

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

DOCKET NO. 950495-WS

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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

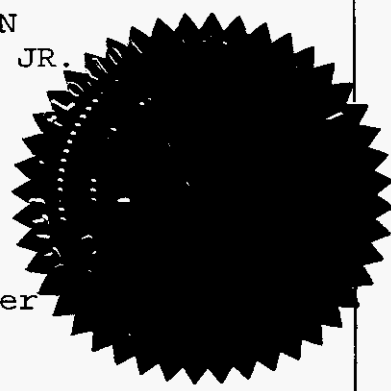
BEFORE: CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER E. LEON JACOBS, JR.

DATE: Monday, August 23, 1999

TIME: Commenced at 9:30 a.m.
Concluded at 11:20 a.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
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1 P R O C E E D I N G S

2 (Hearing convened at 9:30 a.m.)

3 **CHAIRMAN GARCIA:** Good morning. Counsel,
4 will you read the notice.

5 **MR. JAEGER:** Pursuant to notice issued
6 August 11th, 1999, this time and place has been set
7 for a Special Agenda to consider the motions of
8 Florida Water Services for approval of a new offer of
9 settlement and reconsideration of Order No.
10 PSC-99-1199-PCO-WS and OPC's motion to consolidate
11 this docket 950495-WS with Docket No. 980744-WS.

12 **CHAIRMAN GARCIA:** Any preliminary matters?

13 **MR. JAEGER:** I can read my intro, and then
14 we can take appearances, I think would be the best way
15 to go, Chairman.

16 **CHAIRMAN GARCIA:** Okay.

17 **MR. JAEGER:** Commissioners, this Special
18 Agenda item is to consider the newest offer of
19 settlement submitted by Florida Water Services on June
20 14th, 1999, and the responses thereto. Also, the
21 Office of Public Counsel in its response to this new
22 offer of settlement submitted on June 28th, 1999,
23 requested this docket, Docket No. 950495, be
24 consolidated with Docket No. 980744, the gain-on-sale
25 docket. Finally, on June 24th, 1999, Florida Water

1 petitioned for reconsideration of Order
2 No. PSC-99-1199-PCO-WS, an order requiring discovery
3 to proceed. Staff is recommending that each party be
4 allowed to participate, with participation limited to
5 ten minutes. However, Staff notes that it has been
6 past Commission policy to hear from any sitting
7 members of the Legislature in any Commission
8 proceeding. Also, in the November 13th Special Agenda
9 the other Commissioners voted to make the time limit
10 within the Chairman's discretion.

11 So our first issue today is participation,
12 which I think we need to vote on, and then we can
13 proceed with the other issues.

14 **CHAIRMAN GARCIA:** Very good. Do I have a
15 motion?

16 **COMMISSIONER CLARK:** Move Staff.

17 **COMMISSIONER DEASON:** Second.

18 **CHAIRMAN GARCIA:** There being no objection,
19 show Issue 1 approved unanimously.

20 **MR. JAEGER:** Okay. For Issue 2, I guess we
21 could take appearances now so you can get everybody's
22 name on the record.

23 **CHAIRMAN GARCIA:** Sure. Mr. Armstrong.

24 **MR. HOFFMAN:** Mr. Chairman, Commissioners,
25 my name is Kenneth Hoffman. With me is

1 Brian Armstrong, Senior Vice President and General
2 Counsel of Florida Water Services, as well as Matthew
3 Feil here on behalf this morning of Florida Water
4 Services Corporation. I should also mention that also
5 with us on behalf of the company is Joseph Cresse,
6 Forrest Ludsen and Tony Issacs.

7 **CHAIRMAN GARCIA:** Okay.

8 **MR. JENKINS:** Good morning. I'm John
9 Jenkins with the Tallahassee firm of Rose, Sundstrom &
10 Bentley here today on behalf of the City of Marco
11 Island.

12 **MS. FOX:** I'm Susan Fox from the Tampa law
13 firm of Macfarlane Ferguson & McMullen, here on behalf
14 of Sugarmill Woods Civic Association.

15 **MR. SHREVE:** Jack Shreve, Public Counsel,
16 here on behalf of the Citizens of the state of
17 Florida. With me are Charlie Beck and Harold McLean.

18 **MR. JAEGER:** Ralph Jaeger. With me is
19 Rosanne Gervasi, and also Samantha Cibula on behalf of
20 legal staff. Also to my left are Troy Rendell,
21 Marshall Willis and Joann Chase on behalf of the
22 Commission Staff.

23 **MR. JAEGER:** Chairman, for Issue 2
24 concerning Florida Waters' new offer of settlement, I
25 believe Mr. Hoffman would like to clarify one portion

1 of the offer in which Staff thought there was an
2 ambiguity. And I think we had a little bit of
3 confusion when talking to Mr. Cresse and Mr. Hoffman
4 about exactly what that part meant.

5 **CHAIRMAN GARCIA:** Before we get to this,
6 there's a letter that was sent to us by Senator Cowin.
7 And let me take back that statement. It was sent to
8 the Commission. I have not read the letter. My aide
9 read the letter, told me about it and I just discussed
10 it with Staff. It's a letter that asks for us to
11 answer a series of questions for it. Who does it ask
12 to answer the question? The Commission? Does it ask
13 the Company to answer the questions?

14 **MR. JAEGER:** It's to the Commission. I just
15 got this about two minutes before agenda conference.
16 But it says -- it was addressed to you, sir, and it
17 says "to provide a transcript of the proceeding and
18 responses to the following questions."

19 **CHAIRMAN GARCIA:** What are the questions, if
20 you could go over them very quickly?

21 **MR. JAEGER:** I can read the questions, but
22 part of the problem may be is if this is -- if you
23 haven't read it, it's not an ex parte communication
24 and there's maybe a response problem. And if we start
25 reading the letter, then none of the other parties

1 have had a chance to respond and it could cause a
2 deferral. I mean, I'm not sure exactly how -- if this
3 is an ex parte communication. It sort of took me by
4 surprise coming in this late an hour.

5 **CHAIRMAN GARCIA:** I understand. But it's
6 something we have to deal with and it's a member of
7 the legislature who has asked us a series of
8 questions. And I don't know who it is asked to. Is
9 it asked to of the Commission?

10 **MR. JAEGER:** It's to you, so it's to the
11 Commission. It was not directed to the Company. It's
12 directly mainly to you or the Staff, I believe, to
13 respond her questions.

14 **MS. GERVASI:** Chairman Garcia --

15 **COMMISSIONER DEASON:** Excuse me. Excuse me.

16 **MS. GERVASI:** Sure.

17 **COMMISSIONER DEASON:** It seems to me that if
18 we just got it perhaps the parties have not seen it
19 and maybe they need to see the letter. It's no
20 problem for them to see the letter. They may could
21 get a feel for it and they may have a position or
22 maybe suggestion as to how we proceed from this point.

23 **CHAIRMAN GARCIA:** Let's do that. Let's take
24 ten minutes and we'll reconvene, show the parties the
25 letter so that they --

1 **MR. SHREVE:** Could we have some copies?

2 **MS. GERVASI:** I have copies.

3 (Brief recess.)

4 - - - - -

5 **CHAIRMAN GARCIA:** All right. I've discussed
6 it with our Staff, and since it's a procedural matter,
7 we sort of discussed among ourselves up here. I don't
8 want to be violating any ex parte, but just
9 procedurally we think it's best not to deal with the
10 letter. Since none of us have seen the letter, it's a
11 great advantage not to know what's in it, but we'll
12 trust Ms. Gervasi when she says to us that most of
13 what's in it will be answered at some point or another
14 during our discussion, or is in the Staff rec, and
15 it's information that customers need to know
16 regardless.

17 So what I'm going to instruct Ms. Gervasi to
18 do is when we finish voting out these issues today,
19 that they draft a response for Senator Cowin, and we
20 will get it to her, hopefully, by the end of today,
21 and hopefully, Commissioners, I'll show all of you --
22 we'll circulate it -- but it will be after we've done
23 what we're going to do today.

24 I think -- this case, we have been at this a
25 very long time. And I understand Staff's, especially

1 legal staff's, hesitancy to complicate it any further.
2 I think that is a safe way to go. If we read the
3 letter specifically, she wants an answer in writing.

4 **MS. GERVASI:** Correct.

5 **CHAIRMAN GARCIA:** Not necessarily on the
6 record, but she wants a copy of the transcript.

7 **MS. GERVASI:** Right. She wants an immediate
8 reply and she's interested in knowing how your
9 decision will impact the customers in her district.
10 And she has various questions that she wants answered.
11 Without going into the substance of those questions, I
12 can tell you that I think those questions will be best
13 answered after you make your decision anyway, the
14 impact of your decision, how it will affect the
15 customers in her district will depend on what you
16 decide today anyway.

17 **CHAIRMAN GARCIA:** Very good.

18 **COMMISSIONER JOHNSON:** Will you be able to
19 answer those by the end of the day?

20 **MS. GERVASI:** It will depend on how long the
21 agenda conference takes, I think.

22 **COMMISSIONER JOHNSON:** I just meant were
23 they the nature, the kind of questions that could
24 easily be answered?

25 **MR. JAEGER:** I would hazard a guess that

1 it's going to be tomorrow before we can get it
2 drafted.

3 **CHAIRMAN GARCIA:** Okay. Tomorrow is fine.
4 Very good.

5 I think we had left off with -- Mr. Hoffman
6 wanted to ask some clarifying questions, was it, or to
7 clarify some of the --

8 **MR. JAEGER:** Yes. Clarify the new offer of
9 settlement. There was an ambiguity that Staff had
10 with one of the provisions.

