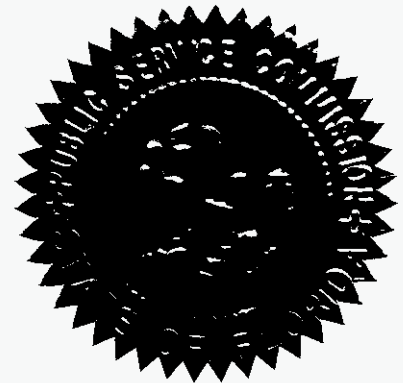


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080517-WS

In the Matter of:

APPLICATION FOR APPROVAL OF TRANSFER  
OF HORIZON HOMES OF CENTRAL FLORIDA,  
INC. AND FIVE LAND GROUP LLC'S WATER  
AND WASTEWATER SYSTEMS TO AQUA UTILITIES  
FLORIDA, INC., AND FOR AMENDMENT OF  
CERTIFICATE NOS. 441-S AND 507-W, IN  
SUMTER COUNTY.



PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 20

BEFORE: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, April 7, 2009

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

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

1  
2 CHAIRMAN CARTER: Commissioners, and staff,  
3 now we shall move to Item 20 on our agenda; Item 20,  
4 give staff an opportunity to get settled in, but we'll  
5 be moving to Item 20. And while we're going that, let  
6 me make sure -- give me one administrative moment there,  
7 Commissioners.

8 (Off the record.)

9 CHAIRMAN CARTER: Okay. We're back on the  
10 record.

11 Good afternoon. Staff, you're recognized.

12 MS. JOHNSON: Good morning. Cheryl Johnson on  
13 behalf of staff.

14 Commissioners, Item Number 20 has an oral  
15 modification that Mr. Eric Saylor would like to present.

16 CHAIRMAN CARTER: Okay. Let's have the oral  
17 modification first. Mr. Saylor.

18 MR. SAYLER: Good afternoon, Commissioners.  
19 My name is Eric Saylor with the Commission General  
20 Counsel.

21 We have one oral modification. The first page  
22 of the recommendation needs to be modified to reflect  
23 that Issues 2, 3, 5, and 6 are PAA and not final agency  
24 action.

25 The line starting with agenda on the cover

1 page should be amended to read Agenda, 04-07-09, Regular  
2 Agenda, Proposed Agency Action for Issues 2, 3, 5, and  
3 6, and interested persons may participate. The PAA  
4 language was contemplated by the recommendation, but it  
5 was inadvertently left off the cover page.

6 CHAIRMAN CARTER: Okay. So by the time it's  
7 final make sure that the paperwork is cleared up, okay?

8 MR. SAYLER: Yes, sir.

9 CHAIRMAN CARTER: All right. Staff, you're  
10 recognized.

11 MS. JOHNSON: Commissioner, Item Number 20 is  
12 a request to transfer the Jumper Creek utility system,  
13 which was previously owned by a homeowner's association,  
14 to Aqua Utilities Florida. Staff is recommending that  
15 this transfer be approved, and because the purchase  
16 price is less than rate base, that a negative  
17 acquisition adjustment be approved. In addition, we're  
18 recommending that existing rates remain the same.

19 CHAIRMAN CARTER: Okay. Commissioner Skop,  
20 you're recognized, sir.

21 COMMISSIONER SKOP: Thank you, Mr. Chairman.

22 I have a concern on this particular issue, and  
23 my concern is two-fold. First and foremost, there's a  
24 revenue deficiency associated with the existing system  
25 that staff has identified. And, secondly, I have an

1 issue with the negative acquisition adjustment, and I  
2 will take those in turn.

3 As we spoke at a recent proceeding, again,  
4 making sure that we have a comprehensive solution, I  
5 think, is important as we deal with the amounts of  
6 subsidy and the affordability levels that have come  
7 before the Commission. And, again, in good faith I just  
8 can't close my eyes and ignore the obvious, so I feel  
9 compelled to speak on this issue.

10 With respect to the revenue deficiency, as  
11 staff has pointed out -- and let me see if I can find it  
12 quickly -- staff, can you help me real quick?

13 MR. SAYLER: Issue 7.

14 COMMISSIONER SKOP: Is it Issue 7 on -- yes.  
15 At the bottom of Page 12 on Issue 7, there's  
16 approximately, subject to check, about an \$8,000 revenue  
17 deficiency in terms of the existing rates on the system  
18 as operated by the homeowner's association, and the  
19 expenses to operate the plant, and that's before ROE and  
20 overhead and what have you. So in this instant case,  
21 just putting this into perspective, upon approval of the  
22 transfer, if the utility were to come in tomorrow and  
23 request a rate increase, which they would be entitled to  
24 based upon compensatory rates, rates would go up. That  
25 would further increase subsidy levels, the same problems

1 facing the Commission.

2 Which brings me to my second point on the  
3 negative acquisition adjustment. I'm in favor of  
4 negative acquisition adjustment. I think the rule is a  
5 good one because it provides incentives for utilities to  
6 come in and buy up small systems. Unfortunately, in the  
7 instant case, the application of this rule yields a --  
8 I'm trying to think of the choice of words here -- it  
9 yields a result that I'm having problems dealing with.  
10 And the reason for this, and I hope -- I think staff had  
11 prepared a handout showing the effect of the negative  
12 acquisition adjustment in terms of rate base and what  
13 happens.

14 And effectively, in a nutshell, and I'm going  
15 to use millions instead of thousands just because it's  
16 easier for me to talk about. But if a rate base, a  
17 theoretical regulatory rate base of a system was  
18 \$5 million, and you buy it for \$1 million, the practical  
19 effect of approving a negative acquisition adjustment  
20 pursuant to the rule is that over the course of four  
21 years you invest a million, but at the end of year four  
22 you can come in and capture the intrinsic value of the  
23 \$4 million negative acquisition adjustment.

24 So, obviously, that's a benefit to the  
25 company. So if we were to do a balanced scorecard

1 approach, obviously the company benefits because they  
2 show growth, they show immediate return on investment,  
3 immediate return on equity for making that acquisition.  
4 The Commission benefits by virtue of the rule to the  
5 extent that we are encouraging the right public policies  
6 of adopting the -- having small systems acquired. But  
7 what I'm seeing is who is not winning here is the  
8 consumer who has to deal with those subsidy rates that  
9 we had to deal with and the affordability levels, and  
10 this just further accentuates that problem.

11 So, again, what I'm looking for is a  
12 comprehensive win/win solution where the company, the  
13 acquiring company can be a partner in being part of the  
14 solution, not compounding the problem. And I think that  
15 if we were to look at the negative acquisition sheet  
16 that was prepared by staff, essentially at the time of  
17 acquisition, if you bought it for \$100,000 tomorrow, you  
18 wake up after approval by the Commission, and suddenly  
19 the rate base is over -- you know, you've doubled your  
20 investment overnight.

21 So the intrinsic value of making this  
22 acquisition is that -- I mean the practical effect of  
23 making the acquisition is that it is immediately  
24 accretive to shareholder value. Okay. But the problems  
25 with that is, again, you are already dealing with a

1 revenue deficit on top of a negative acquisition  
2 adjustment windfall.

3 So to get to my point, again, what I'm trying  
4 to do here is respect the rule and keep the rule in  
5 place, but I'm also asking, you know, to look at  
6 holistically what is the practical effect of what's  
7 going on. Because, I mean, to me I just can't put the  
8 blinders on.

9 So what I would propose for the Commission's  
10 discussion is two-fold with respect to this acquisition.  
11 In theory, I like the negative acquisition adjustment  
12 rule, but I think it provides too much of a benefit  
13 right now. The practical effect is that you are getting  
14 a huge windfall for the shareholders, yet consumers'  
15 rates are going up. So how do we address that problem  
16 as a Commission where we find win/win solutions and  
17 partner -- and that's probably not a good word -- but  
18 have the utility be a good steward in finding a solution  
19 that addresses these subsidized rates and these  
20 affordability levels? How can we find that win/win  
21 solution?

