

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
TALLAHASSEE, FLORIDA

IN RE: Complaint by Susan K. Candelore against Florida  
Power Corporation regarding alleged violation of  
Medically Essential Service tariff through failure  
to give required 30-day notice of disconnect.

DOCKET NO. 980682-EI

BEFORE: CHAIRMAN JULIA A. JOHNSON  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER JOE GARCIA  
COMMISSIONER E. LEON JACOBS, JR.

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 7\*\*PAA

DATE: Tuesday, August 4, 1998

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

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**APPEARANCES:**

JAMES A. MCGEE, Esquire, representing Florida Power Corporation.

**STAFF RECOMMENDATIONS**

**Issue 1:** Should the Commission dismiss the complaint of Susan K. Candelore against Florida Power Corporation for failure to state a cause of action?

**Recommendation:** No. Ms. Candelore's complaint states a cause of action upon which the Commission may grant relief.

**Issue 2:** Should the Commission find that Florida Power Corporation violated the notice provisions in its Medically Essential Service tariff in handling the account of Susan K. Candelore?

**Recommendation:** Yes. In handling Ms. Candelore's account, Florida Power Corporation violated its Medically Essential Service tariff by failing to give Ms. Candelore 30 days' notice of discontinuance of service.

**Issue 3:** Should the commission impose any penalty upon, or otherwise discipline, Florida Power Corporation for violating the notice provision in its Medically Essential Service tariff in handling the account of Susan K. Candelore?

**Recommendation:** No. The Commission should not impose any penalty upon, or otherwise discipline, Florida Power Corporation for violating the notice provision in its Medically Essential Service tariff.

**Issue 4:** Should this docket be closed?

**Recommendation:** This docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period.

P R O C E E D I N G S

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CHAIRMAN JOHNSON: Item 7.

COMMISSIONER GARCIA: Is there anyone to speak?  
I'll move it.

COMMISSIONER JACOBS: I -- there were a couple  
of questions I had on that.

CHAIRMAN JOHNSON: Florida Power Corp if you could  
be seated.

Commissioner Jacobs, would you like for staff to  
tee it up?

COMMISSIONER JACOBS: Yeah, why don't you do that.

CHAIRMAN JOHNSON: If you could, go ahead and  
introduce the item.

COMMISSION STAFF: Yes. Commissioners, Item 7 is  
staff's recommendation concerning the complaint of Susan  
Candelore against Florida Power Corporation for violation  
of its Medically Essential Service tariff.

Although Ms. Candelore's service was not  
disconnected, staff recommends that you find that Florida  
Power Corporation violated its tariff by failing to give  
Ms. Candelore the requisite 30-day notice of  
discontinuance of service.

Staff does not recommend a penalty or any other  
disciplinary action against Florida Power for two main  
reasons:

1           The first, a review of our complaint files indicates  
2           that this tariff violation was an isolated event and is  
3           not indicative of a recurring problem at Florida Power.

4           Second, Florida Power's Medically Essential  
5           Service tariff was amended effective January 1998 to  
6           clarify the procedures to be followed for providing  
7           disconnect notices to customers receiving service under  
8           the tariff. This amendment, it appears, will further  
9           reduce the likelihood of a similar tariff violation.

10           Ms. Candelore's attorney notified me by letter  
11           that she would not be appearing today. And I believe  
12           that I provided each of you with a copy of her letter.

13           And Mr. McGee is here for Florida Power Corporation.

14           CHAIRMAN JOHNSON: Mr. McGee, are you here to make a  
15           presentation or just answer questions?

16           MR. MCGEE: Just a very brief presentation and then  
17           answer questions.

18           CHAIRMAN JOHNSON: Okay.

19           MR. MCGEE: My name is Jim McGee. I'm here on  
20           behalf of Florida Power Corporation.

21           Florida Power concurs with staff's ultimate  
22           recommendation, that no penalty should be imposed in this  
23           matter. We respectfully disagree with the way the staff  
24           arrived at that conclusion, and there's two points of  
25           disagreement.

1           One, we believe that the complaint should have been  
2 dismissed, as we requested in our answer to the  
3 complaint. And the reason is because the complaint  
4 sought penalties to be imposed on Florida Power by the  
5 Commission, but failed to allege in -- either as an  
6 ultimate conclusion or any facts that would support a  
7 conclusion that there was any willful intention or  
8 conduct on Florida Power's part. I think staff,  
9 essentially, agreed with Florida Power that the failure  
10 to provide the full 30-day notice period was a result of  
11 a clerical mistake. And in a situation like this where  
12 there is a finding, but no relief that can be based on  
13 that finding and no relief being able to be based because  
14 there is no willful conduct, there's no basis for the  
15 Commission to consider the complaint because penalties  
16 can't be invoked.

17           We also disagreed with the conclusion that staff  
18 recommended that Florida Power violated the Medically  
19 Essential Service tariff. And the reason that we believe  
20 that there shouldn't be a violation of that is because  
21 the purpose of the tariff is intended to provide an  
22 additional notice period for Medically Essential Service  
23 customers, to provide them with the extra time necessary  
24 to make the alternative service arrangements or care  
25 arrangements that might be necessary if service was

1 disconnected. And the key point here is that service was  
2 not disconnected. And we don't believe that just because  
3 there is a clerical error that involves a mistake in  
4 administering the tariff that that necessarily supports a  
5 conclusion that the tariff was violated, particularly  
6 when the purpose of the tariff in this case was not  
7 compromised. There was no harm either to Ms. Candelore  
8 or to anyone in her household.

