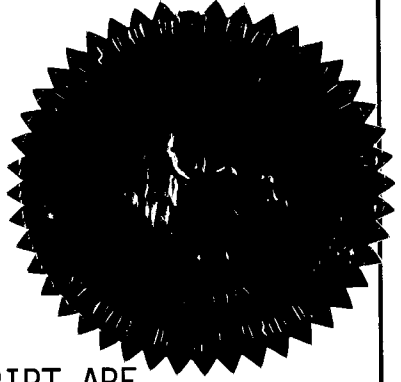


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001502-WS

In the Matter of:

PROPOSED RULE 25-30.0371, F. A. C.  
ACQUISITION ADJUSTMENT



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PROCEEDINGS:           AGENDA CONFERENCE  
                                  ITEM NO. 3

BEFORE:                   CHAIRMAN E. LEON JACOBS, JR.  
                                  COMMISSIONER J. TERRY DEASON  
                                  COMMISSIONER LILA A. JABER  
                                  COMMISSIONER BRAULIO L. BAEZ  
                                  COMMISSIONER MICHAEL A. PALECKI

DATE:                     Tuesday, December 4, 2001

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

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## 1 PARTICIPATING:

2 CHRIS MOORE, FPSC Division of Appeals.

3 MARSHALL WILLIS, FPSC Division of Economic  
4 Regulation.

5 MARTIN FRIEDMAN, Rose, Sundstrom and Bentley.

6 MARTY McDONALD, Rutledge, Ecenia, Underwood, Purnell  
7 and Hoffman, representing Florida Water.8 BEN GIRTMAN and FRANK SEIDMAN, representing  
9 Utilities, Inc.10 JACK SHREVE, Public Counsel; CHARLES BECK and STEVE  
11 BURGESS, Associate Public Counsels, Office of the Public  
12 Counsel representing the Citizens of the State of Florida.

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## P R O C E E D I N G S

1  
2 MS. MOORE: Commissioners, Item Number 3 is a  
3 recommendation to propose a rule on acquisition adjustments for  
4 water and wastewater utilities. Staff has both a primary  
5 recommendation and an alternative recommendation. The  
6 alternative is a rule that codifies the Commission's current  
7 policy, which is that an acquisition adjustment will not be  
8 included in rate base absent proof of extraordinary  
9 circumstances.

10 The primary recommendation is a rule that differs  
11 only in the way it treats negative acquisition adjustments and  
12 it comes into play if the utility files for a rate increase  
13 within five years of the date of the order approving the  
14 transfer of assets and if the difference between the purchase  
15 price and the net book value of the utility is more than 20  
16 percent of the net book value.

17 Staff believes the primary recommended rule still  
18 provides a good incentive to the utilities to consolidate and  
19 to take over small troubled utilities, but better recognizes  
20 the concerns of ratepayers and concerns raised by Public  
21 Counsel about overpaying for rate base.

22 CHAIRMAN JACOBS: Very well. I see we have parties  
23 here to participate.

24 Mr. Friedman.

25 MR. FRIEDMAN: Martin Friedman, law firm of Rose,

1 Sundstrom and Bentley.

2 MR. McDONALD: Marty McDonald, Rutledge, Ecenia,  
3 Purnell, and Hoffman on behalf of Florida Water.

4 CHAIRMAN JACOBS: Mr. Girtman.

5 MR. GIRTMAN: Ben Girtman and Frank Seidman  
6 representing Utilities, Inc.

7 CHAIRMAN JACOBS: Mr. Beck.

8 MR. BECK: Charlie Beck, Jack Shreve, and Steve  
9 Burgess on behalf of the citizens of Florida.

10 MS. MOORE: Who would like to go first? Mr.  
11 Friedman, I guess you're on the end.

12 MR. FRIEDMAN: Yes. My comments are going to be  
13 brief, and so I was elected to go first.

14 CHAIRMAN JACOBS: Very well.

15 MR. FRIEDMAN: I want to address something in the  
16 staff recommendation that really goes to the crux of the whole  
17 issue of encouraging the acquisition of small troubled systems.  
18 And I think that there is a problem with the way that the rule  
19 defines what extraordinary circumstances are. I mean, it seems  
20 to me that what you are trying to do is to encourage  
21 well-managed, well-financed companies and individuals to  
22 acquire systems that are troubled.

23 The problem is that someone that meets those criteria  
24 and purchases a troubled system finds itself in the position of  
25 finding that that situation created by the prior owner is

1 extraordinary circumstances and they lose the incentive to  
2 negotiate the best purchase price they can negotiate. One  
3 instance that is coming up later this afternoon is on Birkham  
4 Enterprises (phonetic), where exactly the same thing happened.  
5 They acquired a trouble system and the staff is recommending  
6 that because they purchased a trouble system that had DEP  
7 problems, and they brought in -- and the staff recommendation  
8 says they brought in the management, and the funds, and all of  
9 these things that you want people to do for small systems, and  
10 yet all of a sudden that is considered an extraordinary  
11 circumstance and they lose the benefit of having come in and  
12 taken over that troubled system.

13           And that loses for the Commission the incentive on  
14 people to, number one, acquire the small systems, because if  
15 they acquire them at less than rate base they don't get any  
16 benefit for it. And, number two, it loses the incentive to buy  
17 it at the best price possible because if they can pay \$100,000  
18 for a \$100,000 rate base company, they are going to get a  
19 \$100,000 rate base. If they pay less than that, they are going  
20 to get the purchase price instead of the rate base. And there  
21 is no harm to the customers in that because they are getting  
22 all of those things that you want to happen to small poorly  
23 run, poorly managed utilities companies.

24           And so I think that the problem with the rule as I  
25 see it is the way that it defines extraordinary circumstances,

1 because it causes the problem that it is intended to create --  
2 to remedy, which is to get rid of those small poorly managed,  
3 poorly financed companies.

4 COMMISSIONER JABER: Mr. Friedman, do you have  
5 suggested language?

6 MR. FRIEDMAN: You know, that's the hard thing about  
7 extraordinary circumstances -- no. The answer is no, I do not  
8 would be the short answer, Commissioner Jaber. And some of the  
9 earlier drafts of the rule had longer explanations and more  
10 things that should be looked at. This one just says in  
11 determining whether extraordinary circumstances have been  
12 demonstrated, the Commission will consider evidence provided to  
13 the Commission such as anticipated retirement of acquired  
14 assets and condition of the assets acquired.

15 Well, that leads you to believe that if you are going  
16 to retire required assets and that if the condition of those  
17 assets are not very good, then you are going to find that is an  
18 extraordinary circumstance and you are going to give a negative  
19 acquisition adjustment. Well, that is exactly what you are  
20 trying to accomplish is to get rid of those people that are  
21 managing small systems that have assets in poor condition. And  
22 naturally what you are going to do is infuse new capital and  
23 retire the parts of the system that need to be taken care of.

24 And so there is just an inherent problem with the  
25 rule accomplishing what the legislative intent was and that the

1 staff so nicely pointed out on Page 2 of the recommendation  
2 when it cited from Order 25729 stating all of those things that  
3 we are looking to do and encourage in the acquisition of  
4 smaller utilities by larger better financed, better maintained.

5 So I think that it needs to be reworked some on the  
6 definition so that you don't penalize people for doing exactly  
7 what you are intending for them to do.

8 COMMISSIONER DEASON: Mr. Friedman, let me ask you a  
9 question on that point. Obviously you are familiar with both  
10 the primary and the alternate recommendations, correct?