22 And what I would suggest is that by making an  
23 acquisition of this nature there is basically a \$400,000  
24 delta intrinsic value that's provided. If we were to  
25 use the discussion that I had of about a million

1 dollars, if the regulatory rate base was 5 million, and  
2 you acquired it for a million, then over four years you  
3 would create at least 4 million of shareholder value and  
4 recognize 4 million of rate base for doing nothing more  
5 than making an investment.

6 And so to me, again, there's no winners for  
7 the consumers there. I mean, there is obviously a  
8 benefit to the company, we want to continue to attract  
9 investment. But in equal turn, I think my point is that  
10 if you are going to create, in this case, 400,000 of  
11 intrinsic value in terms of the negative acquisition  
12 adjustment, I think a fraction of that should be equally  
13 put in by the company to go towards addressing these  
14 system problems.

15 And I would go to a local use-only type of  
16 scenario to where if the system acquired needed future  
17 capital improvements to bring it up to regulatory par,  
18 then that infusion by the company would go to help make  
19 those improvements without impacting the rate base. So  
20 call it a contribution-in-aid-construction or whatever.  
21 I mean, they are sharing the -- they're benefiting, but  
22 they are equally sharing in trying to address the  
23 problem.

24 But the point that I -- and I keep -- it's  
25 hard to explain, you know, in words. It's easier to



1 explain on paper. But my theory of this is the rule is  
2 fine, but what I would look towards is tweaking the  
3 rule, if I could wave a wand, and say, look, for the  
4 intrinsic value that you are creating, half of that  
5 needs to go back in as a contribution in aid of  
6 construction to address your system problems that deal  
7 with affordability and subsidy levels, because I can't  
8 ignore those.

9           And so the part of that would be is you would  
10 look to the existing system first, and in this system  
11 it's not at issue because it is a relative new system.  
12 No capital investments are needed, but we have all the  
13 affordability issues and other rate bands that are  
14 within the same company. So, to me, if I couldn't use  
15 it locally, then I would use it at the next appropriate  
16 rate band to help smooth out those affordability and  
17 subsidy levels.

18           And so I think that is a win/win solution. So  
19 what I would be inclined to do, or propose to the  
20 Commission and hope that we would have some good  
21 thoughtful discussion on this would be defer this item  
22 and allow staff the opportunity to talk to the company  
23 and see if there could be some win/win solution that  
24 could be achievable to where the company could be  
25 partners in addressing the global problem that we have.

1           And if not, I would alternately recommend that  
2 we defer approval of this and go into expedited  
3 rulemaking to tweak the rule to make it more equitable  
4 for all of the parties because right now it's a huge  
5 windfall. It's too much of a windfall in my mind. And  
6 I don't think when that rule was adopted -- I mean,  
7 times have changed, things happen, but I don't think  
8 when that rule was adopted we had the subsidy level  
9 problems that we have now, and I don't think we had the  
10 affordability levels problems we have now. And this  
11 acquisition, in my mind, given the revenue deficit, does  
12 nothing more than to accentuate the existing problem  
13 rather than trying to find a comprehensive solution.

14           So, again, I would recommend that, and if the  
15 Commission would choose to do otherwise, I would respect  
16 that decision, but I would respectfully vote against  
17 approval of the staff recommendation.

18           CHAIRMAN CARTER: Thank you, Commissioner.  
19 And I'll recognize you, Commissioners, but I just want  
20 to get this thought out before I forget it. But I think  
21 the problem you run into is that -- we just had some  
22 discussion today about the cost-causers and all, is that  
23 you have other ratepayers subsidizing this group of  
24 ratepayers. And, I mean, there is a fairness issue  
25 there in the context of that, and I think the rules

1 attempts to balance that whole process.

2 When you buy a company similarly situated, it  
3 allows an opportunity over time for whatever the  
4 investments are, and real investments to be recouped.  
5 Not necessarily to give them sticker shock the next  
6 year, but over time to do that. And I think that's  
7 the -- the way I read it, that was the perspective on  
8 the rule.

9 Staff, am I wrong on that?

10 MS. JOHNSON: No, you're not, sir.

11 CHAIRMAN CARTER: And that's the kind of  
12 thing, because -- that's what happens is that if you say  
13 the company pays and the company takes -- they're going  
14 to take it from other ratepayers to subsidize, but I  
15 think that the rule contemplates that you are going to  
16 buy a company that may be undervalued at this point in  
17 time, but over a period of time the company will be able  
18 to recoup. But by the same token is that now the --  
19 this system here will be part of an entity that will be  
20 regulated by the Commission, we can look at the rates  
21 and see what they should be.

22 I'm just kind of thinking aloud. I just don't  
23 think that this case rises to the level to go into a  
24 rulemaking. I think that the rule contemplates this  
25 sort of situation, and that probably is, in fact, the

1 reason that they came up with it.

2 But I do think that when you start talking  
3 about subsidization and all like that, and when you  
4 start saying take it from the company, and if the  
5 company takes it from ratepayers in another  
6 jurisdiction, that causes me some heartburn.

7 Commissioner Argenziano.

8 COMMISSIONER ARGENZIANO: I think the rule  
9 contemplated the incentive for companies or individuals  
10 to go out and buy smaller utilities. But I think it was  
11 really the older small utilities. In this case, I  
12 understand Commissioner Skop's point you're getting, but  
13 that you are getting a brand new -- pretty much a brand  
14 new facility undervalued that immediately, I think, what  
15 is it, you can get the 1/20th and then --

16 (Inaudible.)

17 COMMISSIONER ARGENZIANO: Yes, but if you got  
18 a good deal, well, then more power to you. But I think  
19 the rule really contemplated the more delapidated  
20 systems that were out there, asking companies you go in  
21 and get whatever price you can and hopefully you can fix  
22 it up.

23 And I understand Commissioner Skop's point.  
24 But to Commissioner Skop, wouldn't it be like saying you  
25 got a good deal, and we're going to then -- kind of a

1 taking. Here is what we are going to do. Or let's say  
2 in this case would it better than -- I don't know how  
3 you do that. Would it be better than, say, if you  
4 bought it for \$100,000, that is what the value is rather  
5 than saying, you know, we're going to force you to put  
6 your money then into in the plant.

7 I understand what you're saying, and if it was  
8 a delapidated plant, I would say, yes, that would be  
9 probably a very good thing. You knew when you bought it  
10 it was bad, but this is a pretty new plant.

11 CHAIRMAN CARTER: Commissioner Skop.

12 COMMISSIONER SKOP: Mr. Chair, just two  
13 points. And then, also, too, I think I probably would  
14 like to hear from Mr. Willis, because I spoke to him and  
15 I think he was involved in the original rule. But I  
16 guess what I'm saying, and maybe I can articulate it  
17 better, is I think the existing rule in certain  
18 instances is too generous. And although the company is  
19 getting a good deal because they are buying a new asset  
20 at bargain basement price, and I don't know what the  
21 reason is behind that, that might be a good deal for the  
22 company, but that may be a bad -- that good deal may be  
23 at the expense of the other ratepayers, to the extent  
24 that we already have a revenue deficit here that's  
25 approaching \$10,000 a year, and that's before the

1 company comes in for a rate case and adds ROE and all  
2 the other things on top of that.

3 So I could see this being a driver for  
4 increasing rates for other systems, and that's the point  
5 I'm trying to make here is that if this does nothing  
6 more then it's a good deal for the company, but bad for  
7 the ratepayers, then comprehensively we need to address  
8 that situation to the extent -- not to penalize the  
9 company, because they are benefiting from the negative  
10 acquisition adjustment, but say, look, you know, it  
11 can't be like Burger King. You can't have it all your  
12 way. You need to help us address the --

13 COMMISSIONER ARGENZIANO: But isn't that a  
14 taking?

15 COMMISSIONER SKOP: No.

16 COMMISSIONER ARGENZIANO: To me, I think that  
17 is a taking.

18 COMMISSIONER SKOP: Well, the other part would  
19 be, you know, you could just deny the negative  
20 acquisition adjustment, I think that has been done  
21 historically. But I'd like to -- Mr. Chair, if you  
22 would permit, I would like to hear from Mr. Willis with  
23 respect to the comments, his views.

