

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Application for rate increase and
increase in service availability
charges by Southern States
Utilities, Inc. for Orange-Osceola
Utilities, Inc. in Osceola County
and in Bradford, Brevard,
Charlotte, Citrus, Clay, Collier,
Duval, Highlands, Lake, Lee,
Marion, Martin, Nassau, Orange,
Osceola, Pasco, Putnam, Seminole,
St. Johns, St. Lucie, Volusia, and
Washington Counties.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 28

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
(Teleconferencing from Miami)
COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, February 3, 1998

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

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

DOCUMENT NUMBER-DATE
02069 FEB 10 1998
FPSC-RECORDS/REPORTING

1 **PARTICIPATING:**

2 **RALPH JAEGER and LILA JABER, FPSC Division**
3 of Legal Services.

4 **CHUCK HILL, MARSHALL WILLIS, JOANN CHASE and**
5 **TROY RENDELL, FPSC Division of Water & Wastewater.**

6 **DAVID SMITH and MARY ANNE HELTON, FPSC**
7 Division of Appeals.

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1 preliminary analysis, but at this point Staff is not
2 willing to say that the \$967,560 corporate undertaking
3 is not required.

4 **COMMISSIONER DEASON:** I'm sorry, I didn't
5 catch the last.

6 **MR. JAEGER:** Staff is recommending that a
7 corporate undertaking in the amount of \$967,560 be a
8 condition of the vacation of the stay. And there's
9 some question of whether the 5.8 million bond is
10 already sufficient, but at this point in time we still
11 think to err on the side of caution, that we need the
12 additional corporate undertaking.

13 **COMMISSIONER DEASON:** And what is that
14 corporate undertaking going to ensure?

15 **MR. JAEGER:** There was an acquisition, a
16 negative acquisition adjustment that OPC has raised on
17 appeal in the amount of about \$3.8 million, I believe;
18 and that equates to about a \$500,000 annual revenue
19 change and that would protect that for about 20 months
20 that we expect this appeal to run.

21 **COMMISSIONER DEASON:** So it's to protect a
22 revenue requirement issue.

23 **MR. JAEGER:** A revenue requirement issue.

24 **COMMISSIONER DEASON:** We don't have any
25 protection for a rate structure issue, do we?

1 **MR. JAEGER:** A rate structure? No, sir, we
2 do not. We're in the same situation that we found
3 ourselves, pretty much, in 920199.

4 **COMMISSIONER DEASON:** We're in the same
5 situation, but at least in the previous one there was
6 a motion filed to vacate the stay and that was
7 adequately addressed and debated. I disagreed with
8 it, but the Commission made a decision and the
9 decision was to vacate it. Here we have had,
10 basically, the effect of having the stay vacated with
11 no action by this Commission for the past year. Am I
12 reading that correctly?

13 **MR. JAEGER:** They have continued to charge
14 the cap band rate structure for the past year, and it
15 was not until we got this motion to establish
16 mechanism that Paragraphs 10 through 12 -- basically,
17 the Staff believes is a request to vacate.

18 **COMMISSIONER DEASON:** I guess the concern
19 that I have is that we're potentially going to find
20 ourselves in the same situation that we've already
21 experienced. And this time around we're going to be
22 put in that same boat, and, at least, we didn't even
23 make the decision to get in the boat; we're being
24 placed in the boat by the action of someone else. And
25 what I understand Staff saying is we don't have any

1 choice, no recourse.

2 **COMMISSIONER CLARK:** I don't know how we
3 would do it except to go back and say they charge
4 stand-alone rates for everybody. I don't know.

5 **COMMISSIONER DEASON:** It's just the
6 difficulty you get when you have the potential to have
7 a refund or surcharge on a rate structure issue, which
8 I think is beyond me how -- but, of course, I won't
9 get into that debate. But I just see where this is
10 going to be another one of those extremely difficult
11 situations, and I don't know the way out of it either.
12 I even thought about that perhaps we could fine the
13 Company in the amount of the potential refund and
14 surcharges and suspend it, but those monies go to the
15 state; they don't go to customers. I don't know of
16 any recourse we have.

17 It seems to me that if we're overturned at
18 the court, we're going to be in the exact same
19 position again of trying to determine whether we're
20 going to refund and surcharge different classes of
21 customers, different groups of customers depending
22 upon their location and which cap band they are in.
23 Am I addressing the issue correctly? That is the
24 issue.

25 **MS. CHASE:** Right, Commissioner. I think we

1 completely agree with what you're saying. The dilemma
2 is that if you try to have the Utility through a bond,
3 or whatever, guarantee that, the money is not coming
4 from the Utility, according to the last court decision
5 we had; it would be coming from the other customers.
6 So there really isn't a mechanism that we know of that
7 would protect that.

8 **COMMISSIONER DEASON:** Now, if at the time
9 the decision -- at the time the appeal were filed,
10 which according to Staff that's when the stay should
11 have taken effect, okay, legally; is that correct? It
12 was an automatic stay; is that correct?

13 **MR. JAEGER:** It was an automatic stay. In
14 our opinion the 25-22.061(3)(a) is an automatic stay.

15 **COMMISSIONER DEASON:** What rates would the
16 Company would have had to have charged if they had not
17 gotten the stay vacated?

18 **MR. JAEGER:** If they had not gotten the stay
19 vacated, then they should have gone back to the
20 interim modified stand-alone that they had.

21 **COMMISSIONER DEASON:** Okay. They chose to
22 implement the new rate structure, and that rate
23 structure is under appeal now. And we would
24 anticipate that if we lose, we're going to be faced
25 with the same issue of refunds and surcharges.

1 There's no way to avoid that. If that's what --

2 **MR. JAEGER:** There may have been a way, as
3 you say, when they first did the appeal -- like we did
4 in AFPI charges, where you maybe gave them the higher
5 of each -- either the modified stand-alone, but now
6 that we've gone this full year and some odd months,
7 Staff did not see a way out of this predicament.

8 **COMMISSIONER CLARK:** Well, one of the
9 reasons you don't see a way out of it is it's no
10 longer under our control.

11 **MR. JAEGER:** It's not under our control now.

12 **COMMISSIONER CLARK:** But even if we had
13 done -- it seems to me if they had -- if the stay had
14 gone into effect and the interim stand-alone rates had
15 gone into effect and they were supposedly -- if they
16 had collected less than the revenue requirement they
17 are allowed, we would have been in the same boat.

