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November 30, 1999

ORIGINAL

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 950387-SU
Application for a rate increase for North Ft. Myers Division in Lee County by
Florida Cities Water Company – Lee County Division.

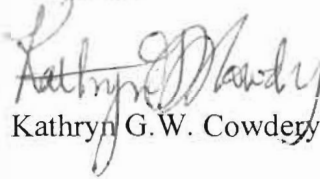
Dear Ms. Bayo:

Enclosed for filing in the above docket, on behalf of Florida Cities Water Company, is an original and fifteen copies of a Notice of Filing Transcript and an original transcript of Item 73 of the March 16, 1999, agenda conference.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this letter and returning same to my attention.

Thank you for your assistance.

Sincerely,


Kathryn G.W. Cowdery

FA _____
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REPORTING

IN THE FLORIDA PUBLIC SERVICE COMMISSION

Florida Cities Water Company,)
a Florida Corporation,)
Applicant/Appellant,)
v.)
State of Florida, Florida)
Public Service Commission,)
Appellee.)

FPSC Case No. 950387-SU
First DCA Case No. 1999-1666

NOTICE OF FILING TRANSCRIPT

Applicant/Appellant, Florida Cities Water Company, gives notice of filing the Transcript of Item No. 73 from the March 16, 1999, commission agenda conference.

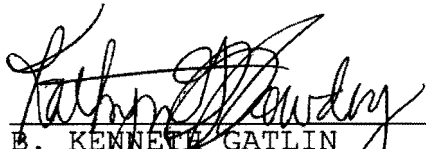
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Notice of Filing Transcript has been furnished this 30th day of November 1999 by hand delivery to:

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DOCUMENT NUMBER-DATE

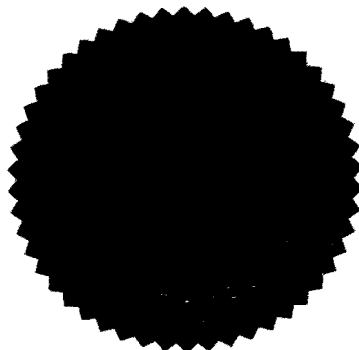
14605 NOV 30 99

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Application for a rate increase for North Ft. Myers
Division in Lee County by Florida Cities Water Company - Lee
County Division.

DOCKET NO. 950387-SU

BEFORE:



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

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

73

DATE:

March 16, 1999

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

JANE FAUROT, RPR
P.O. BOX 10751
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(850) 561-5598

APPEARANCES:

KATHRYN COWDERY, Esquire, representing Florida Cities
Water Company

HAROLD McLEAN, Esquire, representing OPC

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CHAIRMAN GARCIA: Item Number 73.

MR. JAEGER: Commissioners, Item Number 73 is staff's recommendation concerning the remand and reversal by the First District Court of Appeal of the Commission's final order in Florida Cities Water Company's rate case, and also the motion in Florida Cities to make rates permanent.

Staff is recommending that the Commission use annual average daily flow as the numerator of the used and useful equation and do grant in part the utility's motion to make rates permanent.

Kathryn Cowdery is here to address the Commission. Also, I think Harold McLean is here to answer any questions or respond if necessary.

One other thing, staff notes that participation is allowed only on Issue 3A and Issue 10.

COMMISSIONER CLARK: Okay.

MS. COWDERY: Commissioners, good afternoon. I'm Kathryn Cowdery of Ruden McClosky, Tallahassee, representing Florida Cities Water Company. As to Issue 3A, Florida Cities agrees with the staff recommendation that pursuant to the holding in the Southern States case in 1998, no used and useful adjustment should be made to the reuse facilities.

1 However, I have some concerns, and I hope the
2 Commission has some concerns about the recommendation
3 that the issues should be proposed agency action. I
4 think there is some problems with this. I don't think
5 it's appropriate in this case. If you look at
6 the staff recommendation on Page 19 you will see that
7 the staff states in the bottom paragraph that in this
8 case staff believes that the utility has separated the
9 costs associated purely with reuse -- this is in the
10 initial hearing, okay -- and those figures are
11 available without the need or requirement for
12 additional evidence.