24 CHAIRMAN CARTER: We will hear from Mr. Willis  
25 and then Commissioner McMurrian.

1 Mr. Willis.

2 MR. WILLIS: Commissioners, I understand where  
3 Commissioner Skop is coming from. When you look at this  
4 one compared to some of the other ones, it's a rather  
5 significant negative acquisition adjustment which  
6 probably would make a person take pause. Reflecting  
7 back on the rule which was adopted somewhere around  
8 2004, this was a negotiated rule. It was kind of placed  
9 in my lap to try and go to the parties. We had the  
10 industry representatives as well as the Office of Public  
11 Counsel trying to work out a resolution to the flurry of  
12 protests that were coming in on transfer dockets before  
13 the Commission as far as acquisition adjustments.

14 This turned out to be the solution. I don't  
15 think either party was extremely happy. Neither party  
16 walked away with more of a one-sided resolution to the  
17 acquisition adjustment problem. Both parties, Public  
18 Counsel and the industry looked at it and said they  
19 weren't willing to protest the rule. They were willing  
20 to live with the rule. So it was a give/give on both  
21 sides as far as the rule goes. It did eliminate all the  
22 protests that were coming in, and it has worked fairly  
23 well since that time.

24 As far as a resolution to what Commissioner  
25 Skop is talking about, it would have to be the company

1 willing to do something, which would not be in  
2 accordance with the rule, but they could do that if they  
3 were willing to do that. It would more like a  
4 settlement you might say if they were willing to do it.

5 I don't know what the company is willing to  
6 do. I do know they don't have any representatives here  
7 today to discuss it with at this point.

8 CHAIRMAN CARTER: Let me go to Commissioner  
9 McMurrian, and I'll come back to you.

10 Commissioner McMurrian.

11 COMMISSIONER McMURRIAN: I guess I just want  
12 to understand, and maybe it's -- I don't know, I'm  
13 having a hard time in my mind figuring out why it would  
14 harm other ratepayers. So I guess if someone can help  
15 me that, whether it's Commissioner Skop or Mr. Willis.  
16 Maybe I should ask Mr. Willis. That's probably better.

17 MR. WILLIS: Well, let me start out with what  
18 the rule does basically is it places the customers in  
19 the same position that they were in prior to the  
20 acquisition. If you think about it --

21 COMMISSIONER McMURRIAN: You mean the  
22 customers at here, the customers of this utility that is  
23 being acquired.

24 MR. WILLIS: According to our calculations,  
25 the customers in this case had a rate base of \$504,000



1 prior to the sale to Aqua. After the sale to Aqua,  
2 after five years, they would have close to the same rate  
3 base. What the calculation doesn't include on this  
4 sheet here is any depreciation expense additions to the  
5 accumulated reserve, which actually reduced rate base  
6 slightly. It doesn't take into account any possible  
7 additions, which probably wouldn't be that many, based  
8 on the fact that this is a rather new system.

9 What I'm getting at is the customers are  
10 basically held in the same position for this system.  
11 I'm not talking about in the future when they might be  
12 placed into a rate band, but right now these customers  
13 are in the same position before the acquisition as they  
14 are after, except for the fact that during the first  
15 five years rate base is a lot less, which means the  
16 company is likely -- if this was a stand-alone system,  
17 they would likely not come in for a rate because they  
18 wouldn't have rate base to support a rate increase.

19 In other words, if Aqua in this case were to  
20 use this as a stand-alone system, they would come in and  
21 load their expenses on. They might not have the ability  
22 to come in for a rate case based on the lower rate base.  
23 Maybe, maybe not, we don't know that. After five years,  
24 yes, the rate base is going to be higher at that point.  
25 But at that point -- the basis behind the rule was that

1 those customers, whether Aqua owned it or the  
2 homeowner's association owned it, should be in the same  
3 position.

4 Now, Aqua has, according to the last vote by  
5 the Commission, has rate banding. I'm sure that at some  
6 point this system, if the Commission allows the  
7 transfer, will be included in a rate band at some point.  
8 And I understand where Commissioner Skop is coming from  
9 that -- will this be a subsidized utility when it is  
10 purchased or not? I don't know. We don't know that  
11 because all we know is what the costs were under the  
12 homeowner's association. We don't know how the expenses  
13 will be loaded onto the system when Aqua takes over. We  
14 don't know that at this time point. That's all to be  
15 seen in the future.

16 COMMISSIONER McMURRIAN: But you all are  
17 saying this system is in good shape, right?

18 MR. WILLIS: Yes.

19 COMMISSIONER McMURRIAN: So isn't it more  
20 likely that it's a good system to throw with a number of  
21 bad systems that we have, and that if we are looking at  
22 the subsidy thing, isn't it more likely that it helps?  
23 And I'm not sure, but --

24 MR. WILLIS: That I can't tell you,  
25 Commissioner. I really can't tell you whether it's

1 going to be a subsidized system or one who subsidizes.  
2 I really don't know. Because this is a brand new  
3 system; there are apparently no problems with the system  
4 at this point, and probably won't be for the foreseeable  
5 future because I think it is only about five years old.

6 What we don't know is how the cost for this  
7 system once it is fully loaded by Aqua as far as its  
8 costs go -- because remember under a homeowner's  
9 association there probably was no rate of return. There  
10 probably was no depreciation expense. There might have  
11 been some funds set aside for reserves, but the way the  
12 expenses look for the homeowner's association are  
13 probably entirely different than they would look for an  
14 investor-owned company. So in all likelihood the  
15 expenses may be higher, I don't know. I can't sit here  
16 today and tell you whether this company will be one who  
17 will be subsidizing or subsidized under any kind of band  
18 approach.

19 CHAIRMAN CARTER: I'm going to go to  
20 Commissioner Skop and then I'll come back to you.

21 Commissioner Skop.

22 COMMISSIONER SKOP: Thank you, Mr. Chair.

23 And I just wanted to kind of clarify some  
24 points. I guess we can look at those, and I know it's  
25 hard to discern at this appropriate point, but I think

1 the question will enlighten what's really happening.  
2 But the rates on a -- if there were a stand-alone system  
3 today, not part of a rate band under statewide rates or  
4 what have you, on a stand-alone basis as it exists today  
5 before the acquisition as a homeowner's association, the  
6 rates are currently not compensatory to the extent that  
7 it is already operating at a revenue deficit, is that  
8 correct? So, basically, the customers are getting water  
9 cheaper than they should, right?

10 MR. WILLIS: According to staff's  
11 recommendation, that's true.

12 COMMISSIONER SKOP: Okay. All right. So I  
13 guess my concern would be, you know, obviously if the  
14 utility acquires the company and there's nothing  
15 precluding the company either on -- you know, the  
16 likelihood on a stand-alone basis, maybe if this were  
17 the only system that a company had bought, they probably  
18 wouldn't run in for a rate case, but they certainly  
19 could because they are operating at a revenue deficit,  
20 and that's before an ROE is added on top of that, or  
21 depreciation and all the other things that get stacked  
22 on there, corporate overhead and what have you.

23 So I guess the point I'm trying to get at is  
24 that the likelihood -- in staff's professional opinion,  
25 what is the likelihood that at some point rates would go

1 up as a result of this acquisition either on an  
2 individual system basis or on a -- you know, as it comes  
3 into the fold of a rate band? Because, again, you are  
4 operating at a revenue deficit now, and that is a  
5 deficit before ROE and before all the other corporate  
6 overhead stuff. So it's likely, at least in my mind,  
7 that rates are going to go up at some point.

8 Now, that's going to require a rate case, and  
9 I don't think we can be agnostic to the comprehensive  
10 global situations of what's going to happen here,  
11 because me, personally, I expect them to come in within  
12 18 months and seek a rate increase. And obviously at  
13 that point this is going to get called into question.  
14 So, again, if staff could briefly comment on that.