18 **MS. CHASE:** It would have been just a
19 surcharge then.

20 **MR. JAEGER:** Yes.

21 **COMMISSIONER CLARK:** What GTE tells us is we
22 would have had to surcharge.

23 **MR. JAEGER:** Yes. The interim modified
24 stand-alone did not give them their revenue
25 requirement, and so they would have been collecting

1 less than they were entitled to.

2 **COMMISSIONER DEASON:** But could we have
3 increased the revenue requirement using that same rate
4 structure? Would that have alleviated the possibility
5 of having a refund and surcharge, not based upon
6 revenue requirements, but based upon rate structure;
7 that is different customers paying different rates and
8 being a subsidy between customers?

9 **MR. RENDELL:** There would still be a
10 problem, because all of the service areas under
11 interim were not under the modified stand-alone. They
12 were some stand-alone rates. And if the final rates
13 ultimately were cap band, you would still see a refund
14 surcharge situation, so there's a mixture under
15 interim.

16 **COMMISSIONER DEASON:** See, it seems to me --
17 and this goes to the difficulty of this court's
18 decision about having refunds on a rate structure
19 issue. It seems to me that not only for water and
20 wastewater, but for any company we regulate, electric
21 or whatever, what we have to do is say, "What are all
22 of the conceivable rate structures out there? All
23 right. If there's going to be a rate structure issue,
24 charge everybody the highest rate under their rate
25 structure to avoid surcharges." And that's the only

1 way to eliminate it.

2 **MS. CHASE:** The concern with that is --

3 **COMMISSIONER CLARK:** And it's compounded by
4 the fact that even if it isn't a rate structure issue,
5 if you have an appeal you have to find out what
6 they've appealed and allow the maximum of that issue.

7 **COMMISSIONER DEASON:** I mean, if we're in an
8 electric case, there's different cost of service
9 studies, and some -- industrial may have one rate and
10 residential another in this cost of service study and
11 in another one it could be just the opposite. What's
12 the highest rate under any conceivable cost of service
13 study that's out there and have those be the interim
14 rates to avoid surcharging one customer class to give
15 money to another customer class. That is --

16 **MR. HILL:** Bizarre.

17 **COMMISSIONER DEASON:** Exactly. I would
18 agree with that terminology. It's just frustrating.

19 **COMMISSIONER CLARK:** I think at this point
20 even if we wanted to invoke that remedy, I don't think
21 we can.

22 **COMMISSIONER DEASON:** Well, one of the
23 suggestions was to take this to the court and have it
24 brought back to us. Maybe that would show the
25 difficulty and -- to the court of doing this, because

1 the only way to eliminate on a going-forward basis is
2 to get jurisdiction back and impose the highest rate
3 on every customer out there for the interim purposes
4 to avoid a surcharge situation. And, of course, that
5 would not be very easy to do either. How do you
6 explain that to customers? That may be easier to
7 explain, though, than surcharging customers for past
8 consumption, which I still think is retroactive
9 ratemaking, but I know the court defines it
10 differently. And I'm talking about a revenue
11 requirements issue, because I think the court was very
12 clear, the Supreme Court of Florida was very clear in
13 the GTE case. But when it comes to rate structure, I
14 just don't see where it's the same thing. It's just
15 extremely difficult.

16 And I still have difficulty reconciling the
17 fact that we're in this situation because the Company,
18 deciding that -- and I'm not putting any blame on
19 them, but the fact remains that there should have been
20 a stay, and the stay was not activated or recognized
21 or whatever. And they implemented these rates which
22 are now under appeal, and that's already been a year
23 that we're going to have -- and how much longer do we
24 think we're going to have these rates collected before
25 there's going to be an ultimate outcome of the appeal?

1 It could be another year.

2 **COMMISSIONER CLARK:** I would suggest one
3 thing. I think something ought to be filed with the
4 Court indicating that this decision needs to be
5 expedited because of that potential -- if they are
6 going to say that we have to deal with surcharge and
7 do a refund, they need to know -- an expedited opinion
8 would be helpful.

9 **MS. JABER:** Commissioners, you need to know
10 that oral argument for this case has been scheduled
11 for next week.

12 **COMMISSIONER CLARK:** February 10. You can
13 file things at any time.

14 **MS. JABER:** We'll pass it on to appeals and
15 let them know.

16 **COMMISSIONER CLARK:** And it probably should
17 be brought up in oral argument. Is there any clue who
18 is assigned to this case?

19 **MS. JABER:** The panel, you mean?

20 **COMMISSIONER CLARK:** Yes, who is on the
21 panel?

22 **MS. JABER:** I have no idea. I'll check with
23 David.

24 **CHAIRMAN JOHNSON:** Can it be brought up in
25 that context?

1 **COMMISSIONER CLARK:** Probably have to file
2 something. You're right.

3 **CHAIRMAN DEASON:** Well, one of the things
4 that we're denying here is a request from the Company
5 to try to minimize exposure to both the Company and
6 the ratepayers, and Staff is saying that we can't do
7 that because we don't have jurisdiction anymore.
8 Jurisdiction is with the court. Would there be any
9 merit in trying to get back jurisdiction to try to do
10 something on a going-forward basis to minimize that
11 exposure? Explain that to the court and maybe they'll
12 understand some of the difficulties we're having to
13 deal with some of the decisions they're making and
14 handing back to us.

15 **MR. JAEGER:** I think -- you know, we've got
16 that 15 months or so that we already -- water under
17 the bridge, that we're going to have to do something
18 with that no matter what. And so we could try on a
19 going-forward basis to do what you all were talking
20 about, the higher -- but we're still going to have
21 that problem with what we already have. With oral
22 argument next week, and if we do get the expedited
23 decision, we're really doing a lot of work for three
24 or four months, and we don't know if it's even going
25 to be necessary at all.

1 **MR. RENDELL:** That was one concern. The
2 other concern is, since oral argument is next week, if
3 we were to go back to, say, stand-alone or -- you
4 know, we'd have to look at the merits of going to
5 modified stand-alone or stand-alone. The customers
6 see a rate change this month and then they are going
7 to see another rate change after the oral argument
8 comes out, and they had a year's worth under one rate
9 structure it's going to be too much confusion on the
10 customer's part. So that's one of the things we also
11 look at.