9 And so for those reasons we believe that the  
10 complaint should have been dismissed. And we believe  
11 that -- excuse me -- that there shouldn't have been a  
12 finding that the tariff was violated.

13 CHAIRMAN JOHNSON: Thank you, Mr. McGee.

14 Staff, any response?

15 COMMISSION STAFF: First, in response to whether  
16 there was a violation of the tariff, the tariff states  
17 that the company -- well, let me clarify that this --  
18 this is what the tariff stated at the time that the  
19 notice of disconnection was sent out. The tariff has  
20 since been amended, as I said earlier. The tariff at the  
21 time stated that, "The company will give 30 days notice  
22 of discontinuance of service to any customer whose  
23 service is deemed to be medically essential." And the  
24 way staff reads that is that it required -- the tariff  
25 requires that the notice be sent out and say, "If you do

1 not pay within this 30-day period, or by a certain date  
2 that's 30 days from now, that you will be disconnected."  
3 And the notice that was sent gave a date that was 15 days  
4 from the date of the notice of disconnection. And we  
5 believe that the language of the tariff required that the  
6 notice itself give the 30-day period.

7 CHAIRMAN JOHNSON: To the first point on the willful  
8 intent, that willful intent was not present and,  
9 therefore, there was not a basis for a cause of action.

10 COMMISSION STAFF: Well, on that point, I believe --  
11 I believe what Mr. McGee argued was that because --  
12 because there was no relief that the Commission could  
13 provide that the complaint should be dismissed.

14 CHAIRMAN JOHNSON: Uh-huh.

15 COMMISSION STAFF: Part of the relief that -- well,  
16 the relief that was requested was a finding that there  
17 was a violation of the tariff and a penalty or any other  
18 discipline that the Commission deemed appropriate. Staff  
19 believes that the Commission has the power to make a  
20 finding of the tariff violation, that the Commission does  
21 have exclusive jurisdiction over this type of a service  
22 question.

23 COMMISSIONER JACOBS: Does the standard for willful  
24 violation apply to a simple violation of the tariff  
25 filing or was that some kind of show cause that would

1 follow from that?

2 COMMISSION STAFF: I'm sorry. Could you repeat  
3 that?

4 COMMISSIONER JACOBS: Are we required to make a  
5 finding of willful violation simply for -- where the  
6 allegation is for the violation of the tariff or --  
7 because my understanding was that that was a show cause  
8 proceeding would be where we would have to find a willful  
9 violation or some kind of willful intent. Why we are  
10 show causing them here.

11 COMMISSIONER CLARK: Yes, that is -- are we just  
12 making a finding here that the tariff was violated?

13 COMMISSION STAFF: That is what staff is  
14 recommending, that we simply -- that you simply make a  
15 finding that the tariff was violated.

16 COMMISSIONER CLARK: And --

17 COMMISSION STAFF: But that no penalties are  
18 appropriate.

19 COMMISSIONER CLARK: Right.

20 COMMISSION STAFF: And I think we don't even -- in  
21 our opinion, it's not necessary in this case because of  
22 the circumstances to get to the question of even looking  
23 at whether it was a willful violation or considering  
24 penalties. It's something that's in the Commission's  
25 discretion.

1           COMMISSIONER JACOBS: Did you have a question,  
2 Susan?

3           COMMISSIONER CLARK: Yes. Mr. McGee, you're  
4 taking the position that we should not find a violation  
5 unless we find it a willful violation?

6           MR. MCGEE: No, ma'am. The willful violation has to  
7 do with whether the complaint should be dismissed. And I  
8 guess our view there is that simply having a finding that  
9 Florida Power violated the tariff without the ability to  
10 take some action that's requested in the complaint based  
11 on that finding renders the complaint insufficient.

12           As to the violation of the tariff, what we've asked  
13 is that you look at that issue in terms of the purpose  
14 that that tariff is intended to accomplish. And that's  
15 to provide a period of additional notice before service  
16 is disconnected, so that suitable arrangements can be  
17 made. And here there was no disconnection. It was a  
18 harmless miscalculation of the 30-day notice period.

19           COMMISSIONER CLARK: Well, I appreciate the fact  
20 that you might indicate it's harmless. But I certainly  
21 think to the person receiving that notice it might not  
22 have been harmless. The fact that she didn't get the  
23 full 30 days notice and was told that it was going to be  
24 15 days, that probably was not harmless to her.

25           COMMISSIONER JACOBS: The question I had is you

1 indicated that you were given some comfort by the  
2 revisions that had been made to the tariff. What was  
3 that revision?

4 COMMISSION STAFF: If you could give me a minute  
5 to find that. Basically, it's the same language that  
6 was in the prior tariff, but it added two paragraphs to  
7 further clarify what the procedures would be.

