

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).

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920199-WS gm

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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:

26**

DATE:

Tuesday, October 7, 1997

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

BUREAU OF REPORTING

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APPEARANCES:

KENNETH HOFFMAN, ESQUIRE and BRIAN ARMSTRONG, ESQUIRE, representing Florida Water Services Corporation.

MIKE TWOMEY, ESQUIRE, representing Spring Hill

JOE MCGLOTHLIN, ESQUIRE, representing the City of Keystone Heights and Marion Oaks Civic Association

CHARLIE BECK, ESQUIRE, JACK SHREVE, ESQUIRE, representing OPC

CHARLES FORMAN, ESQUIRE, representing DeRouin and customers of Pine Ridge Subdivision

STAFF RECOMMENDATION

Issue 1: Should the Commission require Florida Water Services Corporation to notice all of the utility's customers who may be impacted by the remand decision in Southern States Utils. of the potential impact to the customers?

Recommendation: Yes. FWSC should provide the notice shown on staff's recommendation dated October 1, 1997 to all of its customers who may be impacted by the remand decision by October 13, 1997. Accordingly, OPC's motion to provide notice to customers, the motion of customers DeRouin et al. for formal notice, the utility's motion for reconsideration on the notice issue, and Keystone/Marion's motion to provide customer notice and input from customers, should be found moot. All petitions to intervene and written comments, letters, or briefs regarding what action the Commission should take in light of the remand decision in Southern States should be filed by November 5, 1997. The Commission should put the parties on notice that no further extensions of time to file briefs, written comments, letters and petitions to intervene will be granted.

Issue 2: Should the Commission grant Florida Water Services Corporation's Motion to Compel?

Recommendation: Yes, in part. Counsel for Intervenors has now provided the utility with copies of the photographs used at the August 5, 1997 Agenda Conference. In this regard, a ruling on the utility's motion to compel is not necessary. However, counsel for the Intervenors should produce the names of the customers, address of the second home, and the respective service areas of the homes depicted in the photographs, within ten days of the vote. The Intervenors' motion for fees and costs should be denied.

P R O C E E D I N G S

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CHAIRMAN JOHNSON: I think we are on Item 26.

MS. JABER: Commissioners, in Item Number 26 there are two issues. In the first, Staff is recommending that you require the utility to provide the notice attached to this recommendation by October 13th. Staff recommends that all letters, comments, petitions to intervene, and/or briefs be filed by November 5th with no further extension.

In the second issue, Staff recommends that the utility's motion to compel be granted in part, as explained further in the Staff's analysis.

Parties are here to address the Commission.

CHAIRMAN JOHNSON: How should we proceed?

MS. JABER: In the first issue there were numerous parties that requested by various motions for the Commission to require the utility to provide notice. The first was the utility, so that's a place to start.

CHAIRMAN JOHNSON: Okay. We'll start with the utility.

MR. ARMSTRONG: Okay. Madam Chair and Commissioners, Brian Armstrong on behalf of Florida Water Services. With me is Ken Hoffman from the Rutledge, Ecenia law firm.

1 We've reviewed the Staff's recommendation. As
2 the Commissioners are aware, a couple of months ago we
3 were here requesting this type of notice to customers.
4 We appreciate the fact that the Office of Public
5 Counsel has now asked for that relief and, I believe
6 now all the parties --

7 CHAIRMAN JOHNSON: Excuse me.

8 MR. TWOMEY: I'd like to interpose an objection,
9 Madam Chairman. SSU, I believe, doesn't have any
10 business or right to speak on this issue. They were
11 ordered by this Commission months ago to make refunds
12 to their customers who were overcharged under the
13 uniform rate structure.

14 At that time they objected to being forced to
15 make the refunds themselves and said that they didn't
16 mind if there were refunds as long as it was paid by
17 the other customers.

18 That order of the Commission was reversed. And
19 the court said that the issue of equity amongst the
20 parties had to be maintained. And, essentially, they
21 determined, the court did, that SSU would be let out
22 of this determination of having to pay the refunds.
23 They were let off the hook. And the court decision
24 left it amongst the customers, unfortunately, to fight
25 out what the refunds would be and whether there would

1 be interest and so forth.

2 Now, I would suggest to you, Madam Chair and
3 Commissioners, that having -- after four years of
4 suggesting that the customers would be okay in this
5 thing; that is, SSU has maintained that for four years
6 and seven months when they got the stay lifted
7 everything would be fine, my clients and others would
8 be protected. They've talked their way out at the
9 court of making the refunds themselves and matters
10 between the customers. I suggest to you they don't
11 have standing to speak on the side of one customer
12 group or another.

13 And as we'll see later, they've gone out and
14 apparently gone to the trouble and hired a law firm to
15 take the side of one group of customers against the
16 other. But I'm objecting right now. I don't think
17 they've got any business to be heard on this, and I
18 object to them being heard.

19 MR. ARMSTRONG: Madam Chair, first, I'd like to
20 note for the record the lack of professional courtesy
21 just demonstrated. I don't think I've ever done that
22 myself or seen any other lawyer do the same type of
23 thing, and it's something we've had to endure for a
24 long time.

25 Second, I'd just like to state that what we've

1 just witnessed and heard was a demonstration of the
2 fact that Mr. Twomey on behalf of clients -- now, I
3 don't know if it's with the approval of clients, but
4 he doesn't want this Commission to hear from anybody
5 except for himself.

6 And, yes, there has been a law firm that has been
7 retained now by the customers of Florida Water to
8 represent them and their interests. And you'll hear
9 from Mr. Forman subsequently regarding that
10 representation.

11 We are here. We were here two months ago saying
12 a notice must be made to all customers. Again, we
13 appreciate the fact that most of the parties have
14 acknowledged that. We --

15 COMMISSIONER GARCIA: Excuse me, Mr. Armstrong.
16 A law firm has been retained to represent your
17 customers?

18 MR. ARMSTRONG: A law firm has been retained who
19 represents our customers, correct, by our customers.

20 COMMISSIONER GARCIA: A law firm has been
21 retained by your customers?

22 MR. ARMSTRONG: Right.

23 COMMISSIONER GARCIA: Or has been retained by you
24 for your customers?

25 MR. ARMSTRONG: By our customers. They have an

1 agreement with our customers. They have all the
2 appropriate waivers, all the appropriate
3 acknowledgements. We do not have any control over the
4 law firm. The clients -- it has been fully disclosed.
5 And we wanted -- if this was going to happen where
6 customers were not going to be heard from, we wanted
7 to make sure that all customers had a right to be
8 heard. All customers who had a right to be heard and
9 represented by a counsel of their choosing, and that's
10 what has been done.

11 COMMISSIONER GARCIA: And who is paying for this
12 law firm? Are all the customers paying for it or is
13 it --

14 MR. ARMSTRONG: No, the company pays for it. The
15 shareholders of our parent company are paying for the
16 law firm.

17 COMMISSIONER GARCIA: Thank you.

18 MR. ARMSTRONG: Sure. Now, as I was beginning to
19 indicate earlier, what the company has proposed is for
20 notice to customers. We have the Staff recommendation
21 in hand, and we'd like to make a proposal of several
22 adjustments to the Staff recommendation.

23 The first adjustment would be that we use the
24 billing cycle to prepare -- to insert notices in, so
25 that customers will receive our notice through the

1 bill. Obviously, there is a savings in cost to
2 customers, and we believe from experience customers
3 are more likely to receive that notification. On the
4 bill there would be a sentence which would read
5 something to the effect of, "Attached please find a
6 schedule which indicates potential refunds and
7 surcharges that might impact you as a result of a
8 court reversal of a decision in Docket No. 920199," or
9 something to that effect.

10 The notice proposed by Staff provides some
11 historical information which we believe should be
12 provided. We suggest some rewording to make it more
13 what we would hope -- we believe would be more
14 comprehensible to our customers. But it also needs to
15 leave some leeway.

16 And that leeway will -- what we would propose is
17 that a reference on the bill and the sentence that I
18 talked about saying to take a look at the attached
19 schedule. The schedule itself shouldn't have, as
20 proposed by Staff, a by-customer dollar amount for
21 refunds and surcharges.

22 Now, why shouldn't it? There are some many
23 variables in this case at this point in time that it's
24 impossible to perceive and to understand now what the
25 potential impact on customers are.

1 And, briefly, to go through some of those
2 variables, we have the question of whether refunds and
3 surcharges will be made at all. If they're to be
4 made, over what time period will they be made? If
5 they're to be made, will there be an interest rate,
6 and what interest rate will that be -- will be
7 applied? If the refunds are to be made under a time
8 period that is different from the period of time
9 approved for collection of the surcharges, then what
10 is the interest rate that's going to be accrued on the
11 unrecovered balance?

12 In other words, if we make refunds up front and
13 we have a longer period of time where we have to put
14 surcharges, it's the company's position that we be
15 required to earn our rate of return on the unrecovered
16 balance outstanding.

17 While the principal of the refund or surcharge
18 amount won't increase, we will have an accrual of
19 interest over time in the future as months progress
20 before we actually start to implement. So that also
21 will increase the charge. There will be an income tax
22 effect on these charges. The question of regulatory
23 assessment fees and how that will play out. We don't
24 believe there should be a regulatory assessment fee
25 collected on the surcharge because it's already been

1 collected once, and this is merely replacing dollars
2 previously collected. So that has to be worked out.

3 There's the question of the Spring Hill amount,
4 which was accruing from January of 1996 through June
5 of 1997, and how that will impact the refund amount.
6 There's the question of the treatment of surcharges
7 from customers who are no longer customers of Florida
8 Water.

9 MS. JABER: Commissioners -- excuse me,
10 Mr. Armstrong, I apologize. I just need to let you
11 know that the last few comments are outside the scope
12 of the recommendation. There is a pending motion for
13 reconsideration that was filed by the utility that
14 relates to Spring Hill and some of the other points
15 that were brought up.

16 CHAIRMAN JOHNSON: I understood -- I thought he
17 was making the point that the reason why -- well, I'm
18 not sure what point you were making. But I was
19 connecting those points to why we shouldn't have this
20 per-customer impact thing and all of the stuff that
21 could change and impact -- and impact that, and that's
22 why they can't get customer specific as to this will
23 be the dollar amount.

24 MS. JABER: Right. But what goes into the
25 calculations of the surcharge and, you know, the time

1 periods, those are the subject of why the briefs are
2 to be -- that goes into the brief, as a matter of
3 fact. It has nothing to do with requiring the utility
4 to do notice.

5 COMMISSIONER KIESLING: If I could, just right
6 here, I found that same question about the wording in
7 the notice and a couple of others, and I've come up
8 with some proposed language that when it's my turn I
9 intend to offer --

10 CHAIRMAN JOHNSON: Okay. Thank you.

11 COMMISSIONER KIESLING: -- to make clear that
12 that amount if it remains in there is an estimated
13 amount and things of that nature.

14 MR. ARMSTRONG: Thank you, Commissioner.

15 Madam Chair, and that was the purpose of going
16 through these variables. There are so many variables.
17 The company would not like to see any of us have to
18 deal with the situation where we provide notice of one
19 number and then that number turns out to be either
20 substantially less or substantially more in the
21 future.

22 So what we would propose is to provide customers
23 notice by service area based on an average refund and
24 surcharge, with specific notations that that's exactly
25 what we would be providing to our customers, so that

1 we could avoid that type of situation.

2 Those are my -- those are the company's comments
3 on Issue 1. Again, we do support the Staff's
4 recommendation that notice be given, but with those
5 modifications.

6 CHAIRMAN JOHNSON: Okay. Thank you.

7 Mr. McGlothlin.

8 MR. MCGLOTHLIN: I'm Joe McGlothlin. I'm here on
9 behalf of the City of Keystone Heights and the Marion
10 Oaks Civic Association. On behalf of those clients, I
11 filed a motion asking the Commission to require the
12 company to give individual customers notice of their
13 specific exposure to a refund or a surcharge and also
14 to hold public hearings so that the customers could
15 have an adequate opportunity to provide input as to
16 the impact of a decision on them.

17 I believe that the Staff's recommendation and the
18 notice attached to the recommendation goes a long way
19 towards achieving the type of notice that we
20 recommended in our motion. And so I endorse that, and
21 I think that the Commission ought to require that as a
22 minimum.

23 With respect to the suggestion that an average
24 refund or surcharge be calculated, I believe it's
25 within the company's capability to provide the

1 individual information that the customers are most
2 interested in.

3 Here today are Mr. J.C. Nettesheim and Mr. Archie
4 Green. Mr. Green is Mayor of the City of Keystone
5 Heights. Mr. Nettesheim is a member of the Marion
6 Oaks Civic Association. They, of course, have
7 followed these proceedings with considerable and
8 natural interest. I've explained to them that the
9 only issue before the Commission has to do with the
10 notice, but they've indicated they'd like to make some
11 brief comments if you would allow that, Madam
12 Chairman.

13 CHAIRMAN JOHNSON: Certainly. Mr. McGlothlin,
14 let me ask you a question. Are you objecting, then,
15 to the calculation being by service area and based on
16 averages?

17 MR. MCGLOTHLIN: Yes. Yes, I would prefer that
18 the type of notice recommended by Staff, that is the
19 individual customer's impact be required of the
20 company.

21 CHAIRMAN JOHNSON: Now, how would we account,
22 then, for the variables, the fact that there may be
23 some conditions or variables that would impact that
24 number?

25 MR. MCGLOTHLIN: Well, I'm not sure I understand

1 all of the variables, but to the extent that it is
2 within -- that the company has the information -- if
3 the company has the information with which to actually
4 bill a refund or a surcharge, it seems to me they
5 would have the same ability to provide notice of that
6 potential impact on customers. I don't think anything
7 less should be required of them.

8 MR. FORMAN: Me?

9 CHAIRMAN JOHNSON: Yes.

10 MR. FORMAN: Yes. Okay. Charles Forman --

11 CHAIRMAN JOHNSON: If you could state your name
12 and address. State your name for the record.

13 MR. FORMAN: Good morning.

14 MR. MCGLOTHLIN: Could the other gentlemen speak?

15 MR. FORMAN: Sure. That was what I was trying to
16 figure out. Thank you.

17 Would you like to sit here?

18 MR. NETTESHEIM: I'm Joseph C. Nettesheim. I
19 live at 330 Marion Oaks Drive, Ocala.

20 CHAIRMAN JOHNSON: Would you repeat your last
21 name again?

22 MR. NETTESHEIM: Nettesheim.

23 CHAIRMAN JOHNSON: Could you spell that for us?

24 MR. NETTESHEIM: N, as in Nancy,

25 E-T-T-E-S-H-E-I-M.

1 I have followed this with considerable interest,
2 and I would like to make known to the Commissioners
3 that in Marion Oaks approximately all of the customers
4 receive water service, but only about half receive
5 wastewater service. And if any notice is to be sent
6 out, and I do think that one should be sent out, and
7 it should be very explicit and it should clearly
8 delineate what the burden would be on not only water
9 customers, but clearly delineate what the burden would
10 be on the wastewater customers.

11 The reason for this is that the wastewater
12 service area is in the older section of Marion Oaks.
13 And in this section is where we have the long-term
14 retirees and also the working families. And in this
15 area the economic burden is going to be quite severe
16 if a surcharge is applied. So it's important that
17 they be well-informed and as specifically as possible.
18 That's about all I have to say. Thank you.

19 CHAIRMAN JOHNSON: Thank you, sir.

20 MR. GREEN: Madam Chairman, Commissioners, I'm
21 Archie Green, Mayor of the City of Keystone Heights.

22 We've been facing this issue now for, I guess,
23 four years or more. I heard a statement. And I think
24 now is the time to get it over with. I support the
25 Staff's recommendation to disclose the detailed

1 information to the citizens, the water users, and
2 let's open this to public debate. I think there's a
3 credibility problem. I notice in some of the
4 newspapers that, I think, the PSC has had some flak,
5 and I think we need to open it up and get it off the
6 table and out and let the people make some decisions
7 here.

8 I am a little concerned about some of the
9 previous testimony or comments made about one class of
10 users versus another. In Keystone Heights we have
11 five water systems that are affected by this. Looking
12 at some of the data that was calculated, Keystone
13 Heights shows, I think, \$168,000. But I'm not sure --
14 there is, I think, three -- two other water systems
15 lumped in with that amount. So, you know, what are we
16 paying for here? I think you need to answer some of
17 the questions to the users of the water.

18 But the problem I have is showing one class of
19 user as living behind wrought iron gates and then the
20 other class living in low income housing. Now, I
21 would like you to come see our area. We're retired
22 people. We have a lot of bedroom community of
23 Gainesville and Jacksonville. We have a lot of
24 retired service people, and they're on fixed incomes.

25 I do not know what the effect of this increase is

1 going to be. It could be \$1.95 or some -- I think the
2 Wall Street Journal said \$1,000 over two and a half
3 years. So I think we need to get that out, and take a
4 look at the people that are affected.

5 Our water system is -- we've been after four or
6 five years to get our water system improved. I think
7 you're going to cause rates to start going up a lot.
8 We're going to have a rate to pay back the surcharge,
9 and we're going to have another rate increase if we
10 want our water system to be improved.

11 I think out of 50, 60 hydrants in our city, four
12 met the state and federal standards. We've got major
13 problems with our water systems, so somewhere along
14 the line they're going to have to be upgraded.

15 So whatever you're going to do is going to impact
16 rates tremendously. And if you're on a fixed income,
17 what I would start recommending is start putting down
18 wells. You can put down a well, a four-inch well in
19 our area for like \$3,000. So what are you going to
20 do? Are you going to have people dropping off the
21 water systems?

22 So I would like for you to go ahead, let's get
23 the information out to the users, open it up to public
24 debate and then resolve the situation. Thank you very
25 much.

1 CHAIRMAN JOHNSON: Thank you, Mayor.

2 MR. FORMAN: Thank you, Madam Chairman,
3 Commissioners. Charles Forman, the law firm of
4 Forman, Krehl and Montgomery. We represent DeRouin
5 and several other customers. These clients are
6 located in Beverly Hills and the Pine Ridge
7 Subdivision. And according to the best information we
8 have at this point, they are within a clearly defined
9 class that is solely subject to a surcharge.

10 One of the problems with this particular case is
11 that you have many permutations of people who may be
12 entitled to a potential refund for one service, while
13 being charged a surcharge on another within the same
14 area. As we heard this morning, someone else may be
15 getting refunds on both, someone else may be getting
16 surcharges on both.

17 Unfortunately, the people that are subject to a
18 surcharge, to the best of my ability in reviewing the
19 record, it does go back many years, have not been
20 represented in this particular proceeding. The issues
21 have not been addressed on their behalf. Public
22 Counsel stated early on he didn't brief that issue.
23 He wouldn't brief it. He couldn't support refund
24 people over surcharge people or vice versa. And they
25 have been shut out.

1 We have filed a petition to intervene, which was
2 timely within the timeliness, if you will, of your
3 last order. And I think that it's clear our clients
4 have substantial interests that are at risk here and
5 that they have not been represented to date.

6 We also filed a motion for formal notice to the
7 customers and a request for extension of time to file
8 the briefs. That was done. Staff came out with a
9 recommendation. I have several comments related to
10 that, but we would agree with Staff's recommendation
11 that notice certainly should be given.

12 At this point in time, the closest thing that I
13 have litigated in that is akin to where we are now is
14 a class action. And we would be sending out a notice
15 to the members of the class as to what the potential
16 settlement or the rights and responsibilities would be
17 and giving them an option to get in or out of the
18 class or to do something different if they wanted to.

19 The problem with the short notice as proposed
20 here is in a typical class proceeding they would have
21 already had someone representing the class. Here
22 there has been no one representing the people with the
23 surcharges. And you have records that go on for
24 hundreds of pages, orders that are over in excess of
25 100 pages, several court appellate decisions.

1 And I have asked, and I think it would be
2 appropriate -- I know everybody wants to get this over
3 with, but you don't want to shut people out and not
4 permit them to have the opportunity to be heard. I
5 have suggested 45 days within which to intervene and
6 60 days within which to file a brief on this matter.
7 I think that that would be appropriate.

8 If you looked at a typical from the day that the
9 notice is sent, you have at least 70 days to get a
10 brief ready in a case where you actually litigated it
11 and should know something about it to send off to an
12 appellate court. Here you have people and potential
13 attorneys coming in with no prior involvement in the
14 case that need at this point to very vigorously bring
15 in and contest and litigate some interesting issues.

16 Two of the issues I see raised here immediately
17 that are unique and should be given a lot of
18 attention, one, as I understand the refund people have
19 requested compound interest. In 20 years of
20 litigation, all sorts of administrative and judicial
21 proceedings, I've not seen a request for compound
22 interest, and I know that there are not a lot of
23 cases, and so forth, dealing with that.

24 The second is the surcharge authority itself.
25 The Commission is a creature of statute. It's given

1 its authority under the state statutes passed by the
2 Legislature. There's no authority in those statutes
3 that authorizes a surcharge.

4 I've been through your rules, and maybe I missed
5 something, but there's no rule that deals with
6 surcharge or authorizes a surcharge. What is the
7 authority we're working under? These are very complex
8 and important issues.

9 In terms of the specific notice to go out in
10 class action, for instance, the Supreme Court of this
11 state and the United States, said the best notice
12 practicable under the circumstances, and I think
13 that's what we should strive for. Sometimes you can
14 -- and I think Mr. Armstrong suggested this, you can
15 have a problem in that you can give too specific a
16 notice and have it be a wrong notice. And probably at
17 this point for people who have never been represented,
18 giving them the wrong notice would be the worst thing
19 that could be done.

20 But to the extent that the numbers can be
21 documented, to the extent that the information the
22 Board can make a decision specifically how they want
23 this calculated and addressed, it should be specific.
24 Giving them notice actually in the form of a potential
25 bill would be the thing that I believe would get their

1 attention the most.

2 But it should be a personal notice, and they
3 should have a reasonable period of time to respond, to
4 talk to people, to make a decision. You know, they
5 are going to get this notice, they are going to want
6 to have a homeowner group discussion, they are going
7 to try to decide what to do from there. They are
8 going to talk to an attorney and want to be back.
9 They can't do that under the limited amount of time
10 your staff has recommended here. Thank you.