12 **COMMISSIONER DEASON:** I agree. It's
13 difficult, it's frustrating, it's confusing to
14 customers. On the other hand, if we get overturned by
15 the court, then what we're potentially going to have,
16 they're going to have their rates changed and then
17 there's going to be some increment on some customers
18 bills, there's going to be a surcharge to pay to other
19 customers to fund their refund. That's going to be
20 confusing too.

21 **MR. RENDELL:** I agree, it's a difficult
22 situation. We also looked at would it be precedent
23 setting, as you mentioned earlier, in any other case
24 that has a rate structure change? Would we have to go
25 and calculate various rate structures and then pick

1 the highest of all of the different rate structures?
2 And that's something we'd have to consider in all
3 future rate cases.

4 **MS. JABER:** Commissioners, when we started
5 drafting this recommendation, we mapped out all of the
6 different scenarios, and asking the court to give us
7 jurisdiction back to deal with Florida Water's motion
8 was one of the things we thoroughly reviewed and
9 discussed.

10 I think that we do not share the Utility's
11 view that the rate structure decision in this case is
12 exactly like the rate structure decision in the last
13 case. There was more evidence to support the cap band
14 rate structure. There was that finding that the court
15 said in Citrus County we needed to make. So we made
16 the decision to let this appeal go forward with what
17 the order had in it for all of the reasons that
18 Mr. Rendell is telling you, the precedent setting. We
19 knew the oral argument was to be scheduled. It's
20 still my opinion this is the way to go.

21 **COMMISSIONER DEASON:** Commissioner Clark,
22 what were you suggesting that to somehow advise the
23 court some way to put them on notice of the
24 difficulties?

25 **COMMISSIONER CLARK:** Yeah. And I don't

1 know, it just seems to me that it would be important
2 to let them know that the case should be expedited,
3 particularly if they are going to order us to do
4 refunds and surcharges. But I don't know if we should
5 even mention that. I don't know how it plays into the
6 other case that will certainly go up.

7 And, Lila, with all due respect, I
8 understand that the first one had issues of notices
9 and testimony, but that ain't what the court decided.
10 They just completely put that aside and said, "We
11 decided on this issue. And the issue they decided on,
12 one could argue -- I mean, I'm sure the argument is
13 going to be that it applies to everything but
14 stand-alone.

15 **COMMISSIONER JACOBS:** Let me ask a question.
16 Maybe --

17 **COMMISSIONER CLARK:** Let go back, though,
18 for a minute. How would you -- my suggestion was that
19 you somehow alert the court of the need to expedite
20 these decisions. And it may just be the notion that
21 the rate structure has been -- or even the revenue
22 requirement has been questioned. And I guess maybe
23 it's a general notice to them that when they do have
24 our cases involving revenue requirements or rate
25 setting, that delays have the impact of making -- you

1 know, refunds aren't a problem because they are
2 collecting it. But if there has to be any change in
3 the rates to recover past charges, that those past
4 charges add up and customers who aren't there will not
5 -- you know, we would not be able to get the revenues
6 from them.

7 **COMMISSIONER DEASON:** That's certainly going
8 to be an issue in the other appeal.

9 **COMMISSIONER CLARK:** Yeah.

10 **COMMISSIONER DEASON:** In the previous case.
11 We've got to realize we've got appeals from the
12 previous case as well as this case.

13 **MR. HILL:** Also, if I may suggest, I realize
14 we have a lot of cases in the hopper that have to deal
15 with current law and current court decisions. But if
16 this is, indeed, going to be a problem in the future,
17 perhaps a legislative change to say that in the future
18 when we're dealing with cases of revenue requirement,
19 that, no, there's not going to be these surcharges in
20 that.

21 Again, we have cases that decisions have
22 already been made. There are things in the court, and
23 we can't do anything about that except deal with those
24 decisions. But cases are filed every day, and it
25 seems to me that if we have new laws, and new cases

1 filed under the new law, that we would not face this
2 dilemma; just a suggestion.

3 **COMMISSIONER DEASON:** I'm sure Dr. Bane can
4 handle that one.

5 **COMMISSIONER JACOBS:** A couple of questions.
6 One is kind of help me to understand. From what I'm
7 understanding it's arguable whether they should have
8 adhered to a stay. Certainly, a reasonable
9 interpretation is that they could have adhered to a
10 stay when the appeal was filed, correct?

11 **MR. JAEGER:** That's correct.

12 **COMMISSIONER JACOBS:** As a result of
13 proceeding, there is now some risk of loss. To whom
14 is the question that will be resolved by the outcome
15 of the appeal. Is it not unreasonable that by
16 implementing this decision which reasonable minds
17 could argue should not have been done, that some risk
18 of loss should be passed back to the Company.

19 **MR. JAEGER:** There's a whole assumption of
20 the risk argument in that 920199 docket, and we
21 actually tried to nail them down at the agenda
22 conference saying, "Well, you realize that if you do
23 this you assume the risk." And I think the Court -- I
24 need help in that from Lila, I think, on exactly what
25 did happen in 920199. But the court said the Company

1 did not assume the risk by vacating the stay. Of
2 course, in this case they did not do it properly.

3 **COMMISSIONER DEASON:** We did not vacate the
4 stay.

5 **MR. JAEGER:** They did not do it properly.
6 That is correct.

7 **COMMISSIONER DEASON:** That's the
8 distinction. In the previous case there was a request
9 to vacate the stay. The Commission considered that.
10 The Commission vacated the stay. And the Court said
11 that there was no assumption of risk by the Company to
12 make all of the customers whole just their request to
13 have the stay vacate was granted. The facts are a
14 little different here. We never even were confronted
15 with the question of vacating the stay. And whether
16 that would have any bearing on the court's final
17 decision, I don't know. But the circumstances are
18 different this time.

19 **MS. JABER:** That's correct.

20 **COMMISSIONER JACOBS:** And I don't know if we
21 could resolve that. Really, we can't do anything
22 about that until such time as we're faced with a
23 decision about what to do about the Court decision.
24 But I pose that as a -- I think you're right. I think
25 there is a distinction here.

1 **COMMISSIONER DEASON:** That's what I
2 thought -- I mean, I started thinking about maybe we
3 should fine the Company and suspend it, waiting the
4 outcome. But fines go to the state; they can't go
5 from one customer class to another customer class.
6 Even though the Company did something that potentially
7 they perhaps could be fined for, it wouldn't help the
8 individuals we're trying to help by taking that
9 action.