8 COMMISSIONER JACOBS: Uh-huh.

9 COMMISSION STAFF: The language that was added is  
10 that, "When a Medically Essential account appears on the  
11 disconnect list for electric service, a letter will be  
12 mailed to the customer indicating that if full payment is  
13 not received or other arrangements are not made for  
14 payment within 30 days from the date of the letter,  
15 electric service will be disconnected.

16 "The account would be documented with the following  
17 information: The date the letter was mailed, the amount  
18 required to be paid to continue service and the adjusted  
19 disconnect fee.

20 "In the case of a Medically Essential account or  
21 termination of electric service threatens assessments of  
22 life, a courtesy call will be made prior to disconnect.  
23 For those customers where service is vital to sustain  
24 life and the company becomes aware that the customer  
25 cannot meet the payment requirement, the appropriate

1 state agency will be notified."

2 COMMISSIONER JACOBS: Okay. And it would appear,  
3 then, that for the -- for Ms. Candelore here in this  
4 instance, her situation would have been that someone  
5 would have called her, because they would have  
6 recognized that this account would have had some  
7 life-sustaining relevance to it?

8 COMMISSION STAFF: Yes. And I think that even  
9 before this tariff was amended, I believe that's -- from  
10 what we've seen from the customer and the company, I  
11 believe that's what happened in this case, that she was  
12 called after the notice, and Power Corp was still  
13 operating under the assumption that the 30 days -- or the  
14 appropriate notice period was going to end on a certain  
15 date.

16 COMMISSIONER JACOBS: Did they contact her? I'm  
17 sorry, the company did contact her before --

18 COMMISSION STAFF: Yes. As I recall, yes.

19 COMMISSIONER JACOBS: The concern I have is  
20 two-fold. One, this is a particularly sensitive kind of  
21 issue with regard to where there is a life-sustaining  
22 piece of equipment that requires service. The prospect  
23 of clerical errors or the prospect of inadvertent notices  
24 carries a much greater relevance in these circumstances.

25 And I've been contacted by a group of people who

1 have some similar concerns, not -- and Ms. Candelore was  
2 not part of that group that I'm aware of. But -- so I  
3 can't -- I won't discuss too much what the concern was,  
4 but only to say that they are very similar, are similar  
5 circumstances and very similar concerns.

6 Without belaboring the point, Madam Chairman, what  
7 I would suggest -- and I've been informed that there are  
8 significant numbers of clients who've requested these  
9 services, and there are even others, perhaps, who may  
10 need these services and are not aware of these tariffs.

11 What I would simply suggest is we have staff go do  
12 a managing audit of these tariffs, which are required by  
13 Commission rules. These type tariffs are required by  
14 Commission rules, and -- because I think it's a very  
15 sensitive matter. We want to know how effective they  
16 are, first of all, in reaching the affected communities.  
17 And second of all, in their interaction with the  
18 companies to ensure that the particular concerns are  
19 addressed.

20 CHAIRMAN JOHNSON: Weren't we -- and maybe -- is  
21 Ms. DeMello here?

22 Could you speak to this issue in general and what  
23 we've been doing on this particular issue?

24 MS. DEMELLO: Commissioners, we've had a workshop --  
25 basically, it was an informal workshop with the gentleman

1 that Commissioner Jacobs was speaking of, Mr. Tony  
2 Georgio (phonetic) of Compassion Friends, who was very  
3 concerned about this issue of the medical hardship cases.

4 And we did have -- the companies did come to  
5 Tallahassee, and Mr. Georgio spoke to our staff and to  
6 the representatives there. And his concern is that  
7 people, like Commissioner Jacobs mentioned, don't know  
8 about this. And so we are doing -- asking the companies  
9 to work trying to get the word out.

10 And, also, Mr. Georgio, when he finds somebody in  
11 this type of situation, has been calling my office on a  
12 weekly basis to let me know who has a problem and the  
13 utility. And so we have been working with the utilities  
14 on these types of cases.

15 As far as the legal ramifications, I believe  
16 Mr. Elias can speak to that or somebody, perhaps --  
17 Mr. Ging has done a lot of work in electric and gas on  
18 the background material. You may want to hear from them.

19 COMMISSIONER DEASON: One quick question before we  
20 transfer that over to them. This dialogue that's been  
21 going on, has it been just for the investor-owned  
22 utilities or has it also been with municipals and  
23 cooperatives?

24 MS. DEMELLO: The investor-owned utilities were  
25 the ones that appeared, you know, at the workshop.

1           COMMISSIONER DEASON: So far --

2           MS. DEMELLO: It wasn't -- let me say it wasn't  
3 really characterized as a workshop. It was a meeting  
4 Mr. Georgio had requested. He also had met with the  
5 executive management of the Commission, and then he  
6 requested a follow-up meeting to try to get his point  
7 across. And so the investor-owned utilities were the  
8 ones at the meeting.

9           CHAIRMAN JOHNSON: Mr. Elias, I know one of your  
10 attorneys did some legal research.

11          MR. ELIAS: Yes, let me speak to that. Let me say  
12 first, in further responding to Commissioner Deason's  
13 questions concerning the municipals and the cooperative  
14 utilities, it's our belief that we do not have the  
15 jurisdiction to impose on them tariff conditions at this  
16 level of detail, directed to this specific concern.  
17 That's for the governing bodies of the munies and  
18 cooperatives --

19          COMMISSIONER GARCIA: Don't we have safety authority  
20 over them?

21          MR. ELIAS: It's the safety of the distribution  
22 system. I don't know that it has ever been viewed as  
23 jurisdiction to protect the safety of people who, but for  
24 the provision of electric service, would suffer grave  
25 consequences.