15 MR. WILLIS: Well, Commissioner, I can't  
16 disagree with you. I don't think any investor company  
17 who owns a system wants to keep it out there at a loss.  
18 I don't think Aqua will do that. I think whatever this  
19 Commission allows as far as a purchase will be blended  
20 into the next rate case, and that may be on the horizon,  
21 we don't know.

22 COMMISSIONER SKOP: Okay. And just this  
23 follow-up question, Mr. Chair. Again, you know, I think  
24 acquisition is a good thing. But I guess in this  
25 particular instance I guess I would ask do you feel that

1 the rule is too generous in this instance given the  
2 other problems facing the other systems, the subsidies,  
3 the affordability issues? Because, in my mind, if a  
4 rate increase is imminent, whether it be through the  
5 negative acquisition adjustment and capturing that  
6 intrinsic value, or addressing the existing revenue  
7 deficit issue, then at some point the rates have to go  
8 up whether they be on an individual system basis or on  
9 the aggregate.

10 So that's the issue. That's the crux of the  
11 issue I'm trying to get staff to address. Because,  
12 again, we can operate in isolation and just say, oh,  
13 yes, this is a good thing, but all that could do in the  
14 very near future, as soon as tomorrow, is accentuate an  
15 existing problem that consumers are already facing,  
16 because you have some systems, other customers having to  
17 subsidize others to make it affordable right now. And I  
18 see a revenue deficit, and that gives me pause, and then  
19 I look at an immediate 100 percent return on investment  
20 overnight, and look at, okay, I'm just putting a little  
21 bit of money in the game, I get the big home-run payoff  
22 as soon as I come in for a rate case, and who absorbs  
23 that? It is the general body of ratepayers, or the  
24 system bands, however this gets integrated.

25 But on a stand-alone basis right now, this

1 things is at a revenue deficit before the acquisition  
2 and before ROE and all the overhead comes to be burdened  
3 upon it. So that implies to me that the rates have got  
4 to go up at some time, and that is independent of the  
5 negative acquisition adjustment. The negative  
6 acquisition adjustment just further accentuates it. So  
7 if you could speak briefly to that. It is very subtle,  
8 but I think a very important point given the subsidy  
9 levels and the affordability issues that we are facing  
10 on addressing these problems. I don't deny it's a new  
11 system, but that doesn't negate the fact that it is  
12 operating at a revenue deficit.

13 MR. WILLIS: Well, getting back to whether or  
14 not -- I think your first question was whether or not  
15 this produces a generous windfall. If it was a  
16 stand-alone totally operated on its own system, it  
17 wouldn't for five years. It wouldn't produce any  
18 windfall. But that is the way negative acquisition  
19 adjustments work if they are not applied.

20 COMMISSIONER SKOP: Can I ask you to clarify  
21 that one point? That is only true so long as you don't  
22 seek a rate case. If I come in tomorrow, if I acquire  
23 it today for a million dollars and overnight the  
24 intrinsic value is two million because of the negative  
25 acquisition adjustment and I'm capturing just the first

1 year of the negative acquisition adjustment and the  
2 20 percent of the rate base. The rate base, the  
3 overnight rate base is effectively two million plus, yet  
4 I only spent a million. So I could come in tomorrow  
5 with a rate case and cash in. It's not as much as the  
6 full rate base that I'll get to in four years, but I  
7 doubled my money overnight.

8 MR. WILLIS: Well, it does allow you to get a  
9 rate of return on investment that you haven't  
10 actually -- you don't actually have any money invested  
11 in. But you have to look at the way the rule was  
12 designed. The rule was designed as an incentive for  
13 exactly what you said, for purchasing. A company may  
14 have gotten a really good deal today, but tomorrow they  
15 may find a system that isn't such a good deal, but it  
16 really needs to be taken over by somebody who can do  
17 something. They may have to pay more for it. When they  
18 do that, these two may balance out.

19 I have seen -- the way I have seen companies  
20 working with negative and positive acquisition  
21 adjustments in the past, for instance, Florida Water,  
22 the old predecessor to this company, they might get a  
23 good deal one day -- you might look at their whole  
24 acquisition adjustments. If you compared the positive  
25 against the negative, one year they might be in the good



1 because they had a lot of negative adjustments that  
2 outweighed the positive, but the next year after a few  
3 more acquisitions they may be in the red as far as  
4 acquisitions go, because the positives for the new  
5 acquisitions have outweighed that. So every year you  
6 could see where that balancing of the positive and  
7 negative acquisition adjustments for the whole  
8 company varied.

9 COMMISSIONER SKOP: But, again, I think --

10 MR. WILLIS: And that's why I'm saying this  
11 may not be as much of a windfall as you may think it is.  
12 It looks like it on the surface that this is a really  
13 good deal. And it is a good deal. They got a nice  
14 brand new system for a small price. But on the other  
15 hand, it does allow the company according -- and this is  
16 what the rule was designed for -- to go out and look at  
17 other companies they may have to purchase for more.

18 COMMISSIONER SKOP: But help me understand  
19 this. Because historically we don't recognize a  
20 positive acquisition adjustment. So if you pay a  
21 multiple for a property, whether it be rundown or not,  
22 we don't recognize that adjustment. We only recognize  
23 the negative acquisition to incentivize them, which I'm  
24 fine with. But what I'm trying to get at, and, again,  
25 I'll work with the millions, although it's a factor of

1       ten less with the hundreds of thousands we are dealing  
2       with here.

3                If I walked in tomorrow and bought -- you  
4       know, assuming for the sake of discussion the regulatory  
5       rate base is 5 million. I buy it for a million.  
6       Overnight it is worth 2 million. I can come in the rate  
7       case and capture a million dollars of rate base without  
8       doing a thing. So, again, what I'm trying to look at,  
9       if this were a stand-alone system, I probably wouldn't  
10      have a lot of problem. The dollar in value is  
11      questionable. What concerns me is the revenue deficit  
12      which is only going to drive rates higher. I think that  
13      is a given. I think that is a fair and accurate  
14      statement because they are not compensatory rates now,  
15      and that is before we get into overhead and all the  
16      corporate things.

17               But what gets me here is that I can't  
18      overlook -- and I think this is the fallacy of what we  
19      are doing -- instead of looking at this from a  
20      comprehensive approach is that we have other problems,  
21      and allowing this doesn't help me solve those other  
22      problems. So what I'm trying to do is trying to find  
23      partners in addressing the global solution here and say,  
24      look, okay, fine. You get -- you get, you know, 400,000  
25      in negative acquisition adjustment. Why don't you, you

1 know, show some commitment to improving your operations  
2 which benefits everyone in the long-run. It benefits  
3 the company, it benefits the Commission because it makes  
4 our job easier, it benefits the consumers because it  
5 helps keep their rates low. But right now I see this  
6 driving rates high.

7 I mean, I'd like to get new systems, too, at  
8 bargain basement prices, but not with revenue deficits,  
9 because what is that going to do to the general rates  
10 that we already have problems with. That's, I guess, my  
11 concern a nutshell. I mean, you know, I'm in support of  
12 the rule, but, you know, if they are creating value,  
13 shareholder value, intrinsic value until you recognize  
14 it via a rate case, then maybe part of that intrinsic  
15 value ought to be recontributed in terms of  
16 contribution-in-aid-of-construction to address the  
17 global problem that the Commission and the utilities  
18 currently facing the problem. I am, again, trying to be  
19 fair. But, again, you know, showing some good faith up  
20 front yields a win/win, I think, for everybody involved.  
21 It helps the company. Again, it helps the Commission.  
22 It helps the consumers.

23 So, again, I know the rule is what it is. I  
24 like the rule, but when the rule yields absurd results  
25 on top of a revenue deficit, in light of the other

1 concerns that I just can't ignore, then I feel compelled  
2 to speak to that and question are we truly doing the  
3 right thing. If we are just blindly approving this  
4 pursuant to a rule without looking at the drivers of  
5 what is really going on, then, you know, to me it's  
6 problematic because we are further accentuating an  
7 existing problem instead of trying to address it.