11 COMMISSIONER DEASON: Let me ask a clarifying
12 question. You keep indicating that there are
13 customers who have never been represented at all
14 during this process. And I guess I need some
15 clarification from Mr. McGlothlin.

16 Mr. McGlothlin, I thought that you had intervened
17 on a number of customers who perhaps would be subject
18 to a surcharge, and that you had intervened some
19 months -- you had intervened at the time of the
20 hearing, is that correct?

21 MR. MCGLOTHLIN: I intervened or attempted to
22 intervene at the time you were having briefs on the
23 impact of the GTE case. You denied intervention. We
24 appealed that decision, the court reversed, and you
25 have since allowed us to intervene.

1 And I do represent the two clients that I
2 introduced earlier who are facing surcharges. I'm
3 assuming Mr. Forman is talking about the numerous
4 other customers who were not represented by counsel,
5 although they are faced with a possible surcharge.

6 MS. JABER: Commissioner, you are recalling the
7 last rate case, the 495 docket, where they intervened
8 at the hearing. I think that's what you're thinking
9 about.

10 CHAIRMAN JOHNSON: Mr. Shreve.

11 MR. SHREVE: I'm sure Mr. Forman just was not
12 aware of the activities prior. This has come to the
13 Commission before, and well back I saw this becoming a
14 problem when we were faced with the division between
15 the customers. And, of course, came to you trying to
16 work something out as far as providing representation.
17 That didn't work. I tried to get Southern States to
18 provide the funds out of rate case expense. That did
19 not work.

20 So I went ahead and provided the funds for Joe
21 McGlothlin and Darol Carr to represent the interests
22 of that group of customers that is on that side. Not
23 specifically all of those customers, but a group of
24 customers were the ones that selected those two
25 attorneys. And as well as for the other side, because

1 it appeared that we were not going to be able to
2 represent them because of a conflict. And I will be
3 glad to go over that with Mr. Forman. I'm sure he is
4 probably not aware of what happened on that and that
5 there has been that representation.

6 COMMISSIONER DEASON: I knew that there had been
7 efforts and that you had started that effort to try to
8 alleviate that concern and that there had been some
9 accommodation made, and to what extent I'm not exactly
10 sure.

11 MR. SHREVE: Well, we have provided the funds
12 with no control whatsoever and the customers -- and I
13 guess really the way we approached it was that
14 interest, rather than a specific group, while coming
15 in and representing specific customers and that would
16 be Joe McGlothlin and Darol Carr on that side, Mike
17 Twomey and Buddy Jacobs on the other side. But --

18 MR. FORMAN: If I may respond just briefly. My
19 understanding was that in the original proceeding, the
20 original hearing that neither the Public Counsel nor
21 anyone else for that matter actually offered evidence
22 or proposed the uniform rates that ultimately were
23 held to be invalid.

24 And from that point until -- several years I
25 think went by before Mr. McGlothlin's petition for

1 intervention was filed. That petition, as I
2 understood the case, was originally denied. They
3 appealed to the First District Court of Appeal, that
4 appeal was then consolidated with the appeal on the
5 merits. And if I recall this correctly, the First
6 District Court of Appeal in reversing the Board said
7 accordingly -- and I'm reading from Page 9, I don't
8 have the -- this is the actual decision, I don't have
9 the proper cite -- "Accordingly, on remand, we direct
10 the PSC to reconsider its decision denying
11 intervention by these groups and to consider any
12 petitions for intervention that may be filed by other
13 such groups subject to potential surcharge on this
14 case."

15 And the date of that decision by the First
16 District Court of Appeal is June 17th, 1997. So it
17 seems pretty clear to me that there has not been any
18 permitted formal activity and advocacy on behalf of
19 the surchargees at least until the District Court of
20 Appeal reversed the decision denying their petition to
21 intervene.

22 So, I do think, and we do represent some of the
23 people, but there are a lot of people out there that I
24 know have never heard of me and never heard of Mr.
25 McGlothlin, don't know this case is there, and are

1 going to be extremely surprised, in my opinion, when
2 they receive that notice of the potential surcharge.

3 MR. SHREVE: I don't disagree with any of that.

4 CHAIRMAN JOHNSON: Who do you represent?

5 MR. FORMAN: I represent six customers who are
6 potential -- right now have a potential surcharge.

7 MS. JABER: Commissioners, just a point of
8 information. There was an order issued granting their
9 petition to intervene just yesterday. We did it
10 administratively consistent with your past decisions
11 and with the opinion.

12 CHAIRMAN JOHNSON: Okay. And are you the law
13 firm that the company referred to?

14 MR. FORMAN: Yes.

15 CHAIRMAN JOHNSON: Okay. I'm just trying keep my
16 parties straight.

17 MR. SHREVE: Commissioner, I don't have any
18 argument with any of this, I just wanted to make sure
19 that there was an understanding. Because, once the
20 concern -- of course, the uniform rates came out and
21 then were overturned, and that is when there became a
22 schism between the customer groups, and that's when
23 all us, I think, became concerned and started trying
24 to correct it.

25 And you are aware of what we tried to take care

1 of and has been done. And I don't have any argument
2 with the representation of that, but that is what
3 happened. And it was brought to the Commission and to
4 Southern States at that time.

5 CHAIRMAN JOHNSON: Public Counsel, Mr. Shreve,
6 are you still paying for the services of the two -- of
7 both sides to represent -- are they have generally to
8 represent all of the customers or how does this it
9 break out?

10 MR. SHREVE: Since the '95 case, we now have a
11 different set of customers in different positions, so
12 I'm talking primarily about the '92 case and the
13 refund or the surcharges that you're talking about.

14 At that point when the decision was made, or when
15 there was a difference between uniform rates and the
16 modified stand-alone rates, at one point you, of
17 course, had the Commission defending the order,
18 Southern States defending the order, and then once
19 that was overturned then you had a clear division
20 between two customer groups.

21 That has all been confused at this point beyond
22 that. But if you keep it back in the '92 case, the
23 division is still there. And I think that's where Mr.
24 Forman is talking about coming in at this point where
25 Joe McGlothlin is in, Darol Carr, Mike Twomey, and

1 Buddy Jacobs on the other side.

2 If you recall, there was no other way to handle
3 it. We tried to get something done about it, and I
4 made the agreement that I would provide the funds. I
5 have no control over whatever they do and they all
6 have instructions to represent the interest of their
7 clients, and that was the only way we could handle it.

8 I hope it goes away one day, yes, but I am still
9 funding that. And it was two on each side and
10 selected by customer groups.

11 CHAIRMAN JOHNSON: And, Mr. Forman, how do your
12 customers' interests differ from Mr. McGlothlin's
13 customers?

14 MR. FORMAN: I'm not sure that they do exactly.
15 I have not discussed that with them. They just have
16 separate representation in that they have me. In
17 response to your question, though, the point that I
18 wanted to make was this. We looked at trying to
19 establish a class representation, and that, well, you
20 know, wouldn't it be simpler if you could be the
21 lawyer and represent all of the people that needed to
22 be represented.

23 And our staff went to work on the issues and the
24 permutations of someone who might want a surcharge and
25 might be entitled to -- or might oppose a surcharge

1 and be entitled to a refund, vice versa, and the
2 different types of utility systems that were in place.
3 We came up with at least eight different identifiable
4 groups. And depending on how you term one issue, my
5 staff told me there were 16.

6 So we have other people who have asked us to
7 represent them at this point in time that we declined
8 representation to because they had a mixed bag. They
9 were not solely subject to a potential surcharge, they
10 had a refund for one service and a surcharge for the
11 other. And we didn't think, you know, we could argue
12 that issue appropriately.

13 So it's very complex. And the staff right now,
14 you are down to the practical matter, you get the
15 notice out and maybe there is ten days for all of
16 these eight groups to have their homeowners meetings,
17 do whatever they want to do, get back in, hire
18 counsel, appear. It's not going to happen. It's too
19 short.

20 CHAIRMAN JOHNSON: Thank you. One other question
21 for my edification directed to the company. How did
22 you determine what category or interest of customers
23 you would support?

24 MR. ARMSTRONG: Well, I was just demonstrating
25 earlier, we knew that the potentially surcharged

1 customers were going to have some problems getting
2 communication and having representation. Through the
3 past four years we have had statements made in the
4 press and in pleadings that we were not -- we were
5 concealing things from our customers and we wanted to
6 dispel that totally, because we are always in favor of
7 notification to customers and always tried to provide
8 that notice to customers.

9 Our concern, too, in terms of Mr. McGlothlin's
10 representation was that he had participated before
11 this Commission in the past acknowledging that refunds
12 were okay as long as there are no surcharges. And
13 that is a concern to us and to our potentially
14 surcharged customers who had the same concerns we had
15 express two months ago about not being notified.

16 So it was based on those considerations that the
17 shareholders of our parent company have determined
18 that they want customers notified and want to make
19 sure that there is adequate representation.

20 Now, I heard several times the fact that there is
21 no control over the attorneys being paid for by the
22 Office of Public Counsel, and I want to assure this
23 Commission there is absolutely no control being
24 exercised nor will we exercise any control over any
25 attorneys representing the to be surcharged customers.

1 That is a question between the clients of the new
2 law firm, and, like I said, full disclosure was made.
3 The company made sure there was full and adequate
4 disclosure of all potential conflicts, and we will
5 not, have not exercised that type of control. The
6 same situation as Mr. Shreve.

7 CHAIRMAN JOHNSON: I was just concerned even
8 after we send notice to the extent that we are somehow
9 contacted by customers and they want to know who
10 represents what and which interests, I'm just trying
11 to better understand that myself. And I was wondering
12 if Mr. Forman was going to be -- if there was some
13 limited interest that you were going to represent in
14 this case and whether or not those were different from
15 Mr. McGlothlin's. I was just a little confused and I
16 still am.

17 COMMISSIONER GARCIA: Correct me if I'm wrong,
18 you are representing a specific six customers, you are
19 not representing -- I believe you used the number six.

20 MR. FORMAN: Six.

21 COMMISSIONER GARCIA: And you are representing
22 those six?

23 MR. FORMAN: We represent those six at this time,
24 yes.

25 CHAIRMAN JOHNSON: At this time, but you are

1 not --

2 COMMISSIONER GARCIA: So they have double
3 representation in the sense that Mr. McGlothlin is
4 representing them as Public Counsel as a class, I
5 guess, or as a grouping of people who are going to be
6 affected in a certain way. You are simply the
7 attorney for six customers of the company.

8 MR. FORMAN: That is correct. And we limit it
9 because of the additional conflict, as I indicated.
10 We limited our representation strictly to people who
11 were purely within the class facing a surcharge. But
12 there are other, and lots of them, other identifiable
13 classes of people out there who may very well want
14 representation and may need some time to get it.

15 CHAIRMAN JOHNSON: Thank you.

16 MR. MCGLOTHLIN: And if I could offer a bit of
17 precision. I represent the City of Keystone Heights
18 and the Marion Oaks Civic Association. Those are my
19 clients, and I don't represent a class. But to the
20 extent there may be others who are similarly situated
21 perhaps, you know, there would be some alignment
22 there. But specifically I represent those customers.

23 And if I could just correct counsel's
24 characterization of our further position, I think
25 precisely what I said is if there is going to be a

1 refund, the company's shareholders ought to absorb it.
2 And maybe that's what put him off. I don't think I'm
3 on record as saying refunds are okay, period.

4 CHAIRMAN JOHNSON: Thank you. Public Counsel.

5 MR. SHREVE: Mr. Beck will go over some details.
6 Primarily what we are interested in at this point is
7 that all the customers be given adequate, fair,
8 complete notice of what the situation is and what is
9 their jeopardy or what their exposure is.

10 Mr. Beck will point out some points that we are
11 concerned with.

12 MR. BECK: Commissioners, my name is Charlie
13 Beck. There are a few matters we think that the
14 Commission needs to address so that the notice can be
15 accurate that is given to customers.

16 The first matter concerns Spring Hill refunds for
17 the period of January 1996 through June of 1997. And
18 to give you a little background to that issue, we have
19 been through that before. You recall uniform rates
20 were implemented in 1993, and uniform rates produced a
21 certain amount of revenue for the company. Had
22 modified stand-alone rates been put into effect for
23 all of the systems in the '92 rate case, that would
24 have generated the same amount of revenue, also.

25 The uniform rates stayed in effect until January

1 of 1996, and at that point all of the systems except
2 Spring Hill went to a modified stand-alone basis. Had
3 all of the systems, including Spring Hill, gone to a
4 modified stand-alone basis, it would have been a
5 revenue neutral restructure. But since Spring Hill
6 was not, and because uniform rates were much higher
7 for Spring Hill customers than the others, the change
8 in January 1996 was not revenue neutral. There was a
9 windfall to Southern States, and it amounted to the
10 difference between uniform rates and modified
11 stand-alone rates from January 1996 through June of
12 1997.

13 The point on this is one of the filings made by
14 Southern States had the surcharge that would have made
15 the potentially surcharged customers pay for that
16 refund to Spring Hill customers for the period January
17 '96 through June of '97. We believe that is improper.
18 That that portion of the refund to Spring Hill
19 customers must be funded by the company because it was
20 a windfall that they received. The company opposes
21 that. They have made some filings saying they think
22 they should keep it.

23 The point is I think the Commission needs to
24 address that so that information that goes out to
25 customers is accurate. In our view, there would be no

1 sense in telling customers they would be surcharged
2 that amount when the company is going to be
3 responsible for that portion of a refund.

4 We also think that the notice to Spring Hill
5 customers should be bifurcated so that there is a
6 portion that says this is the company's
7 responsibility, and then with respect to the remainder
8 that Spring Hill customers are the same as everybody
9 else.

10 The second item I wanted to mention is the
11 movement in and out of customers, and that will affect
12 -- as would the Spring Hill item -- affect the notice.
13 Whether it's on an individual basis or on an average
14 basis, as Southern States has proposed. If you recall
15 in the GTE case on the remand, one of the things the
16 Commission did is you surcharge customers an amount in
17 excess of the amount they benefitted by the reduced
18 rates during the benefitted period.

19 You will recall perhaps at agenda conference we
20 tried to make the point with you how this was coming
21 about, and in the GTE case suppose there were five
22 customers, that each of you were GTE customers, and
23 there was a benefit of \$10 during the two-year period
24 that was at play there. And then if four of you had
25 moved out of the territory and were not around at the

1 time the surcharge came out, your decision would have
2 had that one remaining customer picking up a tab of
3 \$50 plus interest.

4 It had a very substantial impact on the surcharge
5 in total. That's an extreme example, but in effect it
6 had a very large impact on the customers. It would
7 affect the average surcharge or it would affect the
8 customer-specific surcharge, depending on how you go
9 on that issue.

10 We disagreed with your decision, we felt that
11 your decision shifted the company's risk or business
12 risk off the company onto customers, but nonetheless
13 that was your decision. I think you need to deal with
14 it and address it so that the amount can be accurately
15 stated in the notice.

16 On the movement you would have to -- among the
17 things, is deciding how you are going to account for
18 the movement. You would also have to decide whether
19 you are going to do it on a system basis or on a
20 company-wide basis. We agree with Mr. Nettlesheim that
21 the notice should be separate for both --

22 COMMISSIONER CLARK: Mr. Beck, go back to that
23 statement. You need to decide what?

24 MR. BECK: The customer movement affects the
25 amounts per customer, and you could do it on a system

1 basis or you could do it on a company-wide basis.
2 Suppose that there is only -- it would affect the
3 amount on each --

4 COMMISSIONER CLARK: Yes, explain that.

5 MR. BECK: For example, suppose in System X you
6 had ten customers out of 100 move out, and in System Y
7 you had 80 customers out of 100 move out. Whether you
8 averaged that or whether you did it specifically
9 system-by-system would affect the amount of each
10 system.

11 COMMISSIONER CLARK: Okay.

12 MR. BECK: I agree with Mr. Nettesheim on the
13 issue of separately noticing the water and the
14 wastewater. There are many examples where there is
15 different interests there. Deltona is one that comes
16 to mind. In the Deltona there is a large number -- a
17 comparatively large number of water customers compared
18 to wastewater. The water customers potentially
19 receive a refund, the wastewater customers potentially
20 receive a surcharge. So we think that the notice
21 should be separated between those two interests.

22 We prefer that you give individual notice. It's
23 our understanding that Southern States has calculated
24 the amounts customer-by-customer for each of the
25 customers. It would be better information for the

1 customers to know what their potential either refund
2 or liability is.

3 If you go with a range, of course, the range and
4 the average have to be correct or -- I'm sorry, if you
5 go with an average we think you at least need to have
6 a range going from the least to the highest so
7 customers will know what the range is.

8 An average doesn't mean much if you are not
9 anywhere close to that average. So customers need to
10 have a range there if you go that way, but we prefer
11 the individual customer basis.

12 And that concludes my remarks.

13 CHAIRMAN JOHNSON: Public Counsel.

14 MR. SHREVE: I apologize. Just to make sure
15 that there is an understanding now. As far as --
16 particularly the question of the movement, that
17 doesn't really concern the refund at all. It's my
18 understanding that Southern States at this point has
19 calculated the -- and correct me if I'm wrong, because
20 we don't feel that we have all the information on it
21 yet, and I'm sure Southern States will be willing to
22 give it to us. But they have calculated the total
23 revenues needed for the surcharge for each individual
24 system based on an account-by-account or bill-by-bill
25 basis and then totaled that up.

1 It is our feeling, and I think Mr. Forman and Mr.
2 McGlothlin would agree, that the present customers
3 should not pick up the tab for those customers who
4 have a responsibility and are gone at this point so
5 that that calculation would still stand. And I think
6 the way that Southern States has done it or that
7 Florida Water has done it would hold, but I think we
8 all agree that that amount should not be added to the
9 surcharge. And it would have no impact on the refund
10 one way or the other.

11 We would like to also have an understanding that
12 -- and here, again, I think they will provide us to it
13 -- that all the information on the calculations
14 regardless of your decision as to how that notice goes
15 out be given to all the parties, particularly to the
16 staff, the Commission, and to us because we are
17 receiving questions even down to an individual basis
18 that at this point we just cannot answer.

19 Once the calculations are made and we are
20 furnished with the total information on it, then I
21 think we will be able to answer some questions even
22 beyond the notice that is sent out. Thank you.

23 CHAIRMAN JOHNSON: Thank you.

24 MR. ARMSTRONG: Madam Chair, briefly just for the
25 record because a few statements were made that we want

1 to make sure are addressed on the record. The company
2 was not included among the "we who agree" statement by
3 the Office of Public Counsel about customers who may
4 have left, the surcharged customers who may have left
5 and that we might be able to collect from. It is very
6 clear from the decisions in this case that have led to
7 us sitting here today, as well as the GTE Florida that
8 the company must be made whole.

9 So whatever amount we have to refund we must be
10 made whole and be allowed to surcharge. The
11 explanation of what occurred in GTE Florida is exactly
12 what occurred, the company was made whole, and we
13 would expect the same thing and argue for the same
14 thing.

15 COMMISSIONER DEASON: What about refunds to
16 customers who have left the system, you are going to
17 track each one of them down and try to refund them the
18 money.

19 MR. ARMSTRONG: That's all the same -- it's part
20 and parcel to the issues that are outstanding here
21 that the Commission has to determine. We see that
22 contributions-in-aid-of-construction, we have some
23 obligations to try and track customers in the past,
24 and that money that was not -- we couldn't track the
25 customer down, it was used to offset rate base. In

1 this situation if we can't track down a customer,
2 that's one of the questions we have for the
3 Commission, should we use that to offset against the
4 surcharge that we collect? I think that would be our
5 preferred method. But these are the kind of issues
6 that have arisen that are unique issues because of the
7 complexity of this case and how we find it.

8 COMMISSIONER DEASON: Do you have customer
9 specific estimates at this point?

10 MR. ARMSTRONG: We have -- and that's what Mr.
11 Shreve is referring to -- on a bill-by-bill basis, the
12 company has done a rollup by service area so that you
13 can tell what revenues, whether there would be a need
14 for a refund or a surcharge.

15 The complexity of this is such that you may have
16 customers within the same service area receiving water
17 service and you may have some that get a refund and
18 some that get a surcharge.

19 COMMISSIONER KIESLING: Well, let me see if I can
20 understand what you are saying. You have the
21 information and you have made the calculations on a
22 customer-by-customer basis based on their past
23 consumption or past usage of what each customer would
24 be responsible for. But then you have aggregated that
25 and come up with a total that you want to do on a

1 facility-by-facility or service area-by-service area
2 basis. Is that what you are saying?

3 MR. ARMSTRONG: Commissioner, we have it on a
4 bill-by-bill basis as opposed to a customer by -- the
5 customer-by-customer is another step in that equation,
6 because some have left, some come back. And like I
7 say, some by bill, you might have a refund on your
8 bill for this month, but for the next month you might
9 have a surcharge.

10 So it's not on a bill-by-bill accumulated by
11 service area. And then what we would propose is to
12 give an average refund or surcharge by water or
13 wastewater service.

14 COMMISSIONER KIESLING: I understand what you are
15 proposing. I still don't understand what data it is
16 that you have. When you say you have done it on a
17 bill-by-bill, are you saying that you have done it on
18 a customer-by-customer basis based on their past
19 bills, or you have spread it out among everyone and
20 then figured out of the current customers how you
21 think they should pay it?

22 MR. ARMSTRONG: No. And, Commissioner, that step
23 of going customer-by-customer is the next step that we
24 would have to do. We don't have that at this point.
25 We have it bill-by-bill.

1 COMMISSIONER KIESLING: What does that mean?

2 MR. ARMSTRONG: And that's the complexity of this
3 thing.

4 COMMISSIONER KIESLING: No, just tell me what it
5 means. All I want to know is what you mean when you
6 say on a bill-by-bill basis.

7 MR. ARMSTRONG: It means, you know, there are 12
8 bills per customers per year that go out, and based on
9 that consumption on that bill what would the
10 ramifications be, a surcharge or a refund? That is in
11 the system now. You know, which is millions of pieces
12 of information. The breakdown of that by customer is
13 not broken down right now. That would be the next
14 step. If we have to do it by customer we would have
15 to provide -- we would have to have that calculation
16 inserted into our billing system so that they could
17 run that.