10 **MS. JABER:** Commissioner, Mr. Jaeger
11 identified the Show Cause issue as a potential issue
12 and then decided against it because we recognize there
13 is an apparent rule violation, but we don't know what
14 Show Causing the Utility would accomplish.

15 **COMMISSIONER GARCIA:** In theory, couldn't we
16 fine the Company, and then if they reimburse the
17 citizens, we remove the fine?

18 **MS. JABER:** You could Show Cause them.
19 They'll have 20 days to respond, and then we could
20 come back and recommend a fine if the response wasn't
21 persuasive against a Show Cause.

22 **CHAIRMAN JOHNSON:** Ms. Jaber, couldn't we
23 just, because these facts are different, if we were
24 faced with an issue of surcharge, again raise the
25 assumption of the risk argument at that point in the

1 same way that we tried to argue it last time? To me
2 this seems a better case for that kind of an argument.
3 Because they will raise the revenue requirement
4 argument that they are to be made whole. And then we
5 say that in this instance we didn't lift the stay, you
6 just unilaterally acted; therefore, you assumed the
7 risk.

8 **MS. JABER:** It's a stronger argument. I
9 can't guess the court anymore.

10 **COMMISSIONER CLARK:** Yes, but it will depend
11 on what the interim rates -- if their alternative was
12 leaving the interim rates into effect, if they would
13 have, by doing that, not recovered what they needed
14 here, there would be some balancing there.

15 **COMMISSIONER DEASON:** If we had been
16 confronted with that issue, we could have debated
17 those things, and perhaps we could have done
18 something --

19 **COMMISSIONER CLARK:** Yes.

20 **COMMISSIONER DEASON:** -- could have taken
21 the interim structure and increased the interim
22 structure, keeping the same basic structure
23 relationship between customer classes and increased it
24 enough to generate the revenues to meet their revenue
25 requirements. But we were not given the opportunity

1 to debate those kind of questions.

2 **COMMISSIONER CLARK:** Right. And we don't
3 have the opportunity to address it now because it's
4 out of our jurisdiction.

5 **COMMISSIONER JACOBS:** And that takes me to
6 my next point. If -- well, let me not speculate.

7 Would not the appropriate action at this
8 point for the Company to ask us to consider be that
9 motion to vacate? Because if you're concerned about
10 potential loss in the event things go of a particular
11 way with the court, then it sounds like to me you want
12 to get out of that situation right now and not belabor
13 that point.

14 **COMMISSIONER DEASON:** That's an excellent
15 point. Actually, we've not had a piece of paper filed
16 with us asking us specifically to vacate the stay.
17 We've interpreted something to mean that, but we
18 actually have not received it as such.

19 **MR. JAEGER:** There's been no such motion to
20 vacate stay, paragraphs 10 through 12 of the motion to
21 establish mechanism, that we've interpreted.

22 **MS. JABER:** For whatever it's worth, also,
23 Commissioners, I don't want to leave agenda today
24 without telling you this: It doesn't relieve the
25 Utility of its responsibility, but I do want you to

1 know that we did not catch the automatic stay problem
2 either. When we received the notice of appeal, we
3 didn't catch it either.

4 **COMMISSIONER JACOBS:** Have deadlines been
5 passed for that?

6 **CHAIRMAN JOHNSON:** I don't know what you
7 mean by "we didn't catch."

8 **MS. JABER:** Typically Staff, when we receive
9 notice of appeal one of the things we look for is
10 whether the automatic stay provision kicks in; you
11 know, was that notice of appeal filed by a
12 governmental body? And in this case it was. And we
13 didn't contact the Utility either to say --

14 **CHAIRMAN JOHNSON:** It's self-actuating,
15 right? I mean, we don't have to do anything.

16 **MS. JABER:** We don't have to.

17 **CHAIRMAN JOHNSON:** There's no obligation.

18 **MS. JABER:** There's no obligation, and
19 that's what I started with. I'm not trying to relieve
20 the Utility from its responsibility, but I wanted you
21 all to know that that is something that, you know,
22 typically we do and we didn't.

23 **MR. JAEGER:** Also, the parties that filed
24 the notices of cross-appeal, OPC and Citrus County,
25 although we had like three agendas that addressed

1 stay, reconsideration and stay, it was never
2 mentioned, and we went around and around on stays and
3 vacation of stays, and it never came up.

4 **CHAIRMAN JOHNSON:** It's automatic, though,
5 right?

6 **MR. JAEGER:** Yes.

7 **MS. JABER:** Right.

8 **CHAIRMAN JOHNSON:** And I appreciate your
9 comments. I don't want us to -- I appreciate the fact
10 that we do that, and that we generally do, and perhaps
11 we didn't do it in this case. But I don't want to
12 leave the impression that we have an obligation and
13 that that's the only way that the automatic stay
14 provisions are effectuated, because they are
15 automatic.

16 **MS. JABER:** No. That's right.

17 **COMMISSIONER CLARK:** Let me ask a question.
18 You say it went to agenda on a stay?

19 **MS. JABER:** AFPI.

20 **MR. JAEGER:** AFPI, and then we had -- in
21 January of last year, and then also we had another --
22 there's other stays requested but --

23 **COMMISSIONER DEASON:** And when that came to
24 us, we took action to try to mitigate the potential
25 for there to be surcharges, did we need not?

1 **MR. JAEGER:** That's correct. AFPI -- well,
2 we finally reached -- in the May and June orders, we
3 came around and did AFPI charges where they were
4 protected.

5 **COMMISSIONER DEASON:** Basically, they are
6 allowed to charge the higher rates when there were
7 higher rates, were they not.

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

9 **COMMISSIONER DEASON:** I think that's a
10 showing of the Commission's good-faith effort to try
11 to minimize these situations had we been confronted
12 with the question and we weren't. I think sometimes
13 if that has to be argued to the court, maybe that's a
14 point that needs to be made.

15 **COMMISSIONER JACOBS:** I think that's a very
16 important point. Why today we're looking at this
17 document as opposed to that, that situation you just
18 described?

19 **MS. JABER:** And the only thing you need to
20 know in addition to that, and maybe Ms. Chase can
21 correct me if I'm wrong, it's the notice of the
22 cross-appeal that brought the rate structure issues to
23 appeal. When we were dealing with AFPI, that was just
24 after getting the first notice of appeal, which had
25 nothing to do with rate structure.