1           On the question of our jurisdiction over  
2 investor-owned utilities to impose further detailed  
3 requirements with respect to the treatment of medically  
4 essential -- customers for whom service is medically  
5 essential, it has not been all that clear under the  
6 revised APA that we have the power to promulgate rules to  
7 further define this area.

8           As you know, with the last APA -- with the last APA  
9 revision in 1996, the Legislature included language that  
10 spoke to an agency having specific authority for each and  
11 every rule that it enacts. And an awful lot of our rules  
12 have been subject to scrutiny by the Joint Administrative  
13 Procedures Committee and by the Administration Commission  
14 insofar as claims that they exceed the delegated  
15 authority which this agency has to operate with.

16           If this particular rule or this particular subject  
17 area is capable of further regulation, it's under the  
18 powers granted the Commission in Section 366.051, which  
19 authorizes us to provide service rules and regulations to  
20 be observed by each investor-owned utility.

21           There has been a case pending for several months  
22 now before the First District Court of Appeals involving  
23 Consolidated Tomoca Land Company which addressed the  
24 particular issue of what is meant by the new language in  
25 the APA with respect to an agency's authority to

1 promulgate rules. The First DCA rendered its opinion  
2 last Wednesday, stating, in essence, that the St. Johns  
3 River Water Management District did have the authority to  
4 adopt the proposed rules, reversing the order of the  
5 administrative law judge that found the authority (sic)  
6 did not have the authority, and basically provided some  
7 guidance to agencies as to whether or not a specific rule  
8 could be construed to be within the authority granted by  
9 the Legislature.

10 We're still analyzing that case. We just got the  
11 opinion yesterday afternoon. And what we do further in  
12 this area depends on what the Commission ultimately  
13 decides is within our scope of authority under the APA as  
14 it now exists.

15 COMMISSIONER JACOBS: If I may interject, I think  
16 that, perhaps, is a fight for a later day.

17 MR. ELIAS: Uh-huh.

18 COMMISSIONER JACOBS: I think the real concern is  
19 to what extent -- we're addressing some -- I think, some  
20 rather pressing concerns with regard to these families.  
21 I would hope that we would proceed in a cooperative  
22 manner with the utilities, because I think this should be  
23 a joint effort. They're addressing some issues from  
24 their prospective, and we're addressing some health and  
25 public policy issues. I would hope that we could

1 proceed primarily in a cooperative effort. And I would  
2 hope that we could bring in those other entities that --  
3 where jurisdiction is questionable in a voluntary manner.  
4 But where we -- in an effort to develop some pretty  
5 concise approaches to addressing this concern.

6 I've seen the tariffs that the IOUs have filed. I  
7 don't think there's anything particularly glaring or  
8 noteworthy about those tariffs. They basically express  
9 an intent.

10 My concern is the underlying procedures and actual  
11 details of how we address the ultimate needs of these  
12 companies -- I'm sorry, these families. And where we can  
13 develop some good and solid procedures in how to help  
14 them. I would hope we could bring that in voluntarily.  
15 And if not, then I think we could pursue some other ways  
16 there.

17 MR. ELIAS: And I think that the staff has been  
18 doing just that since this problem was first highlighted  
19 for us more than a year or so ago, as far as making sure  
20 that if we get a call from a consumer with this  
21 particular --

22 COMMISSIONER GARCIA: Let me just, so that staff  
23 can understand. I agree with the Commissioner. And  
24 think that, you know, if you need to count heads up here,  
25 I think it's something important. And I don't know if

1 it's establishing procedures or writing a rule that  
2 applies to everyone evenly, so that all this state and  
3 this Commission can explain exactly what it is that a  
4 customer can ask for if they have a specific condition;  
5 and, thereby, making it easier for those people who need  
6 this type of service. We may have to end up there, but I  
7 want to express support for what the Commissioner is  
8 saying, because I think this is a very specific group who  
9 has very specific needs. And I think that there should  
10 be some type of blanket protection we provide for them.  
11 And if we can provide it for everyone in the State of  
12 Florida under the provision of safety, so be it.

13 I don't know if we need to go there, and I hope  
14 we can work it in a cooperative manner. But I think the  
15 same thing that applies to TECO should apply to Florida  
16 Power Corp, should apply to FPL and should apply to  
17 municipals. In other words, any Floridian who has this  
18 type of need should have certain basic guarantees. And  
19 if this Commission is the forum to do that, I'm all for  
20 it.

21 CHAIRMAN JOHNSON: Let me make sure I understand,  
22 Commissioner Jacobs. One of the things in your original  
23 suggestion, you're asking that we -- an audit sounds  
24 like a strong word, but you're asking that we review the  
25 tariffs in all of the different IOUs to, I guess, look

1 at consistency and to look at implementation?