18 COMMISSIONER DEASON: But you bill on a per
19 customer basis. If you've got it by bill, why is it
20 that you don't have it by customer?

21 COMMISSIONER CLARK: I think the customer may
22 change for the same connection is the point.

23 COMMISSIONER DEASON: Oh, you're saying it's per
24 address or location.

25 MS. JABER: I think, Commissioners, if I could

1 take a stab at it, they have a billing analysis. The
2 bill doesn't necessarily identify the customer. Is
3 that correct?

4 MR. ARMSTRONG: Right.

5 COMMISSIONER KIESLING: Does it identify the
6 location?

7 MR. ARMSTRONG: I didn't ask that question when I
8 was trying to figure out this myself. I'm sorry.

9 MR. SHREVE: I'm sorry, I had assumed that when
10 we said a bill-by-bill, that meant a customer's bill
11 and it carried through for the 2-1/2 years.

12 MR. ARMSTRONG: You might have, and that's why
13 that question I didn't think you asked me, but that is
14 the point, you know, a customer -- in the same
15 location a customer may have changed. And that's the
16 breakdown that we don't have. We just have a
17 cumulative amount by service area.

18 COMMISSIONER GARCIA: Let me take a stab at it,
19 because Ms. Jaber's point only confused me. And I
20 thought I understood it before until you straightened
21 it out for the rest of us.

22 What you are saying is that if there are 100
23 customers in the area. You've got a bill-by-bill
24 analysis as if all of them were the same customer in
25 that particular area.

1 MR. ARMSTRONG: Right.

2 COMMISSIONER GARCIA: And that bill-by-bill
3 analysis takes into consideration that 10 percent of
4 them may have moved out and a new 10 percent may have
5 moved in. And so the group is even narrowed further.

6 MR. ARMSTRONG: Well, the problem would be that
7 where you have a situation where one person moved out
8 and another moved in, you would have to go in and
9 break into the system and break it down to how long
10 was that customer there and how long the next customer
11 who moved in was.

12 COMMISSIONER KIESLING: Yes. That's exactly what
13 you would need to do, and that's exactly what I think
14 you need to do.

15 MR. ARMSTRONG: Right. And the point I guess
16 would be at this point with all of these other
17 variables, if we are going to give a notice by
18 customer, though, the notice we provide can't
19 contemplate what is going to happen with all of these
20 -- that's why I started to list them -- 10, 11, or 12
21 variables. And what interest rate is going to apply.
22 Is it going to be done, you know, the one suggestion,
23 again, being the most poignant one, is that if there
24 is a refund immediately and an extended period of time
25 for a surcharge, you are going to have income tax

1 affects, you are going to have possibly RAF affects,
2 regulatory assessment fees, which I hope we don't
3 have, but you are going to have what interest rate is
4 go to be applied. You know, if we have -- if the
5 company has laid out money up front, we would suggest
6 that lawfully we must be able to recover a rate of
7 return on that money that we have laid out, the
8 unamortized portion which has not been recovered
9 through a surcharge.

10 COMMISSIONER KIESLING: But that goes well beyond
11 where we are today, which is what should be in the
12 notice.

13 MR. ARMSTRONG: Right. It goes beyond it, but it
14 highlights the fact that we don't want to put any of
15 us in a situation where we put something in a notice
16 and the number that comes out might be half that or
17 double that.

18 COMMISSIONER KIESLING: And that I agree with,
19 which is why I'm saying I think what needs to be in
20 notice is a customer-by-customer breakdown of their
21 potential estimated liability, and if you don't have
22 that information now, you need to figure out how you
23 are going to get it, because that is what should be in
24 each of these notices.

25 MR. ARMSTRONG: Commissioner, I guess -- I don't

1 want to speak past, but unless we know what the time
2 period of this is going to be collected over, unless
3 we know what interest rate is going to apply, unless
4 we know whether, you know, all of these other factors
5 that we have talked about, whether the unrecovered
6 surcharge amount is going to be lumped in and
7 recovered from the current customers who still remain
8 who were also customers back when these surcharges and
9 refunds were accruing, unless we know all of those
10 things we cannot tell the customer with any degree of
11 definiteness what their potential liability is.

12 COMMISSIONER KIESLING: Well, in that case, I
13 think perhaps what we need to do is to give you the
14 parameters under which you need to calculate that, and
15 it ought to be the best case scenario for the
16 customers, not the best case scenario for the utility.

17 MR. ARMSTRONG: Commissioner, as long as there is
18 the words indicating in the customer notice that
19 provide that information, you know, how it's
20 calculated, that could be one way of doing it.

21 COMMISSIONER GARCIA: Not wanting to be an
22 alarmist, I would assume if I were in the customers'
23 position, I wouldn't want the best-case scenario. I
24 would want the worst-case scenario for the customer to
25 know what their exposure is. And I know that --

1 COMMISSIONER KIESLING: That's what I meant.
2 When I said best-case scenario for the customer, I
3 meant the one that would give them the absolute
4 maximum range or maximum amount of their liability so
5 if it comes out less than that, they are not going to
6 be unhappy.

7 COMMISSIONER CLARK: My concern is I don't think
8 you can calculate that until you make some decisions
9 on how a refund or a surcharge should be made.

10 MS. JABER: Commissioners, just to bring you
11 back, if you recall I interrupted Mr. Armstrong and
12 said to you the variables are outside the scope of the
13 recommendation today. It's the same comment again.
14 To decide which variables you are going to include in
15 the notice, you would have to decide the issues that
16 we have asked to have briefs on.

17 COMMISSIONER DEASON: Well, can't you just come
18 up with a principal amount, not worrying about what
19 the time period is going to be? We know the issues
20 are going to have to be decided, what the interest
21 rate is, how you are going to treat an unamortized
22 balance, how you are going to treat customers that
23 have left the system. But if you come up with a
24 principal amount and -- this is our best good faith
25 estimate, but it could be more or it could be less,

1 but right now this is what you could be subject to and
2 there probably is and there is probably going to be
3 and this is something the Commission will address,
4 some type of a payment plan. You don't expect
5 customers to write a check for \$1,000 with the next
6 bill, if that's what their potential liability is.
7 There is going to be some type of a payment schedule.

8 MS. JABER: Right. That was the purpose of the
9 way we drafted the notice. I think Commissioner
10 Kiesling was going to bring out that what is missing
11 from here, and we do agree, is that the word potential
12 and estimate and some of those other qualifiers. But
13 we agree with you, that was the purpose of the draft
14 notice that we have included in the recommendation.

15 COMMISSION STAFF: Commissioner, even beyond
16 that, I think that your idea of having the principal
17 amount in there is a good one and then we could even
18 add verbiage that there are other factors that would
19 affect this that include, and the lump sum and
20 overpayments and what interest rate. And, you know,
21 we could actually tell them what those factors are.

22 COMMISSIONER GARCIA: What if some customer
23 decided to cancel his water service with the company.
24 Let's say the account is under Joe Garcia, and Joe
25 sees what his potential exposure is, and that month he

1 cancels his water service with Southern States
2 Utilities. And the very next month, Carmen Garcia
3 hooks up to the water company, pays the hook-up fee,
4 pays up the reconnect fee, does everything that we
5 require through our rules and that we have allowed the
6 company to charge. And all the customers do this. I
7 mean, all the wiley customers, let's say. What do we
8 do?

9 COMMISSION STAFF: Commissioners, that's one of
10 the items we are going to have to address after the
11 briefs. I would like to point out those variables are
12 there regardless if you use an average or a specific,
13 and there is no way of contemplating all of those
14 different variables. One thing I would like to point
15 out --

16 COMMISSIONER GARCIA: No, I think it's an almost
17 absurd argument, the one we are getting into here,
18 because I think it's impossible to figure out. We
19 couldn't figure out the maximum exposure. It could be
20 that one guy is not smart enough to disconnect his
21 service, so we present him with a bill of \$6 million
22 to pay for everybody's ride. I mean, it goes to these
23 lengths. And clearly, I don't think we can give any
24 exposure.

25 I mean, the only thing I can say is that Mr.

1 Talbott should get ready to mount gun turrets at the
2 entrances of this building when that bills goes out,
3 because this is -- it is going to be that desperate
4 for customers who receive this bill. And you are
5 speaking to someone who wants them to be aware.

6 I mean, all through this I think my record has
7 reflected that I have voted, and I think this
8 Commission as a general rule has always voted to give
9 out more information regardless of the cost to us. We
10 have visited -- we probably know certain parts of this
11 system better than the people who work it, because we
12 have been to so many different parts.

13 But maybe we have to step back and look at this
14 all at once and not individually, because I don't
15 think we can give even an idea of where this is going
16 to end up because I don't think there is legally a way
17 that we could collect this if we decided to.

18 Because in the GTE case, a very limited case, a
19 very small amount of money. But if we step back, how
20 are we going to do this? I don't think anyone has a
21 clue of that. Maybe you will, Mr. Twomey, because I
22 know you have waited patiently, and I think you
23 deserve a right to speak, and I'm probably jumping
24 ahead you. But I'm just worried that we can't figure
25 out that maximum exposure. There is no way that we

1 can ask the company without the help of some type of a
2 profit to come up with any clue on how this is going
3 to be.

4 MR. SHREVE: While Mr. Twomey is still patient,
5 it seems to me that you cannot make any calculations
6 with any variables without first coming up with what
7 Commissioner Kiesling and Commissioner Deason are
8 talking about, more or less a surcharge that is
9 calculated at this point. Then there are going to be
10 variables based on Commission decisions that will
11 change that somewhat.

12 If you do that on a customer-by-customer basis,
13 it necessarily is going to be closer than your average
14 or your range or whatever, and I think before you make
15 any calculations you have to start with that and then
16 see how are you going to manipulate that, if at all.
17 If you are going to make any changes in it.

18 That would at least give you something to tell
19 the customers this appears as close as we can get
20 right now to what your exposure is, and probably would
21 be fairly close when you get right down to it.

22 I mean, there may be some changes based on the
23 Commission decision, but the people are entitled to
24 know what that is probably before you make those
25 decisions. But that is a known at this point, and can

1 be calculated on an individual basis. It's going to
2 have to be. And I don't see how you can do anything
3 without having that information so that you know what
4 you are dealing with. I think that should be
5 calculated by the company as to what the surcharge
6 would be at this point for each one of the individual
7 customers.

8 I had misunderstood. I thought when you said
9 bill-by-bill basis, I thought we were talking about on
10 a customer basis. Maybe at this point you are going
11 to have an interruption in a service on a location and
12 that particular bill is going to be wrong, but I will
13 guarantee you, and I have already had calls in where a
14 person has called me and said I was only on this
15 system for a year, why should I have to pay the full
16 amount, and that type of thing.

17 They will be back in touch if they have only been
18 there for a year, and they have got a bill for 2-1/2
19 years.

20 But I think you have to have that information to
21 start with, and I think it has to be furnished.
22 I'm sure the staff wants it. I know I want it,
23 because I'm getting calls and I can explain that,
24 look, this is not a final thing, but this is the
25 calculation that the company has already done, and

1 this is what we have to deal with right now. If we
2 make any changes up or down, it won't be too much, but
3 we will let you know.

4 COMMISSIONER CLARK: I thought when Mr. Shreve
5 was sort of giving the parameters of what we should
6 give out, I saw you, Troy, and Lila shaking your
7 heads, you apparently agree with that, that we can do
8 at least that?

9 MS. JABER: We know the variables, we know the
10 variables that we have identified. I guess the
11 difficulty we are having is we can't predict what
12 decision the Commission is going to make, and to
13 include all of the variables and the amount that is
14 not necessarily the most accurate fashion.

15 MR. RENDELL: If I could just take a minute.
16 When we made the recommendation, we were under the
17 assumption as with it seems like everyone, that they
18 had it on a customer-by-customer basis. Based on the
19 explanation that was provided, the company did go on
20 and recalculate each person's bill. So let me first
21 start off by saying we thought that they had this
22 information on a bill -- by a customer-by-customer
23 basis as opposed to a bill-by-bill.

24 We never even contemplated all of these variables
25 that were brought up today. These are something that

1 is going to have to be decided later. All we were
2 alluding to was that you should take the bills,
3 calculate it using one rate structure and compare it
4 to the next rate structure, that's it. Now, all of
5 these other variables will be decided at a later date.

6 COMMISSIONER CLARK: Now, I think the nuance of
7 the customer-by-customer, if you do it I think
8 bill-by-bill you are going to get a bigger impact.
9 And if you ultimately decide that because a customer
10 has only been there for part of the time, he is only
11 responsible, then it's going to be less. I think if
12 we use the bill-by-bill, then it's going to be the
13 worst-case scenario.

14 COMMISSIONER KIESLING: Well, my concern -- I
15 understand that logic, but my concern is also for
16 those customers who have left that are entitled to a
17 refund. And I have no reason to think at this point
18 that those two things aren't going to balance out.
19 That as many customers have left who are due a refund
20 and are not going to get one because they are dead,
21 they have moved, they have something.

22 COMMISSIONER CLARK: But I'm not sure that can be
23 concluded. I think in the past when we have had to
24 have refunds, they have had to track down the
25 customers when they were no longer on their system.

1 MR. ARMSTRONG: Madam Chairman, if I could --

2 COMMISSIONER GARCIA: Have we ever tracked down
3 someone who owed us money on something like this?
4 Have we ever tracked down a customer, just out of
5 curiosity, because I don't think --

6 COMMISSIONER DEASON: I don't think we ever had a
7 surcharge until the GTE case.

8 MR. TWOMEY: It would certainly force companies
9 to make refunds and find the people, I don't think you
10 can legally track down somebody even if they are next
11 door and make them pay a surcharge as a result of --
12 if they are no longer a customer. That's my view.

13 MR. ARMSTRONG: Commissioners, I think what is
14 highlighted by all of this discussion today and the
15 reason we are having to discussion today, the reason
16 we are trying to work out a process that doesn't
17 exist, the reason is the same reason that we have been
18 saying since 1993 when we indicated that there
19 couldn't be a surcharge without a refund, and that we
20 would be opening up a huge ball of wax if we tried to
21 do that.

22 And this discussion today highlights that fact.
23 A rate structure setting is reversed, that we are
24 going to go in and start calculating refunds and
25 surcharges with all the intervening circumstances that

1 happened during the appellate process, which can last
2 three and four years as this one has done, we are
3 setting ourselves up with a horrible precedent that is
4 going to be awfully, awfully difficult to address from
5 case to case to case. Every rate structure can't be
6 attacked.

7 COMMISSIONER GARCIA: Maybe if we could hear from
8 Mr. Twomey and move on from there, because --

9 CHAIRMAN JOHNSON: Mr. Twomey.

10 MR. TWOMEY: Commissioners, let me say first that
11 you have heard for the last hour, I think, or however
12 long we have been going here, innumerable reasons why
13 you shouldn't give notice.

14 I mean, these people who are all on the same side
15 can't agree amongst themselves how complicated they
16 want to make it for you. Whether there should be
17 refunds, whether there should be interest, whether
18 there should be compound interest.

19 I'm sure Mr. Forman is a fine attorney. He is
20 the first name in the name of the law firm. He is not
21 a PSC practitioner. If he were he would know probably
22 that compound interest is not something thought up by
23 my clients or myself, it's pursuant to your rule.
24 It's something that you have imposed, you have awarded
25 routinely without exception.

1 Now, Mr. Armstrong says he wants to get it right.
2 He cautions you against giving the customers notice
3 for fear that the number that you give them might be
4 too big or too small, especially if it is short to
5 SSU, who wants to get all their money back. I find
6 that a curious statement on Mr. Armstrong's part.

7 Professional courtesy or not, whatever his view
8 of it is, I find it a curious statement because this
9 company, as you will recall, if you realize what they
10 did, Commissioners, in response to your first order
11 requiring that SSU calculate the refunds owing by
12 customer group intentionally and dishonestly stuck in
13 the two-plus million dollars that they and they alone
14 owe the customers at Spring Hill.

15 That is the two million plus that was taken from
16 those customers there after the uniform rates were
17 reversed and after no one else was taking uniform
18 rates subsidies throughout the rest of the system.
19 They included that two-plus million dollars, which
20 under any scenario they are going to have to pay back
21 whether they realize it or not, and they put it in the
22 refunds and the surcharges they gave to you, if not
23 for the explicit purpose, with the explicit result
24 that it overstated the surcharges that had to be paid
25 for by the surcharge group. They then went out and

1 gave those numbers out to these people to incite them.

2 And then with just no more than a small bit of
3 hypocrisy, they go out while they are intentionally
4 overstating the surcharges these people have to pay,
5 if, in fact, the surcharges come to pass, they go out
6 and take the hands of some of these customers by
7 purporting to hire a law firm on their behalf.

8 COMMISSIONER CLARK: Mr. Twomey, putting that
9 aside, let me ask you a question. You have, you know,
10 for a long time told us, you know, you need to give
11 notice. You need to be open in your notice, you need
12 to let parties in. And I guess -- I know we voted at
13 one time not to give notice with respect to this, and
14 now staff has rethought it, and quite frankly, I have
15 rethought it, and it seems like these customers are
16 going to be affected and they ought to be able to at
17 least have a say in fashioning it. And I guess it
18 comes under the notion of if it is good for your
19 customers to get notice, isn't it appropriate to give
20 notice here.

21 MR. TWOMEY: I don't think so, and let me tell
22 you why. I will address it, but let me go about it in
23 my fashion, if I may.

24 COMMISSIONER CLARK: It seems an inconsistent
25 position with your past positions on being more

1 aggressive in giving customers notice.

2 MR. TWOMEY: It may seem so, and I understand
3 that appearance, but it is not, and I will tell you
4 why. It is merely the appearance of inconsistency.
5 Let's go back over what happened here. Let's focus
6 just for a moment on the notice issue.

7 On August the 5th, Mr. Armstrong and Mr. Hoffman
8 or the two of them together, sat at this table and
9 they asked you to give precisely the type of
10 information that you are again reconsidering today.

11 I said at that time to what end? Notice
12 comprehends the ability of the customers to be able to
13 -- or the people that are given the notice to react to
14 that in some administrative point of entry where they
15 have meaningful rights they can pursue.

16 And I told you at that time it was my view, and I
17 think Commissioner Clark agreed with me on this point,
18 maybe others, that we are over four years into this
19 case, and your primary concern here, Commissioners, I
20 would maintain is complying with the July 1997 mandate
21 of the First District Court of Appeals. That should
22 be your primary concern right now, is you have been
23 given a mandate by a superior court that reversed one
24 of your orders and you've got to deal with it.

25 Your staff recognized in their recommendation

1 that at some point you've got to enter into some
2 alacrity, as Commissioner Cresse might say, some
3 alacrity in dealing with the court's mandate. You
4 just can't let it sit there forever. You have to
5 comply with the court.

6 I said to you on August 5th, the court reversed
7 your order, long ago it reversed you on uniform rates.
8 Some of your staff people still can't accept that. We
9 have got Marshall Willis quoted in the Wall Street
10 Journal, uniform rates is still a good deal, bad
11 decision from the court.

12 That is behind us, Commissioners. Uniform rates
13 reversed. Your order reversed in July of this year.
14 The court gave you a mandate. I said to you on August
15 the 5th, that they let the company out. I'm sorry as
16 can be that they let SSU off the hook for paying those
17 surcharges. I think everybody in this room probably
18 except SSU feels that way. But they did. And I read
19 that opinion as not reversing the refund requirement.

20 The court specifically stated that some customers
21 were unduly benefitted by the uniform rate structure.
22 Got something they didn't deserve. Other people,
23 including my client, had to pay something over and
24 above what they should have paid. The court said
25 there had to be equity between the two groups. Again,

1 why I'm saying SSU shouldn't be heard on this issue.
2 They're not in it anymore. It's the two customer
3 groups. I think if your staff responsibly had
4 addressed the mandate to this court, this Commission,
5 and given you a straight up what you should do
6 recommendation, they wouldn't have engaged all these
7 five issues they have managed to conjure up. They
8 would have said we think the only fair reading of that
9 opinion is that you have to order the surcharges, and
10 pursuant to our Commission rule, you have to order
11 interest pursuant to the rule. There is no other way
12 to do it. And let's get on it, okay.

13 Instead, they dilly-dallied around, they gave you
14 a six of one, half a dozen of another, make up your
15 mind here, delayed the case even longer. Have more
16 input, have more briefs, and all of this kind of
17 stuff. No decisive action.

18 On August 5th, you denied SSU their request for
19 notice. Now they have come back and they have got
20 this motion for reconsideration on two issues, one of
21 them is the notice, and as the staff would normally
22 point out they don't point out how you all erred on
23 the standard for reconsideration.

24 But they went a little bit further. You denied
25 them straight out, they went out at some point, agreed

1 to finance a law firm to represent customers who
2 amongst other things, in addition to seeking
3 intervention, they asked for precisely the same
4 notice. A second bite of the apple, so to speak. And
5 in SSU's words, Public Counsel files what they call,
6 SSU calls a mirror -- it's in their pleading -- a
7 mirror of SSU's request for notice.

8 Now, I will tell you I'm sure Mr. Shreve and Mr.
9 Beck believe that their request for notice is unbiased
10 and doesn't favor one group over the other. I'm sure
11 they believe that. I don't. It unfairly biases my
12 clients and the group of clients they come from.

13 And going back to the point of entry,
14 Commissioner Clark, there is -- if you take my view,
15 that this case has been going on for four years and
16 seven months and that we are down to the point where
17 the court says you have to order refunds, and the only
18 group left to pay them is by the customers being
19 surcharged. And if your own rule says, unambiguously,
20 that you have to give people the time value of their
21 money through compound interest, what is left to be
22 decided? If these people -- pardon me, let me finish
23 this point.

24 While there is a generalized notion that notice
25 is good and you can't have too much of it, what are

1 these people going to say? Mr. Forman will tell you,
2 I can tell you that his clients and everybody else out
3 there that is going to have to pay a surcharge is not
4 going to like it.