11 **MR. HOFFMAN:** Mr. Chairman, the
12 clarification is part of our proposal that we filed,
13 which remains part of our proposal this morning, is
14 that the regulatory asset be allocated to all of the
15 service areas in this docket on a uniform
16 across-the-board basis. And we just wanted to make
17 sure that that was clear on the record and that that
18 decision is, in fact, part of our proposal, and would
19 request in approving our proposal that the Commission
20 approve that -- approve that methodology for the
21 allocation of the regulatory asset today.

22 **CHAIRMAN GARCIA:** All right. Do we want to
23 go item by item?

24 **MR. JAEGER:** Yes. Chairman, I think Issue 2
25 is the first issue we really need to get to, is the

1 new offer of settlement, and I think Troy Rendell --
2 he has the Primary Staff recommendation and he can
3 tell you what that is.

4 **MR. RENDELL:** Commissioners, I would like to
5 put on the record that the clarification does not
6 change Staff's recommendation.

7 Staff is recommending denial of the new
8 offer of settlement as filed. However, primary Staff
9 recommends acceptance if the Company agrees to
10 withdraw three provisions that's outlined in the Staff
11 recommendation.

12 And briefly those provisions deal with --
13 that the utility would not be subject to an earnings
14 investigation for the next three years; that any
15 overearnings would be shared one-third/two-thirds by
16 the customers and the Utility Company; and that the
17 Orange County gain-on-sale docket would be closed and
18 not be looked at or revisited by the Commission.

19 Staff believes that if these three
20 provisions are deleted from the new offer of
21 settlement, then it should be accepted.

22 **CHAIRMAN GARCIA:** Okay.

23 **MR. RENDELL:** Mr. Jaeger will address the
24 Alternate Staff.

25 **MR. JAEGER:** Alternate Staff believes that

1 the creation of the regulatory asset up-front, without
2 any attempt to collect from the correct customers,
3 would be inconsistent with the holdings of GTE where
4 it said that you have to collect this amount that --
5 the improper rates that were set originally in this
6 case -- you have to collect that from the customers
7 who paid the improper rates.

8 **CHAIRMAN GARCIA:** Okay. Thank you,
9 Mr. Jaeger.

10 Should we hear -- should we hear from the
11 parties or should we hear from the Company first?

12 **MR. JAEGER:** I would think the Company.
13 It's their offer of settlement and I would think they
14 would be best --

15 **CHAIRMAN GARCIA:** I understand. But -- I
16 mean in essence they've gone already. They've given
17 us an offer of settlement. I would assume that it's
18 better to hear from the other parties since they have
19 a position already scoped out.

20 **COMMISSIONER JACOBS:** Would they like to
21 respond to the evidence of the proposal that Staff --

22 **CHAIRMAN GARCIA:** Let's not make them move
23 before they have to. If you're right, let me listen
24 to the other parties on the offer of settlement.

25 **MR. SHREVE:** Commissioner, I think it would

1 be better to hear from the Company. That may answer
2 some questions and I primarily have questions about
3 how anything that is done by you or the Staff would be
4 implemented. I may or may not have them at that
5 point.

6 **CHAIRMAN GARCIA:** Mr. Hoffman.

7 **COMMISSIONER JOHNSON:** Mr. Chairman, can I
8 ask one question of Staff, I guess the Legal Staff, I
9 guess the alternative decision. And I'm not certain
10 that the Utility will respond to this -- but if you
11 could listen carefully perhaps you'll have some
12 comments also. And it goes to the issue of, I guess,
13 Alternative Staff, and the Legal Staff believes that
14 the mechanism that we've set up, the regulatory asset,
15 and its application to all customers is in violation
16 of GTE. Now, are there any legal -- any of our
17 attorneys that would have the opposite view?

18 **MS. GERVASI:** Commissioner, no, I believe
19 that -- to my knowledge the entire Bureau is of the
20 opinion that to surcharge new customers who came on
21 line after the erroneous decision was made would be
22 inconsistent with GTE.

23 **COMMISSIONER DEASON:** You used the term
24 "surcharge." I think you need to clarify that because
25 I think that this proposal envisions no surcharges.

1 Now, I know there are going to be charges at some
2 future time, but it seems to me at that point their
3 prospective charges, and there would be adequate
4 notice to customers as to what those charges are going
5 to be, and would not be surcharges as have been
6 contemplated prior to this settlement proposal.

7 **MS. GERVASI:** In the GTE case the Court
8 allowed the recovery of the erroneously disallowed
9 expenses through a surcharge. That was just the
10 methodology that the court allowed. It was the
11 methodology that was discussed and approved and went
12 on appeal.

13 **COMMISSIONER DEASON:** But the Court never
14 ruled upon whether a regulatory asset would be an
15 adequate mechanism to recover this, did they?

16 **MS. GERVASI:** That's correct. A regulatory
17 asset was not at issue in GTE. But the Court did say
18 that no customer should be subjected to a surcharge
19 which represented that amount of money that was
20 erroneously disallowed by the Commission, unless --

21 **COMMISSIONER JOHNSON:** Let me ask --

22 **MS. GERVASI:** I'm sorry -- unless the
23 customer received the services during the disputed
24 period of time.

25 **COMMISSIONER JOHNSON:** Perhaps you can help

1 me through this and technical Staff could assist.
2 Isn't a regulatory asset just the opposite of
3 unclaimed refunds credited to CIAC? That's kind of
4 how I see that.

5 **MR. RENDELL:** It would be very similar if --
6 unclaimed refunds are credited to CIAC, and the flip
7 side of that, you can make a debit to CIAC, but in
8 essence it's doing the same thing as creating a
9 regulatory asset for uncollectibles. And this -- a
10 large part of these charges for past expenses that
11 were disallowed we believe would be uncollectible, and
12 so it would be analogous to a flip side of that.

13 **COMMISSIONER JOHNSON:** And if we -- looking
14 at the Court's opinion on that last paragraph, where
15 they talk about "Finally, we address the structure of
16 the current surcharge. The PSC has acknowledged it
17 has the ability to closely tailor the implementation
18 of refunds and to accurately monitor refund payments
19 to ensure that the recipients of such refunds truly
20 are those who were overcharged, while no procedure can
21 perfectly account for the transient nature of utility
22 customers." And they kind of acknowledge that up
23 front. "We envision that the surcharges in this case
24 can be administered with the same standard of care
25 afforded to refunds."

1 So to the extent that we have a process that
2 would allow in a refund situation of a utility cannot
3 find customers to refund, we require the utility to
4 increase the contribution to CIAC and everyone gets a
5 rate decrease. Why can't we do the same in this
6 instance? Isn't that what we're doing with this
7 regulatory asset? We can call it something else if
8 you want to but aren't we doing the same thing?

9 **MS. GERVASI:** That's what we would be doing.

10 **COMMISSIONER JOHNSON:** You think they allow
11 us to do it for refunds but they don't allow us to do
12 it for surcharges.

13 **MS. GERVASI:** I think because of GTE that
14 that would be true, only to the extent that it would
15 be apportioned to customers who weren't on line at the
16 time.

17 Part of the decision had to do with the fact
18 that the customers who were on line at the time the
19 erroneous decision were made were all represented by
20 the office of Public Counsel. It was implemented to
21 recover costs already expended that should have been
22 lawfully recoverable in the first place, but that it
23 would only be fair to have those customers who are on
24 line and who received the service at the time pay it.
25 And that's why the Legal Staff departs from the

1 Primary Staff on allowing the regulatory asset.

2 **MR. JAEGER:** In the briefs of OPC and our
3 counsel for GTE, they were responding to the utility
4 saying it would be unfair to let these customers
5 receive the rates as a lesser amount -- the quantum
6 merit-type argument is that they've received this
7 benefit, these customers have, and in responding to
8 that the OPC and counsel said, "Well, it's unfair to
9 now charge people on a going-forward basis that had
10 no -- they didn't receive this benefit of the improper
11 rates." And so the Court, I think, was listening to
12 the retroactive ratemaking and the fairness of who has
13 to pay. And when they made their decision they said
14 well, the people who see the benefit of the improper
15 rates pay too little should be the ones that should
16 pay for it.

17 **COMMISSIONER JOHNSON:** Let me ask the
18 question in a different way.

19 **COMMISSIONER CLARK:** Commissioner Johnson, I
20 was just going to say it seems to me that there are --
21 I think there are many things that can be focussed on
22 that distinguishes this from GTE. And I don't know
23 that -- I think one of the things Commissioner Deason
24 said last time was that in the effort to do equity we
25 are being inequitable in the surcharge, and I think

1 that is one of the advantages of the regulatory asset.
2 But I guess I was concerned that -- I have a different
3 opinion as to whether or not we could do it legally.

4 **COMMISSIONER JOHNSON:** Yeah. That might be
5 helpful because I'm just -- and I don't see GTE as
6 tying our hands as much as Legal Staff does.

7 **COMMISSIONER CLARK:** I agree with that.

8 **COMMISSIONER JOHNSON:** I read this language
9 and it actually acknowledges our expertise. It talks
10 about some of the other methodologies that we used.
11 It speaks directly to that no process will be perfect
12 particularly when you're looking at a process that's
13 been going on for three or four years; may go on for
14 another three or four years. As I read this decision,
15 certainly there's -- respecting the position of the
16 Legal Staff, there is some clear language, but we're
17 dealing with the different facts. And even as I look
18 at some of the things that we do with respect to
19 refunds, and when we do impute stuff to CIAC and lower
20 rate base and then allow the rates to go down for
21 everybody, are we not supposed to do that? And when I
22 look at the Court in its last decision that we made
23 with respect to treating the utility and the customers
24 fairly and not applying double standards, it strikes
25 me that we shouldn't apply a double standard here

1 either.

2 **COMMISSIONER DEASON:** Let me say something
3 at this point, make another observation, which I think
4 does have some relevance to this overall question.