2 COMMISSIONER JACOBS: Correct.

3 CHAIRMAN JOHNSON: And we can do that, can't we?

4 MR. ELIAS: Absolutely.

5 CHAIRMAN JOHNSON: I guess one of the things that  
6 Ms. DeMello stated, too, as maybe problematic, but it  
7 probably goes to implementation, is customers being aware  
8 that this is available and what this is that's available.  
9 That, to me, goes to your whole issue of implementation.  
10 And if we're auditing or reviewing, if we have the  
11 companies come to us, they can tell us their process. We  
12 could discuss with them the sufficiency or lack of  
13 sufficiency and see if we can come up with some  
14 solutions.

15 COMMISSIONER JACOBS: That's exactly the spirit that  
16 I would like to proceed in.

17 COMMISSION STAFF: Commissioners, we got together  
18 with the utilities and got them to explain to us the  
19 procedures that actually do -- that extend beyond what  
20 their tariffs say. And to staff it appeared adequate.  
21 They seem to respond to the customers' concerns in  
22 calling them and going the extra mile beyond what their  
23 tariffs say. I'm not sure if Mr. Georgio would agree  
24 that it was as far-reaching as he would have liked, but  
25 I'm not sure that -- I guess whether or not we have the

1 authority to go to rulemaking and codify for each  
2 utility procedures that they must follow in order to,  
3 you know, comply with the --

4 COMMISSIONER GARCIA: Do you think it's easy to  
5 explain this statewide? (Microphone not on.) Could I,  
6 as a Commissioner, or could Commissioner Jacobs, as a  
7 Commissioner, make a statement on what exactly we do for  
8 Floridians that have this (inaudible), based on the  
9 report that you did with the company? Each one has a  
10 different procedure. I'm not saying this is not an  
11 appropriate procedure.

12 COMMISSION STAFF: Right.

13 COMMISSIONER GARCIA: I'm just saying it's not a  
14 comprehensive, because each one is different.

15 COMMISSION STAFF: That's correct.

16 COMMISSIONER GARCIA: That TECO has a more detailed  
17 (inaudible)-- there's a little more detail there. Others  
18 were a little bit more vague. But I'm sure that if  
19 Commissioner Jacobs was asked today what exactly we do  
20 for these people in Florida, we wouldn't have an answer.  
21 We know we do something, and it's only on these we could.

22 I think what the Commission would like, and perhaps  
23 -- and correct me if I'm wrong, Commissioners, is  
24 something more comprehensive from the companies, as well  
25 as from municipals and cooperatives, just to have an

1 idea. We're not forcing anybody to do anything, but we  
2 need to have a comprehensive idea of what's out there, so  
3 that these people who are in this condition have some  
4 type of guarantee when they're in Florida.

5 COMMISSION STAFF: Okay. I suppose the utilities  
6 could, you know, put together much of what -- like they  
7 did before about their procedures that they follow that,  
8 you know, maybe go beyond their tariffs. And I don't  
9 know if they'd like to issue that to the Commission as  
10 available for a press release or something.

11 COMMISSIONER JACOBS: Let me first -- when you say,  
12 "go beyond their tariff," I view this as a tariff that is  
13 in place that is being implemented. And what we're  
14 asking is what are the procedures by which you implement  
15 your tariff language, first of all. Second of all, I  
16 would -- I think our review of that response would then  
17 be to say, "To what extent do these procedures  
18 sufficiently adhere to the intent and the language of  
19 this tariff?" And if we conclude at the end of that day  
20 that those procedures comply with the language of that  
21 tariff, then I think we have an answer to one question.  
22 If we conclude that they are not sufficient, then I think  
23 we have another course of action in front of us.

24 I'm not looking to start off on a trail that is  
25 endless. I understand the difficulties that these

1 companies are facing in dealing with this problem. And  
2 there are certain limits that they can -- that they will  
3 meet in trying to address this problem, but beyond which  
4 they probably won't go. So I'm not looking for them to  
5 try and figure out how to ultimately solve this problem  
6 for these families. I'm trying to figure out whether or  
7 not the tariff that they are required to have on their  
8 books and the language that they put in those tariffs has  
9 been effectively implemented.

10 COMMISSION STAFF: Okay.

11 COMMISSIONER JACOBS: And if we have done that  
12 already, then that would be okay. But if we have not,  
13 then I'd like to be able to do that, and as  
14 comprehensively as possible.

15 COMMISSION STAFF: Well, the rule that we have in  
16 place right now, it just calls for -- it's actually a --  
17 it's a one-sentence rule. I believe it says, "Each  
18 utility shall submit as a tariff item a procedure for  
19 discontinuance of service when that service is medically  
20 essential." And based on the limitations of that  
21 language, it basically says utilities shall file a tariff  
22 dealing with it. We've not -- haven't gone to rulemaking  
23 or to codify the procedures that each utility must follow  
24 in order to implement this.

25 COMMISSIONER CLARK: I don't think that's what he's

1 asking you to do. Let me ask a question about that rule.  
2 Is that rule applicable only to investor-owned?