5 COMMISSIONER CLARK: Mr. Twomey, let me say what
6 they might say is if we are going to be subject to a
7 surcharge, we think that it shouldn't include those
8 customers that are not here anymore. It should be
9 over this period of time. The \$2-1/2 million you
10 mentioned should not be in there.

11 There are various things that affect the timing
12 and the amount that I think they would want to be
13 heard from.

14 MR. TWOMEY: They may, Commissioner, and what I'm
15 saying to you is I don't think --

16 COMMISSIONER CLARK: Well, you asked what would
17 they say. Those are what they would say. And I guess
18 if you think of those things as being points they
19 would raise, is it not appropriate to give them
20 notice? What makes it not appropriate to give them
21 notice? What I have heard you, I think, say is
22 because really what this is is Southern States asking
23 for reconsideration of a decision and avoiding the
24 standard on reconsideration.

25 MR. TWOMEY: In part.

1 COMMISSIONER CLARK: But Public Counsel has come
2 in and asked for the notice.

3 MR. TWOMEY: Yes, ma'am. And what I'm saying is
4 they have asked, they have asked you to -- they have
5 asked for the same notice that you have denied once
6 already. And don't get me wrong, I'm not suggesting
7 that you can't do this notice legally, okay?

8 I mean, your staff has pointed out on Page 4 of
9 the recommendation, one, the court hasn't mandated
10 notice, okay? And, two, they point out, again on Page
11 4, that your rules don't mandate notice. And all I'm
12 suggesting to you is, and I will say to you that the
13 only issue that may be available to be considered here
14 is the timing issue.

15 No respectable person would argue that SSU's
16 customers are going to have to pay back that can \$2
17 million that SSU pocketed from Spring Hill. That's
18 the biggest folly that you can imagine.

19 COMMISSIONER CLARK: Well, I just wanted -- the
20 thing that concerns me is our rules didn't require us
21 allowing the customers who might be surcharged
22 intervention after the decision, and we stuck with our
23 rules and the court said you will allow them
24 intervention. And as you requested when you came in
25 here with representing clients, there was a

1 recommendation to deny your intervention.

2 And, you know, my view was the court was telling
3 us to take what we say in its broadest sense. You
4 better get all the input you need. And I guess I'm
5 leaning toward the idea that notice to customers is
6 one thing they are going to look at.

7 MR. TWOMEY: Right. And, again, as the
8 distinction, when I asked for intervention, I think in
9 '93 at some point, I think, is the time you're talking
10 about.

11 COMMISSIONER CLARK: No, I was talking about most
12 recently.

13 MR. TWOMEY: Oh. Right. And clearly the court
14 said -- in my view the court said you had to do that.
15 They didn't speak to the issue of notice.

16 COMMISSIONER CLARK: The staff was saying all
17 they said was the customers who tried to intervene are
18 entitled to intervene, and you said you should
19 interpret that broadly and people who are intervening
20 now should be allowed.

21 MR. TWOMEY: And I agree. I don't change that.

22 COMMISSIONER CLARK: I guess what it seems to me
23 to be consistent with the court's notion that to
24 comply with due process you had better get everybody
25 in there. That they would look unfavorably on us if

1 we didn't do the notice.

2 MR. TWOMEY: Right. And, Commissioner Clark,
3 again, I'm not suggesting for a moment that you can't
4 legally require this notice. All I'm saying to you is
5 I don't think, one, that it serves any legitimate
6 purpose. And, two, I think that you all are really
7 going to bite off some serious stuff by this. And
8 it's not going to -- it's not going to -- the reason
9 I'm opposed to it is because it's not coming to make
10 it any -- like I said, my people have been without
11 their money for four years and seven months.

12 This notice issue is not going to make it any
13 easier for me to get their money back, and it's not
14 going to make it any easier for you all to deal with
15 in the process. Again, you can give notice if you
16 wish, I'm just urging you not to.

17 COMMISSIONER CLARK: And I'm just concerned about
18 when it goes back up, because I think it will, that
19 I'm concerned with the -- you know, we seem to be
20 unable to predict what the court may do in this case.
21 And it seems like that if we didn't give notice they
22 might say you had better give notice. ♪

23 MR. TWOMEY: You're right. If you give notice
24 you can't be faulted for it.

25 COMMISSIONER KIESLING: Right. And I think it's

1 axiomatic that when a state agency or a state body
2 like this is going to make a decision that is going to
3 affect someone within their jurisdiction, that those
4 entities have a due process right to notice and an
5 opportunity to be heard. And I think that the court
6 has made it clear that that is the direction they want
7 us to be going.

8 MR. MCGLOTHLIN: May I respond to Mr. Twomey for
9 a second? Mr. Twomey's argument --

10 CHAIRMAN JOHNSON: Commissioner Kiesling, were
11 you finished?

12 COMMISSIONER KIESLING: Well, I wasn't, but I
13 guess I am.

14 MR. MCGLOTHLIN: I'm sorry, Commissioner, I
15 thought you were.

16 COMMISSIONER KIESLING: No, I wasn't. And it
17 seems to me that when you recognize that the due
18 process rights to notice and an opportunity to be
19 heard on this matter, that the only notice that would
20 be acceptable would be a notice to all customers of
21 the impact that it may have on them -- when the
22 decision is going to be made, what the possible impact
23 on them may be, and how they can have their input. I
24 mean, I think that is absolutely required.

25 CHAIRMAN JOHNSON: Mr. McGlothlin.

1 MR. MCGLOTHLIN: Mr. Twomey's argument proceeds
2 from the assumption that there is only one way to read
3 the court's opinion. And I would just like to point
4 out that at the conclusion of the opinion the court
5 referred to the need to allow customers to intervene
6 so they can -- if they are exposed to potential
7 surcharges, and the word potential I think is
8 significant. It indicates to me that the court did
9 not mandate that there be refunds. The only issue
10 before the court was whether if there is a refund, the
11 Commission could require the company to absorb the
12 cost of that refund. That was the only thing
13 addressed.

14 And it seems to me that if the court indicated
15 anything other than that this is an open issue, then
16 it's directive to allow customers to intervene to
17 address the surcharge would have been a futile
18 gesture.

19 So I think among the things that we need to
20 remind ourselves of, we have had a lot of discussion
21 about the variables and is it that calculation or that
22 calculation, one of the issues identified properly by
23 the staff in the recommendation is whether there is
24 going to be a refund/surcharge at all. And based upon
25 the language in the court's order, I contend that is

1 one of the options that is available to you and will
2 be considered at this point.

3 I want to clarify one more thing. When I
4 answered the question earlier, and indicated that I
5 was in favor of a calculation based upon per customer,
6 like Mr. Shreve, I thought the company had that
7 information. And I continue to urge that if there is
8 going to be a calculation to show the customer what
9 the customer is exposed to potentially, it should be
10 based upon, first, that amount which arguably the
11 customer underpaid during the period that the rates
12 were in effect.

13 And then to the extent that anything more is
14 contemplated, including the option of no refund or no
15 surcharge, it would make sense to make the customer
16 aware of the potential that it could increase by
17 virtue of such things as other customers having left
18 the system. Because if there is a reason to give
19 notice and request input, it is so that an informed
20 customer can tell the Commission its position, his or
21 her position with respect to the suggestion that the
22 customer pay anything more than the customer's own
23 responsibility.

24 So I think, again, I would like to urge the
25 Commission to keep in mind that whether there is a

1 refund/surcharge at all is an open question, and
2 beyond that, to the extent there are calculations to
3 describe to the customers their potential exposure, it
4 ought to begin with the customer's own experience with
5 the company.

6 CHAIRMAN JOHNSON: Mr. Forman, did you have
7 something to add?

8 MR. FORMAN: No. That was exactly what I wanted
9 to point out, was the language in the opinion that the
10 appellate court obviously sent us down so there would
11 be that opportunity.

12 CHAIRMAN JOHNSON: Thank you. Staff.

13 MR. RENDELL: Commissioners, if I could address a
14 couple of points. The recommendation did contemplate
15 that it would be done on a customer-by-customer basis.
16 We were under the understanding that this information
17 was available. Based on today's discussion, we
18 understand now that the information may not be
19 available and it may take additional time. We are
20 concerned with the amount of time. We would like to
21 get these notices out as soon as possible.

22 We would be amenable to some type of averaging if
23 we can determine how that average was determined. If
24 there is additional time that SSU or Florida Water
25 will require to get the additional information for a

1 specific customer-by-customer basis then we would be
2 willing to look at that.

3 One clarification I do believe that needs to be
4 on there is that how these amounts are calculated. I
5 think that there should be a clarification that the
6 amounts were calculated based on the bills during that
7 time period comparing one rate structure to the other.
8 That's the principal amount.

9 Now, if we decide to include interest, which I
10 believe we probably should, because it does give an
11 additional exposure, we can put a date certain. We
12 could go up to the date certain of August 30th or the
13 date of today's vote. So I think we can add
14 clarification into the notice. I do realize that we
15 did leave out some further clarification as potential
16 refunds or surcharge, and I also believe that we could
17 -- we could separate the water and wastewater charges
18 if the parties so desired. I believe for Spring Hill
19 what we could do is include an extra paragraph,
20 because this is at issue, this is one of the issues
21 that we are looking at, and you can have separate
22 amounts.

23 In the refund report, refund surcharge report
24 that was filed in September, it did include a
25 separate amount for the Spring Hill amount. So the

1 information is there, it's just a matter of Florida
2 Water getting the information and putting it into the
3 notice. But we still believe a notice should be
4 issued, and we still stand beside that it should be a
5 customer-by-customer basis. But if that is not
6 possible, then we would be amenable to an averaged
7 basis.

8 CHAIRMAN JOHNSON: Ms. Jaber.

9 MS. JABER: And only that I would add if you do
10 decide to do a customer-specific notice, even though
11 Troy is saying we could include an interest amount as
12 of a certain date, we should also point out that
13 interest as well as other variables would affect the
14 bottom number, and this is only an estimate, and it is
15 the best that we can do because a decision is still
16 pending with respect to the variables.

17 CHAIRMAN JOHNSON: Commissioner Kiesling.

18 COMMISSIONER KIESLING: Well, I've got some draft
19 language that does all of those things. The one thing
20 is doesn't do is itemize the variables, because I
21 didn't perceive that, and I agree that it may need to
22 be there. But can I give you what my proposed changes
23 to the notice are and see if that satisfies some of
24 it?

25 CHAIRMAN JOHNSON: That's a good idea.

1 COMMISSIONER KIESLING: I would suggest that on
2 the top of Page 2, right below where we list the five
3 options, and we indicate that the parties may identify
4 and argue other options that aren't on that list, that
5 we need to add an additional sentence that says,
6 "Further, the Commission is not bound by the options
7 listed above in reaching its final decision," so that
8 we are not opening the possibility that others can
9 give different options by saying we are going to make
10 our choice from this list.

11 So, that would be one change. And then based on
12 all of this discussion, I think that the please be
13 advised paragraph that tells the amount should say,
14 "Please be advised that if the Commission should
15 approve one of the options above, the impact on you as
16 a customer during the period of time uniform rates
17 were in effect is estimated to be a net --" and then
18 it would either be a net refund or a net surcharge, so
19 that they are on notice that this is a net calculation
20 with some offset between sewer and water for those who
21 have both.

22 And in the notice each notice would have to be
23 different. If it was refund or surcharge, that word
24 would be inserted there. Okay. Is estimated to be a
25 net refund or surcharge including interest (if

1 approved), of blank amount based on a final decision
2 to be rendered on December 15th, 1997.

3 And I do agree that somewhere in there we need to
4 identify to them that this amount is estimated and can
5 change based on that same final decision as to certain
6 variables, and we should list some of those variables,
7 the ones that we can.

8 COMMISSIONER GARCIA: Can we come up with this
9 specific information by then to make this notice?

10 MR. ARMSTRONG: In order to get customer-specific
11 information it's going to take several weeks, at least
12 a couple of weeks to get the customer-specific
13 information that has been asked for.

14 COMMISSIONER KIESLING: Well, you know, I have
15 some other changes, but I'm sympathetic to that.
16 However, up until today every one of us in this room
17 except Southern States thought that what they were
18 talking about when they said a bill-by-bill basis was
19 customer-by-customer. And all that it serves to do is
20 to drag this out longer and longer.

21 COMMISSIONER CLARK: Yes. If we do the
22 bill-by-bill it's going to be the worst-case scenario.

23 COMMISSIONER KIESLING: Yes.

24 COMMISSIONER GARCIA: Which isn't bad.

25 COMMISSIONER DEASON: Well, I'm not so sure.

1 When you say bill-by-bill, you mean by address?
2 Because if a customer just gets on the system a week
3 ago, they are going to get a notice that says they may
4 have a surcharge for a customer that lived there the
5 previous 3-1/2 years.

6 MR. ARMSTRONG: I don't have the answer to that
7 question.

8 COMMISSIONER DEASON: I don't want to send that
9 out. I mean, that's just -- I mean, that is
10 irrelevant to that customer that just moved in. Of
11 course, if they just moved in there -- we could have
12 some results that would just be so out of character
13 from what would be expected that I don't think it
14 would be useful to use your per bill or your
15 bill-by-bill analysis. I think you have to do it on a
16 customer-by-customer analysis.

17 COMMISSIONER CLARK: If that's true, then where
18 does that put us in terms of getting December 15?

19 COMMISSIONER KIESLING: Well, as far as I'm
20 concerned it puts them at the point of running 24-hour
21 shifts and hiring the people they have to to get it
22 done. Because it should have been done already, and
23 everything that I understood was that it had been done
24 already.

25 MR. ARMSTRONG: Madam Commissioner, to address

1 that, though, there are so many variables, once again.
2 The basic principal amount, the basic refund amount,
3 by bill it has been done, but there are so many
4 variables, once again, that even the interest itself,
5 what is the interest to be applied to this? There are
6 so many variables that we would be sitting there
7 making -- I am just assured by the people who are
8 informing me how complex this is by the discussion
9 between your staff and our people how complex this is.

10 For us to be hiring people two days before now to
11 do this kind of calculation only to have to change it
12 again after this discussion when we might have come to
13 any one of 40 different variable conclusions --

14 COMMISSIONER GARCIA: Mr. Armstrong -- and you
15 make a good point, and I don't think 24-hour -- hiring
16 24 hours 25 accountants to figure this out is going to
17 get us any -- because the next day someone moves out
18 of a small system and all the figures are out of
19 whack.

20 Perhaps the company didn't do what we expected it
21 to do. And if you want to find fault with them, we
22 can deal with that at some other time, but we have got
23 to get this thing out of here. We have got to get
24 this thing on the street, and we have got to give them
25 the bad news, because we do have to give them notice.

1 And that may mean that we have to go with the figures
2 that the company has. And they may not be exact, but
3 I think -- this has more disclaimers than a car
4 commercial.

5 You know, there are all sorts of limitations and
6 areas here that we can't cover, and we will never be
7 able to cover, so we might as well get this out the
8 door. And when we do these customer service hearings
9 we have to enter in this discussion, which I don't
10 know how specific we are going to be. I'm sorry, when
11 we discuss this issue -- forgive me. When we break
12 this news, we are not going to be very specific. And
13 forgive me for using the term customer service. When
14 we discuss this, until we get these things out the
15 door, we are not going to know.

16 So maybe the company did something wrong and
17 maybe we want to do something about that on this
18 specific instance, but I think giving them this
19 worst-case scenario, as difficult as it is going to
20 be, is not going to be any closer to the right -- any
21 more precise than hiring 25 accountants to work 24
22 hours a day for 25 days. And it will only put us 25
23 days further in the hole in terms of getting this
24 information out.

25 COMMISSIONER KIESLING: Well, let me point out to

1 you one thing that I have some level of concern over,
2 and if no one else wants me to worry my head about it
3 then I won't, but this is set for special agenda on
4 December 15th to be resolved. And my term ends
5 January 1st. If you want to put off this notice until
6 there is a new Commissioner sitting, then they can
7 educate themselves, his or herself, you know, on
8 everything that I have learned over the last four
9 years with this case, or we can get it done so that a
10 decision can be made with the most educated
11 Commissioners hearing it.

12 And that is a concern that I have. And if the
13 rest of the Commission doesn't want to be concerned
14 about that, and wants to just let the chips fall where
15 they may after the first of the year, fine. I'm fine
16 with that, too.

17 COMMISSIONER GARCIA: Okay. Well, the reason I
18 want to get it out of here is because I do want you
19 here, and that's the reason I want to put this out
20 here. Secondly, I think we are by the court --
21 weren't we directed to have this thing out of here by
22 the end of December?

23 MS. JABER: No.

24 COMMISSIONER GARCIA: We don't have any
25 limitation on that?

1 MS. JABER: No. Well, there is no limitation in
2 the mandate or in the decision, but there are cases
3 which suggest that you have to act in the most
4 expeditiously fashion.

5 COMMISSIONER DEASON: Well, now, let me -- I
6 guess the difficulty I'm having is to me, it will take
7 some work and I guess it would be complicated, but
8 let's ignore all of these variables at this point.
9 What you've got, you've got customer one, and he is
10 number one on your list, and you say, all right, if I
11 applied this rate structure to his consumption, he has
12 been on line for four years and seven months.

13 I take customer one, I apply rate structure one,
14 I apply rate structure two, what is the difference.
15 It's a difference of \$157.13. That is the principal
16 amount. Whether it's a refund or a surcharge.

17 You identify that as the principal amount, and
18 say there may be -- if it is a surcharge, say this
19 could be financed over a period of time, all that is
20 to be worked out. And this amount could be affected
21 by customers who have departed the system. It could
22 be affected by the way you treat Spring Hill.

23 I mean, I don't know, but we cannot at this point
24 make an assumption as to what all of those variables
25 are and then calculate what that principal amount

1 would be with all of those variables. We have to
2 notify the customers that there are variables out here
3 that are going to affect this number. But right now,
4 based upon your consumption and the one rate structure
5 versus the other rate structure, this is the
6 difference.

7 And this is a good faith estimate of what your
8 potential liability or refund is going to be, plus or
9 minus all of these other things that can affect it. I
10 don't see how we can do any more than that.

11 COMMISSIONER CLARK: Well, and you -- I think the
12 billing, the issue with billing, even though you
13 didn't ask Mr. Armstrong, is you get billing for a
14 certain connection. And the issue is whether or not
15 you have the same customer. Can you think of any
16 reason your billing would be different or bill
17 wouldn't represent the customer?

18 MR. ARMSTRONG: Commissioners, all I know, and
19 staff acknowledges as well, is that the billing
20 analysis apparently doesn't break down by customer
21 like different people. It might have been three
22 people that lived at that residence over the period of
23 time that the refund --

24 COMMISSIONER CLARK: I agree. But do you know if
25 there would be bills any different than based on the

1 fact that it wasn't the same customer at that
2 connection?

3 MR. TWOMEY: Commissioner, may I say something?
4 It sounds to me --

5 CHAIRMAN JOHNSON: Hold on, Mr. Twomey. Let
6 staff and then we will come back just to keep this --

7 MS. JABER: Thank you. Just to clarify it, Mr.
8 Armstrong, I was trying to bail you out on your
9 explanation between bill-by-bill and
10 customer-by-customer. I wasn't agreeing with you.

11 We received on September 15th, 1997 a cover
12 letter to the refund surcharge report. Here is what
13 the first paragraph says in their letter. This is why
14 staff thought that they could do it
15 customer-by-customer, nevermind the conversations that
16 Troy, Mr. Rendell and I had with counsel and, I think,
17 Mr. Isaacs. "There are no supporting schedules for
18 our calculations because the calculations are being
19 done at the bill detail level. Each affected
20 customer's bill is billed out at the modified
21 stand-alone rates provided by staff in their September
22 25th, 1995 schedule. This recalculated bill is
23 compared to the bill that was generated under the
24 uniform rates. The difference between these two bills
25 is shown as either a refund or a surcharge."

1 COMMISSIONER CLARK: Well, I'm just -- this
2 paragraph that says, "Please --" Commissioner Deason,
3 you have the concern that you would have a customer
4 that just came on line and he gets that and he sees he
5 is liable for the refund, and I think one -- I think
6 that customer should still get the notice, but the
7 notice should indicate -- and it may be appropriate to
8 do it in this paragraph, and then I think because
9 there are so many variables we want them -- and maybe
10 we should put Jack's number on this so Jack can direct
11 them to the right counsel to get good information, or
12 help them out. And you can respond to that in a
13 little while.

14 COMMISSIONER KIESLING: And the language that I
15 had proposed specifically said that it was going to be
16 the impact on you as a customer during the period of
17 time uniform rates were in effect.

18 COMMISSIONER CLARK: Right, and it's in there.

19 COMMISSIONER KIESLING: And then I think you need
20 to you follow that with a caveat that says if you were
21 not a customer during this entire rate period, this
22 calculation may differ.

23 COMMISSIONER GARCIA: Or it's based on that
24 period.

25 COMMISSIONER KIESLING: Yes.

1 Talbott should get ready to mount gun turrets at the
2 entrances of this building when that bill goes out,
3 because this is -- it is going to be that desperate
4 for customers who receive this bill. And you are
5 speaking to someone who wants them to be aware.

6 I mean, all through this I think my record has
7 reflected that I have voted, and I think this
8 Commission as a general rule has always voted to give
9 out more information regardless of the cost to us. We
10 have visited -- we probably know certain parts of this
11 system better than the people who work it, because we
12 have been to so many different parts.

13 But maybe we have to step back and look at this
14 all at once and not individually, because I don't
15 think we can give even an idea of where this is going
16 to end up because I don't think there is legally a way
17 that we could collect this if we decided to.

18 Because in the GTE case, a very limited case, a
19 very small amount of money. But if we step back, how
20 are we going to do this? I don't think anyone has a
21 clue of that. Maybe you will, Mr. Twomey, because I
22 know you have waited patiently, and I think you
23 deserve a right to speak, and I'm probably jumping
24 ahead you. But I'm just worried that we can't figure
25 out that maximum exposure. There is no way that we

1 can ask the company without the help of some type of a
2 profit to come up with any clue on how this is going
3 to be.