13 You may not recall however, in the initial
14 hearing that information was given as part of
15 25-30.4415, the rule regarding improvements in the
16 public interest. There was a lot of detailed
17 information, it's in the MFRs and Schedule G-19,
18 Exhibit 1 in the case.

19 The staff recommendation goes on further to say,
20 "However --" in the final order -- "despite the
21 facilities being designated as reuse and absent any
22 determination that the costs were imprudently
23 incurred, the Commission through its used and useful
24 adjustment set rates such that a portion of these
25 costs were not recovered in the utility's rates.

1 Based on all of the above, staff believes that the
2 Commission must correct this apparent error and set
3 rates in this remand proceeding making no used and
4 useful adjustment to those facilities classified as
5 reuse." That's fine, and I think that is completely
6 on point with the Southern States 1998 court case.

7 Then we come to the last paragraph of the
8 recommendation, it's almost as a postscript and it
9 does not follow that thinking. They seem to believe
10 that there is some question whether the parties had a
11 fair opportunity to address whether the facilities
12 were actually reuse and whether the costs incurred
13 were prudent, okay.

14 Florida Cities put on a complete case in this
15 regard. There was no finding of any imprudency, there
16 was no challenge, there was no issue in that regard.
17 It was purely a used and useful determination, okay.

18 If you look at the language of the Southern
19 States First DCA case, you will see -- and I'm going
20 to read this to you, because I think this case is
21 directly on point in guiding you in this matter.

22 On Page 1058, "We agree that in order to comply
23 with the First DCA with the statutory mandate
24 requiring that the entire cost of a prudently
25 constructed reuse facility be recovered in rates, such

1 a reuse facility must be treated as if it were 100
2 percent used and useful." You go on through, they
3 cite to some reasoning in that regard and
4 conclude, "In the present case, there has been no
5 suggestion that any costs incurred in constructing the
6 reuse facilities was imprudent. We therefore, reverse
7 the order under review to the extent it excludes a
8 portion of the construction cost for reuse facilities
9 from rate base."

10 So what we are looking at here is application for
11 that First DCA case to the facts of this case. If you
12 have a PAA order, what is going to happen if someone
13 disagrees, if somebody protests? Where are you going
14 to go with that? It's not appropriate to go back to
15 an evidentiary hearing on it; we have already had
16 that. We are on remand from the First DCA on, as we
17 all know, limited issues. I don't think this was
18 contemplated.

19 CHAIRMAN GARCIA: Staff, could you answer that?

20 MR. JAEGER: Commissioners, a lot of what Ms.
21 Cowdery says is true. What we went to was the
22 prehearing order and the first hearing we had on this,
23 and I don't think anybody was put on notice of the
24 importance of whether it was classified as reuse or
25 wastewater facilities, and so they didn't have their

1 clear point of entry into the process that this would
2 be. It wasn't until the Southern States decision came
3 out that it became all important that everybody
4 realized, hey, now, if it is reuse, if it is prudently
5 incurred, then they get all of it.

6 And so I think there was -- the customers did not
7 have a clear point of entry that they needed to
8 contest whether it was reuse and whether it was
9 prudent. So, I believe that is the reason we were
10 going with the PAA, just to give -- that they did have
11 that now that they know of the significance.

12 CHAIRMAN GARCIA: Is that what the customers
13 want?

14 MR. McLEAN: I think we had fair opportunity to
15 question whether it was reuse and whether it was
16 prudently constructed in the principal part of the
17 hearing. I appreciate very much Mr. Jaeger's concern,
18 and I think we knew that it was very likely important.
19 Because the argument was certainly made by Florida
20 Cities and other utilities that that reuse statute
21 meant what the court eventually said. So the
22 importance didn't come as a big surprise to us.

23 I think we had fair opportunity to protest both
24 of those issues. So I don't think it offends us for
25 you to issue that as a final order.