5 This Commission has dealt with questions of
6 intergenerational inequity through the years, and I
7 think, in essence, that's really what this boils down
8 to, is which specific customers are going to be
9 charged what rates for what period of time. And I
10 think everyone would agree as a matter of policy you
11 try to tailor your rates so that customers that are
12 benefitting from certain expenses pay the rates which
13 reimburse the company for those expenses, and you try
14 to do it as precisely as you can so that you don't
15 have future customers paying present cost or past
16 customers paying future costs, but there are some
17 overriding policy questions that this Commission has
18 dealt with, which has made decisions that changes that
19 to some extent, and one that comes to mind is CWIP and
20 rate base.

21 There's always been a question as to whether
22 we allow any CWIP in rate base. And I think the
23 Commission has been always been reluctant to do that
24 for the intergenerational inequities that could
25 result. But there are some overriding policy

1 questions as to well, are the customers, the general
2 body of customers better off by including some CWIP in
3 rate base because of perhaps some financial
4 constraints on the Company; they may have to issue
5 debt at a high interest rate because of an adverse
6 effect on their bond rating. There are many, many
7 aspects of that. And this Commission has in the past
8 deviated from the strict adherence to avoiding
9 intergenerational inequities for some broader policy
10 issues. And I think that there are some broader
11 policy issues in this particular case, particularly
12 when you consider the time frame that has elapsed, the
13 number of customers which have departed the system,
14 the additional burden which would be placed upon
15 existing customers -- these are things we can't
16 ignore. And I think it has to be looked at on a
17 case-by-case basis. And I would hate to think that
18 GTE has -- that decision has to be interpreted such
19 that it ties our hand and takes away some discretion
20 and flexibility to look at facts of a particular
21 situation.

22 **COMMISSIONER JOHNSON:** I would agree with
23 you wholeheartedly because one of my concerns is if we
24 read this in an absolute way and there's one customer
25 left, he gets the whole bill. And where do you draw

1 the line?

2 So I think we have to find a place to draw
3 the line that ensures that we fulfill our
4 responsibility of insuring that rates are reasonable,
5 just and affordable, and I think they give us that
6 flexible within this decision.

7 **COMMISSIONER JACOBS:** Is this really a
8 question of intergenerational equities so much as it
9 is system-by-system equity? I mean, if I understand
10 the issue, surcharges can't come about because certain
11 systems didn't pay as opposed to other systems.

12 **MS. GERVASI:** I think, Commissioner, perhaps
13 what you're talking about are two different things.
14 The ultimate dollar amount, whatever that amount is,
15 the allocation of that amount may or may not differ
16 from system to system depending on the methodology
17 that you use. But if a regulatory asset is approved
18 and the utility's customers all pay it, then there's a
19 question of intergenerational inequity because you've
20 got everybody paying it, including customers who
21 didn't receive the benefit of the service.

22 But let me just say, if I may, that the
23 Legal Staff really did look long and hard to find a
24 way to distinguish GTE. The Technical Staff has
25 educated us and we're aware that the approval of a

1 regulatory asset may well be much more palatable. We
2 have been unable to do that but certainly if you're
3 able to it's within your discretion to distinguish
4 GTE.

5 **COMMISSIONER JACOBS:** As I read the GTE
6 decision, there was a central focus on ensuring that
7 there was equity between -- for the Company in that
8 case. In this instance we're speaking about the
9 customers.

10 In this instance I think Commissioner Deason
11 makes an interesting point. If we're attempting to
12 achieve equity for the customers -- and that's how my
13 question comes about. Are we attempting to achieve
14 equity for the whole of the customer base? And if
15 that is the objective, then perhaps the standard
16 should be to see that the whole body of ratepayers
17 achieve some measure of benefit from this. But if we
18 are not seeking that, if we're seeking to achieve some
19 level of equity for different parts of the customer
20 base, that, in my mind, raises the GTE question here.
21 And we must be clear about what we're seeking to
22 achieve. I think that's the first way we distinguish
23 GTE in this case, is who are we trying to achieve
24 equity for.

25 **MR. RENDELL:** Commissioner, I think you're

1 100% correct. We are trying to achieve the customer
2 base. In this particular instance, this utility, if
3 we were to even attempt to try to get system equity, I
4 don't believe we'd be able to do it in any way or
5 fashion. So I think that in this particular case --
6 and also due to the fact of the rate structure, the
7 way -- the sharing amongst the systems and the
8 different utility customers throughout the state of
9 Florida that we have to look at the utility customer
10 base as a whole and not try to single one or two
11 systems out, so you are correct.

12 **COMMISSIONER JACOBS:** And this being sort of
13 a devil's advocate here, what of those people who are
14 in those systems who paid initially a rate more than
15 they would have, what of those people when we then
16 impose upon them this charge for this regulatory
17 asset? How do we make the argument that we've given
18 them a benefit by adopting this regulatory asset? I
19 mean, that's what we're arguing. We are looking at
20 them as a part of this whole customer base and we're
21 saying to them even though you encountered this fee
22 initially, which arguably you shouldn't have, we
23 perceive that this settlement is in your best interest
24 for these reasons. What would those reasons be?

25 **COMMISSIONER DEASON:** I'm trying to

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25 go back and try to get more evidence. But if you

1 understand the question. You're saying as it pertains
2 to those customers who would have paid less?

3 **COMMISSIONER JACOBS:** No. No. I'm sorry,
4 yes. Initially they would have paid less.

5 **COMMISSIONER DEASON:** We're here on a remand
6 from a court case which told the Commission that we
7 erred, and that there were the Category 1 issues,
8 which we had no discretion on, and that had the
9 tendency to increase rates. It wasn't a question of
10 some people's rates going down and some people's going
11 up. It was rates have to go up; the Court said that.
12 Then there was Category 2 where it said there are some
13 issues which you decided, which we think that you
14 erred and that you didn't have sufficient evidence.
15 If you want to go back and try to get that evidence,
16 fine. But if not, well, then what it means is a rate
17 increase for customers. Not a question of this
18 customer gets a decrease and this one gets an
19 increase. It was a question of a rate increase. And
20 unless I'm misinterpreting the remand, it wasn't a
21 question of one group benefitting and one group being
22 harmed. It was a question of the Company's revenue
23 requirement. And the Court said some we erred on flat
24 out, increased rates, and it said some issues you can
25 go back and try to get more evidence. But if you

1 can't provide that evidence, it's going to be further
2 rate increase; an increase in review requirements.
3 There's a question of how you would allocate that.
4 Maybe some customers would share a greater burden than
5 others and probably would have to do with how they
6 particularly fit into the capband rate structure. But
7 we're beyond that with Staff's recommendation. We're
8 at the point now to where if there is an increase,
9 Staff is recommending it just be an across-the-board
10 type, and that we can't -- don't have the information
11 to try to be so precise as to calculate actual impacts
12 on a system-by-system basis and see how it would fall
13 out in the capband rate structure.

14 So I don't really see where it's a question
15 of some customers benefitting and some being harmed, I
16 don't think. But I'm open for it to be clarified.

17 **MS. GERVASI:** It may be that the question
18 is, Commissioner Jacobs, if I'm understanding it
19 correctly, that those Commissioners who are new
20 customers to the system since the Commission's final
21 order went into effect, who -- if a surcharge were to
22 be assessed would not have to pay that surcharge, but
23 they would have to pay the regulatory asset under the
24 Company's proposal. Is there some benefit that would
25 accrue to them that would make it somehow more fair

1 for them to have to contribute to that regulatory
2 asset?

3 **COMMISSIONER JACOBS:** That would be the
4 appropriate question.

5 **MS. CHASE:** Commissioner, to maybe help
6 answer that question. The benefit that would accrue
7 to those future customers goes to the revenue
8 requirement issues, which is that the Company is
9 accepting less than if the Court -- if we were to give
10 them all of the Category 2 rate increase. Also the
11 benefit of the Company staying out of -- or agreeing
12 to stay out of a rate case for three years, the rate
13 case expense being delayed until the Company's next
14 rate case, those are the benefits to those customers.

15 **COMMISSIONER JACOBS:** If I understand it
16 also, in the event the Company comes in and -- let's
17 take a purely hypothetical situation, they exceed
18 revenue requirements, it's my understanding that some
19 of that potential -- that could be an offset against
20 the regulatory asset in that event. Is that true?
21 Maybe I have the circumstances incorrect.

22 But in other words, there could be some
23 instances where normally the Company would be
24 justified to increase rates, but there could be an
25 offset against the regulatory asset to defer that.

1 **MR. RENDELL:** I believe all you are getting
2 at is the Commission's discretion in future cases or
3 future analysis, if we were to look at the
4 gain-on-sale docket or if, perhaps, in the future the
5 utility may overearn. Instead of refunding monies and
6 lowering rates, we would have the latitude to offset
7 the regulatory asset and that's completely within the
8 discretion of the Commission.

9 **MR. SHREVE:** Could I ask a question about
10 something Joann Chase said a minute ago. Because I
11 think I had understood it a different way. You said
12 that the Company was willing to accept less, and
13 that's going to be a benefit to those new customers
14 that come on line.

15 It's my understanding they were getting 100%
16 of the past surcharge, and that's what we're talking
17 about going in as a regulatory asset and not the rate
18 increase.

19 **MS. CHASE:** What I was talking about was the
20 rate increase; not the surcharge but the rate increase
21 going forward that those future customers will be
22 paying. They will be paying future rates.

23 There are two different issues and you are
24 correct. There is the surcharge amount or the amount
25 that would be surcharged. There's also the rate going

1 forward based on this. And the Company's offer to ask
2 for less than what the Court says they are entitled to
3 unless the Commission goes to hearing on the Category
4 2 issues. And I was referring to the prospective rate
5 increase.