8 CHAIRMAN CARTER: Okay. We will have  
9 Commissioner Argenziano and then Commissioner McMurrian.  
10 Commissioner Argenziano and then Commissioner  
11 Edgar.

12 COMMISSIONER ARGENZIANO: You know, I  
13 understand exactly what Commissioner Skop is saying,  
14 because, I mean, there is -- I mean, they could come in  
15 overnight and the rate increase -- I think, and I do  
16 disagree, you can't like the rule and not like it now.  
17 I can't like it and not like it now, because obviously  
18 this rule was created under a different Commission  
19 anyway. Maybe a different mind-set, different things  
20 were happening at that time, and perhaps it's time to  
21 look at that rule. Because, truthfully, I believe at  
22 the time that that rule was created, and you were here,  
23 I was over there, and I remember the discussion that was  
24 going around was that it was really to help those  
25 smaller broken down systems and give an incentive to

1 companies to go in and buy those systems that were not  
2 functioning well.

3 Now you have different scenarios and possibly  
4 consumers or the ratepayers are going to pay, even  
5 though you want -- I'm not so sure you have to give an  
6 incentive to a company to go in and buy and to negotiate  
7 for a brand new system. So perhaps to me it may be time  
8 to relook at that rule and take into consideration  
9 that -- I do understand what Commissioner Skop is saying  
10 because there is the potential that -- I mean, let's  
11 look at who won. The developer, he got a quick hundred  
12 grand, and the company got a good deal. But the  
13 ratepayer now is going to be the one who's going to be  
14 in trouble.

15 So I understand what Commissioner Skop wants  
16 to do. I'm not sure that your way of getting there is  
17 not a taking. I don't know how you could tell the  
18 company you have to spend the money here, and maybe I  
19 just don't get it. Perhaps the other way of saying it  
20 is that, you know, what you bought it for is what its  
21 value is. Or while you're looking at the rule, because  
22 maybe I think it is time to look at that rule again, it  
23 is a different Commission, it is a different time, and  
24 there's different things happening. It's not just  
25 delapidated systems.

1           At that time we were overrun with SSU and  
2 Florida Water Services, and there was a lot, a lot of  
3 facilities out there, and there were a lot of problems  
4 as you had indicated. I would wonder if OPC would take  
5 a different position today if a rule was being looked at  
6 again. Or others, Commissioners, or anybody. I still  
7 think there needs to be an incentive for companies to go  
8 in and buy the smaller facilities, but I think things  
9 have changed.

10           But now to this case, what do you do to  
11 protect the consumer and not penalize a company for  
12 getting a good deal. You know, and I don't know that  
13 there is a way. Commissioner Skop has brought up a way.  
14 I'm not sure in my mind that that is not telling the  
15 company afterwards this is a taking. Here, you bought  
16 it at a good deal, and now we're going to tell you how  
17 to put your money, so I'm not sure you can do that.

18           The only other alternative, and if there is  
19 another one this is where I need staff or Commissioners  
20 to bring it up, is to say, okay, you got a good deal,  
21 but we don't want to sock it to the consumer, the  
22 ratepayer of that facility any way right now. It's  
23 either value it for what you paid for it, and that is  
24 disincentivizing, but, again, I'm not sure you give an  
25 incentive to go in and get a brand new system at that

1 price. Or maybe bump the cost and bump it down. Not  
2 500,000, but maybe 200,000. So is there another way of  
3 protecting the consumer from an instant windfall?

4 MR. WILLIS: Commissioner, in that light, I'd  
5 like to point out that the acquisition adjustment,  
6 according to the rule, is basically PAA; because there  
7 is an ability of a party to protest, and that's why this  
8 issue is PAA. If Public Counsel believes that there are  
9 extraordinary circumstances per the rule, and I'm not  
10 sure if they could prove up, I don't know how they would  
11 -- well, I'm not going to tell them how to do their  
12 case, but if they were able to come forward to the  
13 Commission and say that there's no way that this is what  
14 is normal. There are extraordinary circumstances here  
15 and you shouldn't allow the company to get the complete  
16 negative acquisition adjustment pursuant to the rule,  
17 they could do that. And you would have that before you  
18 in a hearing mode and you would be able to make that  
19 decision.

20 Because it's PAA, there is a protection for  
21 the consumers. If Public Counsel has a different  
22 opinion now, today, and they think that there is a  
23 reason that they can prove up that this is  
24 extraordinary, pursuant to the rule they can object and  
25 they can bring that before you. So there are safeguards

1 here built into the rule.

2 COMMISSIONER ARGENZIANO: That's great, but it  
3 doesn't make me feel comfortable in respect to having to  
4 vote for something that may be, you know,  
5 extraordinarily different. And the fact that this is  
6 not an old delapidated system. It is a new system.  
7 More power to the company for making a good deal, but  
8 I'm here to look out for both, and I don't know how I  
9 make a decision today. And I think Commissioner Skop  
10 wanted an answer, I think it was to my taking, is that  
11 it?

12 CHAIRMAN CARTER: Briefly, Commissioner,  
13 because I do want to have other Commissioners have some  
14 input. You're recognized.

15 COMMISSIONER SKOP: Thank you, Mr. Chair.

16 And I think to achieve that result you would  
17 have to tweak the rule. I think that right now in this  
18 case the application of the rule yields an absurd  
19 result. And I'm looking for a more equitable outcome  
20 which would probably involve or entail adding a little  
21 bit more discretion to the Commission's rule.

22 I think your idea is a good one. In a case  
23 where the rule doesn't really fit the situation, it  
24 would be nice to have that discretion to do the things  
25 that you mentioned. And I would fully support you



1 value -- you deny the negative acquisition adjustment  
2 and give them what they paid or you give them a fraction  
3 of the negative acquisition adjustment. Maybe they paid  
4 100,000 and they get 200,000. But, to do otherwise just  
5 benefits the company and its shareholders and it is  
6 going to drive rates down in the future.

7 So I'm trying to look at the big picture and  
8 say, look, we need to grab the bull by the horns and  
9 have a comprehensive solution. And, you know, I think  
10 the ways you proposed are equally valid ways of getting  
11 there. But, again, my concern is to make the rule more  
12 equitable long-term and that may involve some tweaks to  
13 build in some discretion instead of making it, you know,  
14 just, you know, a formula. We say, hey, because the  
15 company did get a good deal, and I want to encourage  
16 additional investment in Florida. But here I just  
17 can't -- I just can't close my eyes and ignore all the  
18 things around me.

19 CHAIRMAN CARTER: Thank you.

20 Commissioner McMurrian and then Commissioner  
21 Edgar.

22 COMMISSIONER McMURRIAN: Thank you.

23 And this probably isn't as organized as I  
24 would like it to be, but I guess to the last point we  
25 were talking about with discretion, and often we have

1 cases that for some reason we are trying to apply a rule  
2 and we kind of wish the rule was a little bit different  
3 in that particular case. But, I mean, in the water and  
4 wastewater area, at least the way I understand it, is a  
5 lot of these rules that we have put in place, and the  
6 reason why we struggle with not having discretion is  
7 because we have put rules in place in an effort to try  
8 to streamline these cases because we have so many of  
9 them so frequently and we are trying to, frankly, take a  
10 little bit of discretion out of it so that we can move  
11 on and focus on the areas where we need to focus.

12 So it is always that Catch-22, and I realize  
13 here we have got sort of a different issue. And I  
14 understand and appreciate the points you're making. I  
15 realize that you are trying to make sure that the  
16 customers' rates, you know, stay as low as possible.  
17 And I agree with that. But I guess what my concern is,  
18 it sort of feels like we are trying to get into  
19 management of this utility a little bit too much. And  
20 that's maybe -- that's my words, but it feels a little  
21 bit like we are trying to say pick this one, don't pick  
22 this one. Or if you pick this one, we're not going to  
23 -- we're going to make sure we adjust it this way. And  
24 it just feels like it is getting a little bit too much  
25 in the management of the utility.