1 MR. JAEGER: If OPC has no objection to issuing
2 it as a final order, then I have no problem with that.

3 MR. McLEAN: I don't know that -- there are other
4 affected parties, but speaking on behalf of OPC, we
5 had the opportunity to contest those issues.

6 MR. JAEGER: It could have been -- I'm sorry.

7 CHAIRMAN GARCIA: Are you doing the PAA for
8 yourself so you can go back and add something to the
9 record or --

10 MR. JAEGER: No. I think what Mr. McLean said,
11 it could have been made an issue, it was not made an
12 issue. And it was just staff was concerned that
13 people at that point in time it had not been decided
14 how important if it is reuse it's 100 percent. I
15 mean, we didn't know, staff didn't know that and we
16 were not operating under that principle.

17 COMMISSIONER DEASON: Was this issue part of the
18 remand from the court in this docket?

19 MR. JAEGER: I'm sorry, Commissioner.

20 COMMISSIONER DEASON: Was this issue part of the
21 remand from the court in this docket?

22 MR. JAEGER: In Footnote 4 of the order, the
23 court said we need not address whether 367.0817 is
24 applicable in this case, because the parties did not
25 raise it. I don't understand that footnote, because

1 in both their brief and --

2 COMMISSIONER DEASON: Was it raised on appeal by
3 any of the parties?

4 MR. JAEGER: Yes, it was raised by the utility,
5 in both briefs that they submitted.

6 COMMISSIONER DEASON: To the court.

7 MR. JAEGER: To the court.

8 COMMISSIONER DEASON: And then the court in a
9 footnote said that we shouldn't have to determine
10 whether it is or is not reuse?

11 MR. JAEGER: I could read the footnote.

12 COMMISSIONER DEASON: I have read the footnote.
13 I think it's in your recommendation. What does it
14 mean? Don't read it to me, tell me what it means.

15 MR. JAEGER: Well, I think they just did not feel
16 like they needed to go into whether 367.0817 was
17 applicable at that point in time.

18 COMMISSIONER DEASON: So if they are not
19 concerned with it, why are we?

20 MR. JAEGER: Well, when they sent it back they
21 did not tell us to put reuse in at 100 percent at that
22 time. They didn't tell us to fix that. It was only
23 when Southern States came out six months later that
24 they made the decision --

25 COMMISSIONER DEASON: Why does that have

1 retroactive effect on a case that was decided before
2 then?

3 MS. COWDERY: Commissioner --

4 COMMISSIONER DEASON: I'm talking to staff right
5 now, in just a moment.

6 MR. JAEGER: I'm sorry, Commissioner, I'm not
7 sure I understand your question.

8 COMMISSIONER DEASON: My question is how does
9 that decision in Southern States or whatever have a
10 retroactive effect on this decision if it was not
11 specifically addressed by the court at the time it
12 issued the remand to this Commission for this company
13 in this docket?

14 MR. JAEGER: I think that when this comes before
15 the Commission we have an ongoing responsibility to
16 set fair, reasonable, and just rates, and they have
17 now said that you must put in reuse at 100 percent and
18 we must follow the Southern States --

19 COMMISSIONER DEASON: On a going-forward basis.
20 Why do we do it retroactively? Had there been any
21 other case where we had interpreted this the other way
22 we are going to go reopen the record on a case where
23 rates have already been set a year or two and say now
24 we have got to go in and increase your rates because
25 the court made a decision two years later that

1 reversed something that we did earlier? Where do we
2 draw the line?

3 MR. JAEGER: The rates that are in effect are the
4 proposed agency action rates, and they include the
5 facilities at 100 percent, and I believe they have
6 never been final -- they have not been finally set,
7 and this was an on-going issue. That's what this
8 whole appeal was about. So the rates have never been
9 final, and so what we are trying to do is figure out
10 what the rates should have been when this case was
11 first decided back in September of '96, and the
12 court --

13 COMMISSIONER DEASON: And it's because this
14 docket is not closed is the reason that we go back and
15 retroactively apply a decision that was made after we
16 made our initial decision?