6 **MR. RENDELL:** But to follow that up, the
7 utility -- if the Commission decided not to open the
8 record, and to allow the complete recovery of the
9 revenue requirement, the utility would have the right
10 to collect any surcharges today. And they are
11 delaying that for the next rate case, which could
12 possibly be three years or even further. And they are
13 amortizing over 30 years as opposed to a one-time
14 charge from a customer. So that lessens the impact of
15 30-year amortization, and the rate of return on that
16 would lessen the impact of a one-time charge to a
17 customer.

18 **MR. SHREVE:** Okay. I misunderstood
19 something else. If the Commission made that
20 decision -- I thought the Commission had already made
21 the decision.

22 **MR. RENDELL:** That's correct. But in
23 analyzing an offer of settlement, we have to go back
24 and look to see any possibility and the Commission has
25 the discretion of reconsidering a previous vote.

1 **MR. JAEGER:** What Joann was saying is they
2 are entitled to over 1.9 million for the Category 2 on
3 a prospective rate increase and that's where they're
4 only asking about \$960,000; almost exactly one-half of
5 that prospective rate increase. So that would be of
6 benefit to the general body of ratepayers. I think
7 that's the closest way we can distinguish this: Is
8 the general body of customers better off with this
9 settlement? And that way you can get away from -- and
10 GTE maybe does not tie our hands completely, but I
11 think Legal Staff just wanted to make sure you knew it
12 was there, and if it is appealed, that that's going to
13 be the main hurdle.

14 **CHAIRMAN GARCIA:** All right. Mr. Hoffman.

15 **MR. HOFFMAN:** Thank you, Mr. Chairman,
16 Commissioners.

17 Let me ask Mr. Armstrong to hand out to you
18 and to the parties a two-page document which is the
19 Company's Modified Offer of Settlement, which as part
20 of my presentation this morning, I will go through and
21 explain.

22 I guess I'd like to begin.

23 **CHAIRMAN GARCIA:** Explain what you mean. Is
24 this modified offer the modification of what you
25 offered Staff and what they commented on?

1 **MR. HOFFMAN:** Yes, Commissioner. This is a
2 modification to the Settlement Offer that the Company
3 filed on June 14th.

4 Commissioners, we are here today to ask for
5 your approval of a Settlement Offer which we think
6 provides even greater benefits to our customers when
7 compared with our last offer, which was not approved
8 last year on a three-to-two vote. And as you can now
9 see, we have seriously considered the modifications
10 that were raised by the Primary Staff, and are
11 prepared to make some additional concessions this
12 morning as part of this Modified Offer of Settlement.

13 Secondly, in contrast to the Agenda
14 Conference on November 13th of last year, where, after
15 some negotiating and back and forth, we ultimately
16 were left with no customers at the end of that day who
17 had provided a written or verbal support or our offer.
18 We're in a much different posture this morning.

19 We have the written verified support of a
20 whole host of our customers. Specifically, I'm
21 talking about our customers in Collier County, Nassau
22 County, Charlotte County, Volusia County, Citrus
23 County and Putnam County, and I guess I should
24 emphasize that with these modifications we have been
25 informed that our Sugarmill Woods customers also agree

1 to our Modified Offer of Settlement.

2 The third thing I would point out is that
3 your Staff has now recognized, appropriately in our
4 opinion, that the Commission's prospects of success on
5 appeal on both of the used and useful issues on
6 remand, the wastewater treatment and the lot count
7 issues, are diminished in light of the recent Palm
8 Coast decision and that's discussed on Page 18 of the
9 Recommendation.

10 Fourth, without a settlement, you should
11 understand that our customers are guaranteed, at
12 minimum, that they will be required to pay the
13 Category 1 surcharges out of pocket after the final
14 hearing in February of next year, and that's roughly
15 \$3 million.

16 Secondly, that without a settlement, our
17 customers will be required to pay rate case expense,
18 which is estimated to be over \$1 million through the
19 remand hearing and the appellate process. And
20 interestingly enough, that estimated amount is more
21 than the additional revenue the Company is willing to
22 settle for under the Modified Offer of Settlement.
23 And that's about 950,000.

24 Third, if the case is not settled our
25 customers will have an aggregate surcharge hanging

1 over their head of some \$13 million as this case
2 proceeds through what ultimately always is the
3 appellate process.

4 So I wanted to give you some just
5 preliminary comments and now go through our proposal
6 as we've modified it this morning.

7 First, of course, there's the rate increase.
8 There is approximately, Commissioners, \$1.9 million of
9 increased revenue at stake for these Category 2
10 issues. We've proposed to settle for a prospective
11 rate increase of 50%. That's roughly \$966,000. That
12 results in average increase in rates of 1.7%, which
13 the Staff recommends be spread across the board to all
14 of our customers. And I would point out to you that
15 the Staff has recognized, on Page 19 of their
16 recommendation, that an across-the-board increase in
17 rates would not cause a unlawful modification of the
18 existing capband rate structure, which is what we
19 believe as well.

20 I should also point out to you on rates when
21 you couple the 966,000 with the Category 1 rate
22 increase, the Company has reduced the revenue it seeks
23 for Category 1 and Category 2 issues from a total of
24 2.8 million in our last offer last year, down to
25 2.0 million in our current offer.

1 Now, with respect to the issue of the
2 potential surcharges, as you know we have proposed to
3 eliminate the imposition of current out-of-pocket
4 surcharges, and instead are proposing to book an
5 estimated 8.5 million in what would otherwise be
6 Category 1 and Category 2 surcharges, accumulated
7 surcharges, and I should point out this includes
8 interest through August of this year, as a regulatory
9 asset. And the regulatory asset would not begin
10 recovery until our next rate case. And this is with
11 the stipulation that the regulatory asset would be
12 recovered on a uniform across-the-board basis
13 consistent with the methodology that the Commission
14 approve for the recovery of Category 1 surcharges in
15 the Order that it issued on January 15th of this year.
16 And amortization of the asset would not begin until it
17 is included in rates with an amortization period of 30
18 years.

19 **COMMISSIONER DEASON:** Mr. Hoffman, let me
20 ask for a clarification. You would not begin the
21 amortization until it was a rate proceeding. And
22 you've agreed that you're not going to initiate one
23 under your modification for three years. Would that
24 regulatory asset continue to earn interest, or would
25 it sit idle on your books or not even be booked until

1 there's a rate proceeding. Could you clarify that?

2 **MR. HOFFMAN:** It will be booked but it will
3 not earn interest until such time as it is placed in
4 rates as part of a factor in determining our rates in
5 our next rate filing.

6 **COMMISSIONER DEASON:** So that amount would
7 not continue to grow. We know what it would be when
8 we have a rate proceeding, whether it's your filing
9 after three years or something is initiated by the
10 Commission or another party, we know what the amount
11 is going to be and it would not continue to accrue
12 interest until there is that rate proceeding.

13 **MR. HOFFMAN:** Absolutely correct.

14 Now, Commissioners, with your indulgence,
15 let me give you my thoughts on GTE.

16 As you know, your Alternate Staff has
17 suggested by establishing a regulatory asset you would
18 violate the GTE decision and we disagree with that.
19 As many of you may recall, we had a pretty thorough
20 discussion on the issue of whether a regulatory asset
21 would violate the GTE decision at the December 15,
22 1998, Agenda Conference. And the number of you who
23 spoke to that issue repeatedly reaffirmed your belief
24 that the use of a regulatory asset to recover what
25 would otherwise be surcharges would not violate the

1 GTE decision and was within the discretion of the
2 Commission.

3 When you look at the GTE decision I think
4 that there are three pertinent passages which would
5 support your authority to establish a regulatory asset
6 under the facts in this case.

7 First, the Court found that a utility must
8 be made whole when an erroneous PSC Order causes a
9 utility to undercharge its ratepayers. This is
10 essentially no different than the Commission practice
11 of requiring refunds when an erroneous PSC Order has
12 caused the utility to overcharge its ratepayers. We
13 talked about this earlier this morning, Commissioner
14 Johnson.

15 How does the Commission deal with refunds?
16 It required the utility to make a refund to the
17 customers that the utility can find. And where the
18 customers can not be found, the total amount of the
19 unclaimed refund is credited as an addition to CIAC.
20 This addition to CIAC provides the benefit of the
21 remaining amount of the refund to both present and
22 future ratepayers, although they were not customers
23 during the time the erroneous rates were in effect.
24 This is just the flip side of that.

25 Secondly, the Court noted that it was making

1 a decision -- and I'm quoting here -- "on the
2 structure of the current surcharge." And I point out
3 the word "structure" just to emphasize that the
4 language the Court used underscores the fact that the
5 Commission is authorized, and has the discretion, to
6 derive a structure to make the utility whole,
7 including the use of a regulatory asset.

8 Third, going back to the passage out by
9 Commissioner Johnson, the Court concluded -- and I'm
10 quoting -- "While no procedure can perfectly account
11 for the transient nature of utility customers, we
12 envision that the surcharge in this case can be
13 administered with the same standard of care afforded
14 to refunds, and we conclude that no new customer
15 should be required to pay a surcharge," close quote.
16 My emphasis is on the words "in this case." The GTE
17 decision was limited to the facts and the procedures
18 discussed in the GTE case for making the utility
19 whole.

20 Now, you have already determined that you
21 have the discretion and the authority to provide a
22 surcharge recovery mechanism different than that
23 applied by the Commission in the remand of the GTE
24 case.

25 If you recall in January of this year, in

1 addressing the method for recovery of Category 1
2 surcharges, the Commission took an approach different
3 from the approach taken in the GTE remand by requiring
4 the Company to attempt to collect surcharges from
5 departed customers who were customers when the
6 erroneous rates were in effect. And I point that out
7 to you just to emphasize to you that you've already
8 decided that the GTE way is not the only way.

9 I guess the last thing I would point out on
10 this issue is that this Commission uses regulatory
11 assets all the time, and the most obvious example is
12 rate case expense. And the fact that this particular
13 regulatory asset is composed of what would otherwise
14 be recovered in the form of surcharges would not, in
15 my opinion, make the regulatory asset unlawful under
16 GTE.