1           But, again, I am not really sure how to get  
2 out of the quagmire we're in. It just feels like we  
3 have got the rule on acquisition adjustments, it did  
4 take into account the different situations we find  
5 ourselves in. Maybe we didn't -- we didn't contemplate  
6 the severity of the issues we would have with respect to  
7 Aqua probably at the time that we put in that rule, but  
8 it seems like for now that we should consistently apply  
9 the rule, whether it's a case like this one, or whether  
10 it is a case where we are more encouraging utilities to  
11 pick up systems that are in need of repair, and that  
12 hopefully that will benefit those customers long-term.

13           So I guess for me I feel like we need to be  
14 even-handed in how we apply the policies. And perhaps  
15 even the way we have got it in the rule now you could  
16 argue that it's not particularly even-handed with the  
17 positive/negative treatment we have, but it seemed like  
18 it was argued, and as Mr. Willis pointed out, we had  
19 stakeholders on different sides that decided not to  
20 protest the rule. So it seems like perhaps that could  
21 be an indication that no one was really happy, but  
22 perhaps it balanced out all of those interests. And so  
23 for me it seems like, at least for now, until we look at  
24 the rule again, that we should try to apply that rule  
25 consistently. And we can't keep Aqua or any other

1 utility, I guess, from trying to come in and add the  
2 system to its rate base.

3 That's just some thoughts off the top of my  
4 head. Thank you.

5 Thank you, Chairman.

6 CHAIRMAN CARTER: Thank you.

7 Staff.

8 COMMISSIONER ARGENZIANO: I wanted to ask them  
9 a question.

10 CHAIRMAN CARTER: Okay. You're recognized,  
11 and then we will go to Commissioner Edgar.

12 Commissioner Argenziano.

13 COMMISSIONER ARGENZIANO: Just two questions  
14 real quick. One is have there been any other cases that  
15 are similar to this one? I mean, most of the cases  
16 where there have been a negative acquisition usually are  
17 generally with older systems, is that correct?

18 MR. WILLIS: Generally, yes. The large ones  
19 like this are fairly rare where you find somebody that  
20 gets a really, really good deal on a system like this.

21 COMMISSIONER ARGENZIANO: So it's not  
22 really -- this has not been consistent. This is not a  
23 consistent thing we have seen, so there really hasn't  
24 been consistency with this type of situation.

25 MR. WILLIS: Well, as far as this good of a

1 deal, that is not something you normally see, yes.

2 COMMISSIONER ARGENZIANO: Right. And the  
3 second question. What discretion, if we have any, to  
4 waive the rule and change the rate base?

5 MR. WILLIS: That I'm going to have to leave  
6 up to the attorneys to answer.

7 CHAIRMAN CARTER: You're recognized, Legal.

8 MR. SAYLER: Madam Commissioner, it is my  
9 understanding that we don't have the ability to waive  
10 the rule in this particular case. It is an affirmative  
11 obligation. If it's an uncontested acquisition  
12 adjustments, we shall follow the rule, and we are  
13 consistently applying the rule by following it in this  
14 case.

15 COMMISSIONER ARGENZIANO: Okay. So then as a  
16 Commissioner, if I'm not comfortable with voting on it  
17 the way it is with the negative acquisition at the value  
18 that they have purchased it, then if we were to relook  
19 at the rule somewhere down the line, and this -- I mean,  
20 it could pass today, I have no idea. But if it didn't  
21 go out today, if it wasn't approved today, and the rule  
22 was looked at to possibly look into some type of a  
23 different situation like this one, since it's not a  
24 regular type of thing that we run into, it could always  
25 come back at a later time, is that correct? Or would

1 that really mess up the acquisition?

2 MR. SAYLER: Let me clarify your question.  
3 Are you asking if the Commission were to defer today, go  
4 into rulemaking and try to come back and apply the new  
5 rule? Legally, I think there would be --

6 COMMISSIONER ARGENZIANO: No, not defer it.  
7 Let's say we denied it today. Said no --

8 MR. SAYLER: Oh, deny the transfer?

9 COMMISSIONER ARGENZIANO: Right.

10 MR. SAYLER: If we denied the transfer  
11 outright, the sale would revert back to the seller.

12 COMMISSIONER ARGENZIANO: Right. Which could  
13 then be reestablished at another time, right, possibly?

14 MR. SAYLER: The rule or the sale?

15 COMMISSIONER ARGENZIANO: The sale. I mean,  
16 the fact that we don't have the ability to waive the  
17 rule, that says to me if you don't like this then you  
18 either have to go no or yea, one or the other. There is  
19 no in between.

20 CHAIRMAN CARTER: Hang on a second,  
21 Commissioner.

22 MS. DANIEL: Commissioners, you are correct.

23 The only question then would be, you know,  
24 obviously the developer was ready to get out of the  
25 business, so what posture does that leave the customers

1 in during that interim period of time?

2 COMMISSIONER ARGENZIANO: But he wouldn't be  
3 out of the business, then, if he didn't sell it, right?

4 MS. DANIEL: I hope not. It is subject to  
5 Commission approval, but --

6 COMMISSIONER ARGENZIANO: Uh-huh. Okay.

7 CHAIRMAN CARTER: Okay. I'm going to  
8 Commissioner Edgar. She has been very patient.

9 Commissioner Edgar, you're recognized.

10 COMMISSIONER EDGAR: Thank you. I actually  
11 had a question on another point.

12 CHAIRMAN CARTER: You're recognized.

13 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

14 And I am looking at Issue 6 that discusses the  
15 miscellaneous service charges and other charges that  
16 would be a part of, then, the new utility service. As  
17 to the specific issue of the customer deposits, I wasn't  
18 clear from the analysis as to whether if this were to go  
19 forward, if customer deposits would then be required of  
20 current customers or only for new customers.

21 MS. DANIEL: Commissioner, our rule on  
22 customer deposits indicates that you get a customer  
23 deposit from a new customer. And the only reason you  
24 get a customer deposit -- either a new deposit or an  
25 increased deposit for an existing customer would be if

1 there were a history of bad payment.

2 COMMISSIONER EDGAR: Okay. Thank you for that  
3 clarification. And that I would be comfortable with.  
4 But it was, you know, that question as to whether  
5 customers that had been paying their bills, that they  
6 would then suddenly would, because of the transfer, need  
7 to pony up a deposit, and I would not have been  
8 comfortable that. So I appreciate knowing that would  
9 not have been possible under our rules.

10 Which brings me back to some of the discussion  
11 that we have been having here this afternoon as to all  
12 of our concerns about having the transfer not have  
13 negative unintended repercussions for customers. That's  
14 along the same line as my question about the deposits.  
15 I know that we are all trying to address that issue in  
16 our minds and clarify. I'm reminded sometimes of the  
17 old saying of, you know, tough cases can make not  
18 necessarily the best law sometimes. When we try to, you  
19 know, when well intentioned try to change rules or laws  
20 to address very, very unique circumstances, and I think  
21 this may be one of those.

22 So I agree with many of the things that  
23 Commissioner McMurrian said, kind of to summarize, and I  
24 know that we are, again, trying to grapple with this,  
25 but I would have a concern about not having certainty as



1 to the type of and quality of service that customers  
2 would have if the transfer were to be denied at this  
3 point. And I also would have concerns about potential  
4 policy implications for the perception, perhaps, of  
5 penalizing a utility for purchasing a small company at a  
6 good price. So just to put that out there. Thank you.

7 CHAIRMAN CARTER: I will come to you in a  
8 minute, Commissioner. I just want to kind of put this  
9 thought out there. I think where we are, and Mr. Willis  
10 said it probably far more eloquent than I can, is that  
11 you have got some systems -- he said this is a rare  
12 occurrence. Most of the time you buy systems they are  
13 down, but over a period of time you buy some good  
14 systems, some bad systems and it kind of evens out. But  
15 the overlaying philosophy of all of us here is that we  
16 want to encourage the purchase of these small systems,  
17 and so I guess the rule presumes this balancing act that  
18 we will go through. But back in the day, Commissioner,  
19 a lot of those systems that they purchased were -- well,  
20 this is probably -- this is probably one in a million,  
21 but the question is that do you penalize the company for  
22 buying one in a million and the 999,000 bad ones. You  
23 know that is really kind of the crux of the matter, and  
24 I think that my reading of the rule it tries to balance  
25 that out.