3 MR. ELIAS: Yes. And, again, as far as our  
4 rulemaking authority, I'm not so sure -- to be perfectly  
5 honest, safety was not an issue that I'd considered  
6 before. And we'll certainly go take a look at that from  
7 that perspective and see if we can find some support for  
8 that --

9 COMMISSIONER CLARK: I'm not sure we need to do  
10 that. I think we have a rule that addresses this  
11 situation. And I think all Commissioner Jacobs is asking  
12 is ask each utility we regulate, "What are your tariffs  
13 and how do you implement them." And then, perhaps,  
14 you're also looking for --

15 COMMISSIONER GARCIA: Well, I think that staff is  
16 answering that that's they did.

17 COMMISSIONER JACOBS: Yes.

18 COMMISSIONER CLARK: Okay.

19 COMMISSIONER GARCIA: That they already did that.  
20 And I assume you might -- you might have received what  
21 they -- some of what staff was requested by Commissioner  
22 Jacobs.

23 COMMISSIONER CLARK: The other question is, then,  
24 finding out from the municipals and co-ops what their  
25 procedures are. I think we can ask and alert them to the

1 fact that this may be something that they ought to  
2 address. It doesn't seem to me we necessarily have to  
3 require them to do it, because I think it may be  
4 something they would like to know about and do.

5 MR. ELIAS: And as Mr. Ging indicated, this is  
6 something that the utilities have all been very  
7 cooperative about. I mean, there is nobody that I've  
8 encountered that's given short shrift to this problem at  
9 all.

10 COMMISSIONER JACOBS: No, and I would concur in  
11 that. And I don't want to be trying -- casting stones,  
12 that's why I want to continue to focus on whether or not  
13 we're meeting the needs of the targeted families, not to  
14 what extent somebody is shirking their duties.

15 And my ultimate concern is -- and let me approach it  
16 from this way. It sounds like the rule language is  
17 fairly brief and fairly narrow, i.e., just put something  
18 on the books that talks about this circumstance. We may  
19 be looking at something that will say more specifically  
20 how we would pursue addressing this problem. I'm not  
21 putting that off right now. What I'm saying is I want to  
22 understand what's out there. And if we already  
23 understand that, then I think we're looking at the next  
24 step. I did not understand we were there yet. I did not  
25 -- I got the information. I did not understand whether

1 or not -- that we understood what procedures are in place  
2 by each utility to implement the tariff that they put on  
3 the books and how effective those procedures are in  
4 addressing the tariff language. But if that's what  
5 you're saying, then I would like to review that, and then  
6 we'll make a decision. We'll come back and figure out  
7 where we go from there.

8 CHAIRMAN JOHNSON: Commissioner Jacobs, you raise a  
9 good point in that -- and particularly when the  
10 antecedent of the pronoun "we." Perhaps it would be  
11 helpful in Internal Affairs or something for us to better  
12 understand. And I know I worked with the Mr. Elias and  
13 Bev several months ago, and we -- the staff was trying to  
14 determine and assess the tariffs and whether or not they  
15 were sufficient. And they did a wonderful report for  
16 you. But it might be helpful for us to have a  
17 presentation from staff and from the companies, so that  
18 we better understand, and we can respond when customers  
19 call you or call me, we can better respond. And at that  
20 point we can determine, well, is this sufficient? And if  
21 we determine it's not sufficient, do we have the  
22 authority to do more?

23 And in the context of Internal Affairs might be a  
24 good way to kind of tee it up, and have the open dialogue  
25 with the companies in a, you know, nonadversarial way,

1 just to better educate ourselves.

2 COMMISSION STAFF: Okay. We can do that.

3 CHAIRMAN JOHNSON: Would that work as a start?

4 COMMISSIONER JACOBS: I would agree with that.

5 COMMISSION STAFF: I think we can communicate with  
6 the utilities and see if they can come forward and, you  
7 know, give us something more if they've got revised as to  
8 implementation of the procedures. And maybe they could  
9 offer a presentation to you all. I'd like to see how  
10 they do it, and I can also contact the munies and see if  
11 they have anything in place.

12 MR. ELIAS: And the cooperative utilities, too,  
13 since, you know, the intent, as I perceive it, is to have  
14 a standard or at least an understanding of what any  
15 customer in the state, no matter who they take their  
16 service from.

17 CHAIRMAN JOHNSON: And for the co-ops, it may just  
18 be educational for them to see what the IOUs are doing  
19 and voluntarily they may -- although they may be doing  
20 more, you know. And that will be educational for us to  
21 better understand how all of the citizens are being  
22 treated under the provision.

23 COMMISSIONER JACOBS: And one piece I'll tell you  
24 that I found particularly lacking, and I do want to agree  
25 that staff has done a good job in looking at this and I

1 think the companies have done a good job in responding.  
2 But I do want to make sure that we understand how  
3 effective the companies are in complying with what  
4 they've said on their tariff books and what procedure  
5 they've espoused in order to comply with that tariff.  
6 That piece I want to be clear on. Okay.

7 CHAIRMAN JOHNSON: One other question, and this  
8 goes more to Ms. DeMello. Did you all develop or I'm  
9 pretty sure -- didn't you all develop a manual? I think  
10 Ms. Crump put together a manual working with these  
11 individuals?