17 Commissioners, I don't think there's a party
18 at the table who disagrees with our position on this
19 issue. Stated another way, I don't think there is a
20 party who doesn't support our position and would
21 concur with our position that the establishment of the
22 regulatory asset would not violate GTE. And I think
23 Ms. Gervasi concluded her comments by also saying it
24 would be within your discretion to distinguish GTE.

25 Let me move subjects to the three-year stay

1 out that was in our proposal we filed June 14th. As
2 you know we proposed a reciprocal stay out where we
3 would not file a rate case or limited proceeding for
4 three years. And during that same three years, which
5 runs to June 28 of 2002, we would not be subject to a
6 petition or a complaint by a party or an earnings
7 investigation by the Commission to decrease our rates.

8 We also had a sharing proposal in there
9 consistent with what you had approved for another
10 utility where we basically said if we had any excess
11 earnings during that period of time, the excess
12 earnings would be distributed, one-third to the
13 shareholders of the company; two-thirds to the
14 customers. Indexes and pass-throughs were accepted
15 from that proposal.

16 And the Staff has taken issue with the
17 lawfulness of the reciprocal three-year stay out on
18 the basis that the Commission may not abrogate its
19 authority or bind future Commissioners from decreasing
20 rates or looking at our earnings during that
21 three-year period. And while I would disagree and
22 point out that if it was lawful for the Commission to
23 establish just and reasonable rates for a specific
24 period of time with a reciprocal stay out for
25 electrical utilities, then it would certainly appear

1 to be lawful for this utility. We don't want to reach
2 that point, so we have modified our offer in two ways.

3 First, the company would agree to stay out
4 for the three-year period with the proviso that if we
5 are brought in by the Commission, or any party for an
6 earnings investigation, or an application to decrease
7 rates, then all bets are off and we would be allowed
8 to pursue appropriate rate relief. But we will
9 maintain our promise on a one-sided basis to stay out
10 of the Commission in terms of a request for rate
11 relief for three years unless we are called in by a
12 party or the Commission.

13 And secondly, consistent with the
14 modification I just gave you, we would simply drop the
15 two-third/one-third sharing proposal.

16 Next, Commissioners, the gain-on-sale
17 docket, which as you know was a matter of much
18 discussion the last time we heard argument on the
19 Company's last settlement offer. And we have
20 seriously considered the points raised by Staff. And
21 quite frankly, we have been in thorough discussions
22 with Mr. Shreve on this issue. And we obviously
23 appreciate his efforts and his concerns on the issue.
24 We don't agree with him on the merits of the issue,
25 but bottom line is we are prepared to move forward by

1 modifying the proposal concerning the gain-on-sale
2 docket, and our proposal would be that that docket
3 would simply remain open as it is now.

4 Commissioners, the remaining aspects of the
5 proposal are very straightforward. First, the accrued
6 rate case expense relating to this rate case, from the
7 point of consideration forward, including the appeal,
8 including this remand would be deferred to our next
9 rate case. There would be no interim rate refunds.
10 That issue applied only to the Lehigh and Marco Island
11 wastewater customers. There would be no interim rate
12 refunds because the potential refunds would be
13 eliminated as a result of the combined prospective
14 rate increases for the Category 1 and 2 issues.

15 There would be no change in our AFPI rates,
16 and the Staff has concurred with this in their
17 recommendation.

18 I guess a punch list, to conclude,
19 Commissioners, of the benefits is the rate increase
20 under this modified offer is reduced by approximately
21 \$800,000 compared to our last offer. And the rate
22 increase is 1.7% across the board.

23 Secondly, out-of-pocket cash payments of
24 surcharges are eliminated.

25 Third, the Company stays out of rate cases

1 affecting the service areas in this docket until at
2 least June 28, 2002, unless another party or
3 Commission brings us in for an earnings investigation
4 or petition to decrease rates.

5 Fourth, the additional rate case expense of
6 \$656,000 which we would expect to incur through the
7 appellate process is eliminated. And the rate case
8 that was incurred from reconsideration forward is
9 deferred to our next rate case; that is the recovery
10 of that expense.

11 I'm not sure what else to tell you other
12 than we have been here on this case for over four
13 years, and we've worked hard to work with the parties
14 to this case to come up with a proposal that is
15 satisfactory to all concerned.

16 We think it's in the best interest of not
17 only the Company but of our customers to settle the
18 case. And we think that our offer, as we've modified
19 this morning, is fair, just and reasonable, and we
20 hope that you'll approve it. I'll happy to answer any
21 questions. Thank you.

22 **CHAIRMAN GARCIA:** Mr. Jenkins.

23 **MR. JENKINS:** Thank you, Mr. Chairman.

24 The City of Marco Island supports the
25 Modified Offer of Settlement with the stipulation that

1 Mr. Hoffman put on the record originally regarding the
2 regulatory asset amortization on a uniform basis.

3 I essentially concur with his comments on
4 GTE versus Clark. I don't think that case was
5 intended to tie the Commission's hands so tightly as
6 to any particular methodology regarding these types of
7 issues and that you're free to approve the regulatory
8 asset that's been proposed today.

9 To my understanding, all the other parties
10 to the case have joined in the Modified Offer of
11 Settlement with the exception of the Office of Public
12 Counsel. So rather than make any further comments on
13 the offer before you, if I may, I'd rather reserve any
14 additional comments to respond to anything that may
15 come up in the course of the discussion today other
16 than -- that may affect your decision on the Modified
17 Offer of Settlement.

18 **CHAIRMAN GARCIA:** Thank you, Mr. Jenkins.
19 Ms. Fox.

20 **MS. FOX:** Thank you. I'll be brief also. I
21 just have a few remarks.

22 As you have been advised, Sugarmill Woods
23 does support the Primary Staff recommendation. I
24 don't really want to comment on the Modified Offer of
25 Settlement sheet that was passed out because we really

1 haven't had a chance to study on it, or, you know, the
2 client hasn't really voted on this. They have voted
3 to support the Staff's primary recommendation.

4 But let me just say I wasn't really sure
5 what the Commission's position would be if the parties
6 hadn't all come into agreement. And I feel like I
7 need to mention that I didn't feel the Commission
8 would have authority to approve this settlement
9 without our consent. And I don't know what's going to
10 happen today. I don't know if this situation will
11 arise again. But I did want to -- we took that
12 position in our stance. I think we stand by that.
13 But it's our prerogative to agree to this settlement
14 and we do.

15 We think the Staff has made a reasonable
16 proposal. They obviously did a lot of the soul
17 searching, worked very hard, and while we don't
18 wholeheartedly agree with everything that they've
19 said, we agree with their proposal on an overall
20 basis.

21 And I don't know how much more there is to
22 say. There are a number of issues, for example, that
23 Bud Hansen wanted me to mention today, things that
24 ought to be looked into if the case goes back to
25 hearing, some inconsistencies between the way that the

1 AFPI and CIAC have been calculated. And there are
2 some issues about, you know, potentially intersystem
3 inequities on whether some of the amounts in the
4 regulatory asset could be allocated on a per-system
5 basis instead of across the board. And that, again,
6 would be an issue if there's no settlement. We're, of
7 course, not waiving our right to litigate those issues
8 if it's not settled today.

9 And finally -- well, two final comments. We
10 concur with the other counsel here at the table for
11 the parties that the GTE case does not prohibit this
12 settlement. I was going to use the rate case expense
13 analogy myself. And we do want clarification as I'm
14 sure several others will, because of the changes that
15 are recent and anticipated and the status of some of
16 these systems, that this regulatory asset will be able
17 to be determined on a pro rata basis by system so that
18 those who go into Citrus County jurisdiction or those
19 who go into Collier County jurisdiction will carry
20 those with them. Thank you.

21 **CHAIRMAN GARCIA:** Mr. Shreve.

22 **MR. SHREVE:** I'm not sure if the Staff has a
23 clear understanding, I do not, from Mr. Hoffman's
24 remarks on how the regulatory asset would be handled
25 and what they have in mind. And I've heard several

1 different explanations.

2 And we are not saying that the GTE case --
3 as Mr. Hoffman said nobody would make this point that
4 it does not agree with the GTE case. We're not going
5 to make that point one way or the other. But I do
6 want to know exactly what you have in mind as far as
7 the regulatory asset and how that is going to be
8 recovered.

9 Now, from the discussions with past refunds
10 and past collections being used as CIAC, I understand
11 that argument. Does that mean that the order that you
12 put out saying that Southern States would collect from
13 those people leaving the system -- now, I'm not
14 talking about individual systems being pulled out by
15 counties or being sold or whatever -- would those
16 people not be collected from? Or would, when they
17 leave the system, would that portion of that
18 regulatory asset leave with them? Because in your
19 Order now you have told them under the surcharge,
20 which now we have a surcharge but it's going to be
21 become a regulatory asset. What would happen on that?
22 Is that burden going to be put on the customers that
23 are left?

24 **COMMISSIONER CLARK:** As I would understand
25 it, it stays a regulatory asset with the company until

1 it's recovered from customers. And if a customer
2 leaves before it pays -- he or she pays for that whole
3 asset, the asset still stays with the company.

4 **MR. SHREVE:** Okay. The discussion only
5 really talked about new customers. But we're talking
6 also about customers leaving and leaving that burden
7 for the present customers.

8 I'm not sure, but I think at least part of
9 the Staff was under the impression -- and from the
10 Staff recommendation it appeared to me and I -- maybe
11 Mr. Hoffman explained it and I just didn't understand
12 it -- when a system leaves, are they going to leave
13 with their portion of the regulatory asset, whether
14 sold or the county pulls them out?