4 MR. SHREVE: While Mr. Twomey is still patient,
5 it seems to me that you cannot make any calculations
6 with any variables without first coming up with what
7 Commissioner Kiesling and Commissioner Deason are
8 talking about, more or less a surcharge that is
9 calculated at this point. Then there are going to be
10 variables based on Commission decisions that will
11 change that somewhat.

12 If you do that on a customer-by-customer basis,
13 it necessarily is going to be closer than your average
14 or your range or whatever, and I think before you make
15 any calculations you have to start with that and then
16 see how are you going to manipulate that, if at all.
17 If you are going to make any changes in it.

18 That would at least give you something to tell
19 the customers this appears as close as we can get
20 right now to what your exposure is, and probably would
21 be fairly close when you get right down to it.

22 I mean, there may be some changes based on the
23 Commission decision, but the people are entitled to
24 know what that is probably before you make those
25 decisions. But that is known at this point, and can

1 be calculated on an individual basis. It's going to
2 have to be. And I don't see how you can do anything
3 without having that information so that you know what
4 you are dealing with. I think that should be
5 calculated by the company as to what the surcharge
6 would be at this point for each one of the individual
7 customers.

8 I had misunderstood. I thought when you said
9 bill-by-bill basis, I thought we were talking about on
10 a customer basis. Maybe at this point you are going
11 to have an interruption in a service on a location and
12 that particular bill is going to be wrong, but I will
13 guarantee you, and I have already had calls in where a
14 person has called me and said I was only on this
15 system for a year, why should I have to pay the full
16 amount, and that type of thing.

17 They will be back in touch if they have only been
18 there for a year, and they have got a bill for 2-1/2
19 years.

20 But I think you have to have that information to
21 start with, and I think it has to be furnished.
22 I'm sure the staff wants it. I know I want it,
23 because I'm getting calls and I can explain that,
24 look, this is not a final thing, but this is the
25 calculation that the company has already done, and

1 this is what we have to deal with right now. If we
2 make any changes up or down, it won't be too much, but
3 we will let you know.

4 COMMISSIONER CLARK: I thought when Mr. Shreve
5 was sort of giving the parameters of what we should
6 give out, I saw you, Troy, and Lila shaking your
7 heads, you apparently agree with that, that we can do
8 at least that?

9 MS. JABER: We know the variables, we know the
10 variables that we have identified. I guess the
11 difficulty we are having is we can't predict what
12 decision the Commission is going to make, and to
13 include all of the variables and the amount that is
14 not necessarily the most accurate fashion.

15 MR. RENDELL: If I could just take a minute.
16 When we made the recommendation, we were under the
17 assumption as with it seems like everyone, that they
18 had it on a customer-by-customer basis. Based on the
19 explanation that was provided, the company did go on
20 and recalculate each person's bill. So let me first
21 start off by saying we thought that they had this
22 information on a bill -- by a customer-by-customer
23 basis as opposed to a bill-by-bill.

24 We never even contemplated all of these variables
25 that were brought up today. These are something that

1 is going to have to be decided later. All we were
2 alluding to was that you should take the bills,
3 calculate it using one rate structure and compare it
4 to the next rate structure, that's it. Now, all of
5 these other variables will be decided at a later date.

6 COMMISSIONER CLARK: Now, I think the nuance of
7 the customer-by-customer, if you do it I think
8 bill-by-bill you are going to get a bigger impact.
9 And if you ultimately decide that because a customer
10 has only been there for part of the time, he is only
11 responsible, then it's going to be less. I think if
12 we use the bill-by-bill, then it's going to be the
13 worst-case scenario.

14 COMMISSIONER KIESLING: Well, my concern -- I
15 understand that logic, but my concern is also for
16 those customers who have left that are entitled to a
17 refund. And I have no reason to think at this point
18 that those two things aren't going to balance out.
19 That as many customers have left who are due a refund
20 and are not going to get one because they are dead,
21 they have moved, they have something.

22 COMMISSIONER CLARK: But I'm not sure that can be
23 concluded. I think in the past when we have had to
24 have refunds, they have had to track down the
25 customers when they were no longer on their system.

1 happened during the appellate process, which can last
2 three and four years as this one has done, we are
3 setting ourselves up with a horrible precedent that is
4 going to be awfully, awfully difficult to address from
5 case to case to case. Every rate structure can't be
6 attacked.

7 COMMISSIONER GARCIA: Maybe if we could hear from
8 Mr. Twomey and move on from there, because --

9 CHAIRMAN JOHNSON: Mr. Twomey.

10 MR. TWOMEY: Commissioners, let me say first that
11 you have heard for the last hour, I think, or however
12 long we have been going here, innumerable reasons why
13 you shouldn't give notice.

14 I mean, these people who are all on the same side
15 can't agree amongst themselves how complicated they
16 want to make it for you. Whether there should be
17 refunds, whether there should be interest, whether
18 there should be compound interest.

19 I'm sure Mr. Forman is a fine attorney. He is
20 the first name in the name of the law firm. He is not
21 a PSC practitioner. If he were he would know probably
22 that compound interest is not something thought up by
23 my clients or myself, it's pursuant to your rule.
24 It's something that you have imposed, you have awarded
25 routinely without exception.

1 Now, Mr. Armstrong says he wants to get it right.
2 He cautions you against giving the customers notice
3 for fear that the number that you give them might be
4 too big or too small, especially if it is short to
5 SSU, who wants to get all their money back. I find
6 that a curious statement on Mr. Armstrong's part.

7 Professional courtesy or not, whatever his view
8 of it is, I find it a curious statement because this
9 company, as you will recall, if you realize what they
10 did, Commissioners, in response to your first order
11 requiring that SSU calculate the refunds owing by
12 customer group intentionally and dishonestly stuck in
13 the two-plus million dollars that they and they alone
14 owe the customers at Spring Hill.

15 That is the two million plus that was taken from
16 those customers there after the uniform rates were
17 reversed and after no one else was taking uniform
18 rates subsidies throughout the rest of the system.
19 They included that two-plus million dollars, which
20 under any scenario they are going to have to pay back
21 whether they realize it or not, and they put it in the
22 refunds and the surcharges they gave to you, if not
23 for the explicit purpose, with the explicit result
24 that it overstated the surcharges that had to be paid
25 for by the surcharge group. They then went out and

1 gave those numbers out to these people to incite them.

2 And then with just no more than a small bit of
3 hypocrisy, they go out while they are intentionally
4 overstating the surcharges these people have to pay,
5 if, in fact, the surcharges come to pass, they go out
6 and take the hands of some of these customers by
7 purporting to hire a law firm on their behalf.

8 COMMISSIONER CLARK: Mr. Twomey, putting that
9 aside, let me ask you a question. You have, you know,
10 for a long time told us, you know, you need to give
11 notice. You need to be open in your notice, you need
12 to let parties in. And I guess -- I know we voted at
13 one time not to give notice with respect to this, and
14 now staff has rethought it, and quite frankly, I have
15 rethought it, and it seems like these customers are
16 going to be affected and they ought to be able to at
17 least have a say in fashioning it. And I guess it
18 comes under the notion of if it is good for your
19 customers to get notice, isn't it appropriate to give
20 notice here.

21 MR. TWOMEY: I don't think so, and let me tell
22 you why. I will address it, but let me go about it in
23 my fashion, if I may.

24 COMMISSIONER CLARK: It seems an inconsistent
25 position with your past positions on being more

1 aggressive in giving customers notice.

2 MR. TWOMEY: It may seem so, and I understand
3 that appearance, but it is not, and I will tell you
4 why. It is merely the appearance of inconsistency.
5 Let's go back over what happened here. Let's focus
6 just for a moment on the notice issue.

7 On August the 5th, Mr. Armstrong and Mr. Hoffman
8 or the two of them together, sat at this table and
9 they asked you to give precisely the type of
10 information that you are again reconsidering today.

11 I said at that time to what end? Notice
12 comprehends the ability of the customers to be able to
13 -- or the people that are given the notice to react to
14 that in some administrative point of entry where they
15 have meaningful rights they can pursue.

16 And I told you at that time it was my view, and I
17 think Commissioner Clark agreed with me on this point,
18 maybe others, that we are over four years into this
19 case, and your primary concern here, Commissioners, I
20 would maintain is complying with the July 1997 mandate
21 of the First District Court of Appeals. That should
22 be your primary concern right now, is you have been
23 given a mandate by a superior court that reversed one
24 of your orders and you've got to deal with it.

25 Your staff recognized in their recommendation

1 that at some point you've got to enter into some
2 alacrity, as Commissioner Cresse might say, some
3 alacrity in dealing with the court's mandate. You
4 just can't let it sit there forever. You have to
5 comply with the court.

6 I said to you on August 5th, the court reversed
7 your order, long ago it reversed you on uniform rates.
8 Some of your staff people still can't accept that. We
9 have got Marshall Willis quoted in the Wall Street
10 Journal, uniform rates is still a good deal, bad
11 decision from the court.

12 That is behind us, Commissioners. Uniform rates
13 reversed. Your order reversed in July of this year.
14 The court gave you a mandate. I said to you on August
15 the 5th, that they let the company out. I'm sorry as
16 can be that they let SSU off the hook for paying those
17 surcharges. I think everybody in this room probably
18 except SSU feels that way. But they did. And I read
19 that opinion as not reversing the refund requirement.

20 The court specifically stated that some customers
21 were unduly benefitted by the uniform rate structure.
22 Got something they didn't deserve. Other people,
23 including my client, had to pay something over and
24 above what they should have paid. The court said
25 there had to be equity between the two groups. Again,

1 why I'm saying SSU shouldn't be heard on this issue.
2 They're not in it anymore. It's the two customer
3 groups. I think if your staff responsibly had
4 addressed the mandate to this court, this Commission,
5 and given you a straight up what you should do
6 recommendation, they wouldn't have engaged all these
7 five issues they have managed to conjure up. They
8 would have said we think the only fair reading of that
9 opinion is that you have to order the surcharges, and
10 pursuant to our Commission rule, you have to order
11 interest pursuant to the rule. There is no other way
12 to do it. And let's get on it, okay.

13 Instead, they dilly-dallied around, they gave you
14 a six of one, half a dozen of another, make up your
15 mind here, delayed the case even longer. Have more
16 input, have more briefs, and all of this kind of
17 stuff. No decisive action.

18 On August 5th, you denied SSU their request for
19 notice. Now they have come back and they have got
20 this motion for reconsideration on two issues, one of
21 them is the notice, and as the staff would normally
22 point out they don't point out how you all erred on
23 the standard for reconsideration.

24 But they went a little bit further. You denied
25 them straight out, they went out at some point, agreed

1 to finance a law firm to represent customers who
2 amongst other things, in addition to seeking
3 intervention, they asked for precisely the same
4 notice. A second bite of the apple, so to speak. And
5 in SSU's words, Public Counsel files what they call,
6 SSU calls a mirror -- it's in their pleading -- a
7 mirror of SSU's request for notice.

8 Now, I will tell you I'm sure Mr. Shreve and Mr.
9 Beck believe that their request for notice is unbiased
10 and doesn't favor one group over the other. I'm sure
11 they believe that. I don't. It unfairly biases my
12 clients and the group of clients they come from.

13 And going back to the point of entry,
14 Commissioner Clark, there is -- if you take my view,
15 that this case has been going on for four years and
16 seven months and that we are down to the point where
17 the court says you have to order refunds, and the only
18 group left to pay them is by the customers being
19 surcharged. And if your own rule says, unambiguously,
20 that you have to give people the time value of their
21 money through compound interest, what is left to be
22 decided? If these people -- pardon me, let me finish
23 this point.

24 While there is a generalized notion that notice
25 is good and you can't have too much of it, what are

1 these people going to say? Mr. Forman will tell you,
2 I can tell you that his clients and everybody else out
3 there that is going to have to pay a surcharge is not
4 going to like it.

5 COMMISSIONER CLARK: Mr. Twomey, let me say what
6 they might say is if we are going to be subject to a
7 surcharge, we think that it shouldn't include those
8 customers that are not here anymore. It should be
9 over this period of time. The \$2-1/2 million you
10 mentioned should not be in there.

11 There are various things that affect the timing
12 and the amount that I think they would want to be
13 heard from.

14 MR. TWOMEY: They may, Commissioner, and what I'm
15 saying to you is I don't think --

16 COMMISSIONER CLARK: Well, you asked what would
17 they say. Those are what they would say. And I guess
18 if you think of those things as being points they
19 would raise, is it not appropriate to give them
20 notice? What makes it not appropriate to give them
21 notice? What I have heard you, I think, say is
22 because really what this is is Southern States asking
23 for reconsideration of a decision and avoiding the
24 standard on reconsideration.

25 MR. TWOMEY: In part.

1 COMMISSIONER CLARK: But Public Counsel has come
2 in and asked for the notice.

3 MR. TWOMEY: Yes, ma'am. And what I'm saying is
4 they have asked, they have asked you to -- they have
5 asked for the same notice that you have denied once
6 already. And don't get me wrong, I'm not suggesting
7 that you can't do this notice legally, okay?

8 I mean, your staff has pointed out on Page 4 of
9 the recommendation, one, the court hasn't mandated
10 notice, okay? And, two, they point out, again on Page
11 4, that your rules don't mandate notice. And all I'm
12 suggesting to you is, and I will say to you that the
13 only issue that may be available to be considered here
14 is the timing issue.

15 No respectable person would argue that SSU's
16 customers are going to have to pay back that can \$2
17 million that SSU pocketed from Spring Hill. That's
18 the biggest folly that you can imagine.

19 COMMISSIONER CLARK: Well, I just wanted -- the
20 thing that concerns me is our rules didn't require us
21 allowing the customers who might be surcharged
22 intervention after the decision, and we stuck with our
23 rules and the court said you will allow them
24 intervention. And as you requested when you came in
25 here with representing clients, there was a

1 recommendation to deny your intervention.

2 And, you know, my view was the court was telling
3 us to take what we say in its broadest sense. You
4 better get all the input you need. And I guess I'm
5 leaning toward the idea that notice to customers is
6 one thing they are going to look at.

7 MR. TWOMEY: Right. And, again, as the
8 distinction, when I asked for intervention, I think in
9 '93 at some point, I think, is the time you're talking
10 about.

11 COMMISSIONER CLARK: No, I was talking about most
12 recently.

13 MR. TWOMEY: Oh. Right. And clearly the court
14 said -- in my view the court said you had to do that.
15 They didn't speak to the issue of notice.

16 COMMISSIONER CLARK: The staff was saying all
17 they said was the customers who tried to intervene are
18 entitled to intervene, and you said you should
19 interpret that broadly and people who are intervening
20 now should be allowed.

21 MR. TWOMEY: And I agree. I don't change that.

22 COMMISSIONER CLARK: I guess what it seems to me
23 to be consistent with the court's notion that to
24 comply with due process you had better get everybody
25 in there. That they would look unfavorably on us if

1 we didn't do the notice.

2 MR. TWOMEY: Right. And, Commissioner Clark,
3 again, I'm not suggesting for a moment that you can't
4 legally require this notice. All I'm saying to you is
5 I don't think, one, that it serves any legitimate
6 purpose. And, two, I think that you all are really
7 going to bite off some serious stuff by this. And
8 it's not going to -- it's not going to -- the reason
9 I'm opposed to it is because it's not coming to make
10 it any -- like I said, my people have been without
11 their money for four years and seven months.

12 This notice issue is not going to make it any
13 easier for me to get their money back, and it's not
14 going to make it any easier for you all to deal with
15 in the process. Again, you can give notice if you
16 wish, I'm just urging you not to.

17 COMMISSIONER CLARK: And I'm just concerned about
18 when it goes back up, because I think it will, that
19 I'm concerned with the -- you know, we seem to be
20 unable to predict what the court may do in this case.
21 And it seems like that if we didn't give notice they
22 might say you had better give notice. *

23 MR. TWOMEY: You're right. If you give notice
24 you can't be faulted for it.

25 COMMISSIONER KIESLING: Right. And I think it's

1 axiomatic that when a state agency or a state body
2 like this is going to make a decision that is going to
3 affect someone within their jurisdiction, that those
4 entities have a due process right to notice and an
5 opportunity to be heard. And I think that the court
6 has made it clear that that is the direction they want
7 us to be going.

8 MR. MCGLOTHLIN: May I respond to Mr. Twomey for
9 a second? Mr. Twomey's argument --

10 CHAIRMAN JOHNSON: Commissioner Kiesling, were
11 you finished?

12 COMMISSIONER KIESLING: Well, I wasn't, but I
13 guess I am.

14 MR. MCGLOTHLIN: I'm sorry, Commissioner, I
15 thought you were.

16 COMMISSIONER KIESLING: No, I wasn't. And it
17 seems to me that when you recognize that the due
18 process rights to notice and an opportunity to be
19 heard on this matter, that the only notice that would
20 be acceptable would be a notice to all customers of
21 the impact that it may have on them -- when the
22 decision is going to be made, what the possible impact
23 on them may be, and how they can have their input. I
24 mean, I think that is absolutely required.

25 CHAIRMAN JOHNSON: Mr. McGlothlin.

1 MR. MCGLOTHLIN: Mr. Twomey's argument proceeds
2 from the assumption that there is only one way to read
3 the court's opinion. And I would just like to point
4 out that at the conclusion of the opinion the court
5 referred to the need to allow customers to intervene
6 so they can -- if they are exposed to potential
7 surcharges, and the word potential I think is
8 significant. It indicates to me that the court did
9 not mandate that there be refunds. The only issue
10 before the court was whether if there is a refund, the
11 Commission could require the company to absorb the
12 cost of that refund. That was the only thing
13 addressed.

14 And it seems to me that if the court indicated
15 anything other than that this is an open issue, then
16 it's directive to allow customers to intervene to
17 address the surcharge would have been a futile
18 gesture.

19 So I think among the things that we need to
20 remind ourselves of, we have had a lot of discussion
21 about the variables and is it that calculation or that
22 calculation, one of the issues identified properly by
23 the staff in the recommendation is whether there is
24 going to be a refund/surcharge at all. And based upon
25 the language in the court's order, I contend that is

1 one of the options that is available to you and will
2 be considered at this point.

3 I want to clarify one more thing. When I
4 answered the question earlier, and indicated that I
5 was in favor of a calculation based upon per customer,
6 like Mr. Shreve, I thought the company had that
7 information. And I continue to urge that if there is
8 going to be a calculation to show the customer what
9 the customer is exposed to potentially, it should be
10 based upon, first, that amount which arguably the
11 customer underpaid during the period that the rates
12 were in effect.

13 And then to the extent that anything more is
14 contemplated, including the option of no refund or no
15 surcharge, it would make sense to make the customer
16 aware of the potential that it could increase by
17 virtue of such things as other customers having left
18 the system. Because if there is a reason to give
19 notice and request input, it is so that an informed
20 customer can tell the Commission its position, his or
21 her position with respect to the suggestion that the
22 customer pay anything more than the customer's own
23 responsibility.

24 So I think, again, I would like to urge the
25 Commission to keep in mind that whether there is a

1 refund/surcharge at all is an open question, and
2 beyond that, to the extent there are calculations to
3 describe to the customers their potential exposure, it
4 ought to begin with the customer's own experience with
5 the company.

6 CHAIRMAN JOHNSON: Mr. Forman, did you have
7 something to add?

8 MR. FORMAN: No. That was exactly what I wanted
9 to point out, was the language in the opinion that the
10 appellate court obviously sent us down so there would
11 be that opportunity.

12 CHAIRMAN JOHNSON: Thank you. Staff.

13 MR. RENDELL: Commissioners, if I could address a
14 couple of points. The recommendation did contemplate
15 that it would be done on a customer-by-customer basis.
16 We were under the understanding that this information
17 was available. Based on today's discussion, we
18 understand now that the information may not be
19 available and it may take additional time. We are
20 concerned with the amount of time. We would like to
21 get these notices out as soon as possible.

22 We would be amenable to some type of averaging if
23 we can determine how that average was determined. If
24 there is additional time that SSU or Florida Water
25 will require to get the additional information for a

1 specific customer-by-customer basis then we would be
2 willing to look at that.

3 One clarification I do believe that needs to be
4 on there is that how these amounts are calculated. I
5 think that there should be a clarification that the
6 amounts were calculated based on the bills during that
7 time period comparing one rate structure to the other.
8 That's the principal amount.

9 Now, if we decide to include interest, which I
10 believe we probably should, because it does give an
11 additional exposure, we can put a date certain. We
12 could go up to the date certain of August 30th or the
13 date of today's vote. So I think we can add
14 clarification into the notice. I do realize that we
15 did leave out some further clarification as potential
16 refunds or surcharge, and I also believe that we could
17 -- we could separate the water and wastewater charges
18 if the parties so desired. I believe for Spring Hill
19 what we could do is include an extra paragraph,
20 because this is at issue, this is one of the issues
21 that we are looking at, and you can have separate
22 amounts.

23 In the refund report, refund surcharge report
24 that was filed in September, it did include a
25 separate amount for the Spring Hill amount. So the

1 information is there, it's just a matter of Florida
2 Water getting the information and putting it into the
3 notice. But we still believe a notice should be
4 issued, and we still stand beside that it should be a
5 customer-by-customer basis. But if that is not
6 possible, then we would be amenable to an averaged
7 basis.

8 CHAIRMAN JOHNSON: Ms. Jaber.

9 MS. JABER: And only that I would add if you do
10 decide to do a customer-specific notice, even though
11 Troy is saying we could include an interest amount as
12 of a certain date, we should also point out that
13 interest as well as other variables would affect the
14 bottom number, and this is only an estimate, and it is
15 the best that we can do because a decision is still
16 pending with respect to the variables.

17 CHAIRMAN JOHNSON: Commissioner Kiesling.

18 COMMISSIONER KIESLING: Well, I've got some draft
19 language that does all of those things. The one thing
20 is doesn't do is itemize the variables, because I
21 didn't perceive that, and I agree that it may need to
22 be there. But can I give you what my proposed changes
23 to the notice are and see if that satisfies some of
24 it?

25 CHAIRMAN JOHNSON: That's a good idea.

1 COMMISSIONER KIESLING: I would suggest that on
2 the top of Page 2, right below where we list the five
3 options, and we indicate that the parties may identify
4 and argue other options that aren't on that list, that
5 we need to add an additional sentence that says,
6 "Further, the Commission is not bound by the options
7 listed above in reaching its final decision," so that
8 we are not opening the possibility that others can
9 give different options by saying we are going to make
10 our choice from this list.