11 MR. FRIEDMAN: Correct.

12 COMMISSIONER DEASON: Under the primary, as I  
13 understand it, and we may need some clarification from staff,  
14 but as I understand it under the primary recommendation that 20  
15 percent -- in the case of a negative acquisition adjustment,  
16 the first 20 percent is basically recognized so that there is  
17 not the penalty that you speak of. In other words, there is  
18 benefit that is shared, if that is the proper term to use. And  
19 let me continue. And also I understand that there is a  
20 five-year period there where if there is not a rate case filed,  
21 there is no impact on the company in the sense that rates stay  
22 the same. While the amount may be booked, it really is not  
23 used for surveillance purposes and the company couldn't be  
24 brought in for an overearnings investigation during that  
25 five-year period.

1           So how do you view that compromise? I view it as a  
2 compromise position. And how do you view it in regards to the  
3 point you were making that there is no incentive for the  
4 acquiring utility to make the best deal that they can?

5           MR. FRIEDMAN: If that is your interpretation, then I  
6 agree. I didn't interpret the rule that way. The rule to me  
7 says that it is not included absent extraordinary  
8 circumstances. That is a whole issue you deal with. And then  
9 you say unless, and then you pull in the 20 percent. If your  
10 interpretation is correct, that basically the utility gets the  
11 first 20 percent, then I certainly have a less of a problem  
12 with the definition of extraordinary circumstances because  
13 you're only dealing with that with regard to everything over 20  
14 percent. I didn't interpret the rule as saying that.

15           COMMISSIONER DEASON: Well, maybe I'm interpreting it  
16 incorrectly. Maybe I was just hoping that was what it was  
17 saying, and maybe -- but let's ask staff at this point to  
18 clarify the intent.

19           COMMISSIONER JABER: Let me tell you, Commissioner,  
20 I'm reading it the same way you are, and that has also been  
21 reinforced by discussions I have had with staff. So that is a  
22 good clarification to make up front.

23           MR. WILLIS: Let me clarify that, because I think Mr.  
24 Friedman has it right. The 20 percent only comes in if the  
25 Commission doesn't desire to make an acquisition adjustment,



1 and it only comes into play when there is a negative  
2 acquisition judgment where that first 20 percent doesn't get  
3 booked no matter what. That portion is there and doesn't get  
4 applied.

5           If the Commission decides there are extraordinary  
6 circumstances where the Commission wants to apply a negative  
7 acquisition adjustment, that portion of the rule does not come  
8 into play the way it is written. Now, it could. If you decide  
9 that is what you want to do, you could do that.

10           COMMISSIONER DEASON: But as I read it, that whole  
11 issue is not triggered unless they choose to file a rate  
12 proceeding and then it is fair game at that point.

13           MR. WILLIS: Well, that is correct. That is exactly  
14 right. If the Commission doesn't book -- doesn't find any  
15 extraordinary circumstances, doesn't book a negative  
16 acquisition adjustment, nothing is triggered unless the company  
17 files for a rate case within the five years contained in the  
18 rule and --

19           COMMISSIONER DEASON: Okay. But here is another  
20 clarification, and this I am unclear on and I need it  
21 clarified. If there is a negative acquisition adjustment  
22 sometime during that five-year period, the company files for a  
23 rate case, is all of the negative acquisition adjustment a fair  
24 issue or is the 20 percent still for the benefit of the utility  
25 regardless of extraordinary circumstances?

1 MR. WILLIS: The 20 percent is still for the utility  
2 regardless. It's only the excess, or the 80 percent.

3 MR. FRIEDMAN: Well, that is interesting because that  
4 is the not the way I read the rule. But let me make sure I  
5 understand this. So notwithstanding whether the issue of  
6 extraordinary circumstances has anything to do with it, the  
7 utility gets the benefit of the first 20 percent. And it is  
8 only the amount over 20 percent that really comes into play  
9 under the theory of extraordinary circumstances?

10 COMMISSIONER DEASON: That is my understanding.

11 CHAIRMAN JACOBS: Right. That is my understanding.

12 COMMISSIONER JABER: In fact, it is the amount over  
13 20 percent of the difference between booked value and purchased  
14 price, correct? And it is easier -- I always have to read the  
15 hypothetical first. The language isn't as clear as we had  
16 hoped. And, Marshall, I know that you all have gone through  
17 different versions and maybe there is a way to work with the  
18 companies and Public Counsel to make sure that the language is  
19 real clear to avoid problems in the future. But can you do it  
20 in the form of a hypothetical using 100,000 and 60,000?

21 MR. WILLIS: 100,000 and 60,000. 100,000 being the  
22 book value and 60,000 being the purchased price? I think I  
23 need to do this in two ways to make the rule very clear. For  
24 instance, if you had no extraordinary circumstances and we go  
25 that route first, that would trigger the five-year amortization

1 of the rule where 80 percent of the excess would be looked at  
2 if the company came in for a rate case, but would not if they  
3 didn't.

4           And in that case, if the rate base, the actual rate  
5 base at the time of transfer was 100,000, you would have  
6 \$20,000 that would fall under that 20 percent because 20  
7 percent of 100,000 is 20,000. That would be the amount that  
8 would be there regardless in rate base.

9           CHAIRMAN JACOBS: They got that.

10           MR. WILLIS: They would get that regardless. The  
11 remaining portion --

12           MR. FRIEDMAN: Regardless of the extraordinary  
13 circumstances?

14           MR. WILLIS: Well, I'm getting there. Let me finish  
15 with the examples. Under this circumstance you take the 20,000  
16 less the 60, \$40,000 is the excess amount which we would not  
17 recognize for overearnings purposes or any other purpose unless  
18 the utility filed for a rate case, for a rate increase. It  
19 would not be -- it would not be recognized if the company filed  
20 for indexing pass-throughs, that is the one provision that is  
21 left out of the rule. But if the company filed for a rate  
22 case, limited proceeding, two other sections like that, a  
23 staff-assisted rate case, it would be recognized. The  
24 unamortized portion would be recognized at that point of the 80  
25 percent.

1 Now, let's take another example --

2 COMMISSIONER DEASON: Before you leave that, just so  
3 that it is crystal clear, the 100,000 rate base, 60,000  
4 purchase price, leaving a 40,000 potential negative acquisition  
5 adjustment, how do you calculate the 20 percent, how is that in  
6 this particular example?

7 MR. WILLIS: Well, in this case you have a purchased  
8 price of \$60,000, so you have a potential acquisition  
9 adjustment of 40,000 here. The acquisition adjustment, the 20  
10 percent is calculated based upon the actual rate base, so the  
11 20 percent would be calculated on the 100,000. The potential  
12 acquisition adjustment is 40. I think I misspoke awhile ago  
13 when I said 60. But the potential acquisition adjustment is  
14 \$40,000, so the excess amount over that would be \$20,000 in  
15 this example to get it correct.

16 COMMISSIONER DEASON: So 20,000 is preserved as the  
17 amount that is at issue if the company files a rate case within  
18 five years.

19 MR. WILLIS: Within five years, that is correct.  
20 That is the amount that is preserved and will be amortized over  
21 the five years. The other \$20,000 is automatically in rate  
22 base no matter what.

23 COMMISSIONER DEASON: And that is where the incentive  
24 comes in for the company to bargain for the very best price  
25 that they can.

1 MR. WILLIS: Yes. Now, if you took the example where  
2 the Commission found there were extraordinary circumstances and  
3 a party argued that there should be a negotiate acquisition  
4 adjustment applied, a party could argue that it could be a  
5 partial negative acquisition adjustment or the complete amount.  
6 They could argue in this case using this example, a party could  
7 argue that the full \$40,000 should be implemented as a negative  
8 acquisition adjustment from the very beginning because the  
9 Commission found extraordinary circumstances.

10 The way the rule is written, that other section  
11 doesn't apply at all if the Commission were to say we agree, a  
12 negative acquisition adjustment of \$40,000 should be applied in  
13 this circumstance, there is no 20 percent provision the way the  
14 rule is written. That section is totally ignored in this  
15 circumstance because the Commission is applying a negative  
16 acquisition adjustment.