15 **COMMISSIONER CLARK:** I'm glad you asked that
16 because that's my understanding. My understanding
17 is -- and I think you are right, we probably need some
18 clarification that those systems that were part of
19 this case, if they are no longer -- even if they move
20 out of our jurisdiction, some portion of the
21 regulatory asset will stay with that system to be
22 recovered through any appropriate proceeding under any
23 appropriate body. But then it just -- it isn't
24 specific to our jurisdiction. It is specific to the
25 systems in this case.

1 **MR. SHREVE:** And how would that be
2 determined? Is it based on the surcharge or the
3 regulatory -- their portion of the regulatory asset,
4 we need to know that.

5 **COMMISSIONER CLARK:** I think that needs to
6 be answered.

7 **MR. SHREVE:** I'm not going for or against,
8 but I think these are questions that need to be
9 answered.

10 **CHAIRMAN GARCIA:** Why don't we let
11 instead -- if Staff feels comfortable, I would assume
12 that the company can answer the questions and that way
13 the clarification doesn't have to be made by the
14 company -- or Staff. So why don't we answer --
15 Mr. Shreve, why don't you ask the company how they
16 view it and then if Staff disagrees with that, then
17 they can express their view.

18 **MR. HOFFMAN:** Mr. Chairman, the regulatory
19 asset would be spread across the board to all of the
20 service areas that are in this docket on a uniform
21 basis consistent with the methodology that was
22 approved for the Category 1 surcharges, but, of
23 course, here we're talking about a regulatory asset.
24 And part of our offer of settlement is that that
25 allocation be approved as part of the order approving

1 the Modified Offer of Settlement so that that
2 allocation would go with the service areas to the
3 extent they may no longer be under the Commission
4 jurisdiction in the future.

5 **COMMISSIONER DEASON:** Mr. Hoffman, is that
6 under an ERC basis, or what is the common allocator?

7 **MR. HOFFMAN:** Under an ERC basis.

8 **CHAIRMAN GARCIA:** Is that all, Staff?

9 **MR. RENDELL:** Yes, Commissioner. That's the
10 way we understood it would work is we would go back to
11 the same methodology that was approved for the
12 Category 1 surcharges. And it would apply across the
13 board to all systems that were included in this docket
14 and it would be based on the ERC -- the ERCs as in the
15 next rate case. So we would look at the ERCs for all
16 of the systems that are in this past rate case in the
17 future rate case and allocate it exactly the way
18 Mr. Hoffman described.

19 **MR. SHREVE:** I'm sorry, I don't quite
20 understand that.

21 **MR. RENDELL:** The reason why I say --

22 **MR. SHREVE:** I think they do the allocation
23 now.

24 **MR. RENDELL:** The reason why I say the
25 future ERCs is the only ERCs we have in the record are

1 projected for 1996. If they come in in three years,
2 we're looking at 2002, I believe, or 2003, and we'd
3 have to look at the ERCs for all of the different
4 systems at that point in time, and allocate the
5 regulatory assets across all of those ERCs. So, in
6 effect, it will diminish the effect of this recovery
7 because of growth.

8 **COMMISSIONER CLARK:** I think there are
9 two -- Jack Shreve is puzzled, as am I. The
10 allocation would be now. And let's just say suppose
11 you have three systems; one is 100 ERCs, one is 50 and
12 another is 50. You all locate it in those systems now
13 on that basis.

14 **MR. RENDELL:** We could do that also. We
15 could take the 1996 ERCs.

16 **COMMISSIONER CLARK:** I think it's an
17 important point. Let's pose three years from now one
18 of those systems now has -- there's hundred, there's
19 hundred and there's 50. How is the allocation going
20 to take place at that time?

21 **MR. RENDELL:** That's a very good question,
22 and I would pass the ball back to the utility of how
23 they would anticipate -- because we have the 1996 ERCs
24 in the record in this rate case, and it would be very
25 simple to allocate it now and not look at the future.

1 So I would pass the ball to Mr. Hoffman.

2 **COMMISSIONER CLARK:** I guess the question is
3 are we going to allocate it -- you know, when we do
4 have -- when this particular utility would come in for
5 a proceeding on all of its systems or some of its
6 systems that are within our jurisdiction, do we then
7 have to get data on all of the systems that were part
8 of this and allocate it at that time?

9 **MR. RENDELL:** It's a good point. Since we
10 have lost jurisdiction of Collier, Citrus and, I
11 believe, one other, Orange County, it may be difficult
12 to get that information to verify. So we might ought
13 to go ahead and do it on the information that we have
14 now in this docket.

15 **COMMISSIONER CLARK:** Well, maybe the utility
16 had a proposal and we just need it clarified.

17 **MR. RENDELL:** Yes.

18 **MR. SHREVE:** I thought the utility had
19 already said they wanted it on the same basis that had
20 been decided by the Public Service Commission. I
21 would assume if that -- where before the 2.4 million
22 was allocated and had a surcharge placed on a uniform
23 basis across all of the systems, now we're moving --
24 you're taking it to a 8.5 million surcharge, which is
25 going to become a regulatory asset. Are you going to

1 take that 8.5 million and now divide it up for each
2 system so that you know where it stands and what stays
3 and what goes? I don't think you can vote until you
4 know what you have there and I think you need to know.

5 **COMMISSIONER CLARK:** I think the Company --

6 **MR. SHREVE:** See, at one point I thought the
7 Staff had an understanding that the regulatory asset
8 was going to stay totally with the systems that were
9 under regulation, which would have meant those systems
10 wouldn't take it with them.

11 **COMMISSIONER CLARK:** You mean under our
12 jurisdiction?

13 **MR. SHREVE:** Yes.

14 **COMMISSIONER CLARK:** I assume they'll all be
15 under regulated --

16 **MR. SHREVE:** No, but the entire --
17 originally I had understood that the Staff thought
18 that the entire regulatory asset was going to stay
19 with the regulated system.

20 **MR. RENDELL:** No. We never had that
21 intention.

22 **MR. LUDSEN:** Forrest Ludsen, Florida Water.

23 The intent is that we calculate the numbers
24 now based on the information we have now, and whatever
25 that calculation is, that stays with the system and

1 doesn't change. So it would be based on a per ERC
2 basis like it was done under Category 1, and we'd
3 calculate that rate after the prospective rates are
4 implemented. And that whatever those dollar amounts
5 are that are calculated for each of the systems, that
6 number would stay with that system and be booked with
7 that system.

8 **CHAIRMAN GARCIA:** Okay.

9 **COMMISSIONER DEASON:** And it stays with that
10 system regardless of whether -- if there's a system --
11 for example, Citrus County has taken back
12 jurisdiction. If you're unable to convince the
13 regulatory authority there to adjust rates, well, then
14 it still stays with Citrus County. It doesn't then
15 revert back to the PSC for consideration.

16 **MR. LUDSEN:** No. It stays with Citrus
17 County.

18 **MR. ARMSTRONG:** Just to be absolutely clear
19 on that, we consider that this is a pending matter,
20 and it's a pending matter that stays with the FPSC
21 even though Citrus County in the intervening time has
22 taken back jurisdiction, they will be bound by any
23 order issued by this Commission. And that would be
24 one of the things they would be bound by.

25 **MR. SHREVE:** Whoa, whoa.

1 **COMMISSIONER CLARK:** Yeah. I want to ask
2 for clarification on that too.

3 If what occurs, as Commissioner Deason
4 stated, that you go to Citrus County, the County
5 Commission now has jurisdiction, they elect not to
6 provide recovery to that for whatever reason. You
7 come to us and say, "Well, it's still within your
8 jurisdiction and you can order the rates adjusted to
9 recover that regulatory asset." Is that your
10 intention?

11 **MR. ARMSTRONG:** No. Our intention is -- and
12 I don't see how they can legally say they are not
13 bound by the Order of the Florida Public Service --

14 **COMMISSIONER CLARK:** You would argue at that
15 point it's res judicata to them because it's part of a
16 previous decision and your appeal would be to the
17 Court, not to us.

18 **MR. ARMSTRONG:** Right. I think more than
19 likely the concern of a Citrus County and a Sugarmill
20 Woods would be that we attempt to go and say through a
21 direct basis to the customers of Sugarmill Woods, and
22 we wouldn't attempt to do that. We think that the
23 FPSC, if you make it clear in your order that it's a
24 spread across the board in the manner Mr. Ludsen
25 indicated, that's what we're bound by and that's what

1 they're bound by at the County.

2 **MR. SHREVE:** Because I would understand that
3 once this rate case decision is made, anyone that is
4 no longer under the jurisdiction of this Commission,
5 the Commission won't have any authority to order
6 anything in those counties. So whatever order you put
7 out now is the one that stands.

8 **COMMISSIONER CLARK:** Then the issue is what
9 can they legally do in a case that they have
10 jurisdiction over, and they may be bound by this
11 decision. In fact, I would presume they would be.

12 **CHAIRMAN GARCIA:** Very good.

13 Mr. Shreve, you had some other questions?

14 **MR. SHREVE:** I would assume -- now, Ms. Fox,
15 Mr. Jenkins, and Mr. Jacobs represent Citrus, Collier
16 and Nassau County and they have been contacted. I
17 would assume that all of the other customers that were
18 contacted -- I am not privy to what correspondence or
19 recommendations or representations were made by
20 Florida Water to my clients. So I would assume that
21 they've all been told that the regulatory -- or the
22 surcharge is going to go from 2.4 to 8.5, and that all
23 of the different aspects of it were explained. I'm
24 not sure if they have or not. I have no way to know
25 but I would assume that has been properly explained to

1 them. I'm not privy to that information. I just want
2 you to know that and it puts me in a position -- I
3 don't know who has turned it down, who hasn't turned
4 it down. I don't know who has come in and backed it
5 and who hasn't. This is the case where we've all had
6 a problem. Because of the nature of the case, there's
7 been a split in customer groups and I don't know who
8 is -- how different people are going to be adversely
9 affected. We will stand on our filing as to the
10 increase from 2.4 to 8.5 million. We had originally
11 argued for the hearings to be held the way you
12 decided. It's your decision, I think. Hopefully
13 you'll do the right thing for all of the customers in
14 there. We'll stand by our filing on that and follow
15 it from there.