11 So, that would be one change. And then based on
12 all of this discussion, I think that the please be
13 advised paragraph that tells the amount should say,
14 "Please be advised that if the Commission should
15 approve one of the options above, the impact on you as
16 a customer during the period of time uniform rates
17 were in effect is estimated to be a net --" and then
18 it would either be a net refund or a net surcharge, so
19 that they are on notice that this is a net calculation
20 with some offset between sewer and water for those who
21 have both.

22 And in the notice each notice would have to be
23 different. If it was refund or surcharge, that word
24 would be inserted there. Okay. Is estimated to be a
25 net refund or surcharge including interest (if

1 approved), of blank amount based on a final decision
2 to be rendered on December 15th, 1997.

3 And I do agree that somewhere in there we need to
4 identify to them that this amount is estimated and can
5 change based on that same final decision as to certain
6 variables, and we should list some of those variables,
7 the ones that we can.

8 COMMISSIONER GARCIA: Can we come up with this
9 specific information by then to make this notice?

10 MR. ARMSTRONG: In order to get customer-specific
11 information it's going to take several weeks, at least
12 a couple of weeks to get the customer-specific
13 information that has been asked for.

14 COMMISSIONER KIESLING: Well, you know, I have
15 some other changes, but I'm sympathetic to that.
16 However, up until today every one of us in this room
17 except Southern States thought that what they were
18 talking about when they said a bill-by-bill basis was
19 customer-by-customer. And all that it serves to do is
20 to drag this out longer and longer.

21 COMMISSIONER CLARK: Yes. If we do the
22 bill-by-bill it's going to be the worst-case scenario.

23 COMMISSIONER KIESLING: Yes.

24 COMMISSIONER GARCIA: Which isn't bad.

25 COMMISSIONER DEASON: Well, I'm not so sure.

1 When you say bill-by-bill, you mean by address?
2 Because if a customer just gets on the system a week
3 ago, they are going to get a notice that says they may
4 have a surcharge for a customer that lived there the
5 previous 3-1/2 years.

6 MR. ARMSTRONG: I don't have the answer to that
7 question.

8 COMMISSIONER DEASON: I don't want to send that
9 out. I mean, that's just -- I mean, that is
10 irrelevant to that customer that just moved in. Of
11 course, if they just moved in there -- we could have
12 some results that would just be so out of character
13 from what would be expected that I don't think it
14 would be useful to use your per bill or your
15 bill-by-bill analysis. I think you have to do it on a
16 customer-by-customer analysis.

17 COMMISSIONER CLARK: If that's true, then where
18 does that put us in terms of getting December 15?

19 COMMISSIONER KIESLING: Well, as far as I'm
20 concerned it puts them at the point of running 24-hour
21 shifts and hiring the people they have to to get it
22 done. Because it should have been done already, and
23 everything that I understood was that it had been done
24 already.

25 MR. ARMSTRONG: Madam Commissioner, to address

1 that, though, there are so many variables, once again.
2 The basic principal amount, the basic refund amount,
3 by bill it has been done, but there are so many
4 variables, once again, that even the interest itself,
5 what is the interest to be applied to this? There are
6 so many variables that we would be sitting there
7 making -- I am just assured by the people who are
8 informing me how complex this is by the discussion
9 between your staff and our people how complex this is.

10 For us to be hiring people two days before now to
11 do this kind of calculation only to have to change it
12 again after this discussion when we might have come to
13 any one of 40 different variable conclusions --

14 COMMISSIONER GARCIA: Mr. Armstrong -- and you
15 make a good point, and I don't think 24-hour -- hiring
16 24 hours 25 accountants to figure this out is going to
17 get us any -- because the next day someone moves out
18 of a small system and all the figures are out of
19 whack.

20 Perhaps the company didn't do what we expected it
21 to do. And if you want to find fault with them, we
22 can deal with that at some other time, but we have got
23 to get this thing out of here. We have got to get
24 this thing on the street, and we have got to give them
25 the bad news, because we do have to give them notice.

1 And that may mean that we have to go with the figures
2 that the company has. And they may not be exact, but
3 I think -- this has more disclaimers than a car
4 commercial.

5 You know, there are all sorts of limitations and
6 areas here that we can't cover, and we will never be
7 able to cover, so we might as well get this out the
8 door. And when we do these customer service hearings
9 we have to enter in this discussion, which I don't
10 know how specific we are going to be. I'm sorry, when
11 we discuss this issue -- forgive me. When we break
12 this news, we are not going to be very specific. And
13 forgive me for using the term customer service. When
14 we discuss this, until we get these things out the
15 door, we are not going to know.

16 So maybe the company did something wrong and
17 maybe we want to do something about that on this
18 specific instance, but I think giving them this
19 worst-case scenario, as difficult as it is going to
20 be, is not going to be any closer to the right -- any
21 more precise than hiring 25 accountants to work 24
22 hours a day for 25 days. And it will only put us 25
23 days further in the hole in terms of getting this
24 information out.

25 COMMISSIONER KIESLING: Well, let me point out to

1 you one thing that I have some level of concern over,
2 and if no one else wants me to worry my head about it
3 then I won't, but this is set for special agenda on
4 December 15th to be resolved. And my term ends
5 January 1st. If you want to put off this notice until
6 there is a new Commissioner sitting, then they can
7 educate themselves, his or herself, you know, on
8 everything that I have learned over the last four
9 years with this case, or we can get it done so that a
10 decision can be made with the most educated
11 Commissioners hearing it.

12 And that is a concern that I have. And if the
13 rest of the Commission doesn't want to be concerned
14 about that, and wants to just let the chips fall where
15 they may after the first of the year, fine. I'm fine
16 with that, too.

17 COMMISSIONER GARCIA: Okay. Well, the reason I
18 want to get it out of here is because I do want you
19 here, and that's the reason I want to put this out
20 here. Secondly, I think we are by the court --
21 weren't we directed to have this thing out of here by
22 the end of December?

23 MS. JABER: No.

24 COMMISSIONER GARCIA: We don't have any
25 limitation on that?

1 MS. JABER: No. Well, there is no limitation in
2 the mandate or in the decision, but there are cases
3 which suggest that you have to act in the most
4 expeditiously fashion.

5 COMMISSIONER DEASON: Well, now, let me -- I
6 guess the difficulty I'm having is to me, it will take
7 some work and I guess it would be complicated, but
8 let's ignore all of these variables at this point.
9 What you've got, you've got customer one, and he is
10 number one on your list, and you say, all right, if I
11 applied this rate structure to his consumption, he has
12 been on line for four years and seven months.

13 I take customer one, I apply rate structure one,
14 I apply rate structure two, what is the difference.
15 It's a difference of \$157.13. That is the principal
16 amount. Whether it's a refund or a surcharge.

17 You identify that as the principal amount, and
18 say there may be -- if it is a surcharge, say this
19 could be financed over a period of time, all that is
20 to be worked out. And this amount could be affected
21 by customers who have departed the system. It could
22 be affected by the way you treat Spring Hill.

23 I mean, I don't know, but we cannot at this point
24 make an assumption as to what all of those variables
25 are and then calculate what that principal amount

1 would be with all of those variables. We have to
2 notify the customers that there are variables out here
3 that are going to affect this number. But right now,
4 based upon your consumption and the one rate structure
5 versus the other rate structure, this is the
6 difference.

7 And this is a good faith estimate of what your
8 potential liability or refund is going to be, plus or
9 minus all of these other things that can affect it. I
10 don't see how we can do any more than that.

11 COMMISSIONER CLARK: Well, and you -- I think the
12 billing, the issue with billing, even though you
13 didn't ask Mr. Armstrong, is you get billing for a
14 certain connection. And the issue is whether or not
15 you have the same customer. Can you think of any
16 reason your billing would be different or bill
17 wouldn't represent the customer?

18 MR. ARMSTRONG: Commissioners, all I know, and
19 staff acknowledges as well, is that the billing
20 analysis apparently doesn't break down by customer
21 like different people. It might have been three
22 people that lived at that residence over the period of
23 time that the refund --

24 COMMISSIONER CLARK: I agree. But do you know if
25 there would be bills any different than based on the

1 fact that it wasn't the same customer at that
2 connection?

3 MR. TWOMEY: Commissioner, may I say something?
4 It sounds to me --

5 CHAIRMAN JOHNSON: Hold on, Mr. Twomey. Let
6 staff and then we will come back just to keep this --

7 MS. JABER: Thank you. Just to clarify it, Mr.
8 Armstrong, I was trying to bail you out on your
9 explanation between bill-by-bill and
10 customer-by-customer. I wasn't agreeing with you.

11 We received on September 15th, 1997 a cover
12 letter to the refund surcharge report. Here is what
13 the first paragraph says in their letter. This is why
14 staff thought that they could do it
15 customer-by-customer, nevermind the conversations that
16 Troy, Mr. Rendell and I had with counsel and, I think,
17 Mr. Isaacs. "There are no supporting schedules for
18 our calculations because the calculations are being
19 done at the bill detail level. Each affected
20 customer's bill is billed out at the modified
21 stand-alone rates provided by staff in their September
22 25th, 1995 schedule. This recalculated bill is
23 compared to the bill that was generated under the
24 uniform rates. The difference between these two bills
25 is shown as either a refund or a surcharge."

1 COMMISSIONER CLARK: Well, I'm just -- this
2 paragraph that says, "Please --" Commissioner Deason,
3 you have the concern that you would have a customer
4 that just came on line and he gets that and he sees he
5 is liable for the refund, and I think one -- I think
6 that customer should still get the notice, but the
7 notice should indicate -- and it may be appropriate to
8 do it in this paragraph, and then I think because
9 there are so many variables we want them -- and maybe
10 we should put Jack's number on this so Jack can direct
11 them to the right counsel to get good information, or
12 help them out. And you can respond to that in a
13 little while.

14 COMMISSIONER KIESLING: And the language that I
15 had proposed specifically said that it was going to be
16 the impact on you as a customer during the period of
17 time uniform rates were in effect.

18 COMMISSIONER CLARK: Right, and it's in there.

19 COMMISSIONER KIESLING: And then I think you need
20 to you follow that with a caveat that says if you were
21 not a customer during this entire rate period, this
22 calculation may differ.

23 COMMISSIONER GARCIA: Or it's based on that
24 period.

25 COMMISSIONER KIESLING: Yes.

1 COMMISSIONER CLARK: This is based on being a
2 customer of record during that period.

3 COMMISSIONER KIESLING: Right.

4 COMMISSIONER CLARK: Okay. Something to that
5 effect.

6 MR. ARMSTRONG: Commissioner, if the company is
7 required to provide notice --

8 COMMISSIONER GARCIA: Nonetheless, the company is
9 going to be required to provide this information. I
10 mean, there is no question about it. And whether you
11 have to put the guys doing it tonight to get it by
12 whenever, because Mr. Shreve is going to need that
13 information, period. I mean, the customers are going
14 to need that information to what their exposure is.
15 It's absurd to bring them before us to make a decision
16 when they don't have a clue.

17 Now, we are giving them a clue, and that's what
18 the notice is all about, because we can't predict
19 that. But I expect the company, nonetheless, whether
20 it did not address the issue correctly with our staff
21 or not, or whether it didn't follow the directions of
22 our staff, which the more I hear from Lila the more
23 bothered I become by your response to us today, you
24 are going to have to have that information. And we
25 are going to need to be able to give it to all the

1 customers.

2 MR. ARMSTRONG: And if I may remind everyone in
3 the room today, we were here in August asking to give
4 this kind of notice. The order that previously came
5 out from the Commission, the discussions with staff
6 were that was very unspecific, vague, ambiguous, which
7 is another comment we have to make. These issues have
8 not been addressed at any time to date when we wanted
9 to have those issues addressed.

10 You know, I've heard a lot of about blame on the
11 company, but I hope you don't perceive that blame
12 belongs with the company. These issues are very, very
13 complex. And constantly our staff is berating me for
14 trying to simplify something, the way we are doing
15 today. But they are a professional staff that knows
16 what they are doing. When the Commission staff and
17 them get together 99 percent of the time they
18 understand that and they are able to work things
19 through. But all of these issues and all of these
20 variables have not been discussed today.

21 You know, I hear so much about blame, I just want
22 everybody to understand that our staff is willing to
23 try and do what they can. We have wanted to give
24 notice to customers and that was our position all
25 along. And, you know, we are not dragging feet or

1 being in any way obstructive of this, but that is the
2 characterization. When I hear the dishonesties, I
3 take those kinds of things where they come from and
4 they are not worthy addressing from where they are
5 coming. But I don't want the Commission to leave this
6 room thinking that that is what this company is all
7 about, or that is what we are doing because we are
8 not. And we are willing to work with the Commission,
9 willing to work with the Commission staff to get this
10 done. We are willing to work with the Public
11 Counsel's office to make sure this is done, but you
12 can't rush into it and then find that there are
13 mistakes that are just going to have it all coming
14 down on all of us in the future. That's what we are
15 trying to address.

16 MR. TWOMEY: Madam Chair.

17 CHAIRMAN JOHNSON: Yes, Mr. Twomey.

18 MR. TWOMEY: It strikes me as one that doesn't
19 care about the notice issue, that the company keeps
20 different kinds of records. Now, I don't mean this at
21 all -- this particular comment, Mr. Armstrong,
22 accusatory, but I know or believe that they keep
23 customer records by customer. Joe Garcia moves in two
24 years ago, they don't send an account, a bill to 123
25 Pine Street. They send it to Joe Garcia. And when

1 Mike Twomey moves in afterwards, they change the
2 account. They have customer account records, I
3 believe.

4 It sounds to me -- it may not be the case, but it
5 sounds to me that the bill analysis type stuff they
6 are talking about by bill is the kind of thing we look
7 at in a rate case. And it seems to me that what you
8 want, and I think they are capable of doing it
9 probably, is looking at customer-by-customer accounts.
10 Right, Commissioner Deason? And that will tell you --
11 that won't result in somebody that just came in six
12 months ago getting a bill that reflects something when
13 they weren't there.

14 Now, that's what it sounds like to me, but you
15 might inquire there. I think there are different
16 types of account data. There is customer accounts and
17 there is billing data that is used in calculating
18 rates and so forth for rate cases. I think you are
19 talking past each other.

20 CHAIRMAN JOHNSON: Thank you. Any other
21 questions? Any comments?

22 COMMISSIONER DEASON: Yes. What do we do? I
23 want to get this thing moving along and it's almost
24 2:00 o'clock.

25 COMMISSIONER GARCIA: I think we may be here a

1 long time, but we are going to be at this for a long
2 time. Why don't we take the information that we have
3 with the modifications that have been made to the
4 statement by Commissioner Kiesling. We get the
5 company information that they say they have, as
6 imprecise as it is, and it may be scarier than it
7 should be.

8 I would rather scare them worse, you know, than
9 not scare them at all. Let's get that information
10 out, because I don't think then we order the company
11 to come up with that information and make it available
12 to all the customers, to Mr. Shreve's office, and to
13 be quiet honest, I think it is an undue burden to give
14 it to Mr. Shreve's office. I think we have to speak
15 to our customer staff to put our number on this notice
16 so that people will call us to discuss what their
17 exposure may be and we have to prepare for a tide of
18 discontent.

19 But better that than to continue to wait for
20 something that I don't think is going to be as precise
21 as we hoped, and I don't think it's going to change
22 anything about what we have to make a decision on.
23 And in the end it will be our decision, and we will be
24 the ones that have to deal with this. Obviously, the
25 customers will have to deal with the grief of paying

1 it, if that's where we end up.

2 MS. JABER: Commissioners, just to remind --

3 COMMISSIONER CLARK: Just a minute. Mr. Shreve,
4 would you comment on the notion of putting your name
5 on the notice? I'm just concerned that they have a
6 place to call, and I'm not sure it should be the
7 Director of our Division of Records and Reporting.

8 I mean, I just think we are going to have to be
9 able to respond quickly to them asking how do I get
10 more information.

11 MR. SHREVE: You mean as to whether -- are you
12 asking whether I want my name on the notice or not?

13 COMMISSIONER CLARK: Yes.

14 MR. SHREVE: I would first like to know what the
15 information is going to be that is going to be on
16 there.

17 COMMISSIONER CLARK: Well, something basically
18 like what we have here.

19 MR. SHREVE: I don't know, you might even want to
20 put all of the representatives. I think the Public
21 Service Commission should be down there, and I guess
22 Southern States will probably be on there, Florida
23 Water will probably be on there, and they are going to
24 call us anyway.

25 To go one step beyond that, I would like to

1 request, and I think the staff would like to, I would
2 like to have today the information that Florida Water
3 has already compiled and see those on a -- I still
4 don't understand the difference in what a bill-by-bill
5 or a customer-by-customer. I thought you billed
6 customers. And take a look at those. I assume we can
7 get it on disk as to what the calculations were that,
8 the total revenues they have. I would like to take a
9 look at these today. And I guess it's the same thing
10 we have been talking about. I don't see any big
11 difference there. I think you have to start off with
12 that calculation before you can do anything else to
13 it. And that is as close as you are going to get at
14 this point.

15 COMMISSIONER DEASON: When they say bill-by-bill,
16 I assume they probably have a meter number or
17 something that they are using, and that meter number
18 in that data base is not coordinated or somehow
19 identified with a specific customer name. And I
20 assume that's what they mean when they say
21 bill-by-bill.

22 MR. SHREVE: Well, maybe that is the case. But
23 when a customer leaves I thought that customer was cut
24 off and a new one came in and put down a deposit and
25 that's who they billed.

1 COMMISSIONER DEASON: And I agree. And I think
2 that it would be better to have the customer-specific
3 information. The problem, as I understand, is the
4 time frame in getting that. I think that Commissioner
5 Garcia suggested that we use the billing analysis and
6 that what you are going to have is you are going to
7 have some customers getting a notice for 4-1/2 years
8 of consumption when perhaps they only lived there half
9 the time. And I just -- I think that is just -- that
10 is not constructive.

11 COMMISSIONER CLARK: No, no, it wouldn't be the
12 4-1/2 years, it would be for the 12 months, how many
13 months the uniform rates were in effect.

14 MR. TWOMEY: 28 months.

15 COMMISSIONER DEASON: Well, even if he was there
16 14 months and he gets a notice for 28 months, I just
17 think that's not doing the customers a service.

18 COMMISSIONER CLARK: But then what is the
19 alternative? It's that you go back and you get that
20 specific information and we delay this more. And I
21 that's what we have deal with.

22 COMMISSIONER DEASON: I agree, the alternative is
23 not that attractive, either.

24 COMMISSIONER CLARK: And I guess what I think is
25 that please be advised that according to our -- that

1 you give some notice and they can be alerted to the
2 fact that, you know, they need to say, hey, I wasn't a
3 customer during that time, and why should I pay that
4 amount? And then there are people they can contact to
5 get some clarification on it.

6 COMMISSIONER GARCIA: But I'll tell you what,
7 instead of giving it -- I'm sorry, Commissioner
8 Kiesling.

9 COMMISSIONER KIESLING: I had some other changes
10 that may address some of these things that I was going
11 to suggest. One of them was in the last paragraph,
12 the end of the second line, where it says or, it
13 should say and/or, and then in the last sentence in
14 that last paragraph, where it says these written
15 submittals, it should say all written submittals
16 should be addressed to the Clerk, the Director of the
17 Division of Records and Reporting.

18 But I think we needed to add another paragraph
19 that says if you would like additional information
20 about this notice or the matters contained in this
21 notice, that you can contact, and we should give
22 everybody --

23 COMMISSIONER GARCIA: Let me say this. I think
24 that --

25 CHAIRMAN JOHNSON: Do you have something in there

1 that -- because it has been awhile, and you have been
2 trying to delineate all of their notice items, but do
3 you say something where we would state that what is
4 being provided is for the 28-month period?

5 COMMISSIONER KIESLING: Yes. The language I used
6 was the impact on you, as a customer during the period
7 of time uniform rates were in effect. I agree, we
8 could put in the dates, you know, so that it's clear
9 what that time period was, and then after that the
10 caveat that if you were not a customer during, you
11 know, this entire period or, you know, if -- and then
12 we could explain the variables and how that may impact
13 on your personal bill.

14 COMMISSIONER CLARK: I don't think we should
15 explain the variables.

16 COMMISSIONER KIESLING: Okay.

17 CHAIRMAN JOHNSON: I like that clause, though,
18 because at least that -- I have the same concerns as
19 Commissioner Deason about getting it right, but that
20 is way for them to clearly understand, oh, okay,
21 that's for 28 months, I have only been here for three.

22 COMMISSIONER KIESLING: Right. And they can then
23 call one of the information entities and say does this
24 mean I have to pay the whole amount if I wasn't there,
25 and somebody could say --

1 COMMISSIONER CLARK: We don't know.

2 COMMISSIONER GARCIA: Could I make a suggestion.
3 Instead of putting that, since the company is going to
4 be working on this regardless to give us this specific
5 information, I think we may have to handle this in
6 terms of information in-house. I don't think Mr.
7 Shreve has the staff. Probably the company doesn't
8 have the staff to deal with this, and I think we may
9 be limited, but we may have to do this in-house, and
10 we may have to prepare our consumer affairs staff to
11 deal with this torrent of calls and they can explain
12 what this means. And then we can -- if they want to
13 talk to their attorney, we send them on to Jack
14 Shreve.

15 COMMISSIONER KIESLING: But that's the point,
16 Jack Shreve is not their attorney. I think we have to
17 list so it states every other entity that has
18 intervened and our staff.

19 COMMISSIONER CLARK: I guess I'm kind of
20 persuaded by what Joe says, and then they should
21 probably come here and then our staff can alert them
22 to the fact that here are these people out there that
23 are dealing with it.

24 Mr. Shreve, what do you think?

25 MR. SHREVE: That's okay with me. I think the

1 one thing you ought to do is get the notice closed.
2 You are going to have a lot of people out there,
3 hundreds of thousands that are going to be receiving a
4 notice that don't owe a penny that are going to be
5 told that they owe a great deal of money.