17 Now, the Commission the way the rule is written also  
18 has the alternative, like I said before, of applying a partial  
19 negative acquisition adjustment if they didn't believe it went  
20 to -- the reasons stated didn't go to the full effect of the  
21 whole \$40,000, they could choose to say only 20,000 would be  
22 recognized as a negative acquisition adjustment because there  
23 was a reason for the purchase of the system, we need to provide  
24 an incentive, we will only implement half of it. I mean, that  
25 possibility is there the way the rule is written. But I just

1 wanted to make it real clear that if the Commission found there  
2 were extraordinary circumstance there isn't a 20 percent the  
3 way the rule is written that automatically goes into rate base  
4 under that circumstance. And I think that's what Mr. Friedman  
5 is referring to.

6 MR. FRIEDMAN: That is my problem exactly.

7 COMMISSIONER DEASON: So your problem is that if  
8 there is a case filed and a party raises extraordinary  
9 circumstances in the example just cited, the full 40,000  
10 potential negative acquisition adjustment is at issue.

11 MR. FRIEDMAN: Right, because of the fact that the  
12 extraordinary circumstances are the circumstances that will  
13 almost always exist when you buy a troubled utility. And that  
14 is what you want to do, you want people to buy the troubled  
15 utilities, but at the same time under this definition of  
16 extraordinary circumstances it doesn't work. You are giving  
17 the disincentive when you should be giving an incentive.

18 CHAIRMAN JACOBS: Well, it was my understanding that  
19 there is where the balancing occurs, because the idea is to  
20 avoid rate shock to the ratepayers. The idea is that the  
21 company would hold off on rate proceedings for a period of  
22 time. And if you are willing to do that, then the incentive is  
23 there. But if you are not willing to do that, then that is  
24 exactly the trade-off.

25 MR. FRIEDMAN: Well, the problem is that there may be

1 reasons for filing for a rate increase other than just getting  
2 your return on this extra investment, so to speak. The  
3 additional capital that you are putting in the system,  
4 additional expenses. Maybe the system was not running well and  
5 was going into disrepair because the prior owner just hadn't  
6 kept up with rates and that was the problem. That if he had  
7 compensatory rates the system could have been maintained  
8 better, upkeep better and more easily financed.

9           So the reason for the rate case may have absolutely  
10 nothing to do with an acquisition adjustment, and yet you are  
11 penalizing them by saying, gee, if you come in, though, for a  
12 rate case, then all of a sudden we are going to throw this  
13 acquisition adjustment issue at you. But the problem -- that  
14 still doesn't go to the central problem, which is that you  
15 still will find an extraordinary circumstance in every case  
16 where somebody buys a troubled utility.

17           CHAIRMAN JACOBS: Commissioners, we have kind of  
18 engaged in a dialogue with Mr. Friedman, and I don't know if --

19           MR. FRIEDMAN: And I was going to be the shortest  
20 presentation. I apologize.

21           CHAIRMAN JACOBS: Could we get everyone to do their  
22 presentations and then --

23           COMMISSIONER JABER: Mr. Chairman, may I have just  
24 one short question of Mr. Willis before I lose the thought.  
25 Can Mr. Friedman's concern, Marshall, be addressed with the

1 flexibility to prove up the five-year amortization period? I  
2 noticed in the draft rule you say that the five-year period --  
3 it should be a five-year period unless a shorter or longer  
4 period can be justified. Can some of that concern be addressed  
5 by extending the amortization period on a case-by-case --

6 MR. WILLIS: Yes, Commissioner Jaber.

7 COMMISSIONER JABER: Or shorten it, actually. To  
8 address Mr. Friedman's concern you would want to shorten the  
9 amortization period.

10 MR. WILLIS: That is correct. And that's one thing I  
11 was going to point out here if I got a chance. There are three  
12 things that I would like to -- if I could have the opportunity  
13 to respond here. One of those is actually your concern. The  
14 rule does allow you to, with good reason, shorten or lengthen  
15 the amortization period of five years. Five years is sort of  
16 automatic unless a party brings that up.

17 The other thing I would like to bring up is that  
18 treatment that we are recommending here for the negative  
19 acquisition adjustment is no different than what has been done  
20 for the last 18 years when the policy first came out. That is  
21 what the Commission has been doing and we haven't changed that.  
22 The other thing I would like to point out, the third thing is  
23 that during those whole 18 years we have only recognized four  
24 negative acquisition adjustments. Out of all the transfers the  
25 Commission has approved, there has only been four circumstances



1 that the Commission has determined a negative acquisition  
2 adjustment was appropriate. So it's not -- what I'm trying to  
3 say is it doesn't happen all the time. It's not a big issue  
4 where it happens in every single case.

5 COMMISSIONER DEASON: And under your proposed rule,  
6 your primary proposed rule is the same standard as has been in  
7 existence with current Commission policy for all these 18 years  
8 as you indicate?

9 MR. WILLIS: That is correct. And just like  
10 Commissioner Jaber said, you could fix that problem, too. You  
11 could you lean (phonetic) that way and -- two ways you could  
12 fix it. You could say there was a good reason for you to buy  
13 this, but we think the purchase price is a bit too low and we  
14 want to recognize part of that to benefit the customers and  
15 part of it to benefit the company, so you would recognize a  
16 partial negative acquisition adjustment.

17 COMMISSIONER JABER: There is a difference, though.  
18 The difference is we have taken a stab at giving an example of  
19 an extraordinary circumstance, and in doing that have we  
20 inadvertently restricted the definition of extraordinary  
21 circumstance? That is a difference.

22 MR. WILLIS: Well, let me take a shot at this before  
23 Ms. Moore does, but I don't think we have. We have taken  
24 several orders of this Commission in the past where we have  
25 stated what we thought extraordinary circumstances were and the

1 way the rule is addressed, we have just tried to outline in our  
2 rule those circumstances the Commission has already stated in  
3 prior orders that have lead to extraordinary circumstances. It  
4 doesn't even mean that they will in this case.

5 I mean, the way the rule we tried to draft is that  
6 these are just examples. We are trying to be very open with  
7 the utility industry and the customers, with Public Counsel  
8 saying this has happened in the past, the Commission has  
9 recognized this circumstance as being extraordinary. That  
10 doesn't mean that it is going to be in this case, it just means  
11 it's a circumstance.

12 I mean, I would be happy if you we just completely  
13 stripped the rule of any reasons for extraordinary  
14 circumstances, but I don't know that the industry would be  
15 because they have been looking for certainty as to what the  
16 Commission has looked at. So it's my understanding through the  
17 workshop process that they wanted to have these extraordinary  
18 circumstances in the rule that the Commission has looked at in  
19 the past.

20 COMMISSIONER JABER: Regardless of which approach we  
21 take, one of my goals has been to provide certainty. Not just  
22 to the companies, but also to the consumers and consumer  
23 advocates. And what I'm trying to avoid is relitigating each  
24 and every -- or litigating each and every time the issue of  
25 extraordinary circumstances. Do you think the primary

1 eliminates that problem? See, do you envision in every  
2 transfer case we are going to look at the threshold issue of  
3 extraordinary circumstances?

4 MR. WILLIS: No, I don't. I think the primary  
5 eliminates to a good deal those cases where you would be going  
6 to a hearing to litigate extraordinary circumstances. I think  
7 the parties are going to look at this portion of the rule on a  
8 negative circumstance and see whether or not they can live  
9 within the framework of the rule.

10 CHAIRMAN JACOBS: Are you done, Mr. Friedman?

11 MR. FRIEDMAN: Yes, sir.

12 MR. McDONALD: In response to what Commissioner Jaber  
13 just stated, it would be Florida Waters' position that if a  
14 utility or another party requests an acquisition adjustment and  
15 that request is denied by the Commission, that decision cannot  
16 be modified. That would give Florida Water and the other  
17 utilities and the Commission, I believe, the finality that the  
18 Commission is looking for.