12 MS. DEMELLO: We're working on that. But the other  
13 question that I talk to Mr. Georgio recently was that the  
14 people that he is dealing with, who call his office, are  
15 not understanding how to get in touch with their utility.  
16 Oftentimes we'll have people call our 800 line who are  
17 confused about what it means to be medically disabled or  
18 medically -- you know, on that medical hardship. So I  
19 think that would be one point of interest that we need to  
20 look into is how the utilities are educating possible and  
21 potential customers who may or may not know how to become  
22 listed on this. Because there are several steps that the  
23 customers have to take to do this.

24 CHAIRMAN JOHNSON: That will be helpful to bring in  
25 the dialogue. And I did want to note for a moment that I

1 know Ms. DeMello and her staff, that they've been very  
2 involved in this. And Ms. DeMello personally, whereby  
3 instead of calling IOUs, people feel more comfortable  
4 calling Ms. DeMello and her staff because of the  
5 assistance they've been able to provide. We need to make  
6 sure that we have the kind of dialogue and openness that  
7 the IOUs -- of course, you've been doing a wonderful  
8 services, Ms. DeMello, but we want to make sure that we  
9 have a process that works efficiently and the IOUs are  
10 handling more of this.

11 Any other comments to Item 7?

12 COMMISSIONER DEASON: Well, let me just ask a  
13 question for clarification. I've heard a lot of  
14 discussion here today. And I just want to make sure we  
15 focus in on what we're trying to accomplish. And I've  
16 heard discussion here. There's been concern about -- we  
17 know that there are tariffs out there. There have to be  
18 tariffs to be in compliance with our rule. Okay. I've  
19 heard questions to whether the -- whether the tariffs are  
20 adequate. I've heard concerns about even if the tariffs  
21 are adequate, are the tariffs being complied with. And I  
22 realize this is pretty much limited to utilities we have  
23 direct jurisdiction over in terms of -- when it comes to  
24 terms of tariffs and compliance with those tariffs.

25 I've also -- I've heard that there's been some

1 | questions concerning the consistency as to whether there  
2 | are any areas of consistency or if there could be areas  
3 | of consistency developed. And then I've heard concerns  
4 | about the adequacy of customer notification and education  
5 | as to how customers can be informed of these tariffs and  
6 | how they avail themselves if they find themselves in that  
7 | situation. Are we going to cover all of that or -- I'm  
8 | just trying to understand where we are at this point and  
9 | what we hope to accomplish and try to focus in and what  
10 | we want staff to do for the Internal Affairs.

11 | CHAIRMAN JOHNSON: Uh-huh.

12 | COMMISSIONER DEASON: It's going to cover all of  
13 | that? I guess I'll direct that to Commissioner Jacobs  
14 | since you kind of kicked this off.

15 | COMMISSIONER JACOBS: Your first two questions are  
16 | my essential concerns, i.e. --

17 | COMMISSIONER DEASON: Adequacy of the tariffs and  
18 | whether the tariffs are being complied with?

19 | COMMISSIONER JACOBS: Correct.

20 | COMMISSIONER DEASON: Okay.

21 | COMMISSIONER JACOBS: The public education concerns  
22 | are, I think, very important. And I hesitate to separate  
23 | them, separate that concern now, but I think we can deal  
24 | with those in a manner that is a bit different here. And  
25 | I may be wrong. I'm open to changing this, but my

1 essential concerns in coming to this issue was whether or  
2 not what we have now is adequate in dealing with the  
3 concerns of these families and whether or not what we say  
4 we're doing we're actually doing. Because if someone  
5 calls us, I want to have some comfort in telling them  
6 that you call this company, they'll respond to you this  
7 way. It came about in this docket because the essence of  
8 the concern in this docket was that when a family went  
9 through those procedures, they did not discover that.  
10 They did not discover that the procedures were as our  
11 tariff says they should be. I'm sorry, that the  
12 company's tariff says it should be per our requirement.  
13 And so that's how I arrived at this point with this  
14 docket.

15 COMMISSIONER DEASON: Well, let me say I don't  
16 object -- I mean, I agree with that. I think that is a  
17 good basis. We've already got a good -- good preliminary  
18 work has already been done in that regard. I'm a little  
19 hesitant at this point, and that's the reason I asked the  
20 question. When you start talking about consistency  
21 between the different tariffs, that's sounds a lot like  
22 rulemaking to me. And I'm not so sure we're at the point  
23 to try to go to rulemaking. And I guess that's my  
24 question. We're -- are we at -- we're not --

25 COMMISSIONER JACOBS: I don't think we have the

1 information. I don't rule out rulemaking as an avenue to  
2 address this concern. It would be my last avenue. I  
3 would hope it would be the very last avenue that we would  
4 undertake in order to solve this problem. I hope we can  
5 get to some reasonable solutions without having to do  
6 rulemaking, quite frankly. Because I don't think -- that  
7 doesn't really help anyone involved. It doesn't help the  
8 family necessarily to have a rule. They want the  
9 companies to really have something on the books that the  
10 companies can effectively implement.

11 COMMISSIONER GARCIA: Just to make sure that by  
12 placement, I'm not forgotten. I only sit to the right of  
13 Commissioner Deason. I am way to the left on him on this  
14 issue. I think we may need to go to rulemaking from what  
15 I saw that staff had done. I have no problem with the  
16 work that staff did. I think they did -- they did the  
17 preliminary work and I think what Commissioner Jacobs is  
18 asking for is a good beginning so that we can get the  
19 full picture. And we may not need to go there.