1 **COMMISSIONER DEASON:** And it was the
2 cross-appeal that followed that triggered the rate
3 structure question.

4 **MS. JABER:** Right. That's exactly right.

5 **COMMISSIONER DEASON:** But a cross-appeal has
6 its own legal standing as well. So in fact, if the
7 appeal had been withdrawn, the cross-appeal would
8 still stand, would it not?

9 **MS. JABER:** That's right.

10 **COMMISSIONER CLARK:** Well, I guess my
11 question is if you don't treat what they requested as
12 a motion to have this stay lifted, where are we?
13 Should they be filing a new tariff?

14 **MS. JABER:** You're asking what rates do they
15 charge, basically.

16 **COMMISSIONER CLARK:** Yes. If there is a
17 stay, what should they be doing?

18 **MR. JAEGER:** I think, if you decide what you
19 decided, I believe, that the automatic stay was
20 triggered, then they must go back to the rates they
21 had before that order was issued. And then it's up to
22 them to request remedy if you don't treat this --
23 they've requested that they be allowed to continue
24 charging the final rates, that that be confirmed, that
25 they be allowed to continue charging the final rates.

1 **COMMISSIONER CLARK:** That's what they've
2 requested?

3 **MR. JAEGER:** That's what they've requested
4 in this motion.

5 **MR. RENDELL:** And the reason behind that is
6 so we wouldn't impair their final revenue requirement.
7 If you go back to interim it's less than final.

8 **COMMISSIONER CLARK:** Well, it seems to me
9 that the issue -- the impact of their implementing the
10 rates while they were supposed to be stayed is
11 something that we may have to confront in the future.
12 And they having requested by this that they -- it
13 seems to me it's out of our hands and there's nothing
14 we can do one way or the other, and that we will have
15 to make a decision on what impact the failure of
16 bringing it to us for a stay had with respect to any
17 assumption of the risk for a different rate structure.

18 **MR. JAEGER:** I believe, yes, that we can
19 consider that when we come to that bridge if it comes
20 back.

21 **COMMISSIONER JACOBS:** Or we can Show Cause
22 them.

23 **CHAIRMAN JOHNSON:** Commissioners, is there a
24 motion?

25 **COMMISSIONER CLARK:** I'll move Staff.

1 **CHAIRMAN JOHNSON:** Is there a second?

2 **COMMISSIONER DEASON:** Well, let me back up
3 just a second. So the motion would be to grant a --
4 to basically interpret a filing as a request of
5 vacating a stay and grant it?

6 **COMMISSIONER JACOBS:** That's what 2 says. I
7 would not do that.

8 **COMMISSIONER CLARK:** Well, then that was my
9 question. What happens? It seems -- we may not have
10 to vote on 2 the way it is. It just seems like we
11 can't do either. Even if we wanted to lift the stay
12 at this point, we couldn't.

13 **COMMISSIONER DEASON:** So you're saying we
14 can't do anything.

15 **COMMISSIONER CLARK:** Right.

16 **COMMISSIONER DEASON:** We are where we are,
17 and the Company finds itself where it is because of
18 the decisions it made, and we can't do anything until
19 the court makes a decision.

20 **MR. JAEGER:** Under the Florida Rules of
21 Appellate Procedure you have continuing jurisdiction
22 over stays. It's my interpretation of the Rule 310 --
23 let me get the rule out.

24 **COMMISSIONER DEASON:** Can they go to the
25 court and get a stay?

1 **MS. JABER:** On the jurisdiction issue with
2 respect to stays, clearly, in the appellate rules of
3 procedure the stay aspect is procedural and you can
4 rule on that. You can address the stay. There is
5 enough in their motion, in the Utility's motion, I
6 think, to interpret their motion as a motion to
7 vacate.

8 **MR. JAEGER:** Rule 9.310, it's my
9 interpretation of that rule of appellate procedure
10 that on motion, the lower tribunal or the court may
11 extend the stay imposing lawful conditions or vacate
12 the stay. So I believe we still have continuing
13 jurisdiction to do anything with stays as long as it's
14 under --

15 **COMMISSIONER CLARK:** And their request here
16 is that they be allowed to implement the final rates
17 under the rate structure --

18 **MR. JAEGER:** That it be confirmed that they
19 be allowed to continue charging the final rates.

20 **COMMISSIONER CLARK:** And they've not asked
21 us to go to a rate structure that provides for no
22 surcharges if the rate structure is found -- or
23 refunds if the rate structure is -- they haven't asked
24 for that maximum amount of each rate for each class of
25 customer.

1 **MR. JAEGER:** Let me go back. This was filed
2 just before the December 15th special agenda where we
3 had that refund surcharge or no refund, no surcharge.
4 And once they got that decision where it's no refund,
5 no surcharge, you know, they're protected under that
6 decision they think -- and they are protected under
7 the refund surcharge issue also.

8 **COMMISSIONER CLARK:** They are not until the
9 court says they are.

10 **MR. JAEGER:** Well, I think the first thing
11 we did in 920199, we said refund, no surcharge. They
12 came back said, "You can't do that." And that was
13 where they were really -- that's what scared them. If
14 they had to do a refund and no surcharge. But they
15 did do -- in this motion to establish mechanism, they
16 did ask for us to establish a mechanism. They didn't
17 say what it was or how to establish it, to protect
18 both the Utility and the customers.

19 **COMMISSIONER DEASON:** Why don't we set that
20 for oral argument and let them come up here and tell
21 us how to get out of this morass, if they've got a
22 solution.

23 **COMMISSIONER CLARK:** Yes, as far as I'm
24 concerned they have to propose it.

25 **MS. JABER:** But, Commissioners, on that

1 alone, on establishing a mechanism, that part we think
2 is not within your jurisdiction. We think that to be
3 able to address the motion to establish a mechanism,
4 you've got to ask for the court to give you permission
5 in that regard. The stay is different.

6 **COMMISSIONER CLARK:** What are they asking
7 for in the stay? That we lift of the stay and allow
8 them to collect their final rates? And that lessens
9 the exposure, to some extent, because it is a higher
10 revenue requirement. But having not asked us to do it
11 at that point, they didn't give us the opportunity to
12 guard against all contingencies.