17 MR. JAEGER: I think the court -- well, the rates
18 -- I think because the rates have not been finally
19 set, yes. The court has decided that 367.0817
20 requires that no reuse, no used and useful adjustment
21 be made to reuse, and that part of the section was
22 already --

23 COMMISSIONER DEASON: But if that is the way the
24 law should have been interpreted, why didn't the court
25 interpret it then at that time if the issue was in

1 front of them? They declined to. They didn't want
2 to. They said we don't even have to be concerned with
3 it.

4 MR. JAEGER: They said they did not need to reach
5 that because nobody had argued for a discreet used and
6 useful, and they did not reach it. I don't think they
7 determined it one way or another. They didn't reach
8 that at all.

9 COMMISSIONER DEASON: Ms. Cowdery.

10 MS. COWDERY: Thank you, Commissioner. The
11 reason that you need to apply the Southern States case
12 is that it is established case law in the State of
13 Florida and elsewhere that the law as it exists at the
14 time a case is decided is the law to be applied. So
15 the Southern States case must be applied in this case
16 which is still pending. If this case goes up on
17 appeal --

18 COMMISSIONER DEASON: Hold on just a second.
19 That decision was not made at the time we made our
20 decision, and the court did not tell us we were wrong
21 in that decision.

22 MS. COWDERY: That's right. Southern States had
23 not yet been decided, and it was pending about the
24 same time, I think. You know, we can only speculate,
25 you know, why they decided that they wanted to address

1 it in one case over the other, but they did.

2 But the case law is clear that -- it is clear in
3 the State of Florida that you have to apply the law,
4 and this can be statutory changes or it can be
5 statutory interpretations by courts to any pending
6 case. If this case would go up on appeal, the First
7 DCA would be required to apply any law as it existed
8 at that time, including its own court decisions,
9 including any brand new Supreme Court cases, because
10 the case --

11 COMMISSIONER DEASON: But this case has already
12 been on appeal and the court issued a decision.

13 MS. COWDERY: I know, but it is still pending.
14 It is still pending. We don't have final rates. It
15 is still pending. And the case law -- it's just that
16 is the way it is in Florida.

17 And I have cited the two cases, a First DCA case
18 and a -- let me see. I guess they are both First DCA
19 cases, and they just stand for that proposition. And
20 when you've got a court that interprets a statute or
21 an administrative rule, and you have got a remand,
22 you've got to apply it. The case hasn't been
23 finalized.

24 COMMISSIONER DEASON: Even if it wasn't an issue
25 with the court in the original remand?

1 MS. COWDERY: It was at issue. We raised it as
2 an issue and the court simply did not reach it.

3 COMMISSIONER DEASON: Well, that is even more
4 reason it seems to me that you just ignore it now.
5 The court ignored it, we are just doing what the court
6 did.

7 MS. COWDERY: Well, the court didn't need to
8 reach it. There is a lot of times when you get into
9 cases that the courts decide that they are not going
10 to reach certain issues. They just don't reach it.
11 It wasn't decided against us. The Southern States
12 case came out, and under the laws of the state, under
13 the case law of the state you've got to apply it.

14 CHAIRMAN GARCIA: Mr. Vandiver.

15 MR. VANDIVER: I believe this is a very technical
16 point of law, however, I would say that when the court
17 pronounces what the law is, that is what the law has
18 always been. In other words, that is what the law
19 reads, and that is what the court held, and we are
20 trying to give effect to that holding on a
21 going-forward basis in this open docket, and I
22 appreciate the fact --

23 COMMISSIONER DEASON: That is the distinction,
24 it's an open docket. My question is what if this law
25 had been adopted ten years ago and we interpreted it

1 the way we interpreted it, no one ever appealed it,
2 and then in the tenth year someone appeals it and the
3 court interprets, Public Service Commission, you have
4 been wrong all of this time, it should be 100 percent
5 used and useful. Do we have an obligation to go back
6 and increase every utilities' rates that we denied
7 them some used and useful on a reuse facility? I
8 don't think so.

9 MR. VANDIVER: No, I don't think so, either. But
10 I think that we have this case before us today, we
11 have the opportunity to conform our ruling to what the
12 court opined the law was. And I believe we are duty
13 bound to follow that.