19 If no party requests an acquisition adjustment, then  
20 perhaps the Commission should not address that acquisition  
21 adjustment potential and let it lie until brought to its  
22 attention. But it would be Florida Waters' position that if a  
23 utility, or OPC, or any party requested an acquisition  
24 adjustment and that request is denied, that decision cannot be  
25 modified. Also, Florida Water has concerns with staff's

1 Alternative A. Florida Water does support staff Alternative B.  
2 The specific concerns with staff's Alternative A are what has  
3 already been discussed.

4           We don't recall any discussion or comments in the  
5 record of the rulemaking workshop in support of this 80  
6 percent/20 percent approach, and the 20 percent figure appears  
7 to be an arbitrary figure. One fear that the Commission might  
8 have is that the purchase price may be gamed so to speak. If  
9 the fair market value is less than 80 percent, a potential  
10 purchaser may wish to pay more than 80 percent to get itself  
11 around this clause, and that is certainly not to the benefit of  
12 any customer.

13           COMMISSIONER DEASON: Explain to me how that would  
14 happen, because I've got some concerns in that area, too, as to  
15 how -- on what basis the 20 percent applies so that the correct  
16 incentive is sent to the utility in all circumstances. So  
17 explain to me how you -- how do you justify what you just said?

18           MR. McDONALD: I think that a utility is safe in  
19 paying 80 percent in that rate base would be rate base in the  
20 absence of extraordinary circumstances.

21           COMMISSIONER DEASON: And that is my concern. And I  
22 think I agree with you. In the example which Mr. Willis just  
23 indicated, \$100,000 rate base, \$60,000 purchase price, what you  
24 are indicating is that the utility really doesn't have any  
25 incentive to negotiate anything below 80,000.

1 MR. McDONALD: Correct.

2 COMMISSIONER DEASON: Because the 20 percent is  
3 applied to the 100,000 rate base.

4 MR. McDONALD: That is correct.

5 COMMISSIONER DEASON: So once they negotiate 80,000,  
6 they really don't have the incentive. So I guess my question  
7 is should we change that sharing from applying it to rate base  
8 and applying it to the resulting negative acquisition  
9 adjustment. For example, as opposed to 20 percent of rate  
10 base, maybe it should be 40 percent of the negative acquisition  
11 adjustment should be retained by the company so that there is  
12 an incentive to negotiate the very lowest price, because that  
13 maximizes the negative acquisition adjustment and maximizes the  
14 40 percent of that that would be retained by the company. Have  
15 you thought about an alternative along those lines?

16 MR. McDONALD: I understand what you are saying,  
17 Commissioner. It's Florida Waters' position that none of that  
18 is necessary. We can just deal with the extraordinary  
19 circumstances exception to the rate base, which I believe the  
20 Commission has always done.

21 COMMISSIONER DEASON: So you are satisfied with  
22 staff's alternative which is codifying the existing policy?

23 MR. McDONALD: Alternative B, that is correct,  
24 Commissioner. So long as there is some finality language as  
25 Commissioner Jaber stated earlier.

1           CHAIRMAN JACOBS: Does that complete your  
2 presentation.

3           MR. McDONALD: Yes, sir. Thank you, Mr. Chairman.

4           CHAIRMAN JACOBS: Thank you. Mr. Girtman.

5           MR. GIRTMAN: Ben Girtman representing Utilities,  
6 Inc. I am very encouraged to hear the discussion between  
7 Commission Deason and Mr. Willis regarding the intent that  
8 there be no change to historical precedent regarding the  
9 termination of negative acquisition adjustments. The staff  
10 recommendation as revised we didn't feel adequately presented  
11 our views and our written comments presented to the Commission  
12 on the 15th of October.

13           So, I took the liberty of providing a copy to each of  
14 you this morning at your desks. I have additional copies if  
15 anyone wants them. We have served copies on everybody. We do  
16 have specific language in there regarding suggested changes.  
17 Utilities, Inc. strongly prefers Alternative B. We believe  
18 that it has worked in the past. We believe it is simple, it is  
19 clear, it is enforceable. It has specificity and if followed  
20 by the Commission it has finality.

21           At the same time, Utilities, Inc. is seeking to reach  
22 a reasonable compromise on either alternative, and that's why  
23 we have presented the proposed language in both of the  
24 alternatives. One other comment I would like to make in regard  
25 to Mr. Friedman's comments, he is right on point on the

1 concerns that he has raised. But I want to reemphasize if it  
2 has gone by anybody that on Alternative A, the primary  
3 representation of staff in Paragraph 3 regarding negative  
4 acquisition adjustments, the first sentence makes it very clear  
5 that a proponent of a negative acquisition adjustment has to  
6 set forth extraordinary circumstances unless the difference in  
7 the purchase price and net book value is over 20 percent. So  
8 if you get more than 20 percent, extraordinary circumstances is  
9 totally out of the window. It is an automatic application of  
10 the rule.

11           The reason for requiring extraordinary circumstances  
12 applies in a little bit different context, but it applies in  
13 both negative and positive acquisition adjustment  
14 circumstances. You have got to have a good reason to move away  
15 from rate base. You have got to have a good reason. And if  
16 you haven't got a good reason you shouldn't change it. If you  
17 pay more than rate base and you think it is justified, there  
18 are going to be cost savings to the customers for whatever  
19 reason, you can apply for that, but you have got to have a  
20 reason. Those are extraordinary circumstances. If you pay  
21 less than rate base, before you move away from rate base you  
22 have got to have a good reason. That is what extraordinary  
23 circumstances are. And so it totally eliminates that incentive  
24 for anything above 20 percent.

25           I think Commissioner Deason may be on to a point

1 there, and it addresses one of the points we bring out in our  
2 comments. Twenty percent is just totally an absolutely  
3 arbitrary number. It has no basis in anything. It is not  
4 substantiated by any kinds of studies, it is just clear out of  
5 the air. And, quite frankly, it is exceedingly low. My client  
6 is willing to --

7 COMMISSIONER JABER: So is zero.

8 MR. GIRTMAN: Sure. Except you have the statutory  
9 requirement to set rate base at a certain value, original cost  
10 and then you depreciate it. And you have got to have a good  
11 reason for moving it away from that. So, that is the policy  
12 you have followed in over 100 case over close to 20 years. And  
13 so we are saying Alternative B is a better approach. Let's  
14 stay with the finality and the simplicity of it.

15 Now, if you want to go to Alternative A and impose  
16 some kind of delay in a rate case based upon the negative  
17 acquisition adjustment amount, then that is certainly something  
18 you can consider. There are some problems with doing that, not  
19 the least of which is uncompensated confiscation of property.  
20 Now, you can argue a whole lot of different things on that  
21 issue. But if I could, I would like to briefly summarize some  
22 of our comments and why we are trying to come to workable  
23 language in either Alternative A or Alternative B.

24 We believe it is possible to reach something that can  
25 work for everybody, even if you want to go with the approach of



1 this deferral of rate shock concept which I think quite frankly  
2 is spurious, because if an increase in rates by the buyer to  
3 fully compensable rates is to be considered rate shock, then  
4 the customers have obviously been benefitting from rates that  
5 are less than fully compensable. The rates have been  
6 subsidized by the previous owner and the ratepayers have  
7 benefitted from that subsidization.

8           With a rate increase request, customers are only  
9 being asked to pay rates based on the depreciated cost of  
10 building the utility itself. So the rate shock concept, while  
11 it may have political appeal, it has no rational or financial  
12 appeal. The customers have been benefitting from years by not  
13 paying a fully compensable rate.

