.

1 (Unanimous affirmative vote.)

2 CHAIRMAN JOHNSON: Show it approved unanimously.

3 MR. TWOMEY: Thank you very much, Commissioners.

4 COMMISSIONER CLARK: I would point out my view on
5 the customer notice is that we now have through Public
6 Counsel making the appropriate accommodations, we have
7 Public Counsel representation for both sides, and I
8 think that adequately addresses the notice issue.

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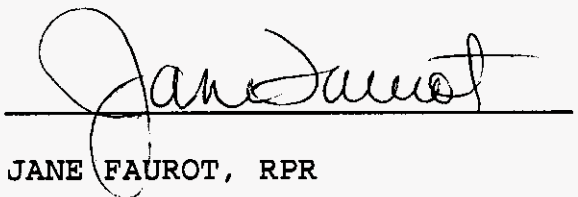
STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 84 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 24th day of September, 1997.



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