14 CHAIRMAN GARCIA: Ms. Jaber, you wanted to say
15 something?

16 MS. JABER: No, I think Rob said it all.

17 CHAIRMAN GARCIA: Okay.

18 COMMISSIONER JOHNSON: You didn't have any
19 questions?

20 COMMISSIONER DEASON: Not on that particular
21 issue. I mean, all the lawyers say that is the way it
22 has got to be, to a non-lawyer it doesn't make a lot
23 of sense. I mean, just from a plain -- if we were
24 wrong then the court should have told us we were wrong
25 then. And the matter was appealed and the court said

1 you don't have to determine it, don't worry yourself
2 with it. And now we are worrying ourselves with it
3 because of a decision that was made six months later.

4 MS. JABER: I think from a practical standpoint,
5 Commissioner Deason, what might give you some comfort
6 is the reason the court didn't specifically address it
7 is the reuse facilities were included in the overall
8 used and useful determination. So when Florida Cities
9 went up on appeal, the court was addressing the entire
10 used and useful concept, and the court noted that no
11 one appealed the reuse calculation, for lack of a
12 better way to say it.

13 COMMISSIONER DEASON: Even more reason. It
14 wasn't even appealed by the person that is now saying
15 that we have got to do it. They didn't raise an issue
16 with the court. They were willing to live with it.

17 MS. JABER: No, actually they weren't. They did
18 include something, as I recall, Mr. Jaeger, in the
19 brief and in the prehearing statements here, and --

20 COMMISSIONER DEASON: Apparently the court didn't
21 think so, they said it's not an issue, don't worry
22 yourself with it.

23 MS. JABER: I don't think they said it's not an
24 issue.

25 COMMISSIONER DEASON: Well, they said don't worry

1 yourself with it. That's what the footnote said.

2 MR. JAEGER: I think they said we did not need to
3 reach -- what they say is, "Neither party has
4 advocated on appeal for a discreet used and useful
5 calculation for the reuse facility or contended that
6 the reuse facilities should be considered separately
7 from the rest of the system. We do not, therefore,
8 reach any question arising under Section 367.0817, Sub
9 3, Florida Statutes."

10 COMMISSIONER DEASON: No question before the
11 court, is that what they're saying?

12 MS. JABER: No specific question before the court
13 on reuse.

14 COMMISSIONER JACOBS: Was it an issue on the case
15 below?

16 MR. JAEGER: Just used and useful. It was not
17 whether reuse should be 100 percent used and useful.
18 That was not a specific issue.

19 COMMISSIONER DEASON: Just the issue of used and
20 useful overall, that was it. And it wasn't whether
21 this facility is a reuse facility, and if it is a
22 reuse facility it has to be 100 percent used and
23 useful. That particular question was not in front of
24 the court.

25 MS. JABER: Right. But what you are articulating

1 is precisely why we recommend it should be at least
2 PAA, because what did not get addressed fully in our
3 opinion is which facilities were reuse facilities, and
4 which were prudently incurred expenses I would imagine
5 is the next step.

6 COMMISSIONER JACOBS: It wasn't an issue in the
7 original case before the Commission and the parties
8 didn't raise it on appeal. This essentially is a
9 fallout of the admonition from the court, because we
10 have got to look at all used and useful. Is that what
11 I'm hearing you say?

12 MS. JABER: That's one way of looking at it.
13 That is not what we have said. What we have said is
14 we recognize that there is an opinion that came out
15 after Florida Cities was heard, that should be
16 applicable here.

17 COMMISSIONER JACOBS: My point is this, my point
18 is this, the fact that it wasn't among the issues that
19 went up on appeal, in fact, argues I think to the
20 contrary, because if we are going to make a
21 pronouncement on that issue, I think it supports the
22 rationale that staff has given us. The court didn't
23 reach it because it wasn't raised by the parties, but
24 the fact is in order to resolve everything that is
25 before us we have to reach that issue.