16 **CHAIRMAN GARCIA:** Okay.

17 **COMMISSIONER DEASON:** I have a question.
18 Mr. Shreve, the 2.4 which you alluded to, that was
19 your understanding was a regulatory asset under the
20 first offer of settlement? What's the 2.4?

21 **MR. SHREVE:** The 2.4 is the amount of the
22 surcharge that was levied across the board on a
23 uniform basis as I understand it.

24 **COMMISSIONER CLARK:** You're talking about
25 the difference between Category 1 and Category 2.

1 **MR. SHREVE:** And that was only for the
2 Category 1. The increase has already taken place on
3 Category 1. The surcharge for Category 1 was
4 2.4 million. Now the increase is going to be 50% on a
5 going-forward basis of the Category 2, with 100% of
6 the surcharge going backwards.

7 **COMMISSIONER DEASON:** Right. 100% of the
8 surcharge, which includes --

9 **MR. SHREVE:** The Company does a surcharge,
10 which I guess is going to be allocated to all of the
11 systems, and then that becomes a regulatory asset
12 rather than a surcharge, which is --

13 **COMMISSIONER DEASON:** It's 100% of the
14 Category 2 as of a date certain, with interest as of a
15 date certain, which I assume is August 31st.

16 **MR. SHREVE:** Yes.

17 **COMMISSIONER DEASON:** And it's 100% of the
18 surcharge for Category 1 as well. That's what
19 comprises the --

20 **MR. SHREVE:** Right. 100% of all of the
21 surcharges, right, with 50% on a going-forward basis
22 of Category 2. And not having any direct knowledge of
23 it, I would assume that Florida Water has properly
24 represented all of these different positions and
25 information to the customer groups, my clients, that

1 they talked to.

2 **MR. HOFFMAN:** Commissioners, just for
3 clarification, the 8.5 million includes interest
4 beginning with the date that the tariffs were filed
5 following the rate case in September of '96 through
6 August 31st of this year.

7 **MR. ARMSTRONG:** Let me just be very, very
8 clear too.

9 We have a date of implementation of
10 prospective rate increase. Like any matter of this
11 type, you determine what the surcharge is through that
12 date of implementation of prospective rate increase.
13 It's approximately \$8.5 million. I don't think it
14 deviates terribly from that as of right now even. But
15 that was just our best estimate given we thought we
16 would have rates in effect already.

17 **COMMISSIONER DEASON:** But the total
18 regulatory asset would include interest to the point
19 to where the prospective rates are implemented.

20 **MR. ARMSTRONG:** Right.

21 **MR. SHREVE:** Commissioner, I think you have
22 it, but I know where there was confusion earlier.
23 Some people thought that there was only 50% of the
24 Category 2 surcharge included but it's 100% and it's
25 50% on a going-forward basis, but there had been some

1 misunderstanding by some of the people on that.

2 **COMMISSIONER DEASON:** I understand. But
3 there's also the -- there is the consideration,
4 though, that the company has indicated on the record
5 that there's not going to be any more increase in
6 terms of interest being accrued on that until the
7 matter is resolved in a rate proceeding, which if it's
8 not initiated by a party or the Commission, is going
9 to be at least three years. So there's going to be at
10 least a three-year period -- potentially a three-year
11 period with no further interest being accrued on that.

12 **MR. SHREVE:** I think that's true. And I
13 think also we have to realize that now we still have
14 the gain-on-sale docket out there which could
15 potentially be used as an offset for any of the
16 regulatory assets remaining.

17 We still keep our same position on the
18 justification for the 8.5 million based on past
19 representations of the Staff of the Public Service
20 Commission.

21 **COMMISSIONER CLARK:** I have a question of --
22 to Staff. Is there a modification to your
23 recommendation on Issue 2 given the fact that we now
24 have a subsequent offer of settlement that
25 incorporates your concern, at least for the Primary

1 Staff.

2 **MR. RENDELL:** Primary Staff would recommend
3 the modification of the settlement as filed today.

4 **COMMISSIONER CLARK:** You would recommend the
5 settlement as modified today.

6 **MR. RENDELL:** That's correct. And we would
7 include the allocation in the Order.

8 **COMMISSIONER CLARK:** The discussion of the
9 allocation with respect to the regulatory asset.

10 **MR. RENDELL:** Yes.

11 **MR. JAEGER:** Chairman Garcia, I'm going to
12 be writing this order, me and Roseanne, and I want to
13 make sure I understand this because I hear 8.5 and
14 then I hear through the time they implement rates, and
15 that is going to be different, I'm sure -- it's like I
16 think it's what they were calculating almost a
17 200-something thousand dollars per month, and I wasn't
18 sure if this 8.5 was through July 31st or August 31st,
19 and when they implement the rates. So I wanted to
20 really make sure we are on the same page on that. Is
21 it 8.5, 8.7 something? Or until they get these rates,
22 do we calculate it until they get the rates? I assume
23 you're going to vote this out today and so they can
24 get the rates as soon as they can get the notice to
25 the customers.

1 **MR. SHREVE:** Well, it was my understanding
2 it was 8.5. If not, perhaps the customers that have
3 signed off on the this should rethink it.

4 **COMMISSIONER JACOBS:** The recommendation now
5 says up to August the 1st.

6 **MR. ARMSTRONG:** The number includes the
7 surcharge with interest accrued for July 31st of 1998,
8 or 1999. When we filed this we were hoping that we
9 could have rates into effect by that time and it was
10 based on an approximation. It was based on an
11 approximation that was informed -- everybody was
12 informed that was an approximation. This is a matter
13 that we always deal with. The Technical Staff and the
14 Company always are able to determine what's the date
15 rates go into effect and you calculate a surcharge
16 through that date, as well the accrued interest. It's
17 not any different than any other docket at this point.

18 **COMMISSIONER CLARK:** And it's Staff's
19 recommendation that it be through the date of the
20 rates being implemented?

21 **MR. RENDELL:** Yes. And we would strive the
22 utility to get tariffs filed, since this is the 23rd
23 of August and to get them approved by the 31st if we
24 could have some time to review them.

25 **COMMISSIONER CLARK:** I have one other

1 question. Staff, you did an estimation of what the
2 impact would be on customers when they do begin
3 charging -- when they do begin including in rates the
4 regulatory asset.

5 **MR. RENDELL:** Yes, Commissioner. Let me try
6 to briefly explain what we did. We took the
7 regulatory asset of 8.5 million, assumed a rate of
8 return of approximately 10%, which gave a rate of
9 return of \$850,000. We used the 30-year amortization,
10 applied income tax, and if you take the 1996 ERCs,
11 which that was clarified today, that's what we would
12 do, and allocate it across the board, it would
13 approximately be 88 cents an annual basis which
14 relates to 7 cents per month per customer per ERC.

15 **COMMISSIONER CLARK:** Potential -- it would
16 likely be less because you will be adding ERCs.

17 **MR. RENDELL:** If we use the ERCs in the
18 record, it would be 7 cents but it would be declining
19 because of the amortization.

20 **COMMISSIONER CLARK:** And it would be
21 declining, too, because you would be adding more
22 customers and the new customers will be paying for
23 regulatory asset.

24 **MR. WILLIS:** That's correct. The more
25 customers you have in the system in the future the

1 lower the rate will be.

2 **COMMISSIONER CLARK:** Okay. Mr. Chairman,
3 when you're ready I can make a motion.

4 **CHAIRMAN GARCIA:** I was just going to ask
5 one question. I feel like a preacher here. Has
6 everybody said their piece? Good.

7 **COMMISSIONER CLARK:** Mr. Chairman, I would
8 recommend that we accept the recommendation of the
9 Primary Staff as it is modified today and clarified
10 today. And I want to thank Mr. Shreve for pointing
11 out those things that did need to be clarified. And I
12 appreciate all of the parties working together on
13 this.

14 I do want to respond, however, to the
15 concern of the Legal Staff with respect to the
16 regulatory asset. And there have been a number of
17 points made by Commissioners and others here with
18 respect to that case. And I share the concern that we
19 should not -- we should not read that decision as
20 broadly as Staff is advocating to us. It is a very --
21 in my view, a very -- it should be limited to the
22 facts in the case. And we should note that this case
23 involves more than just a surcharge. It is a
24 settlement of a much -- of much broader ramifications.
25 It is a case involving wastewater as opposed to

1 telephones. I think that's important. And the
2 opportunity for assuring that the customers who were
3 surcharged were, in fact, almost the same customers
4 who enjoyed the benefit. There was a greater
5 potential in the telephone case than there is here.

6 And I think that refers to -- the number of
7 people who were likely still on the system as opposed
8 to this case in it being three years later.

9 The dollar impact on individual customers
10 with respect to the surcharge is far greater in this
11 case than it was in GTE. And I think that
12 Commissioner Deason's point is very well taken. By
13 trying to do the equity, we might interpret in GTE we
14 would be doing an inequity to those customers who
15 remained on. And as Commissioner Johnson said, I
16 mean, carried to its logical extreme, there could be
17 one customer who bore the whole impact of that.

18 I would also point out that the impact on
19 the remaining customers is somewhat de minimis. I
20 realize this is a 30-year asset but it's roughly about
21 7 cents on the bill as opposed to the dollar amounts
22 it would be if you just did a surcharge. And the GTE
23 case did not concern the establishment of a regulatory
24 asset. I think Commissioner Johnson's point that this
25 is sort of the opposite of unclaimed refunds, in that

1 case customers were getting the benefit of monies paid
2 by other customers, and I would note that to the
3 extent that there are monies from customers that can't
4 get claimed in future cases, I would hope we would
5 apply them to the regulatory assets.