13 Yes, I agree with you I don't think we can
14 establish a mechanism, that's out of your
15 jurisdiction. But then whether or not we can -- if we
16 treat it as a lifting of the stay, I think that's
17 probably safer at this point. I want to emphasis at
18 this point it's a safer process to follow because it
19 has a higher -- it allows for the collection of higher
20 rates. Wait a minute. Because then you wouldn't add
21 to it the notion of failing to -- recover revenue
22 requirements and having to surcharge purely for
23 revenue.

24 **MS. JABER:** That's right.

25 **COMMISSIONER JACOBS:** The more I listen to

1 this, the more and more I come to the conclusion that
2 this is a part -- this is a record that the Court
3 really should hear. I mean, should have the benefit
4 of, rather. And I'm wondering should we go ahead and
5 ask for a limited remand on this?

6 **COMMISSIONER CLARK:** Let me ask a question.
7 We don't have to -- if we don't allow the lifting of
8 the stay, they can go to the court, right?

9 **MR. JAEGER:** It's my understanding that if
10 you deny the lifting of the stay, or I think I've seen
11 them go directly to the appellate court, but --

12 **COMMISSIONER CLARK:** Maybe we should just
13 say the notion of what to do at this point is fraught
14 with difficulties either way and that you should apply
15 to the court for this.

16 **MS. JABER:** Commissioners, would you give us
17 ten minutes to consult with Appeals maybe?

18 **COMMISSIONER CLARK:** It seems to me --

19 **MS. JABER:** I just can't answer your
20 questions.

21 **COMMISSIONER CLARK:** -- they have the choice
22 of coming to us for a stay or lifting of a stay or
23 going right to the court, don't they? I think they
24 do.

25 **MR. JAEGER:** As I say, the rule appellate

1 procedure, 9.310(b) indicates that they would come to
2 us for the lifting of the stay. But I'm just saying I
3 think I have seen where they have gone --

4 **MS. JABER:** They have. They have filed
5 motions for stays in the court. I know in the 199
6 docket, but I'd really rather consult with Mr. Smith.

7 **COMMISSIONER CLARK:** The reason we have a
8 rule on stay is because the Supreme Court kept
9 complaining to us that we didn't, and they wanted us
10 to rule on the stays first, even though we didn't have
11 to.

12 **CHAIRMAN JOHNSON:** We can take a short
13 recess. But, Commissioner Jacobs, did you want them
14 also to report back on -- you said something about a
15 limited remand.

16 **COMMISSIONER JACOBS:** Yes. I haven't done
17 appeal work, so I don't know the propriety of this at
18 all, but can we ask the court for that?

19 **MS. JABER:** That I can answer for you. We
20 can. We discussed it. It's not our recommendation
21 that you ask for the case back to deal with.

22 **COMMISSIONER JACOBS:** I'm interested in
23 understanding why, but we can wait until you come
24 back.

25 **CHAIRMAN JOHNSON:** If you could explain why

1 when we return.

2 **COMMISSIONER GARCIA:** Madam Chairman, before
3 you break, I just want to announce I've got a luncheon
4 with an FCC commissioner, so I'm going to probably
5 miss part of internal affairs. I will call in if I
6 have the opportunity, but I just wanted to state that.
7 And I also wanted to ask the clerk's office to bring
8 up the sign-up sheets to my office. I will be there
9 later this afternoon, so I can sign them. The vote
10 sheets.

11 **COMMISSIONER CLARK:** Do we have anything
12 more on the agenda?

13 **CHAIRMAN JOHNSON:** We have one more item.
14 Well, we can do --

15 **COMMISSIONER GARCIA:** Can we do that one
16 item?

17 **CHAIRMAN JOHNSON:** Yes, we're going to
18 break, allow Staff to leave. But we do have Item 31.
19 It's a panel of Garcia, Clark and Deason. 29 and 30
20 have been deferred.

21 Let's take a ten-minute break and finish up
22 Item 28.

23 (Brief recess.)

24

25 **MR. JAEGER:** I think we have David Smith and

1 Mary Anne Helton here from appeals to maybe shed some
2 light on this.

3 **CHAIRMAN JOHNSON:** Mr. Smith.

4 **MR. SMITH:** On the issue of what would
5 happen if you denied the stay, the Company could then
6 seek review by motion in the First DCA. There's a
7 provision in the Administrative Procedure Act also.
8 It's kind of an exception to the normal procedure.

9 **COMMISSIONER CLARK:** This isn't denying the
10 stay. This is granting the lifting of the stay,
11 right?

12 **MR. SMITH:** Right. Whatever action you take
13 on the stay. Whatever action you take on the stay
14 would be reviewable in the First DCA by motion. You
15 asked the question earlier, what is required -- what
16 is required of them in terms of seeking a stay. The
17 Administrative Procedures Act allows an exception to
18 the general rule that you must go to the lower
19 tribunal in administrative proceedings. And that
20 that says that you can go to the court and seek a stay
21 also.

22 **COMMISSIONER CLARK:** So it's within their
23 discretion to come to us or go to the court?

24 **MR. SMITH:** That's what I understand. But
25 I'll tell you that the law is generally that the court

1 would say, "No, you do it." In general, we have asked
2 the court to allow us to rule on the stay before they
3 did, since it's our decision and we have the knowledge
4 and the expertise involved in making that judgment.

5 **COMMISSIONER CLARK:** I mean, this case is an
6 exception in the sense that it's asking that the stay
7 be lifted. It's 15 months late.

8 **COMMISSIONER DEASON:** We have the
9 opportunity to put conditions on a stay, do we not?

10 **MR. SMITH:** You can impose any reasonable
11 condition on a stay. That's the law, clearly, even
12 stated in the rule. It's basically up to you to
13 determine in the first instance whether or not a stay
14 should be granted and what kind of conditions you want
15 to impose on it. And if there's someone who wants to
16 challenge that, then they have an opportunity to do
17 that by motion to the appropriate appellate court.

18 **COMMISSIONER DEASON:** I have another
19 procedural question of maybe a little different
20 character. And that is when we were going through the
21 question of the stay and vacating it or not, the first
22 time around, in the first case, I remember we had
23 attorneys from all of the different parties up here
24 making arguments, and we gave them some dialogue with
25 the Company. And, unsuccessfully, we were trying to

1 make the point that we felt they were making
2 themselves accountable for those refunds. But I guess
3 my bottom line question is why aren't we having that
4 today? I mean, why is it we don't have the
5 opportunity to have the parties provide us their
6 comments? I know it wasn't noticed as such, so it
7 probably wouldn't be appropriate now. I guess my
8 question is what was different then from now? We had
9 all of the argument then and we're not having any from
10 the parties now.