14           My client is willing to compromise on that if we can  
15 reach something that has workable numbers. They are willing to  
16 stay out for a reasonable period of time and not ask for a rate  
17 increase. But the specific wording recommendations we have in  
18 the drafts you have before you we believe will address some of  
19 the specific concerns that Utilities, Inc. has.

20           CHAIRMAN JACOBS: Mr. Girtman, I can agree that there  
21 is some room for debate, but it is difficult to raise that  
22 argument with customers. And we can look at the case we have  
23 today. Those customers have had boil water notices and other  
24 things.

25           MR. GIRTMAN: Sure.

1           CHAIRMAN JACOBS: And it is difficult to make the  
2 argument to them that they have been getting some kind of value  
3 or they have been incurring some kind of benefit.

4           MR. GIRTMAN: Politically it is very difficult to  
5 deal with, I understand that. What we are looking at is the  
6 numbers. And we are also trying to pay attention to the  
7 concern that customers have when they have been operating or  
8 using a utility system and paying a certain rate, they get used  
9 to it, they got habitized. You know, my rate is \$20, and that  
10 is a, quote, fair rate in my mind. And when somebody comes up  
11 and asks for a 50 percent or whatever number increase in their  
12 rates, that is a valid knee jerk reaction, sure.

13           And so my client is sensitive to that, and I think  
14 the other utilities are, too. And if we can come to some  
15 reasonable resolution of some of the wording problems in Draft  
16 A, it can be workable. That's what we are asking, and that's  
17 why we have presented and taken the time to specifically  
18 present to you some specific recommended language. The 20  
19 percent, I think Commissioner Deason has a question about, and  
20 we certainly feel very strongly about. That is an  
21 inappropriate number even if you go with Draft A.

22           The five-year period, if you will look at our  
23 prepared comments on the bottom of Page 2 and the top of Page  
24 3, three years was talked about in the workshop. Even the  
25 statute or requirement for amortization of rate case expense is

1 set at only four years. If you go five years, in essence, you  
2 have got another year in the application process and getting  
3 the order out, so you are talking six years. I mean, where is  
4 the incentive in that? It is nonexistent. And you need to tie  
5 down -- I remember reading in the staff recommendation they  
6 were talking about a company could come in and use a projected  
7 test year, that shouldn't be done in this kind of situation.  
8 You need to tie that down to a historical test year and use the  
9 language like we have proposed in there. Set that thing at  
10 three years. It delays a rate case for a reasonable period of  
11 time. It is actually going to be four years before the case is  
12 over.

13 COMMISSIONER DEASON: Mr. Girtman, let me ask you a  
14 question, though. Under staff's proposed five-year  
15 amortization, assume the utility acquires another system and  
16 they are able to stay out for four years, but they just can't  
17 stay out any more for reasons which Mr. Friedman alluded to.

18 MR. GIRTMAN: Right.

19 COMMISSIONER DEASON: When they come in 80 percent of  
20 that acquisition adjustment has already been amortized, and so  
21 there is only 20 percent of what is left that is even subject  
22 to an issue. Wouldn't you agree with that?

23 MR. GIRTMAN: Well, 20 percent is 20 percent. It's  
24 not something to be ignored. I mean, the other side is bigger  
25 and this is smaller, but still it's 20 percent. And you can't

1 give away 20 percent, not and stay in business. I think Mr.  
2 Friedman had a very good point, too, is that if you have to  
3 come in for a rate increase for matters that are totally  
4 irrelevant to the acquisition, you're hung. So maybe what you  
5 could do is split that in Alternative A. If you come in for  
6 improvements, for example, that were required so you wouldn't  
7 have to boil water, and you don't deal with the negative  
8 acquisition amount, maybe just separate them. It gets a little  
9 more complicated, but it is a possible solution.

10 COMMISSIONER DEASON: My question, point, whatever  
11 you want to call it is under staff's proposal, if you can't  
12 stay out that whole five years, you come in the fourth year,  
13 there is only 20 percent of that that is left, that could  
14 become an issue, but then it's the same standard that applies.  
15 It is extraordinary circumstances.

16 MR. GIRTMAN: No, sir, it's not.

17 COMMISSIONER DEASON: It's not?

18 MR. GIRTMAN: No, sir. Because if you look on the  
19 bottom of my draft, the page that you have in front of you, it  
20 is Attachment A, starting Line 21, Paragraph 3, if you have it.  
21 It is negative acquisition adjustments. The extraordinary  
22 circumstance requirement doesn't apply to anything over 20  
23 percent. It applies to only the first 20 percent and then  
24 after that it is free for all. You don't have to make any  
25 finding, you don't have to have any other justification for

1 changing from rate base other than the fact that the difference  
2 was more than 20 percent. And that is a real problem.

3 MR. WILLIS: Commissioner Deason, that is correct,  
4 because the whole point of the rule was not to relitigate the  
5 issue of extraordinary circumstances over again. If the  
6 Commission decides that there are no extraordinary  
7 circumstances, but they will go ahead and give you rate base,  
8 but your purchased price, the difference between the purchased  
9 price and rate base exceeds that 20 percent threshold, then  
10 there is an amount that falls under that incentive paragraph in  
11 the rule. And that incentive paragraph is applied for five  
12 years. It is going to be applied. I think it would be  
13 inappropriate to go back and --

14 COMMISSIONER DEASON: Well, let me ask you, what is  
15 the standard then? Let's go back to the example, 100,000 rate  
16 base, 60,000 purchased price, 40,000 potential negative  
17 acquisition adjustment. They go along for four years, it is  
18 amortized down, what would be, it would be down to \$8,000 which  
19 could be at issue, all right. If they file that rate case,  
20 there is an issue on \$8,000. How do we litigate that issue at  
21 that point in that rate proceeding?

22 MR. WILLIS: The way the rule is written there is no  
23 litigation. The \$8,000 gets applied.

24 COMMISSIONER DEASON: It gets applied as a negative  
25 acquisition?

1 MR. WILLIS: Correct.

2 COMMISSIONER DEASON: So that is the compromise.

3 MR. WILLIS: That is exactly right. That is the  
4 compromise. The whole idea behind the rule was let's decide  
5 extraordinary circumstances up front. If no one believes there  
6 are extraordinary circumstances and doesn't come to the  
7 Commission to argue that, then that is over with.

8 COMMISSIONER DEASON: So it's automatic. The \$8,000  
9 would be treated as a negative acquisition adjustment in that  
10 rate case.

11 MR. WILLIS: That is correct. It is automatic and  
12 everyone knows about it up front.

13 MR. GIRTMAN: I respectfully disagree on the  
14 interpretation of that rule. I don't think it does that. And  
15 I have two problems with that. One, I don't think that the  
16 negative acquisition adjustment -- excuse me, extraordinary  
17 circumstances issue is decided once and they are all fully up  
18 front and could never be litigated again under this rule.

19 Second, I think it creates a significant problem  
20 saying we are going to gut 80 percent of this amount for no  
21 reason other than we don't want rates to increase. That is  
22 just not appropriate, quite frankly, Commissioners. There are  
23 ways to get to where you want to go, I do believe, and we have  
24 sincerely tried our best in our draft to provide a mechanism to  
25 do that. The two issues in our --

1 (Tape changed.)

2 MR. GIRTMAN: -- be whether the 20 percent is  
3 appropriate -- actually 3 -- and as raised by Commission Deason  
4 whether that 20 percent or whatever percent should be applied  
5 to the difference amount as opposed to the rate base. And, the  
6 third question is the amortization period, because six years is  
7 just too long. It is just not worth being at risk that long.  
8 You know, if I was buying a utility system personally myself I  
9 wouldn't mess with it. I won't speak for my client on that  
10 issue, they are going to have to decide that, but I wouldn't  
11 mess with it.