20 And perhaps in an effort to stop Commissioner  
21 Garcia, the companies will be as forthcoming as  
22 Commissioner Jacobs and Commissioner Deason wish them to  
23 be, and as cooperative as we need them to be. But I do  
24 believe that we may need to go to rulemaking on this,  
25 especially with the advent of competition looming around

1 the corner in this area. We don't want anyone to slip  
2 through the cracks. This population is infinitesimally  
3 small when you look at the population of Florida. And  
4 they've got enough problems without being worried about  
5 losing their life.

6 COMMISSIONER DEASON: Let me say that comment should  
7 not be interpreted that I am adverse to going to  
8 rulemaking; I just don't think that we're there yet.

9 COMMISSIONER GARCIA: No, I understand.

10 CHAIRMAN JOHNSON: And as we pose the issue, it  
11 seems to me that we'll have the opportunity to review  
12 what's in place now and determine if it's adequate. Then  
13 we'll have to ask Mr. Elias, "Well, do we have the  
14 authority to do anything more in terms of rulemaking?"  
15 So those are subsequent questions.

16 One issue that we raised I saw as a part of the  
17 implementation, Commissioner Jacobs, kind of reviewing  
18 how they let people know.

19 COMMISSIONER JACOBS: Okay.

20 CHAIRMAN JOHNSON: You know, the tariffs may be  
21 there and they may have procedures in place, but if  
22 people don't know about them, how do they communicate  
23 that to individuals? That would be, to me, a part of the  
24 implementation and the effectiveness of the tariff if you  
25 could be prepared to respond to that.

1 MR. ELIAS: I think that, you know, the four  
2 criteria that Commissioner Deason listed, numbers three  
3 and four were the consistency among the utilities and the  
4 customer education aspects of it. And as I understand  
5 Commissioner Jacobs' definition of adequacy, those two  
6 subject areas are of necessity, the kinds of things that  
7 we'll consider in determining whether the tariffs are  
8 adequate. Am I understanding you correctly?

9 COMMISSIONER JACOBS: Yes.

10 MR. ELIAS: Okay.

11 CHAIRMAN JOHNSON: Yes. I'd definitely -- I hadn't  
12 focused in on the consistency, but I definitely would put  
13 the consumer information in there. So we can -- I guess  
14 both are kind of inclusive in that discussion. Is that  
15 okay?

16 COMMISSIONER JACOBS: Yes, that's fine. That will  
17 get us where we want to go.

18 CHAIRMAN JOHNSON: Any other questions on Item 7 as  
19 to the specific issues here?

20 COMMISSIONER CLARK: Yes. I think we've strayed a  
21 little far of what is immediately before us.

22 I just want to -- you know, it seems to me that  
23 Mr. McGee has raised the question of whether or not we  
24 have to make a finding that there is willful in order to  
25 just answer the complaint in terms of whether the tariff

1 has been violated. And I guess my view is that we don't  
2 -- I agree with the staff recommendation here. And I  
3 want to take some comfort from another case that we had  
4 before us and ask the staff if they looked at that or how  
5 -- hopefully, that they looked at it, and they can tell  
6 me how it relates to this case.

7 And specifically I'm talking about Home Shopping  
8 Network, where an issue was before the judge as to  
9 whether the tariff -- whether they had complied with the  
10 tariffs. It was the case that was going on in federal  
11 court, or something, down in Tampa. And they simply sent  
12 it up to us and ask the question.

13 I tend to agree with staff. When we're asked  
14 whether the tariff has been violated or not, that's  
15 something we can speak on and should speak on, because it  
16 is within our expertise. And then whether or not we  
17 impose a penalty, then you'd look at whether it was a  
18 willful violation.

19 Did you look at -- is this the same sort of  
20 situation that we had arise in Home Shopping Network?  
21 I'm aware of the fact that this didn't come to us from a  
22 judge, but it's the same sort of --

23 MR. ELIAS: Yes, it is. The question at issue is  
24 within our exclusive jurisdiction over the rates and  
25 services of the utility.

1           COMMISSIONER CLARK: To determine if the tariffs  
2 have been complied with?

3           MR. ELIAS: Yes.

4           COMMISSIONER CLARK: Okay.

5           MR. ELIAS: And simply that, you know, that aspect  
6 of it.

7           COMMISSIONER CLARK: I move staff, then.

8           COMMISSIONER GARCIA: I think I already have.

9           COMMISSIONER CLARK: Second.

10          CHAIRMAN JOHNSON: There's a motion and a second.  
11 Any further discussion? Seeing none, show it approved  
12 unanimously.

13          Thank you, Mr. McGee.

14          MR. MCGEE: Thank you.

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## CERTIFICATE OF REPORTER

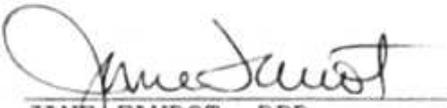
STATE OF FLORIDA )

COUNTY OF LEON )

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages numbered 1 through 35 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 17<sup>th</sup> day of August, 1998.

  
\_\_\_\_\_  
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