6 COMMISSIONER CLARK: Well, then you agree with
7 Commissioner Deason.

8 MR. BECK: Commissioner Clark, any customer that
9 has moved in since January of '96, and my guess is
10 there is thousands and thousands of them, don't owe a
11 penny. And under what you are suggesting you are
12 going to send them notices of anything from 100 to
13 thousands of dollars that they owe. Those people are
14 not going to be happy.

15 COMMISSIONER KIESLING: But that's not true.
16 Because what I'm saying is that we make it clear that
17 this calculation is based on that 28 months, and we
18 include the dates in here so that the calculation for
19 that customer would be zero.

20 COMMISSIONER GARCIA: Let me then ask this
21 question before we move on. How long are we talking
22 about? Because the time frame is so huge that how
23 long are we talking about for you to get this
24 information which we all thought we had at this point
25 except for the company. How long are we talking

1 about?

2 MR. ARMSTRONG: The customer-by-customer
3 information we are talking about now?

4 COMMISSIONER GARCIA: Yes.

5 MR. ARMSTRONG: You're talking about a minimum of
6 three weeks to get that thing run, tested, approved
7 customer-by-customer. It takes five days of 24 hours
8 operating our billing machines, it takes five days 24
9 hours all three billing machines just to get the
10 information printed out. Then that has to be sorted
11 so that if there is going to be any messages or any
12 notice going with it, it has to be sorted so that it
13 merges.

14 It's five days, and we can't do that obviously
15 five days just to get this out because we have our
16 bills that we have to get out. But that gives you
17 just an indication of just the machines running time,
18 that's not the question of notice and all the other
19 variables there.

20 COMMISSIONER CLARK: Mr. Twomey's point is
21 looking better and better.

22 CHAIRMAN JOHNSON: Mr. Forman.

23 MR. FORMAN: Thank you. We have been talking for
24 sometime about the contents of the notice, and I just
25 wanted to get back to the specifics also in the

1 discussion about the time intervals that are proposed.
2 My calculation, staff had originally proposed that the
3 notice be sent by October 13th, and that everyone
4 would have to do everything they were going to do,
5 respond and file their briefs or whatever by November
6 5th. That would be 23 days from the date the notice
7 was sent, the way I read it. And, you know, that's
8 just really unfair. It's not enough time.

9 COMMISSIONER DEASON: Well, let me ask the
10 parties this question, would it be better, more
11 precise to use system averages than there is to
12 use a billing sent to an address when a customer may
13 have only resided for a few months at that address?
14 To say in the notice, based upon your system, the
15 average anticipated refund or the average anticipated
16 surcharge is X. Your particular would be based upon
17 your consumption for the time you resided under X
18 rates structure or Y rate structure.

19 MR. SHREVE: If you did that, I think you should
20 also put the minimum and maximum. That would show
21 them that there is a range there and give them the
22 upper end of the exposure, if you are going to go that
23 direction. I think you still have to move in the
24 direction of finally getting the information together.

25 COMMISSIONER DEASON: Oh, I agree with you.

1 You've got to have that information, we have got to
2 have it, all the parties, it has got to be there. But
3 the problem is trying to get a notice out and still
4 move this docket along and give the parties ample time
5 to provide the information on the issues.

6 MR. ARMSTRONG: For the record, though, the
7 company doesn't want to be held to any maximums. The
8 company doesn't want to be by being silent now with that
9 comment made be insinuated that there is a maximum
10 that could be stated in this notice and that we would
11 be held accountable for.

12 COMMISSIONER CLARK: I think you have to say we
13 estimate --

14 COMMISSIONER DEASON: It would still be -- I
15 guess it would be an estimated maximum, I suppose.
16 What you are saying is that you don't want to be
17 short-changed if you estimated that the maximum is
18 1,000 and it turned out to be 1,000.01, you want the
19 extra cent.

20 MR. ARMSTRONG: Right.

21 MR. SHREVE: The company has already calculated
22 averages. If you are going to do averages, how did
23 you do it without doing a maximum and a minimum?

24 MR. ARMSTRONG: Just using the date provided in
25 the order that said do this as of including interest

1 and without interest, and we used simply the 5 percent
2 or whatever it is that is in your rule, as of that
3 date just interest.

4 COMMISSIONER CLARK: Commissioners, I think that
5 may be a good idea, but we somehow still have the
6 caveat that, you know, this is our best estimate at
7 the time, and it may be higher, it may be lower.

8 COMMISSIONER DEASON: So you are saying the
9 notice should say this is the average for the entire
10 period of time for this system, however, the actual
11 amount -- I guess the minimum is going to zero.

12 I mean, because there is going to be customers
13 who are going to get this who are not going to be
14 entitled to any refund or surcharge because they
15 weren't even on line at the time that these rates were
16 in effect. And the maximum is going to be, I guess,
17 the very worst-case scenario for the customer that
18 used the most during the relevant period of time. Is
19 that what you mean when you say minimum and maximum?

20 MR. ARMSTRONG: I just don't think you can have
21 that maximum either, because of the fact, like the GTE
22 situation, where you have surcharged customers,
23 Commissioner Deason, who may not be available to
24 surcharge. That money comes back into a pool. Now,
25 if, as in GTE, we are then going to allocate that to

1 the customers who remain on the facility, then I'm
2 afraid of those maximums because --

3 COMMISSIONER DEASON: Well, I think that the
4 notice will clarify that the estimates, the average
5 and the minimum and the maximum can be adjusted for
6 these issues that we are going to address. And one of
7 the issues, I assume, is how we are going to treat
8 customers who have departed the system, the impact of
9 those departures.

10 MR. ARMSTRONG: And I don't want to minimize the
11 impact of those customers who may have left. I mean,
12 we are talking 200,000 as opposed to 100,000.

13 COMMISSIONER CLARK: Mr. Armstrong, I understand
14 that, but I'm also trying to address the issue for a
15 customer who has never been there. And I think what
16 Commissioner Deason is suggesting is probably the way
17 to go.

18 MR. MCGLOTHLIN: Mr. Deason, would you envision
19 that if the Commission's notice went in that direction
20 it would also inform the customer that the company has
21 been directed to generate customer-specific
22 information that will be taken into account?

23 COMMISSIONER DEASON: Yes. Put in the part that
24 customer-specific information is being generated and
25 that if they want to inquire further, I suppose that

1 they can. That's what the notice is all about is to
2 put customers on notice. And if they want additional
3 information or to provide comments to do that. I
4 assume that's what we are trying to accomplish.

5 COMMISSIONER CLARK: Are you anticipating putting
6 that kind of language in the notice?

7 COMMISSIONER DEASON: I don't know. I mean --

8 COMMISSIONER CLARK: I think what you have
9 suggested is what we ought to do, and I don't think --

10 COMMISSIONER DEASON: And leave it up to the
11 customer then to --

12 COMMISSIONER CLARK: To give a call. I don't
13 think we should say customer-specific information is
14 being generated because if it hasn't been by the time
15 they get the notice or there is some other glitch,
16 that creates another problem for us.

17 COMMISSIONER DEASON: I tend to agree. But if a
18 customer takes the initiative to inquire and if the
19 information is available, obviously it's going to be
20 given.

21 CHAIRMAN JOHNSON: Certainly.

22 COMMISSIONER CLARK: Right.

23 CHAIRMAN JOHNSON: So we are still asking the
24 company to provide us with the customer-specific
25 information, but for purposes of this notice we would

1 use the by service area based upon average usage and
2 without -- do you still want the minimum and maximum
3 estimate?

4 COMMISSIONER CLARK: Yes.

5 COMMISSIONER DEASON: I think there should be a
6 range in there. But I assume the minimum range is
7 going to be zero, and then the maximum, I need some
8 clarification from the parties. I assume the maximum
9 is that one bill, and I don't know which customer it
10 is, but that one bill that used the most consumption
11 and resulted in the highest differential between the
12 two rate structures. That is going to be the
13 worst-case scenario.

14 COMMISSIONER KIESLING: And it would be the
15 highest customer on a facility-by-facility basis.

16 COMMISSIONER DEASON: Yes. Do you disagree? Do
17 you think that pretty much -- and that is going to be
18 from zero to probably several thousand dollars in some
19 situations. And the average may be several hundred,
20 but the maximum could be several thousand potentially.
21 I don't know.

22 MR. SHREVE: And even with the averages that
23 Southern States has calculated so far, we haven't been
24 in a position to determine how those are done, because
25 we don't have the number of customers that were used.

1 I assume we could get all of that information today
2 for the staff and at least our office, that you have
3 already used on the bill-by-bill basis, is that right?

4 COMMISSIONER CLARK: Let me ask a question.
5 Commissioner Deason, what do you think about leaving
6 it average?

7 COMMISSIONER DEASON: Without a range?

8 COMMISSIONER CLARK: Uh-huh. Because I'm
9 concerned about, you know, you have a customer, and I
10 suppose it was in Marco Island, I mean, you had some
11 customers using 30,000 to 60,000 gallons of water.
12 And certainly that, you know --

13 MR. TWOMEY: (Inaudible. Microphone not on.)

14 COMMISSIONER CLARK: Okay. Well, that may solve
15 that problem.

16 (Simultaneous conversation.)

17 COMMISSIONER DEASON: Well, if do you have a
18 maximum that is quite large, which is probably going
19 to be the case, if it is the ultimate worst-case
20 scenario, you are probably going to have -- I know if
21 I were a customer and even though the average said
22 100, and it said the maximum was 5,000, I would be
23 calling up because I would want to know am I a 100 or
24 am I a 5,000.

25 So we are probably going to -- every customer is

1 probably going to be calling up wanting to know their
2 situation anyway. It may be better to wait three
3 weeks and give them customer-specific information.

4 MR. ARMSTRONG: Can I recommend that the
5 Commission direct all the parties to meet to discuss
6 and have the experts available who can -- I'm not an
7 expert, and no offense intended, but none of us are
8 experts except for possibly staff down at the end of
9 the corner about the complexity of this thing and what
10 we have and don't have.

11 If we are directed to meet with a direction to
12 come up with a notice that is satisfactory to the
13 parties and a time frame and whatever, that seems to
14 be what judges do to parties before them when you have
15 the control that you have.

16 MR. SHREVE: I don't think you need any experts
17 to say that the best scenario would be
18 customer-specific information. And I think that
19 should be put out there foremost. If you do anything
20 else to cover, that is a different ballgame. And I
21 would still like a commitment from the company that
22 the staff and our office get all of the calculations
23 and backup material that they developed on a
24 bill-by-bill basis or whatever it was on disk so we
25 can go ahead and take a look at that and see how they

1 came up with their revenue requirements for the
2 surcharges and refunds on a system-by-system basis.
3 They already have that, and I think we should get it
4 so we know what they are doing.

5 COMMISSIONER DEASON: Is there anyway that we
6 can -- I'm sorry.

7 COMMISSIONER GARCIA: They already said they
8 would.

9 MR. ARMSTRONG: I thought we gave them this.

10 (Simultaneous conversation.)

11 COMMISSIONER GARCIA: Give it again. Mr.
12 Armstrong?

13 MR. ARMSTRONG: Yes, sir.

14 COMMISSIONER GARCIA: Do we have that commitment
15 from you?

16 MR. ARMSTRONG: I always hesitate because I've
17 got to make sure it's on a disk and all that kind of
18 information. With the proviso that it is available,
19 yes, it would be made available to everybody. I don't
20 want to commit and then go back and find out that I
21 may get my head chopped off because it's not available
22 and easily transferrable. He asked to put it on a
23 disk. So with that proviso, we will available what we
24 have, which is what was used to provide the
25 information previously provided. COMMISSIONER

1 GARCIA: Will we have the information,
2 customer-specific information for all the parties
3 involved here?

4 MR. ARMSTRONG: Yes, and that's is we talked
5 about the period of time necessary to do that.
6 Certainly, Commissioner. Mr. Shreve wants additional
7 information as soon as possible, and that is what I'm
8 committing to. As soon as possible if it is available
9 on a disk we will get that information to him.

10 MR. SHREVE: I'm not sure that what you want
11 isn't already there.

12 COMMISSIONER CLARK: Okay.

13 CHAIRMAN JOHNSON: Why don't we do this, at least
14 it is a relates to Issue 1, we will accommodate the
15 request to allow the parties and staff an opportunity
16 to get together for the next couple of hours. And,
17 Mr. Armstrong, you may be able to call some of your
18 folks to determine what is possible and what is not
19 and get better -- I know we are putting you on the
20 spot here, but it will allow you to call them and find
21 out what would the turnaround time be, what is
22 available and what is not, and then work back with
23 staff and the parties to see if you can bring
24 something back to the Commission and Commissioners,
25 but we are saying today and in a couple of hours. Say

1 4:00 o'clock.

2 MR. ARMSTRONG: Certainly, Madam Chair, if we can
3 get those people and get them in the conversation we
4 want to do it.

5 CHAIRMAN JOHNSON: Let's try to do that, then.
6 So we will defer. And the information that Mr.
7 Shreve asked, that there is stuff that is readily
8 available, he will have an answer to that question,
9 and if it is not, then we will at least be able to
10 respond to that at 4:00 o'clock, also.

11 So let's defer then Issue 1. But I think we can
12 address the other issues.

13 MS. JABER: Commissioners, just for the parties'
14 knowledge, we will make Room 362 available.

15 CHAIRMAN JOHNSON: Okay. Issue 2.

16 MS. JABER: In Issue 2, staff is recommending
17 that the utility's motion to compel be granted in part
18 as outlined by the staff analysis.

19 COMMISSIONER KIESLING: And if there is not any
20 comment on that, I will move staff. If there are
21 those who oppose it, I would like to hear that.

22 MR. TWOMEY: Yes. And I would ask that you get a
23 -- first, I would like to have Ms. Jaber explain her
24 recommendation. And I would suggest to you,
25 Commissioners, that you get an attorney from your

1 appellate section that is going to have to appeal any
2 order on your behalf that you enter against me to
3 maybe offer some unbiased advice to you on this thing.
4 Your staff has not --

5 MS. JABER: Wait. Mr. Twomey, are you --

6 MR. TWOMEY: Don't interrupt me, Ms. Jaber.

7 CHAIRMAN JOHNSON: Ms. Jaber, if there is an
8 objection make it through the Chair. Is there an
9 objection?

10 MS. JABER: Yes. My objection is he has made an
11 allegation and I would like explanation on how I'm
12 biased in the recommendation.

13 MR. HOFFMAN: Madam Chairman.

14 CHAIRMAN JOHNSON: Is this another objection? If
15 not, then I'm entertaining the argument and the
16 objection that was made.

17 MR. HOFFMAN: I was just going to comment, Madam
18 Chairman, if you are going to take argument on the
19 motion, then since it is the company's motion, I would
20 ask to be allowed to go first and make a brief
21 argument in support of your motion, and then allow Mr.
22 Twomey to respond, and then staff counsel to comment.

23 CHAIRMAN JOHNSON: Okay. I will then allow --
24 let's start over, and let's go ahead and start. We
25 will entertain argument on the motion.

1 COMMISSIONER CLARK: Let me ask a question. I
2 mean, Mr. Twomey has -- and I don't know how to deal
3 with this, the suggestion of our staff being not
4 unbiased in this, and his concern that we have someone
5 from appeals down here to advise us.

6 And I guess I would like to know the basis of
7 that so that if that is appropriate they are down here
8 during the argument.

9 MS. JABER: Because, quite frankly,
10 Commissioners, if that is the case, then I would not
11 present this recommendation to you. I mean, as a
12 professional, I wouldn't even address you if there is
13 an allegation of bias. So I think we need to decide
14 that before we hear anything.

15 CHAIRMAN JOHNSON: Okay. Mr. Twomey.

16 MR. TWOMEY: To be clear, what I'm saying is,
17 one, I don't think this recommendation -- first of
18 all, it doesn't cite -- and I will be brief on this --
19 it doesn't cite a single case, rule, statute, or
20 anything in support of it, okay? First of all.

21 What I'm suggesting to you is that if I were you
22 I would want -- what I'm telling you is if you enter
23 an order against me, I will appeal it immediately, as
24 soon as it's published. And what I'm suggesting to
25 you is that if I appeal it you are going to have to

1 have somebody in this agency defend it, which is your
2 appeals section. I'm just suggesting that you get
3 some -- Mr. Pruitt, another Mr. Pruitt to advise you
4 on this other than just take the staff attorney who is
5 representing a party in this case.

6 What I'm saying is she is -- the staff has been a
7 party to this case for four-plus years, okay? The
8 staff proposed the uniform rate, which I got reversed.
9 The staff and I have been at opposite sides of this
10 case for almost five years. Now, to pretend -- what
11 I'm saying is that they are biased in a certain
12 direction that is contrary to the interests of my
13 clients. Not anything demeaning. I'm saying they
14 have been against my clients from the beginning and
15 this recommendation is consistent with that.

16 And I'm just suggesting to you that you get
17 somebody who would sit in the position Mr. Pruitt used
18 to, to say can we do this?

19 CHAIRMAN JOHNSON: Mr. Twomey, I hear you saying
20 two things. One, the first part of your argument was
21 that there is no basis for the recommendation as it
22 relates to an articulated rule, or statute, or
23 procedure, so that that is bothersome. And then
24 generally there is some allegations of bias, but it's
25 not shown on the face of the recommendation itself.

1 There is not things that you can point to in the
2 recommendation that would suggest that.

3 MR. TWOMEY: No, I'm not suggesting that there
4 is. I'm suggesting that if I were you, you need to
5 have somebody additionally to sit and advise you on
6 this. You have traditionally had a person from your
7 appeals section that you could turn to and say, is
8 there something we should do, okay. And I'm just
9 suggesting that. Whether you do it or not is your
10 business.

11 CHAIRMAN JOHNSON: But if is an allegation, I
12 guess, of bias then it's something we are going to
13 have deal with before we rule.

14 MR. TWOMEY: No, ma'am. I don't mean bias where
15 someone has to be recused or step down or something
16 like that. I'm just saying -- what I'm is they have
17 been -- they, all of them, your staff has been biased
18 against my clients since day one when they proposed
19 uniform rates as an alternative, and they have
20 remained consistent throughout. They are still
21 complaining it, as evidenced by Mr. Willis' comment to
22 the Wall Street Journal, think that uniform rates has
23 got benefits and you all got a raw deal from the
24 court. That's all I'm saying.

25 COMMISSIONER KIESLING: Wait a minute. I have a

1 number of questions. One of them is do you believe
2 everything you read in the paper is accurate?

3 MR. TWOMEY: You mean do I mean that Marshall
4 Willis is quoted correctly? Yes.

5 COMMISSIONER KIESLING: Well, you haven't lived
6 through the same press that I have.

7 MR. TWOMEY: Maybe not.

8 COMMISSIONER KIESLING: I think that if there is
9 an allegation in this instance, Commissioners, that
10 there is some bias that affects this, that that should
11 have been made in writing, it should have been brought
12 up to us before right now, and that it is now untimely
13 to be taking up whether or not our staff is biased.
14 And I think that this is just another red herring, and
15 we ought to just go ahead and make the ruling.

16 MR. TWOMEY: And I'm not -- just so I can
17 clarify, Madam Chair, I'm not asking that you do
18 anything against your staff. I'm just suggesting to
19 you that you seek advice, alternative advice from your
20 appeals section.

21 COMMISSIONER CLARK: I guess what confuses me is
22 that if -- why is it appropriate in this case and why
23 isn't it appropriate for every other recommendation
24 they have brought to us?

25 MR. TWOMEY: I don't know. You used to do it

1 every time.

2 COMMISSIONER CLARK: Oh, all right.

3 MR. TWOMEY: That's what I'm saying, it used to
4 be your practice. I've worked here for ten years.
5 You always had a Mr. Pruitt or Mr. Pruitt substitute
6 sitting over there that you could turn to if there was
7 any doubt about --

8 COMMISSIONER CLARK: But we haven't had it for
9 awhile.

10 MR. TWOMEY: I understand that.

11 CHAIRMAN JOHNSON: Okay. Again, I don't think
12 Mr. Twomey is asking us not to rule upon this issue
13 based upon that. I think some of the issues that he
14 raised, though, went to the basis for it. Rules
15 weren't cited and law was not cited, and that was part
16 of the criticism.

17 So I think we are fine with staff presenting
18 this, and then staff could respond when it is
19 appropriate to Mr. Twomey's argument as to what rule
20 are we relying upon, what are the procedural issues
21 that we are dealing with. But

22 I'm going to allow Mr. Hoffman to go ahead and
23 present argument, then Mr. Twomey, and then staff can
24 respond.

25 MR. HOFFMAN: Thank you, Madam Chairman. I'm

1 Kenneth Hoffman on behalf of Florida Water Services,
2 and I will try to be brief.

3 The pertinent facts are that at the August 5th
4 agenda conference, Mr. Twomey distributed two color
5 pictures, one which he described as a palatial-looking
6 estate, the so-called, as he called it O.J. Simpson
7 look-alike place. And the other colored picture was
8 described as federally subsidized housing.

9 Mr. Twomey distributed these picture to you, but
10 not to us, to counsel for the company in support of
11 his motion to compel immediate refunds. And he argued
12 to you that the customer that supposedly lived -- or I
13 should say the supposed customer living in the
14 palatial-looking estate could well afford a surcharge,
15 while the customer or the alleged customer in the
16 federally subsidized housing unit was in need of a
17 refund.

18 As it turns out, according to Mr. Twomey's
19 representation at the August 5th agenda, and in a
20 subsequent letter to Chairman Johnson, these
21 residences are supposedly situated in Florida Waters'
22 Palm Valley and Spring Gardens service areas, neither
23 of which are part of this docket.

24 Thus, Mr. Twomey's representations concerning the
25 potential refund and surcharge implications were

1 false. The Palm Valley and Spring Gardens service
2 areas and customers are simply not part of the docket.

3 We asked for those pictures and for the addresses
4 and the names of the alleged customers in the service
5 areas. We were not provided that information. We
6 filed a motion to compel Mr. Twomey to provide us with
7 the same two color pictures that he provided you at
8 the August 5th agenda together with the names of the
9 alleged customers, the addresses, and the service
10 areas.