12 COMMISSIONER DEASON: Let me ask staff a question at  
13 this point. If a company makes an acquisition, and they do not  
14 want to -- they want to go ahead and litigate whether there is  
15 extraordinary circumstances and be at potential risk for the  
16 entire negative acquisition adjustment, is that an option that  
17 they have?

18 MR. WILLIS: Yes, that is an option.

19 COMMISSIONER DEASON: So by your primary they still  
20 retain the same policy that is under -- that we have been  
21 following. All they have to do is when they make that  
22 acquisition indicate that we want to go ahead and litigate  
23 whether there is extraordinary circumstances right now and get  
24 it resolved once and for all.

25 MR. WILLIS: They could do that.

1 MR. GIRTMAN: I would respectfully disagree on that  
2 one, too. Because the existing rule, as I remember reading it,  
3 says that the proponent of an accusation adjustment can raise  
4 the issue. It doesn't say you can raise the issue saying there  
5 is no negative acquisition adjustment and prove a negative,  
6 it's just not in the rule. It's not in this rule, either.

7 COMMISSIONER JABER: I was looking for that, too, Mr.  
8 Willis. Could you point us to the language you think gives  
9 them some flexibility in that regard?

10 MR. WILLIS: It's on Page 23. What it does say is  
11 that any entity believes a full or partial negative acquisition  
12 adjustment should be made has the burden to prove the existence  
13 of those extraordinary circumstances. That rule does indicate  
14 that the party who wishes a negative acquisition adjustment or  
15 positive has the burden to prove that. Whether legally that  
16 prohibits somebody from bringing the question up before the  
17 Commission immediately saying I want it litigated now, I don't  
18 think that stops another party at that point from coming  
19 forward and saying they do or don't.

20 COMMISSIONER DEASON: Let me ask for a clarification,  
21 and we may need to change the wording. But it is your intent  
22 that if a utility acquires another utility and there is a  
23 negative acquisition adjustment that results, that instead of  
24 following the default procedure, I call the default procedure  
25 being the 20 percent sharing and the amortization over five



1 years, that instead of following that default procedure that  
2 any party, Public Counsel could come in and say I think there  
3 is extraordinary circumstance, I'm going to go ahead, I want it  
4 litigated now. Or the utility could say, I don't want to  
5 follow the default procedure, I don't think there are  
6 extraordinary circumstances, I am entitled to not have any of  
7 this negative acquisition adjustment recognized, and I want it  
8 litigated now. They would have that option?

9 MR. WILLIS: Yes. I think the way the rule is  
10 written -- let me put it this way. I believe the way the rule  
11 is written is to have that decided up front. That any party  
12 that believes there should be an acquisition adjustment should  
13 have that and request that to be decided up front.

14 COMMISSIONER JABER: That there should be one. Well,  
15 the company would not come in and say that there should be a  
16 negative acquisition adjustment.

17 MR. WILLIS: Right.

18 COMMISSIONER JABER: Okay. So you would agree that  
19 the language probably needs to be clarified in that regard?

20 MR. WILLIS: If you want to allow the company the  
21 latitude to say I want the extraordinary circumstances done now  
22 and not later, yes, it would have to be rewritten that way.

23 MR. GIRTMAN: Commissioners, I think that there is a  
24 potential here for addressing successfully matters which if we  
25 don't do right now, do it correctly now are going to generate a

1 whole lot of litigation and you are going to make us lawyers  
2 rich.

3 COMMISSIONER JABER: We don't want to do that.

4 MR. GIRTMAN: I mean, I'll send my son to Harvard.

5 But what I was going to suggest is there has been, I  
6 think, a very good discussion done in the workshop and in the  
7 drafts that were done, the comments that were done and the  
8 questions that were raised here. It may be worth workshopping  
9 Draft A, specifically focused on that, and bring these concerns  
10 that you all have raised and that we have raised and let's go  
11 through line-by-line and try to fix some of these things.  
12 Let's get it right is what we are trying to say so we don't  
13 have to litigate. I mean, we have got Wedgefield (phonetic)  
14 coming.

15 COMMISSIONER DEASON: Well, let me tell you what my  
16 motivation and my goal is. I want the utilities to have  
17 incentive to bargain for the very best purchase price, because  
18 I think in the long-term the utility benefits and so do the  
19 customers. Get the very lowest price, and if you need an  
20 incentive to do that, I'm willing to do that. And I want you  
21 to maximize that. And I want to try to put together some type  
22 of a sharing mechanism where everybody feels a little happy  
23 about the utility bargaining for that very best price,  
24 everybody shares, and that we try to avoid litigation. That is  
25 what I want to accomplish.

1           COMMISSIONER JABER: Commissioner Deason, would you  
2 also add onto that that we are trying to be specific on what  
3 the regulatory risks might be so that when they go to the  
4 bargaining table they can also take that into account. Because  
5 I agree with everything you have said only that my additional  
6 goal is to up front identify what the regulatory risks are so  
7 that in their negotiation strategy they can account for that  
8 one way or the other.

9           COMMISSIONER DEASON: I have no problem with that. I  
10 would agree with that.

11           COMMISSIONER JABER: And that is where the finality  
12 issue comes into play, I think.

13           CHAIRMAN JACOBS: We haven't heard yet from Public  
14 Counsel.

15           COMMISSIONER PALECKI: I agree with both of you, but  
16 I'm not sure how we get there from here.

17           COMMISSIONER DEASON: Well, we need to hear from  
18 Public Counsel. We don't really know where they are on this,  
19 and that is a key player.

20           CHAIRMAN JACOBS: Mr. Burgess.

21           MR. BURGESS: Thank you, Mr. Chairman. I'm going to  
22 start by addressing some of the comments that Mr. Girtman has  
23 raised in the discussions with the Commissioners. Just to  
24 clarify perhaps some of the terms that are being used. I'm  
25 hearing terms like there is 20 percent, that the utility is at

1 risk for six years, and Mr. Girtman saying that they are losing  
2 20 percent even in the last year, and it wouldn't even be worth  
3 it. We're talking about a windfall. We're talking about a  
4 return on and depreciation expense on an investment that this  
5 new owner doesn't have. It's all windfall.

6           We have seen where the actual returns on equity end  
7 up being 50 and 70 percent. That is not at risk. That gets  
8 down to the question of how much of that do you share with the  
9 customers. There is nothing at risk about that. If a company  
10 comes in in year one under staff Recommendation A, in year one  
11 the company automatically -- if they come in before anything  
12 happens they automatically get a return on and depreciation  
13 expense based on a rate base that is 20 percent above the  
14 amount of money they actually have invested. There is no loss  
15 associated with that, it is just a question of how much of the  
16 windfall should they get.

17           And I agree with the point that Commissioner Deason  
18 raised about trying to make sure that we don't have a  
19 disincentive or an incentive in there that gets the utility to  
20 stop trying to make its best bargain at a certain point and  
21 that perhaps by doing that the proportionality should be based  
22 on the difference between the purchase price and the former  
23 rate base, rather than based on the former rate base itself.  
24 And I think that is certainly worth looking into, and I would  
25 agree with that.

1           But I just want to make sure that when we are talking  
2 about -- what we're talking about here is if the company comes  
3 in in the fourth year, or the third year, or the second year,  
4 or even the first year, they are going to be earning money  
5 based on the rates on investment that they do not have at  
6 stake. That's a windfall. That's a good thing. Now, if there  
7 is a sharing of it and the customers get some benefit of it,  
8 well, then it's good for the customers, too. But there is no  
9 loss under Mr. Willis' plan, under staff Recommendation A.  
10 There is no loss to the customers. So, I mean, to the --

11           COMMISSIONER JABER: Mr. Burgess, reconcile that,  
12 because that is something I'm sensitive to. But reconcile that  
13 with the situations where you have the company who has had a  
14 poor owner, hasn't made the improvements, the utility is  
15 actually in poor shape, not providing quality of service, and  
16 the new owner is put in the posture of immediately making  
17 improvements to the system.