11 **MR. JAEGER:** I think part of it is that
12 there was a motion, and it was to continue with the
13 final rates, and Citrus County and OPC did not respond
14 to that motion -- or to this motion to establish
15 procedure. And so if it had been clear that it was a
16 motion to vacate the stay, then I think maybe they
17 would have come in and --

18 **COMMISSIONER DEASON:** Well, then I guess
19 that raises the question then why are we going --
20 perhaps going out on a limb, so to speak, to some
21 degree, making an interpretation of something that's
22 not plainly in front of us in those specific terms to
23 do something. If we were going to do it that way,
24 we'd have people here wanting to orally argue and make
25 their comments and that. I'm just uncomfortable doing

1 what we're doing. I mean, doing what Staff
2 recommends. I'm sure the recommendation is based upon
3 good, sound legal analysis and your best judgment and
4 all of that, I'm not quibbling about that. I'm
5 uncomfortable making -- interpreting something into a
6 motion that's not clearly there. And I say I agree it
7 reasonably can be interpreted that way, but why is it
8 our obligation to do that?

9 **MS. JABER:** It wasn't our obligation. We
10 chose to do that, number one, because of the language
11 in the motion. But, number two, because we were
12 trying to minimize the effect in the long run.

13 **Mr. Willis** just gave me a thought: If you
14 want to deny that part of Staff's recommendation,
15 there is nothing to prevent the Utility from turning
16 around and filing the motion to vacate a stay that we
17 could bring back to you.

18 **COMMISSIONER CLARK:** The only thing we
19 really have before us is that motion to establish a
20 mechanism to hold Florida Water harmless; is that
21 right?

22 **MR. JAEGER:** Exactly.

23 **COMMISSIONER CLARK:** All right. Then I'm
24 going to move Staff on Issue 3, and they can come back
25 to us on it whether or not it acted as a stay and what

1 we should do.

2 **CHAIRMAN JOHNSON:** Is there a second on
3 that?

4 **A**

5 **COMMISSIONER DEASON:** I'm sorry, you're
6 moving Staff on Issue 3 and what in regard to Issue 2?

7 **COMMISSIONER CLARK:** Nothing.

8 **COMMISSIONER DEASON:** Oh, just no action.

9 **COMMISSIONER CLARK:** No action on 1 or 2.
10 If they want to come back to us on the issue of
11 lifting the stay or let things stay the way they are,
12 it's really up to them to come and tell us what to do.

13 **COMMISSIONER DEASON:** What about Issue 1,
14 are we taking any action on that?

15 **COMMISSIONER CLARK:** I don't think we need
16 to. Is that before us now?

17 **MR. JAEGER:** I think if you believe that
18 there was an automatic stay, and it's come to your
19 attention now that this utility is charging rates --

20 **COMMISSIONER CLARK:** Has anyone said to us
21 that there was a automatic stay?

22 **MR. JAEGER:** No one has said there's been an
23 automatic stay. The Utility just indicated that they
24 thought it might be, and then they aren't sure
25 themselves if there was an automatic stay. They say,

1 "If there was, then please let us continue charging
2 the rates that we were charging, the final rates,
3 confirm that."

4 **COMMISSIONER CLARK:** I guess my notion would
5 be to decide Issue 3, because that is before us, and
6 then not decide 1 or 2. They can either come to us or
7 go to the court.

8 **MS. JABER:** And what did you want to do
9 about trying to notify the court that we respectfully
10 request an expedited treatment of the appeal?

11 **COMMISSIONER CLARK:** I still think that
12 should be done.

13 **MS. JABER:** Okay.

14 **COMMISSIONER CLARK:** You know, just -- I
15 leave it to the appeals staff to look it over and make
16 a final decision. If they don't think it's the way to
17 go, please let us know. But just, you know, some
18 general indication to the court when we have a case
19 before you that involves a decision on revenue
20 requirements, or rate structure, that the difficulty
21 it imposes the longer the case is pending.

22 **COMMISSIONER JACOBS:** On Issue 1, I'm very
23 leery to -- now that we really have it before us to
24 walk away from that because a reasonable
25 interpretation of no action is that we acknowledge the

1 violation of a rule and took no action.

2 **COMMISSIONER CLARK:** Well, no -- but they
3 didn't ask for the stay to be lifted, did they?

4 **MR. JAEGER:** The automatic stay would have
5 been invoked in November 26th, 27th with the notices
6 of cross-appeal of Citrus County, and that automatic
7 stay has never been asked to be lifted until this past
8 motion, if you interpret it that way.

9 **COMMISSIONER CLARK:** It wasn't even a
10 request to lift the stay. It was a request to
11 establish a mechanism. We can't do that. It's out of
12 our jurisdiction. It's a substantive change.

13 **MS. JABER:** But you could also rule on Issue
14 1 too.

15 **COMMISSIONER CLARK:** Why?

16 **MS. JABER:** You could if you wanted to.

17 **COMMISSIONER CLARK:** Why should we make a
18 decision as to whether it acts as a stay or not?

19 **MS. JABER:** Because you do have that
20 question remaining as to what rates should be in
21 effect.

22 **COMMISSIONER CLARK:** Was that in their
23 motion to establish a mechanism?

24 **MR. JAEGER:** They want you to confirm was
25 there an automatic stay; they think there may have

1 been. They don't know. And if there was an automatic
2 stay, they want you to confirm they have this revenue
3 requirement and that they need to continue charging
4 those final rates that they are charging.

5 **COMMISSIONER DEASON:** See, I think it's a
6 critical point that revenue requirement can be
7 achieved with a rate structure, perhaps, that would
8 not impose the necessity of having surcharges on
9 customers to redo or rearrange subsidies or prevent or
10 whatever. We never were given an opportunity to
11 address that, and that's the difficulty I'm having.

12 **MS. JABER:** Right. But, Commissioners, my
13 concern to answer your question, is the rule says when
14 as public body or public official appeals an order
15 involving an increase in an utility's or a company's
16 rates, which appeal operates as an automatic stay, the
17 Commission shall vacate the stay upon motion by the
18 Utility. If you don't vacate the stay, that's fine.
19 But what I'm saying is they shouldn't continue to
20 charge the rates they are charging now.