1 Commissioner Skop, you're recognized.

2 COMMISSIONER SKOP: Thank you, Mr. Chairman.

3 And either maybe with some further reason,  
4 either I discovered an issue that might bring some  
5 clarity to this issue, or maybe I have read the rule  
6 wrong. But if we were to look at the specific rule on  
7 Rule 25-30.0371, acquisition adjustments, and we look at  
8 the definition, and it defines what the negative  
9 acquisition adjustment is, net book value of utility  
10 assets. And in that case, I would assume that the net  
11 book value, given the calculation on Page 7 of the staff  
12 recommendation, is basically equal to the rate base,  
13 which is \$504,075.

14 Well, Item 3 of our rule, negative acquisition  
15 adjustments, a negative acquisition adjustment shall not  
16 be included in the rate base unless there is proof of  
17 extraordinary circumstances or where the purchase price  
18 is less than 80 percent of the net book value. Well, if  
19 I am doing my math right, if you purchase it for  
20 \$100,000, that's just under 80 percent of the net book  
21 value. So I'm not so sure the rule is properly applied.

22 Maybe I'm wrong, maybe staff can correct me.  
23 I didn't really look at this until right now. But I get  
24 19 percent of the \$100,000 over \$504,075 is  
25 19.8 percent. So I would think that if the rule was not

1 properly applied that would provide a basis for  
2 addressing the negative acquisition adjustment, and I  
3 think it refers you to Paragraph B below. So that might  
4 provide a basis for deferral.

5 MR. WILLIS: Well, when you go down to  
6 Paragraph B on the uncontested, that's where it gets  
7 into the part where on how you will share the negative  
8 acquisition adjustment at that point.

9 COMMISSIONER SKOP: But you don't get to that.  
10 I mean, it tells you up front that a negative  
11 acquisition adjustment shall not -- shall not be  
12 included in rate base unless there is proof of  
13 extraordinary circumstances. I don't see extraordinary  
14 circumstances justified here. I see a staff  
15 recommendation where the purchase price is less than  
16 80 percent of the net book value. The purchase price is  
17 less than 80 percent of the net book value. Am I wrong  
18 on that?

19 CHAIRMAN CARTER: But it does address  
20 contested versus uncontested, though.

21 COMMISSIONER SKOP: No. I'm looking at  
22 Paragraph 3, negative acquisition adjustment.

23 CHAIRMAN CARTER: Paren 3, and what Mr. Willis  
24 was saying is that it referred to under (3)(b) as  
25 uncontested.

1           COMMISSIONER SKOP: But you get to Paragraph 3  
2 before you get to (3)(b).

3           CHAIRMAN CARTER: Right, you do.

4           COMMISSIONER SKOP: So the (3) would control  
5 to the extent that shall not be included when the  
6 purchase price is less than 80 percent of the net book  
7 value.

8           CHAIRMAN CARTER: But you have to read them  
9 all together, though, Commissioner. You can't just pull  
10 out. If the Legislature -- or, excuse me, if there was  
11 no provision for -- I mean, think about it. It gives a  
12 broad statement in (3), but then it says contested,  
13 which is (a), and then uncontested, (b). Now, I think  
14 from what Mr. Willis was saying is that based upon the  
15 reading of this, this fell within the context of (b).  
16 Is that correct, uncontested, is that where you were?

17           MR. WILLIS: It does a little bit, but let me  
18 clarify what we are reading here in Part 3. In Part 3  
19 when it says a negative acquisition adjustment shall not  
20 be included in rate base unless there's proof of  
21 extraordinary circumstances, that means the Commission  
22 has to find extraordinary circumstances to include a  
23 negative acquisition adjustment. When you include a  
24 negative acquisition adjustment, that means you reduce  
25 rate base by it. That means you're going to permanently

1 reduce rate base by that negative acquisition  
2 adjustment. That's how the Commission includes it.

3 What this means is if there are no  
4 extraordinary circumstances existing, such as they  
5 bought a delapidated system, and therefore it's not  
6 worth the 500 million, or \$500,000, it's really only  
7 worth \$100,000, that would be good example of an  
8 extraordinary circumstance where you could say apply it.  
9 You should apply it.

10 Here they bought a brand new system. It's not  
11 delapidated. The Commission would have to find exactly  
12 what those extraordinary circumstances are to be able to  
13 say we're going to apply that negative acquisition  
14 adjustment and reduce your rate base.

15 CHAIRMAN CARTER: So we would have to  
16 define -- in this case if there are extraordinary  
17 conditions -- extraordinary circumstances, excuse me, we  
18 would have to define exactly what those are.

19 MR. WILLIS: Yes.

20 CHAIRMAN CARTER: Such that if another case  
21 occurred like this, then that would give other parties  
22 notice on exactly what those parameters would be,  
23 correct?

24 MR. WILLIS: Yes, sir. You would have to  
25 exactly define what the extraordinary circumstances were

1 if the Commission were to apply the negative acquisition  
2 adjustment at this point.

3 COMMISSIONER SKOP: Mr. Chair, just real  
4 quick?

5 CHAIRMAN CARTER: Commissioner.

6 COMMISSIONER SKOP: Thank you, Mr. Chairman.

7 How does the or fit into that? Because it  
8 says unless there is proof of extraordinary  
9 circumstances or where the purchase price is less than  
10 80 percent of the net book value. I mean, can we agree  
11 in this case that the purchase price is 80 percent or  
12 less -- is less than 80 percent of the net book value,  
13 or am I getting that wrong?

14 MR. WILLIS: Well, in this case, and maybe  
15 it's poor wording in the rule, but the way it's meant to  
16 be --

17 (Laughter.)

18 MR. WILLIS: If you hit the less than  
19 80 percent of book value, at that point it is an  
20 automatic reduction pursuant to the uncontested or  
21 contested portion of A and B. Under an uncontested,  
22 that means it stays in there for five years, and that is  
23 what you requested here in staff's calculation of how  
24 the acquisition adjustment would be amortized over five  
25 years.

1           COMMISSIONER SKOP: I guess I would have to  
2 take a more thorough reading of the rule, but I looked  
3 at that and the shall not be included, you know, kind of  
4 caught my eye. So, you know, and doing some math, the  
5 purchase price seems to be less than 80 percent of the  
6 net book value.

7           CHAIRMAN CARTER: Commissioner McMurrin.

8           COMMISSIONER McMURRIAN: Maybe I'm confused,  
9 too, and I think we can agree it is poor wording, maybe.  
10 Shall not be included unless. But it also goes along  
11 with the or part, so if the purchase price is less than  
12 80 percent of net book value, doesn't that also go along  
13 with it shall not be included unless you have a purchase  
14 price that's less than 80 percent of net.

15           COMMISSIONER SKOP: I think they are mutually  
16 exclusive because it would be an and instead of an or to  
17 make them group together. So I think they're on a  
18 stand-alone basis. So maybe it is poorly worded, and I  
19 think that goes to Commissioner Argenziano's suggestion  
20 that maybe it is time to revisit taking a look at the  
21 rule. I don't want to really hold anything up, but,  
22 again, I don't want to buy into absurd results that seem  
23 too generous and hurt the general body of ratepayers.

24           MR. WILLIS: Let me just add a little -- could  
25 I add a little clarification to that?

1                   CHAIRMAN CARTER: Yes, sir.

2                   MR. WILLIS: When you get to that other part  
3 where it says or, there is basically two circumstances  
4 in there. One is extraordinary circumstances. The next  
5 would be whether or not you met the 80 percent  
6 threshold, and the next sentence is controlling on that  
7 where it says that if you do meet that 80 percent  
8 threshold, then it's to be calculated pursuant to (b)  
9 below. That's the controlling part. So there's two  
10 circumstances you can look at.