11 Mr. Twomey argues in his pleading that he does
12 not have to produce to counsel what he presented to
13 you because his attempt at misleading you failed. If
14 you can believe that he take things a step further and
15 has filed a motion with the Commission claiming that
16 his distribution of these two pictures and misleading
17 representations concerning the alleged refund and
18 surcharge implications arising out of these two
19 pictures entitles him to attorney fees from Florida
20 Water rather than an apology, a retraction of his
21 statements, and immediate production of the same two
22 pictures that were presented to you along with the
23 requested information.

24 We support the staff recommendation with the
25 exception that we ask you to order Mr. Twomey to

1 provide us with the same two colored pictures that he
2 presented to you, not copies that are nowhere near as
3 graphic and illustrative as the color pictures that
4 you reviewed on August 5th. Thank you.

5 CHAIRMAN JOHNSON: Thank you.

6 MR. TWOMEY: Okay. First, the copies that Mr.
7 Armstrong got and Mr. Hoffman are exactly identical to
8 what the Commission had. They were made on the same
9 machine, Mr. Hoffman. They were made on a Xerox
10 machine all of them, okay? So, the first point is
11 that Mr. Hoffman was supplied, as were all the
12 parties, with the two pictures that you were presented
13 with, and which all of you returned, as I recall. I
14 don't recall that any Commissioner kept those.

15 Now, the problem that I have with Ms. Jaber's
16 recommendation and the larger underlying problem I
17 have with Mr. Hoffman's recommendation or his motion
18 to compel and what the two of them collectively are
19 trying to lead you down again where you can embarrass
20 yourself before the First DCA, is that they are trying
21 to get you to enter an order saying, Mr. Twomey, you
22 are compelled to do X. Give Hoffman the photographs,
23 which he has, and give him an address which Twomey
24 claims he doesn't have, which is the case, and the
25 names of the customers, none of which I have, okay?

1 Now, what are the problems here? And your staff
2 recommendation, in fairness to you, Commissioner,
3 should have addressed all of this, and it didn't.
4 Your discovery before this Commission, by rule, as I
5 pointed out in my response to the motion to compel, is
6 pursuant to the Florida Rules of Civil Procedure.

7 Four of you are law school graduates.
8 Commissioner Deason knows this probably as well as
9 anybody else up there. You are governed by the
10 Florida Rules of Civil Procedure. Florida Rules, Rule
11 1.280, provides the means by which discovery is
12 accomplished. And you are all aware of this.
13 Traditionally, at this Commission they include
14 interrogatories, production of document requests, oral
15 depositions, and the like, okay?

16 The time for discovery in this case stopped at
17 some point in 1993. The fact that Mr. Hoffman or
18 Mr. Armstrong writes me a letter or makes a demand
19 here, doesn't rise to the level of discovery under the
20 rules of Florida Civil Procedure, nor accordingly
21 under your rules. There was no pending discovery
22 request out there for me to be compelled to comply
23 with.

24 Discovery pursuant to this Commission's rules and
25 the Florida Rules of Civil Procedure has strict time

1 limits by which it has to be complied. And it's those
2 times after which they are failed to be met the motion
3 to compel lies. Usually it's 30 days, five plus
4 mailing and so forth.

5 Now, I may have been slow in getting the pictures
6 to Mr. Armstrong, but I got them to him. And I gave
7 him the one address that I had. It was within 30
8 days. It was certainly within 35 days.

9 Another foundation of procedure under the Florida
10 Civil Rules is that you don't compel a party to
11 produce or generate information -- and this is a
12 general rule -- to produce or generate information
13 that is not in your possession.

14 Now, I'm telling you I didn't take those
15 pictures, I don't know the address of the expensive
16 home and I don't know the names of any of the
17 occupants. And I'm not intending to go out and bother
18 those people and ask them. And I would suggest to you
19 -- I don't know if this has occurred to you or not, it
20 might have -- I will bet you that Mr. Armstrong and
21 SSU and Mr. Hoffman as well long since have identified
22 those homes. They have got meter readers that go
23 there every month, at least every month, and that they
24 know the addresses. But -- ma'am?

25 COMMISSIONER CLARK: You know, I guess that we

1 can discuss the procedural issues and the
2 technicalities of it. Is there a way to determine --
3 to agree these are the photographs and agree where
4 they are? I mean, what we have here is one
5 representation at agenda as to whether or not the
6 customers in the various houses got a refund or not.
7 They apparently take issue with it. Let's just
8 resolve the underlying issue and determine whether or
9 not -- where they are, agree on where they are and
10 whether or not they would have a refund.

11 MR. TWOMEY: The expensive home was in Palm
12 Valley and the inexpensive place was in Spring
13 Gardens. And, no, they were as -- they are in the '95
14 case. And the figures I quoted you on dollar amounts
15 were from the '95 case.

16 COMMISSIONER CLARK: Well, I guess is it correct
17 that the representation made as to who got a refund
18 and who had to pay the surcharge?

19 MR. TWOMEY: That was incorrect. He is right.
20 And it wasn't intentional. I was thinking of the
21 amounts under the cap then, rates, and quoted you
22 those. That was a mistake and an honest one.

23 COMMISSIONER DEASON: Let me ask this question.

24 MR. TWOMEY: Yes, sir.

25 COMMISSIONER DEASON: We have been going at this

1 item for an awful long time. It has been represented,
2 I think, by Mr. Hoffman that these photographs are for
3 residences in systems that are not even subject to the
4 issues in this docket.

5 MR. TWOMEY: That's correct.

6 COMMISSIONER DEASON: And both parties agree with
7 that?

8 MR. TWOMEY: Yes.

9 COMMISSIONER DEASON: What is even the relevance
10 of this argument? It has already been expressed to
11 the Commission that an error was made, that these
12 don't even pertain. You have indicated you don't have
13 the addresses. You gave us the photographs, we gave
14 them back to you. I remember the photographs, but in
15 all honesty it makes no difference to me on how I'm
16 going to vote in this case. Let's get on with this
17 thing. We are just bickering about something that
18 makes no difference.

19 MR. TWOMEY: Commissioner Deason, I agree with
20 you 100 percent. And the only reason I'm here on this
21 today is that your staff has recommended that you
22 order me to do something that I'm not prepared to do.
23 And I'm saying I'm not going to do it. And they want
24 me to provide information that you are not entitled to
25 make me do, and I'm telling you -- I'm suggesting to

1 you they already have it.

2 COMMISSIONER CLARK: If I can interrupt on this.
3 This was originally brought to me as a procedural
4 motion, and I had a concern similar to what Mr. Twomey
5 has raised with respect that it wasn't discovery. But
6 I said to them, I said to them, you know, I think Mr.
7 Twomey as an officer of the court will want it
8 clarified and that we can go ahead and put this on the
9 agenda and get the opportunity for clarification.

10 And if that is the case, do you still have a
11 motion to compel? I mean, Mr. Twomey has indicated
12 the systems will not be covered and he was in error.

13 MR. ARMSTRONG: Commissioners, we already heard
14 earlier today from one customer who was concerned
15 about this type of information and this type of
16 misrepresentation going before the Commission. With
17 the proviso that we don't expect to hear any more or
18 see any more of this type of information being
19 presented in argument or anywhere else without some
20 factual investigation and background, perhaps we will
21 see an end to this kind of information which we know
22 has been disseminated continuously for four years to
23 our customers.

24 I mean, I hope you have that kind of
25 representation from Mr. Twomey at this point.

1 COMMISSIONER KIESLING: Are you withdrawing your
2 motion to compel or not?

3 MR. ARMSTRONG: I will withdraw the motion with
4 the understanding that we did not know the addresses,
5 or the houses, or the names, and we don't even know
6 whether they are our customers or not, just as Mr.
7 Twomey does not.

8 CHAIRMAN JOHNSON: So the motion has been
9 withdrawn?

10 MR. ARMSTRONG: Yes, it has.

11 COMMISSIONER DEASON: Thank you.

12 MR. TWOMEY: Thank you.

13 CHAIRMAN JOHNSON: Now, we will break until 4:30
14 to give you the two hours. No, I'm sorry, we will
15 defer this. You all will break. And if you can come
16 back at 4:30 to address Issue 1.

17 * * * * *

18 CHAIRMAN JOHNSON: We're going to go back on the
19 record. Item -- oh, is Mr. Twomey not here?

20 MS. JABER: Just a point of information, he
21 wasn't in the meeting, either, so I have to assume
22 he's not going to be back.

23 CHAIRMAN JOHNSON: He didn't give anyone notice
24 of whether he have would participate in the meeting or
25 come back for the -- well, we noticed it for 4:30.

1 COMMISSIONER DEASON: His position is no notice
2 anyway.

3 MS. JABER: Exactly.

4 CHAIRMAN JOHNSON: Okay. We are here on Item 26,
5 Issue 1.

6 MS. JABER: The rest of the parties met for
7 awhile a few minutes ago and we have reached some sort
8 of resolution on what type of notice would be given.
9 We had a conference call with Tony Isaacs from the
10 utility, and he explained to us the process, you know,
11 what it would take basically to do a customer-specific
12 notice. It looks like they need something between 14
13 to 16 days, but we have all agreed on October 22nd for
14 the utility to do a notice and it would be a
15 customer-specific notice.

16 We have all agreed that current parties can file
17 their briefs by November 5th, 1997. We have all
18 agreed that there doesn't necessarily have to be a
19 deadline for customers to send written submittals to
20 the Commission in the notice. The notice doesn't have
21 to contain a deadline. What we can do so that we are
22 not receiving written submittals after the Commission
23 makes its decision is make sure the notice contains
24 the date that we anticipate a decision will be made.

25 CHAIRMAN JOHNSON: So that they could file up

1 until.

2 MS. JABER: Up to the date the staff files its
3 recommendation. Up to the date you consider it,
4 actually.

5 And, Commissioner Kiesling, we were looking at
6 your changes and then in light of the discussion with
7 the parties, there is one thing now that we know for
8 sure since the utility can do the customer-specific
9 notice, the notice will only go to the customers
10 affected. So your one change about making sure that
11 the customers understand that only customers of record
12 are effected is no longer appropriate.

13 We have one thing that came up in the meeting
14 that we didn't discuss at agenda. I'll let Mr.
15 Rendell elaborate on that.

16 MR. RENDELL: Commissioners, there was some
17 discussion about the Spring Hill issue, and we have
18 come up, staff has come up with a paragraph to include
19 in, we believe, all notices to all customers. If you
20 would like I can read it into the record. "FWSC
21 implemented the modified stand-alone rates for all of
22 its facilities impacted by the remand decision,
23 excluding Spring Hill, on January 23rd, 1996. For
24 Spring Hill customers, the uniform rate was not
25 discontinued until June 14, 1997. Therefore, there is

1 a separate issue regarding a potential refund for the
2 Spring Hill customers for this period of time. The
3 potential refund for this period of time is not
4 reflected in the above paragraph."

5 And this will be placed right after the paragraph
6 that identifies the specific dollar amount.

7 CHAIRMAN JOHNSON: Is there anything else?

8 MS. JABER: Just to shed some light on that, the
9 utility wanted to be able to add two amounts, I think,
10 and jump in if my recollection isn't correct, but
11 wanted to add two amounts for Spring Hill. And we
12 take the position that consistent with the rest of the
13 notice we don't think that any sort of variables
14 necessarily have to be specifically included in the
15 amount. This was a compromise. We are trying to
16 bring to the customers' attention that there is this
17 issue regarding Spring Hill.

18 MR. ARMSTRONG: The company has two comments.
19 One would be we request that the notice indicate it
20 was drafted by the Commission. And number two would
21 be on this paragraph regarding Spring Hill, the last
22 sentence currently reads the potential refund for this
23 period of time is not reflected in the above
24 paragraph. We would request that after the word
25 refund you insert and/or surcharge. It would read the

1 potential refund and/or surcharge for this period of
2 time is not reflected in the above paragraph.

3 MR. RENDELL: That's correct.

4 COMMISSIONER CLARK: I understand then that you
5 have reached a consensus on how to do the notice?

6 MS. JABER: Yes.

7 COMMISSIONER CLARK: All right. Let me ask a
8 question then. This amount, the net amount including
9 interest is going to be stated as an aggregate, is
10 that right? It's not a monthly amount, it's an
11 aggregate.

12 MR. RENDELL: It's one amount, and the parties
13 agreed to have a separate amount for water and
14 wastewater. For each individual customer, the
15 potential impact for that individual customer, but,
16 yes, it is an aggregate.

17 COMMISSIONER CLARK: Here is what I'm concerned
18 about, Commissioners, is by showing that impact, it
19 carries with it the notion that you are going to owe
20 it all at once.

21 And I don't know how we would vote, but I'm
22 pretty sure it would call for some spacing out of the
23 payments, and I think that somehow -- it's one thing
24 if you get a bill, you know, for \$1,000, it's another
25 thing if you get a bill that's \$10 a month.

1 COMMISSIONER KIESLING: Would it work then if we
2 said for those customers who are ultimately determined
3 to owe a surcharge the terms and conditions of the
4 payment of that will be determined at a later date?

5 COMMISSIONER CLARK: You know, the period of time
6 over which a payment would be made and the amount will
7 be determined. Something to that effect so that they
8 know that there is an issue.

9 COMMISSION STAFF: Commissioners, in the five
10 options right above that does state that, that one of
11 the options is to allow the refunds and surcharges
12 over an extended period of time. There is another
13 option to allow the utility to make refunds and
14 collect surcharges over different periods of time. So
15 it might be suggested to them anyway.

16 COMMISSIONER CLARK: Suggested, but it isn't --
17 to me, you know, if you give that dollar amount right
18 next to it you have to alert them to the fact that,
19 you know, the period of time over which any surcharge
20 or refund may be made is to be determined, yet to be
21 determined.

22 MS. JABER: How about the period of time for
23 making refunds, if any, or collecting surcharges, if
24 any, is yet to be determined by the Commission staff.

25 COMMISSIONER KIESLING: (Inaudible. Microphone

1 off.) -- last sentence after the five choices to make
2 clear that if other parties bring up an option that we
3 don't have there that we are going to consider all the
4 options, did you include that?

5 COMMISSION STAFF: Not yet, but we will.

6 COMMISSIONER KIESLING: Okay. That's what I
7 meant, were you going to.

8 MS. JABER: On that note, let me tell you we
9 haven't had time to incorporate any of the changes.
10 What I was hoping we could do is by tomorrow send this
11 over to Mr. Armstrong or Mr. Hoffman so that they can
12 start working on it immediately. They need to trust
13 that we will make the changes that we talked about
14 today and in the meeting.

15 COMMISSIONER KIESLING: And the hearing is still
16 going to be December 15th, this is not going to affect
17 that date?

18 MS. JABER: Right now it doesn't affect the date.

19 COMMISSIONER KIESLING: Okay. That makes me
20 nervous. Right now it doesn't, but it might?

21 MS. JABER: Anything could happen in this case.
22 And we talked about whether customers might file
23 petitions to intervene at a subsequent time, and want
24 to become parties and, therefore, want to file briefs.
25 What are we are going to do then?

1 COMMISSION STAFF: Commissioners, what the time
2 schedule anticipates now are that briefs will be filed
3 by the existing parties, and that what we are going to
4 get from customers would be letters and perhaps phone
5 calls, like that.

6 If there is another group that files a petition
7 for intervention and wants to file a brief, we are
8 going to have to revisit this, the time frame.

9 COMMISSIONER KIESLING: But any future
10 intervenors would also take the case as they find it.

11 MS. JABER: That's what our rule says.

12 COMMISSIONER KIESLING: Well, that's what -- I
13 understand, I mean, that that is what our rule says,
14 and it's not just our rule, it's a basic tenet of
15 intervention.

16 CHAIRMAN JOHNSON: Okay. Any other comments on
17 the proposed notice and/or the dates that we set for
18 the different filings?

19 COMMISSIONER KIESLING: Yes, I do have another
20 one. Are we going to clarify that any written
21 submittals go to Records and Reporting, but anybody
22 that has questions or wants information that they have
23 some other place to go?

24 MS. JABER: That's the question I had. Did you
25 make a decision as to including all of the parties in

1 the notice, and then one of the things we talked about
2 in the meeting is if you just say the parties are the
3 Office of Public Counsel, Keystone Heights, and the
4 utility, that isn't going to mean anything to the
5 customers. So do you want to include that, first of
6 all, that's the first question. If you do, do you
7 want us to add a sentence that says surcharge -- a
8 quote that says these are surcharged customers --

9 COMMISSIONER CLARK: Let me interrupt you. I've
10 thought about that, and I think it should just come to
11 our staff. It should come here and you all can --

12 COMMISSIONER KIESLING: But I think it should go
13 to Consumer Affairs and not to Records and Reporting.

14 COMMISSIONER CLARK: Well, they need to make sure
15 Bev is geared up for that and can route them to the
16 appropriate representative.

17 MS. JABER: They need to be filed with Records
18 and Reporting so we can keep track of it. And what we
19 are going to do is talk to Records and Consumer
20 Affairs and Chuck Hill and try and get some --

21 COMMISSIONER CLARK: Lila, here is what I'm
22 suggesting, written submittals have to go to the
23 Division of Records and Reporting or they can call the
24 Commission at 1-800.

25 COMMISSIONER KIESLING: Yes, because if they

1 don't do it in writing, if they call Records and
2 Reporting it's not going to do them any good. We need
3 to get them to the 800 number. I think we should do
4 Mr. Shreve's home phone.

5 MR. FORMAN: Madam Chairman, just for purposes of
6 the record, on behalf of my clients, as I indicated to
7 staff counsel, we will be prepared to file the brief
8 for my current clients on time. However, I didn't
9 want to waive their rights or other people's rights
10 with regard to the notice and the time, timing of the
11 notice for people that as yet are not represented in
12 this case. I think it is legally insufficient.

13 I'm concerned about the point as an intervenor,
14 as well as all of the parties taking the record as we
15 find it when there is no record as to the pie that we
16 are proposing to redistribute at this point. And I
17 think that that is inappropriate, and I also would
18 again point out on the record that I'm concerned about
19 the statutory rule authority for doing a surcharge.
20 And I just want to make sure I have that in the record
21 this afternoon. Thank you.

22 CHAIRMAN JOHNSON: Okay. Thank you. Any other
23 comments?

24 COMMISSIONER GARCIA: Just so I understand, you
25 are dropping all of your objections in terms of the

1 time frame? You are going to meet the deadlines that
2 we have established?

3 MR. FORMAN: Yes. In terms of my particular
4 clients that I have now, we are here and we will file
5 our briefs timely. I'm just making the point that I
6 don't think the notice and the time frame being given
7 to all of these other people is going to be affected
8 if somebody challenges it. My clients are already in
9 and you were kind enough to let us intervene, we are
10 not going to challenge that specific point.

11 COMMISSIONER GARCIA: Lila, doesn't that worry
12 you, that we go down and that they won't have that
13 opportunity? I'm worried about that, and whether we
14 are giving them enough time. He has been very kind to
15 sort of say he is going to play by what rules we have
16 established, but --

17 COMMISSIONER CLARK: Commissioner Garcia, I think
18 we have two competing mandates here sort of, and the
19 court has told us to issue the mandates, we need to
20 get on with it. The fact that there is even
21 intervenors is a result really of the court saying you
22 need to do this. And I think that with the parties,
23 the representation we do have I would be surprised if
24 any issue was not covered. And to that extent, I
25 think the parties are going to be working on it and

1 anyone who gets notice and becomes concerned and does
2 have a new issue, it can be added on.

3 I guess if this were a normal case and we had not
4 been to hearing that might be one thing, but I think
5 we do have to move as expeditiously as possible. And
6 that I'm confident that the representation we have we
7 will get all the issues out there on the table, and I
8 don't think the court will find fault with us.

9 CHAIRMAN JOHNSON: And to the extent that it
10 isn't, when those parties that we aren't sure of that
11 they are going to try to intervene, but I'm sure that
12 they will raise that and we can entertain it at that
13 point in time.

14 COMMISSIONER CLARK: Right, I agree.

15 CHAIRMAN JOHNSON: Commissioner Kiesling, I'm
16 sorry.

17 COMMISSIONER KIESLING: Yes. I was simply going
18 to move Issue 1 with the notice that we have now
19 agreed to so that we can get this thing noticed and
20 move to a resolution expeditiously.

21 CHAIRMAN JOHNSON: There is a motion. Is there a
22 second?

23 COMMISSIONER CLARK: What is the issue number
24 again?

25 CHAIRMAN JOHNSON: It's 26, Issue 1.

1 COMMISSIONER CLARK: Thank you.

2 COMMISSIONER DEASON: I second the motion.

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

6 (Unanimous affirmative vote.)

7 CHAIRMAN JOHNSON: Show it approved unanimously.
8 I would like to thank you all for --

9 MR. SHREVE: Commissioner, just as an
10 afterthought, we went through all the time frames and
11 everything as to running the data and everything, and
12 I would like to request, and I think the staff
13 probably would also like to have a printout or a tape
14 or whatever is available as soon as it comes -- they
15 said six days getting it into the computer before the
16 mailout and everything. And I think that would
17 certainly be helpful to Bev Demello in trying to
18 handle the consumer calls and everything. So if we
19 could get that at the same time, without waiting until
20 the printout. I mean, until the mailout.

21 CHAIRMAN JOHNSON: Okay. With that
22 clarification. Thank you all again for getting
23 together and working through this.

24 COMMISSIONER GARCIA: One second, Madam Chairman.
25 I might want to ask that Southern States get together

1 with our consumer office just so that they have an
2 idea of what they are going to be receiving from you
3 and how to break that down so that they can be
4 effective to the individual customer. It will
5 probably be in your best interest to do it that way so
6 that we can take care of as many of the problems here
7 at the Commission that we can and not clog up other
8 users of your system, as well as Mr. Shreve's office.
9 If we can handle most of it here it would probably be
10 in the best interest of everybody concerned.

11 MR. ARMSTRONG: Okay.

12 CHAIRMAN JOHNSON: We appreciate it.

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CERTIFICATE OF REPORTER

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 135 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 20th day of October, 1997.

Jane Faurot

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