21 **COMMISSIONER CLARK:** You also indicated that
22 it wasn't absolutely clear that a cross-appeal acts as
23 an automatic stay. There was language in some rule
24 commentary.

25 **MS. JABER:** Commentary.

1 **COMMISSIONER CLARK:** I think that should be
2 squarely put before us; that they are asking for us to
3 lift a stay. They believe it might be there and
4 asking us to lift the stay.

5 **COMMISSIONER DEASON:** And I think it's
6 important that we hear from the parties. There may be
7 some opposing viewpoints that we're not getting right
8 now. And just put it squarely in front of us, and if
9 there are opposing viewpoints, give opportunity to
10 Public Counsel or whomever may be interested. I don't
11 know. Even the parties to address the question,
12 whether they think there was or was not and what we
13 should do.

14 **COMMISSIONER CLARK:** And I would point out
15 they can file that with us or they can file it with
16 the court. And when they file it with the court, they
17 could also ask the court to establish the mechanism
18 because they have the case.

19 **CHAIRMAN JOHNSON:** So do we leave it up to
20 -- Commissioner Clark, are you suggesting we leave it
21 -- Issue 1 in the hands of the parties to ask someone
22 to address that question, or should we address the
23 question of whether or not the cross upon our own
24 motion, address that, at least the legal question in
25 Issue 1?

1 **COMMISSIONER CLARK:** I think I'd like the
2 parties -- I think it should be part of -- I'm
3 suggesting the Utility should come in and ask to file
4 it as a motion to lift the stay, and they can say,
5 "It's unclear whether or not it acts as an automatic
6 stay. If you find that it does, we request that you
7 allow us to charge interim rates." And then parties
8 can respond to that, and we can hear from them at
9 agenda.

10 **COMMISSIONER DEASON:** And I think parties
11 should be allowed to respond to both. First of all,
12 is there a stay or is there not a stay? If there is a
13 stay, should it be lifted?

14 **COMMISSIONER CLARK:** Right.

15 **CHAIRMAN JOHNSON:** And if the Company
16 doesn't come forward?

17 **COMMISSIONER CLARK:** It's up to them to
18 bring it back before us, and they have the option of
19 taking it directly to the court.

20 **CHAIRMAN JOHNSON:** Is everyone satisfied
21 with that?

22 **COMMISSIONER DEASON:** And approve Staff on
23 Issue 3.

24 **COMMISSIONER CLARK:** Right.

25 **COMMISSIONER DEASON:** I second that.

1 **CHAIRMAN JOHNSON:** Okay. Then there's a
2 motion to approve Staff on Issue 3, and as it relates
3 to Issues 1 and 2. Now, you made a statement that --

4 **COMMISSIONER CLARK:** Take no vote.

5 **CHAIRMAN JOHNSON:** Just take no vote as to
6 the -- I see the Company's representatives are here,
7 and they've heard the dialogue. But we'll take no
8 vote on Issues 1 and 2. And what about Issue 4?
9 Approved? Leave it open?

10 **COMMISSIONER CLARK:** I think it has to
11 remain open.

12 **COMMISSIONER JACOBS:** I still have some
13 concerns that -- about the rule. I think -- I don't
14 know whether or not we put language in the order
15 indicating -- basically, we've come away today saying
16 we're not clear on the existence of a stay at the
17 moment.

18 **COMMISSIONER CLARK:** And if there was a
19 stay, whether they have made an appropriate request to
20 lifting the stay.

21 **COMMISSIONER JACOBS:** I'd like to have
22 something like that.

23 **COMMISSIONER DEASON:** Let me ask another
24 question. Would it be more appropriate to wait until
25 this gets resolved? Do we know what course of action

1 the Company is going to pursue before we request the
2 court to expedite?

3 **COMMISSIONER CLARK:** Yeah.

4 **CHAIRMAN JOHNSON:** Okay. Let me be clear.
5 What kind of language do we want to have in the order
6 on this?

7 **COMMISSIONER JACOBS:** Now you've asked me to
8 go beyond my expertise language.

9 **COMMISSIONER CLARK:** Well, what I would say
10 is that we would deny their Motion to Establish a
11 Mechanism to Hold Florida Water Harmless on the idea
12 that it's outside of our jurisdiction; it's in the
13 appellate court's jurisdiction, and we cannot make
14 that kind of substantive change while the appeal is
15 pending.

16 With respect to the request -- treating
17 their request -- their motion as a request to vacate
18 the automatic stay, that motion wasn't characterized
19 as such and whether or not there is an automatic stay
20 is not clear. They should refile a motion asking --
21 briefing the notion of whether or not there is a stay.
22 And if there is a stay, that we should lift it and
23 what those terms should be. And then parties would be
24 allowed to respond, and we'd hear from parties at it
25 on agenda.

1 **CHAIRMAN JOHNSON:** That's the motion. I do
2 have one question. It struck me in Staff's analysis
3 as to whether or not the provisions of the rule that
4 provide for an automatic stay are in effect, were
5 pretty clear, the analysis was pretty clear, so I
6 wouldn't want to say we aren't sure, but whether or
7 not the automatic stay provisions apply or not.

8 **COMMISSIONER JACOBS:** We'll leave it for
9 argument by the parties.

10 **COMMISSIONER CLARK:** That's fine.

11 **CHAIRMAN JOHNSON:** Yes, something like that.
12 Just changing the language to we will allow the
13 parties an opportunity, as opposed to just saying
14 we're not clear. Because I thought your analysis was
15 pretty clear and it was convincing, at least to me.
16 But we do want to hear from the other parties before
17 we make a final decision. That's the motion.

18 All those in favor signify by saying "aye."
19 Aye.

20 **COMMISSIONER DEASON:** Aye.

21 **COMMISSIONER CLARK:** Aye.

22 **COMMISSIONER GARCIA:** Aye.

23 **COMMISSIONER JACOBS:** Aye.

24 **CHAIRMAN JOHNSON:** Opposed? Show it then
25 approved unanimously.

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Thank you, and we will re -- we will convene
internal affairs in 30 minutes.

* * * * *

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that Item No. 28, Docket
6 No. 950495-WS of the 2-3-98 Agenda Conference was
7 heard by the Florida Public Service Commission at the
8 time and place herein stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 48 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 10th day of February, 1998.

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JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Official Commission Reporter
(904) 413-6732