1 I think it argues for making it PAA, because only
2 then will we give the parties full rights. They
3 expressly did not get a hearing on it on the last
4 appeal, and it sounds like they didn't get it in the
5 last case that was before us. If we want to resolve
6 that issue now, the only real way to do it is PAA.

7 MR. JAEGER: That was our original reason we did
8 it as PAA.

9 CHAIRMAN GARCIA: (Inaudible, microphone not on.)

10 MR. McLEAN: Well, I think what that boils down
11 to is to give us the opportunity to come in and
12 suggest that the facilities were not reuse facilities,
13 or that they were not prudent, or both. And it's
14 unlikely we are going to make that case, and I think
15 it can be argued that we already had the opportunity
16 to make it.

17 There is one thing you all haven't talked about.
18 One of the witnesses in this case before the
19 Commission attempted to address this whole issue in
20 testimony, and you all struck that issue on staff's
21 motion for it being irrelevant. My sense is that if
22 the court looks at this specific issue --

23 COMMISSIONER DEASON: We struck it as being
24 irrelevant?

25 MR. McLEAN: Yes, sir.

1 COMMISSIONER DEASON: The question of whether a
2 reuse facility is 100 percent used and useful?

3 MR. McLEAN: No, sir. The question -- yes, the
4 question of whether if it is reuse then it is 100
5 percent used and useful if it was prudently incurred.
6 The reuse itself was prudently incurred. Mike Acosta
7 attempted to reach that issue in the case. He filed a
8 couple of lines of testimony about it and staff moved
9 to strike that, and the Commission granted that as it
10 being irrelevant. That is my recollection. My sense
11 is that --

12 COMMISSIONER DEASON: This is the remand hearing?

13 MR. McLEAN: Yes, sir, the remand hearing in Fort
14 Myers, I think it was. My sense is that if we -- if
15 this case goes back to the court with that issue in
16 it, the court knows what the law of the land is today,
17 the court is going to note that a witness tried to
18 raise that issue, tried to bring that issue to the
19 Commission's attention and that we might be faced with
20 adverse action of the court. I think ultimately that
21 issue is now a winner and that's where it boils down
22 to for me, and why I don't mind putting it in the
23 final order.

24 If you all want to hold off and put it in PAA,
25 that's fine with me. But the chances of our coming

1 forward and putting on a case that it's not reuse or
2 that it wasn't prudent is very remote. And I do
3 appreciate the staff affording us a point of entry
4 there. There are sometimes when we have had to argue
5 really vehemently for that, but in this instance I
6 don't think we are going to avail ourselves of it.
7 And it doesn't offend me if you want to put it in the
8 final order.

9 CHAIRMAN GARCIA: He's not going to avail
10 himself? Wait a minute. These are the customers of
11 Florida sitting here. I mean, who are we preserving a
12 right for?

13 MR. JAEGER: As you remember, Sheryl Longa
14 (phonetic) and eleven other customers are the ones
15 that protested, and they have been quite active.
16 Sheryl Longa at the second remand hearing did back
17 away and did not file any prehearing statements and so
18 she just participated as a customer only in the second
19 remand, so --

20 CHAIRMAN GARCIA: She gave up her standing as a
21 party completely.

22 MR. JAEGER: Yes.

23 MS. COWDERY: Chairman Garcia, could I have a few
24 just concluding -- I'm sorry.

25 MR. JAEGER: One other thing. In the prehearing,

1 we did not -- again, the utility did not come forward.
2 This was the issue of whether reuse should be 100
3 percent. That was not made an issue in the prehearing
4 order, and so when Michael Acosta filed his testimony
5 and had that law required, I think the presiding
6 officer determined that that could be a legal question
7 and we didn't need testimony, you know, that was not
8 what we reopened the record for.

9 We reopened the record for very limited annual
10 average daily flow versus max month. And so we didn't
11 need testimony on that issue. If it was an issue it
12 was a legal issue.