6 And, again, I would emphasize that this is a
7 settlement proposal and the Company itself is in some
8 instance taking less than they may be entitled to, and
9 that the customers who will have some of this
10 regulatory assets charged to them are going to be
11 receiving a benefit. They are not just going to be
12 subject to the regulatory asset. They will be
13 receiving a benefit in the form of reduced rates, at
14 least from what they might have been had we gone
15 through this whole process. And Mr. Chairman, it is
16 for those reasons I recommend that we accept primary
17 Staff's recommendation on Issue 2.

18 **CHAIRMAN GARCIA:** Okay. We have a motion.

19 **COMMISSIONER JOHNSON:** Second.

20 **CHAIRMAN GARCIA:** And there is a second.

21 Very briefly.

22 **MR. JACOBS:** I've noticed that being on the
23 back row you don't have a microphone, which is
24 probably a good thing. I don't see anything wrong
25 with that. I just want to record for the purpose of

1 the record that I'm Arthur Jacobs here on behalf of
2 the citizens in Nassau County, particularly Amelia
3 Island, in this rate case and I'm excited by the
4 enthusiasm that has gone into this settlement
5 procedure. We're in favor of it. It's time that this
6 train which has traveled long across the landscape of
7 time in this regulatory process come to the station.
8 We applaud the motion and the second and we certainly
9 are in favor of it.

10 **COMMISSIONER DEASON:** I have -- please, I
11 have one clarifying question and it's to understand
12 what Staff's position is as to -- if we vote out the
13 motion that's been made and seconded, are we taking
14 final action that is subject to reconsideration? Is
15 that where we are legally?

16 **MR. JAEGER:** Yes, Commissioner. It is a
17 final order subject to the reconsideration rule.

18 **COMMISSIONER CLARK:** That's my understanding
19 too.

20 **MR. JAEGER:** The only thing, we do need the
21 tariffs to be filed and the notice -- just the
22 typical -- when they are changing the rates, what we
23 need from them.

24 **COMMISSIONER DEASON:** And that's part of the
25 motion; is that correct?

1 **CHAIRMAN GARCIA:** Mr. Shreve.

2 **MR. SHREVE:** I'll be very brief. And I
3 think Mr. Hoffman did express it properly. The Office
4 of Public Counsel did not sign off on this settlement
5 so you do not have settlement. I think you're in a
6 position to put out a final order because the
7 Commission could have decided not to go to a final
8 hearing and then you would have 100% of the surcharges
9 and 100% of the increase. But I want it very clear
10 that I did not sign on this settlement and you do not
11 have a settlement. You made the motion properly.

12 **COMMISSIONER CLARK:** Let me just say it's an
13 offer of settlement to the Commission to resolve the
14 case on remand.

15 **MR. JAEGER:** Something that may not have
16 been clear and may not have been pointed out in all of
17 this recommendation is part and parcel of this is your
18 decision not to conduct a hearing and you reconsider
19 on your own motion not to conduct the formal hearing.

20 **COMMISSIONER CLARK:** I thought that was in
21 your recommendation and that's part of my motion.

22 **MR. JAEGER:** Yes.

23 **CHAIRMAN GARCIA:** We have a motion and a
24 second.

25 **COMMISSIONER JACOBS:** Very briefly. I think

1 it's important -- two brief points. Primary Staff --
2 and those are the things that are important to bring
3 out, in addition to Commissioner Clark's explanation
4 of the motion.

5 Staff, in its recommendation -- Primary
6 Staff in its recommendation says that the regulatory
7 asset is a means of avoiding a surcharge. I think
8 that really brings out the point that a surcharge is a
9 different mechanism for allocating this.

10 I struggle -- and the reason I wanted to
11 bring this out is I struggle with distinguishing this,
12 but I think there are two things. One is we look at
13 this settlement in the whole. And looking at it in
14 the whole there is an immediate rate impact for
15 customers across the board. And there are long-term
16 benefits for customers across the board. But I think
17 primarily this is a different mechanism that we're
18 looking at in terms of making this company whole from
19 charges they could have collected in the past.

20 **CHAIRMAN GARCIA:** Okay.

21 **COMMISSIONER DEASON:** Before we vote let me
22 say I'm in agreement with Commissioner Clark on her
23 motion as to why this can be distinguished from GTE.
24 I think the motion was very well stated. I'm going to
25 support it.

1 I think that one of the benefits, if not, in
2 my view, the main benefit, is that we're avoiding
3 surcharges and all of the difficulties that arise with
4 surcharges. And the fact that with this settlement
5 customers are not going to be asked to pay for past
6 amounts which they had no notice that they were going
7 to be charged; had no opportunity to either change
8 consumption or perhaps leave the system if they knew
9 they were going to be confronted with these amounts.
10 And that while there will be regulatory asset, there
11 will be adequate opportunity so that customers on a
12 going-forward basis know what prospective rates are.
13 They may agree or disagree with those, but at least
14 they will know what the rates are when they chose to
15 remain a customer and they chose to engage in whatever
16 consumption habits they have.

17 **COMMISSIONER CLARK:** You know, Commissioner
18 Deason brings up a good point, and I think it should
19 be at least touched on in the Order, the extreme
20 difficulty in getting a -- the surcharge right. You
21 know, just allocating it between systems, between
22 customers and things like that.

23 **CHAIRMAN GARCIA:** Extreme difficulty is a
24 euphemism, for what it would be --

25 **COMMISSIONER CLARK:** Well, in GTE it was

1 relatively easy. It's just -- you know, the customers
2 who were there, you didn't have rate classes and those
3 sorts of things. And I think it briefly needs to be
4 stated so that if we do have an appeal, which I hope
5 we don't, but that can certainly be pointed out as one
6 of the reasons that it is distinguishable.

7 **CHAIRMAN GARCIA:** Well, we have a motion and
8 second. Everyone's commented except me. I just want
9 to thank the parties for working this out to this
10 degree and for -- in particular Technical Staff for
11 having a certain flexibility to have a broader vision
12 of this. And I also thank Legal for this.

13 There being a motion and a second, all those
14 in favor signify by saying "aye." Aye.

15 **COMMISSIONER DEASON:** Aye.

16 **COMMISSIONER JOHNSON:** Aye.

17 **COMMISSIONER JACOBS:** Aye.

18 **COMMISSIONER CLARK:** Aye.

19 **MS. GERVASI:** May I just clarify that the
20 motion does include the filing of tariff sheets and
21 also a proposed Customer Notice, and by a particular
22 date.

23 **CHAIRMAN GARCIA:** That is comprehended in
24 the motion, yes.

25 **COMMISSIONER CLARK:** We have Issue 3. I

1 will move Staff on Issue 3.

2 **CHAIRMAN GARCIA:** Is there a second?

3 **COMMISSIONER JOHNSON:** Second.

4 **MR. JAEGER:** I think 3 and 4 are almost moot
5 now that we have a total settlement and just now going
6 to close.

7 **COMMISSIONER CLARK:** I thought about that.
8 But it seems to me you still have a docket open and I
9 would -- you know, maybe you'll have reconsideration.
10 So I don't think -- I think we should still conclude
11 that they should not be merged. They should not be
12 consolidated.

13 **CHAIRMAN GARCIA:** So there's a motion and
14 second. All those in favor signify by saying "aye."
15 Aye.

16 **COMMISSIONER DEASON:** Aye.

17 **COMMISSIONER JOHNSON:** Aye.

18 **COMMISSIONER JACOBS:** Aye.

19 **COMMISSIONER CLARK:** Aye.

20 **CHAIRMAN GARCIA:** Now, on No. 4 I'm willing
21 to take your advice that it's moot.

22 **MR. JAEGER:** Right. They don't need
23 discovery now.

24 **COMMISSIONER CLARK:** I would move Staff on
25 Issue 4 and 5.

1 **CHAIRMAN GARCIA:** Okay.

2 **COMMISSIONER JOHNSON:** Second.

3 **COMMISSIONER DEASON:** Now, 5 says we leave
4 the docket open for hearing, and hopefully we're not
5 going to --

6 **MR. RENDELL:** Primary Staff would like to
7 change this recommendation to close the docket.

8 **COMMISSIONER CLARK:** I guess it's just you
9 close it when the Order becomes final.

10 **MR. RENDELL:** That's correct. But the
11 reason we're keeping it open is because we had
12 recommended not acceptance of the settlement. But now
13 we would like to recommend to close it.

14 **CHAIRMAN GARCIA:** Okay. So we have a motion
15 and a second. There being no objection, show that
16 also approved.

17 (Thereupon, the hearing concluded at
18 11:20 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

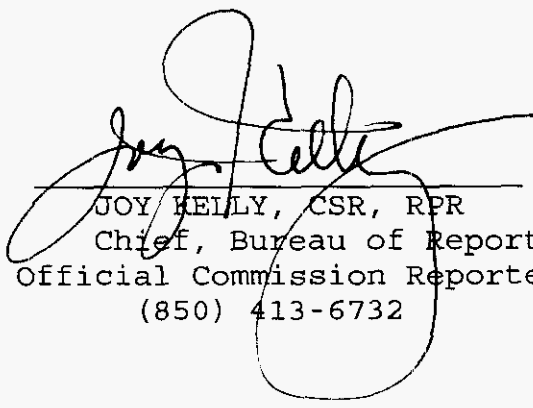
CERTIFICATE OF REPORTER

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

5 DO HEREBY CERTIFY that the Special Agenda
6 Conference in Docket No. 950495-WS was heard by the
7 Florida Public Service Commission at the time and
8 place herein stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed by me; and that this transcript,
12 consisting of 72 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 24th day of August, 1999.

15 
16 JOY KELLY, CSR, RPR
17 Chief, Bureau of Reporting
18 Official Commission Reporter
19 (850) 413-6732

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