18           MR. BURGESS: So that they need to recover their  
19 investment, okay.

20           COMMISSIONER JABER: Right away.

21           MR. BURGESS: Right. My understanding of the way  
22 this would be would be if that happened, the utility, the new  
23 owner is whole up to the point of that 20 percent differential.  
24 If the new owner must make additional investment right away  
25 that is 20 percent of the current rate base or less, they are

1 automatically covered because they get the 20 percent in there.  
2 I mean, that 20 percent differential is there. Or if it is  
3 based on the proportionality between the difference they get  
4 that automatically.

5           If they come in, let's say they make an investment  
6 and they come in in year one, they automatically get the  
7 investment that they have got to make, the investment that they  
8 actually have made, plus a portion of whether it is based on 40  
9 percent of the differential or 20 percent of the previous rate  
10 base, plus a return on that. So they're automatically going to  
11 get more than a reasonable rate of return that would be  
12 determined by the Commission, because they will automatically  
13 be returning -- earning a return on more money that they have  
14 got actually invested.

15           COMMISSIONER JABER: Okay. If we accept staff's  
16 proposal that could happen. But the big picture is the  
17 customers also get a company that can provide quality of  
18 service long-term at rates that are probably at that point  
19 compensatory. That's the big picture.

20           MR. BURGESS: I think we are in agreement. I think I  
21 am in absolute agreement with you that the incentive is there  
22 for them to purchase and the incentive is there for them to  
23 stay out of a rate increase unless it is absolutely necessary  
24 because of additional money that they have got to put in, and  
25 in that case --

1           COMMISSIONER JABER: I don't think we are in  
2 agreement, because what I'm saying is that 20 percent, or  
3 allowing them to immediately recover not only the incentive but  
4 the new rate base is that the customers are served by the new  
5 company right away. Whereas -- and that is through an  
6 acquisition, a proactive acquisition policy as opposed to  
7 letting the company continue to deteriorate facilities and  
8 quality of service to a customer who gets forced into an  
9 abandonment situation and there is no telling who is going to  
10 provide service to that customer.

11           MR. BURGESS: I'm afraid I don't see -- I can't  
12 construct a scenario where there is a disincentive for a  
13 utility to purchase -- for a prospective owner to purchase a  
14 troubled utility even if it has to have additional investment  
15 to bring it up to speed.

16           COMMISSIONER JABER: Shady Oaks doesn't sound  
17 familiar to you?

18           MR. BURGESS: I am not familiar with that case. But  
19 if you talk about they are going to get a return on their  
20 investment, on their actual dollar investment plus something  
21 more depending on how the numbers shake out, plus additional  
22 investment that is reasonable and prudent as necessary, it  
23 seems to me automatic. They are getting a return and a  
24 depreciation on greater than the amount of actual investment  
25 that they are going to have automatically through the

1 regulatory process. That seems to me a positive incentive.

2 CHAIRMAN JACOBS: Is it possible that -- as I  
3 understood you, Mr. Willis, to say that if they came in for a  
4 limited proceeding based on improvements that they made to the  
5 system, then we are in the same scenario. It doesn't make a  
6 difference there. Is it possible to carve that out? In other  
7 words, in order to keep that narrow incentive there, that if  
8 they come in and they make the improvements to a system that  
9 has been in disrepair, and that we carve that out to give  
10 them -- essentially to retain the extraordinary circumstances  
11 stamp, if you will, for that limited proceeding. Is that  
12 possible?

13 MR. WILLIS: That is very possible, and you could  
14 just -- the way the rule is written, there are four particular  
15 instances where this rule would be applied, where that negative  
16 acquisition adjustment, the 80 percent that is remaining would  
17 be applied. And that is under 367.081, which would be a rate  
18 case; 0814, which is a staff-assisted rate case; 0817, which is  
19 a limited proceeding; and 0822. Those are the distinct  
20 circumstances. If you wanted to carve out limited proceedings  
21 and say that wouldn't apply, you just take that portion out of  
22 the rule.

23 Another alternative is if you believe the 20 percent  
24 is too low, then that can always be raised and you could raise  
25 it to what you believe would be the proper incentive under this



1 portion of the rule.

2 CHAIRMAN JACOBS: Mr. Burgess, let me get you  
3 finished, and then I will it get to you, Mr. Girtman.

4 MR. BURGESS: Thank you. That was all that I had. I  
5 just wanted to address what I think is some very good points of  
6 the primary staff recommendation, and address some of the  
7 points that I have heard from the utilities, and that is  
8 basically just that I don't know of a scenario under which they  
9 do not receive more than their actual investment and that seems  
10 to be an incentive.

11 And if I may, with your indulgence, relinquish time  
12 we might have available to Mr. Beck who has additional  
13 comments.

14 MR. BECK: Just very briefly, Commissioners. We are  
15 very gratified and appreciative of the staff's primary  
16 recommendation. We feel it is a very real improvement over  
17 what exists now. Having said that, we want to give one last  
18 plug for our proposal because I think it addresses a lot of  
19 your concerns. And that is simply to share a negative  
20 acquisition adjustment and that way there is always a benefit  
21 both for the company and for the customers. There is no  
22 instances where both won't benefit.

23 And we think the overall way in which it is better  
24 than the primary staff proposal is that it permanent. In other  
25 words, the benefit is there. There is a permanent benefit to

1 the utility and there is a permanent benefit for the customers  
2 when you share the negative acquisition adjustment.

3 COMMISSIONER JABER: Mr. Beck, your proposal, did it  
4 deal with the never modifying the decision on acquisition  
5 adjustments? Remind me.

6 MR. BECK: The five-year provision?

7 COMMISSIONER JABER: Yes, the finality issue.

8 MR. BECK: We didn't address that one way or the  
9 other. I guess it's implicit, though, that it would be a final  
10 decision when you have a sharing where both parties benefit,  
11 that's it.

12 CHAIRMAN JACOBS: Mr. Girtman, very briefly.

13 MR. GIRTMAN: Thank you, Commissioner. Has anybody  
14 here volunteered for a headache? I don't think so. When you  
15 take over one of these little systems, it is a headache, and  
16 you have got to have an incentive to do it.

17 COMMISSIONER JABER: Well, it's a business. And you  
18 evaluate the purchases of a business. And if you choose a  
19 business that gives you a headache, then that's your problem.

20 MR. GIRTMAN: Exactly. But you have got to have an  
21 incentive to make the business decision.

22 COMMISSIONER JABER: No, you don't.

23 MR. GIRTMAN: Well, I don't know --

24 COMMISSIONER JABER: That's dollar signs. And if you  
25 don't see the dollar sign in the purchase of --

1           CHAIRMAN JACOBS: I would tend to -- here would be my  
2 response. Yes, you do have to have incentives, but those  
3 incentives are not isolated to this rule. There are inherent  
4 reasons why a business would even look at a proposition like  
5 this. And some of those benefits are internal and economical  
6 to that entity. But there ought to be a public policy. We do  
7 have a public policy that says it is in the best interest of  
8 the citizens to see you -- to add to your list of  
9 considerations when you consider this kind of a transaction.  
10 So we are not here to premise or to actually quantify your  
11 decision, we are here to supplement those other factors.

12           MR. GIRTMAN: Right, I agree with that. The other  
13 point that I wanted to make is although Utilities, Inc. is  
14 willing to work on some kind of draft using Alternative A as an  
15 approach, we need to always remember the constitution, and that  
16 this is private property, although it is regulated private  
17 property. The customers are not equity owners in the utility  
18 unless they own stock in a publicly-held company.

19           So they don't have the rights or responsibilities of  
20 an equity owner. They can't go bankrupt if they have problems.  
21 They can't do a lot of things. But the point is that if we are  
22 going to do something that changes the basic principles of  
23 private property, even though you buy a piece of private  
24 property at a discount, it's still private property and it is  
25 still rate base regulation that you have got to have a real

1 good reason to move away from. Thank you.