13 CHAIRMAN GARCIA: Okay. Thirty seconds.

14 MS. COWDERY: And to that extent, since it's a
15 legal issue, all you have to determine is does
16 Southern States apply to this case. And I would say
17 it does, and I do want to say that very issue of
18 367.0817(3), reuse being 100 percent used and useful
19 is a specific set out issue in our brief and we
20 specifically argued it. I don't know why the court
21 did what it did, but it was issued, okay. It was an
22 issue.

23 COMMISSIONER JOHNSON: Just one question, and you
24 might have said this, Public Counsel. It's pretty
25 late. Did you say that you believe that Southern

1 States does apply to this case with respect to this
2 issue?

3 MR. McLEAN: Yes, ma'am, I believe it does. I
4 have done a whole bunch of research in that specific
5 area thanks to an excellent brief filed by Ms. Roddy
6 (phonetic) just recently. And I think it does because
7 the distinction in my mind is that this is a pending
8 case. And that makes all the difference in the world.
9 If this case shut down and the Southern States case
10 came out the day after this case shut down, then I
11 don't think it would touch this case.

12 COMMISSIONER JOHNSON: Okay.

13 CHAIRMAN GARCIA: If you don't have a motion then
14 Leon does.

15 COMMISSIONER DEASON: I have --

16 COMMISSIONER JOHNSON: (Inaudible, microphone not
17 on.)

18 CHAIRMAN GARCIA: Do you want to -- is there
19 anything else?

20 COMMISSION STAFF: I have nothing else.

21 COMMISSIONER DEASON: I have a question on Issues
22 8 and 9.

23 CHAIRMAN GARCIA: Okay.

24 COMMISSIONER DEASON: I'm trying to understand
25 what staff's recommendation is concerning the

1 additional rate case expense and when the recovery
2 begins. In a nutshell, the way I understand it, and I
3 may be totally off base, but the way I understand it
4 is that staff is recommending that it basically begin
5 recovery back while the interim rates are being
6 collected, for lack of a better term, calling them
7 interim rates. I guess they were the PAA rates.

8 MR. JAEGER: The implemented rates.

9 COMMISSIONER DEASON: The implemented rates. So
10 that the recovery of that begins sooner and that the
11 four-year period would end sooner and that rates would
12 be reduced sooner as a result.

13 COMMISSION STAFF: That is correct.

14 COMMISSIONER DEASON: In a nutshell, that is the
15 concept that you are arguing here, correct?

16 COMMISSION STAFF: Right.

17 COMMISSIONER DEASON: And that it would reduce
18 the refund amount, but then it would also hasten the
19 recovery during the four-year amortization period?

20 COMMISSION STAFF: Exactly.

21 COMMISSIONER DEASON: Okay. I move -- do you
22 have anything?

23 COMMISSIONER JOHNSON: I don't have any other
24 questions. I was going to move it.

25 COMMISSIONER DEASON: Staff on all issues?

1 COMMISSIONER JOHNSON: Uh-huh.

2 COMMISSIONER DEASON: Second.

3 CHAIRMAN GARCIA: We have a motion and a second.

4 COMMISSIONER DEASON: I'm sorry, are you
5 recommending that we also do the PAA, because there
6 are other parties? The PAA on Issue 3A?

7 COMMISSIONER JOHNSON: 3A and 10.

8 COMMISSIONER DEASON: Because there are other
9 parties?

10 COMMISSIONER JOHNSON: Yes. I don't think it's
11 going to matter, but --

12 MR. JAEGER: PAA is just for 3A, I think 10 was a
13 legal --

14 COMMISSIONER DEASON: 10 was parties could
15 participate. 3A was PAA.

16 MR. JAEGER: 3A was the PAA.

17 CHAIRMAN GARCIA: We have a motion and a second.
18 All those in favor signify by saying aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN GARCIA: Opposed? Okay.

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CERTIFICATE OF REPORTER

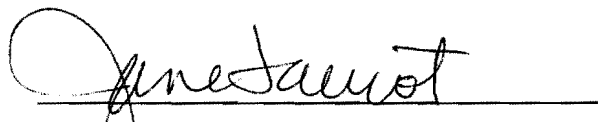
STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 24 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 29th day of March, 1999.



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