2 CHAIRMAN JACOBS: Very well.

3 COMMISSIONER DEASON: Let me say one thing about  
4 Public Counsel, Mr. Beck, and the sharing proposal. I think  
5 the concept of sharing is a good one. I have already stated  
6 that. I think your particular proposal is fairly complicated.  
7 It's a two-step process and it is the lesser of. And one of  
8 the lesser of calculations is the 150 percent applied to  
9 equity, and in some of these utilities the equity investment is  
10 just so small that that might not be a real meaningful  
11 incentive.

12 And it seems to me if we could have something a  
13 little more simple that people pretty well understand going in  
14 with not a lot of calculations and comparisons, you know,  
15 lesser of, lesser than, or whatever, that may be preferable.

16 MR. BECK: Commissioner, I appreciate those comments.  
17 I think our proposal is subject to change. And, again, we put  
18 that limitation in there simply -- it's a policy judgment on  
19 how high a profit level would you want the companies to have as  
20 an incentive. That is essentially your judgment whether to  
21 have that limit at all or not. I mean, we think it is  
22 appropriate, but one possibility is to take it out and say  
23 straight sharing.

24 CHAIRMAN JACOBS: Very well. We have had a  
25 substantial period of discussion on this.

1           COMMISSIONER DEASON: Let me say something. I think  
2 we have had some very fruitful discussion here and I think we  
3 have laid out some concepts, and I am encouraged by what Mr.  
4 Girtman said that while he is supportive of the alternate that  
5 staff is recommending, that he is open to negotiating trying to  
6 see if there is some common ground. I know we have already had  
7 one workshop. I guess I'm going to just ask a question, since  
8 we do have the staff's proposal out, the parties have had a  
9 chance to analyze it, there are some differences, but I think  
10 there is some common ground.

11           It may be beneficial to defer this, set it for  
12 another workshop. I don't think it has to be a Commissioner  
13 workshop, just a workshop for staff and the parties to come.  
14 I would prefer that they take staff's current proposed  
15 proposal, which I think has been referred to as Alternative A  
16 as the starting point, and see if it cannot be fine-tuned. It  
17 may be that everyone can come back and might not be totally  
18 happy, but would be willing to say that this is a workable  
19 solution that we can live with.

20           CHAIRMAN JACOBS: We are proposing the rule today,  
21 right? So --

22           COMMISSIONER DEASON: Yes. But once you propose it,  
23 I think you get into a pretty structured format. And I'm open  
24 to a correction on that, but I would rather have a rule that is  
25 a little bit more agreeable to the parties before it is ever

1 proposed.

2 MR. WILLIS: If you propose the rule as is, then you  
3 will get into that structured format. If it is protested at  
4 that point -- I mean, there is two options. No one could  
5 protest it and the rule would be filed, and Ms. Moore may want  
6 to address this more.

7 COMMISSIONER JABER: Chris, before you get started,  
8 Commissioner Deason, rather than -- I support the deferral for  
9 continued negotiation and discussion, but can we make it even  
10 less formal by not calling it a workshop, just letting staff  
11 and the parties sit down. We have never -- and Mr. Elias and  
12 Harold McLean can correct me if I'm wrong -- we have never sat  
13 down and done like informal negotiated rulemaking. That is  
14 sort of the direction I would give staff and the parties.  
15 Something that doesn't rise to the level of formality of a  
16 workshop because we have done that, but something limited to  
17 the discussion on this recommendation.

18 MS. MOORE: I think we could just have a meeting with  
19 the parties, but negotiated rulemaking is its own formal  
20 process. I think what you are suggesting is just --

21 COMMISSIONER DEASON: Well, I just want to make sure  
22 that whatever meetings take place that everybody -- there may  
23 be parties that are not here today that want to participate,  
24 and I don't want anybody to be excluded if they wanted to  
25 participate. And that's what my concern is.

1           CHAIRMAN JACOBS: Commissioners, I absolutely agree  
2 with the idea of further negotiations, but it occurs to me that  
3 I believe this rule is -- this docket has been deferred once,  
4 if not twice from agenda. It occurs to me that that could have  
5 been and should have been ample opportunity to bring forward  
6 and address those concerns. Perhaps a workshop could do that.  
7 I hope what I'm hearing from the parties it could, but I am  
8 kind of thinking if we went ahead with the process and maybe  
9 see if we can think outside the box a little bit here. What  
10 I'm thinking is propose the rule with a comment cycle. Is that  
11 possible?

12           MS. MOORE: Well, if you vote to propose a rule then,  
13 yes, it is published in the FAW and there are 21 days to file  
14 comments.

15           COMMISSIONER DEASON: But you don't get that  
16 face-to-face negotiations through comments that people are  
17 sitting around a table and saying, well, you know, I'm willing  
18 to concede this if you will concede this. And I may not like  
19 it 100 percent, but I can live with it and work with it. You  
20 know, I think you get that.

21           MS. MOORE: And, too, somebody could ask for a  
22 hearing at that point, which --

23           COMMISSIONER PALECKI: I agree. I think we are more  
24 likely to have positive results if we have a less formal  
25 meeting scenario where the parties can actually kind of hash

1 through their differences. I think a deferral is the way to  
2 get there.

3 MS. MOORE: I'm not sure if there is a reason not to  
4 call it a workshop, though, and just notice it as a staff  
5 workshop and just make sure it gets the required notice.

6 COMMISSIONER DEASON: Yes. And I think staff has the  
7 flexibility to make it as informal -- I mean, as far as -- I  
8 want to call it a workshop just to notice it so everybody is  
9 aware of it. And if they want to come, you know, they can come  
10 and participate. I feel confident the parties that are here  
11 today will certainly be there, but there may be others that we  
12 don't know of right now.

13 CHAIRMAN JACOBS: Well, it sounds like I hear a very  
14 strong agreement, and I will go ahead and add a consensus to  
15 that.

16 COMMISSIONER DEASON: And I think the parties have  
17 the benefit of staff's proposal out there. They also have the  
18 benefit of the discussion that we have had here today, and  
19 hopefully it will help facilitate.

20 MR. GIRTMAN: Thank you, Commissioners.

21 COMMISSIONER JABER: Should staff, though --  
22 Chairman, just to give them sort of a time frame. We don't  
23 want this to take too long. But I'm cautious, I don't want to  
24 give you a deadline, either. Because if you are negotiating  
25 and it is going well and you need more time, I wouldn't want to



1 restrict staff in that regard. But at some point, you know,  
2 you want to exercise your judgment to bring it back.

3 COMMISSIONER DEASON: I agree with that. I think we  
4 are very close. I am very optimistic that we are very close.  
5 And I am optimistic that if we can have a workshop after all  
6 the notice and all of that is done, that we can come back with  
7 a product that even if the parties don't agree 100 percent,  
8 that we will feel more comfortable proposing as a rule. And if  
9 it has to go to hearing, fine, but I'm optimistic that we can  
10 propose something that may not have to go to hearing.

11 CHAIRMAN JACOBS: Very well. It sounds like we have  
12 a consensus for deferral. I would add -- I would reiterate,  
13 actually, the comments of Commissioner Deason earlier. What  
14 our primary focus here from a public policy context is to, yes,  
15 give incentive for the companies to negotiate the best possible  
16 price, but to ensure or to the best extent possible that there  
17 are meaningful benefits to the ratepayers that are derived from  
18 that negotiation, as well. So, with that direction, show Item  
19 3 is deferred.

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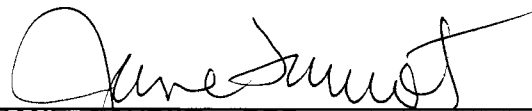
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