11                   COMMISSIONER SKOP: So how does --

12                   MR. WILLIS: And in this case they met the  
13 80 percent and, therefore, it's calculated pursuant to  
14 the --

15                   COMMISSIONER SKOP: No, they didn't meet the  
16 80 percent, because the purchase price is less than  
17 80 percent. So then they go to Paragraph (b). So how  
18 does that affect the math, if any?

19                   MR. WILLIS: That is how it is calculated  
20 based on B, because it is an uncontested acquisition  
21 adjustment at this point.

22                   COMMISSIONER SKOP: So Page 7 of the staff  
23 recommendation is accurate and it is uncontested in  
24 accordance with (3) (b).

25                   MR. WILLIS: Yes, Commissioner, that's



1 correct.

2 COMMISSIONER SKOP: All right.

3 CHAIRMAN CARTER: It's fairly -- I don't want  
4 to say the rule is contorted, but it's -- I am glad Mr.  
5 Willis is here because he was here at the beginning so  
6 he can kind of walk us through this.

7 So you're saying that the second sentence in  
8 (3) says if the purchase price is less than 80 percent,  
9 then you go down to (b) under (3) for uncontested?

10 MR. WILLIS: That's correct.

11 CHAIRMAN CARTER: And that's how staff made  
12 its recommendation based upon (b), uncontested?

13 MR. WILLIS: That is correct. If it was a  
14 contested acquisition adjustment, you would follow Part  
15 A, Paren A.

16 CHAIRMAN CARTER: Commissioner Skop.

17 COMMISSIONER SKOP: Again, that rule just  
18 seems -- you know, putting that in perspective, I  
19 understand that. But looking at B uncontested, I mean,  
20 that just yields a perverse result, because you are  
21 saying you can buy this thing at a fraction of its book  
22 value and get the windfall at the -- you get full rate  
23 base later in four years.

24 CHAIRMAN CARTER: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: There was a

1 different Commission at that time, and that may answer  
2 that question. They may have had a different way of  
3 doing things.

4 CHAIRMAN CARTER: And different circumstances.  
5 As you remember, Southern States was different --

6 COMMISSIONER ARGENZIANO: Right. We had a  
7 bunch of dilapidated systems all over, and that may be  
8 what their intent was. Go ahead.

9 CHAIRMAN CARTER: Mr. Willis.

10 MR. WILLIS: If you would like me to get  
11 involved a little bit more into the rule itself and the  
12 parties' positions, the industry had several objectives  
13 that they wanted to look at in the rule. One was they  
14 wanted consistency. They were not getting consistency  
15 among the Commission. If they wanted to go out and look  
16 for acquisitions, they wanted to know how the Commission  
17 was going to treat an acquisition when they came to the  
18 Commission, pretty much certain. And that is what the  
19 rule does as far as that goes. They know when they will  
20 get a negative acquisition adjustment. They know  
21 basically they are not going to get a positive  
22 acquisition adjustment unless there is a real good  
23 benefit to be defined as far as synergies towards the  
24 customers.

25 So, in other words, you go out and you buy a

1 utility company, it's not in that great of shape, you  
2 can't prove synergies, you are not going to get a  
3 positive. And rarely has there been a positive approved  
4 by this Commission. So the company knows if they have a  
5 rule and they have something in front of them where they  
6 pretty much know how the Commission is going to rule on  
7 these, then they can do that balancing act. They can go  
8 out and get good deals, and they can find some where  
9 they have to be acquired and they know they are not  
10 going to get a good deal and they can kind of balance  
11 the two.

12 That's the way the rule was basically  
13 combined. As far as Public Counsel, they were  
14 consistently coming to the Commission saying apply the  
15 negative acquisition adjustment. It needs to be  
16 applied. Book value is book value. What they purchased  
17 it for is what they ought to get now.

18 Well, that provided these companies no  
19 incentive to go out and buy anything. Why would you go  
20 buy a delapidated system and get what you purchased for  
21 it with no ability to get a little something else for  
22 your effort to go out and take on this task? The two  
23 sides were at complete odds, and that's where the rule  
24 came from.

25 It was a tough rule to draft. I mean, we went

1 through -- well, I did, I went through a year and a half  
2 with the parties working with this thing trying to come  
3 out with a rule that they could all basically live with.  
4 No one was happy with it. I can guarantee you no one  
5 was happy with it. No one would sign off on the rule  
6 saying I think this is a wonderful rule, but no one  
7 would come to the table and say I'm going to object to  
8 it.

9 COMMISSIONER ARGENZIANO: Because they could  
10 have been in deeper trouble if they did.

11 CHAIRMAN CARTER: Right. You would have been  
12 Dodge City.

13 MR. WILLIS: Well, in essence both sides were  
14 getting something out of the rule that they wanted.  
15 That is what they were getting.

16 COMMISSIONER ARGENZIANO: In either case, Mr.  
17 Chair, whatever the outcome is on this particular case,  
18 I think the rule needs to be looked at again for the  
19 reasons we are looking at today. This is a totally  
20 different --

21 (Simultaneous conversation.)

22 CHAIRMAN CARTER: Yes, because circumstances  
23 have changed.

24 COMMISSIONER ARGENZIANO: Right.

25 CHAIRMAN CARTER: And most of those systems

1 like that have either been purchased or are no longer in  
2 existence. So it may very well be a time to look at  
3 that, I don't know. Yes, ma'am. I will come back to  
4 you, Commissioner Skop. I haven't forgotten you.

5 MS. DANIEL: Commissioner, Patti Daniel on  
6 behalf of staff. Most of those troubled systems  
7 hopefully have been purchased, but we received a notice  
8 of abandonment last week for a system.

9 CHAIRMAN CARTER: Oh, really.

10 MS. DANIEL: And I'm in communication with a  
11 couple of other systems that they are not making it.  
12 They don't want to file for a rate case, they are all  
13 done. So this rule does still have applicability. And  
14 certainly if a system abandons, the process is that the  
15 court appoints a receiver, and more often than not it is  
16 the local government, which is fine. But when staff  
17 hears about these troubled systems, I, as a public  
18 servant, am in a quandary. Do I wait for the system to  
19 be abandoned and then let the court take its sweet time  
20 to appoint a receiver, or do I maybe contact some of the  
21 larger companies that I know are perhaps willing to buy  
22 a system, whether it's a dog or -- we've called Jumper  
23 Creek a puppy, not a dog. But, nonetheless, I mean,  
24 staff is in a little bit of a quandary about, you know,  
25 how to address the continuing saga of the very small

1 systems that have troubles.

2 And if I may just -- I'm not going to go  
3 anywhere near the comments that have already been made,  
4 because those certainly have been discussed, but there  
5 were a couple of points just real quickly if I could  
6 make them. Aqua will be absorbing some costs for this  
7 system if the transfer is approved unless and until they  
8 file a rate case. So that's a little bit of a balance  
9 between they're getting a windfall. They are going to  
10 have to absorb the losses of this particular system  
11 unless and until they file a rate case.

12 As to whether the system might be a subsidy  
13 provider or need subsidies down the road, I wanted to  
14 clarify that really will depend on if this transfer is  
15 approved where this system fell within a particular rate  
16 band, okay. If it's in the middle of the rate band, it  
17 is neither a provider or a user of subsidies. So  
18 whether the system is losing money or not isn't really  
19 the determining factor as to whether it will need  
20 subsidies in the future. It depends on where it falls  
21 within a given rate band. And then, again, just to  
22 reiterate, there are still more troubled systems out  
23 there.

24 CHAIRMAN CARTER: Commissioner Argenziano and  
25 then we will go back to Commissioner Skop.

1           COMMISSIONER ARGENZIANO: First of all, I have  
2 to say that with all due respect, I don't think anyone  
3 here said eliminate the rule for those troubled systems.  
4 What we're saying, and you might not have understood,  
5 was that there are different circumstances that are now  
6 there from when that rule was made.

7           I remember coming here and speaking to  
8 Commissioners saying what the heck is going on with a  
9 lot of those systems. So no one is making that  
10 suggestion. I think everybody understands there always  
11 may be still systems that are going to be abandoned and  
12 we need to take care of those.

13           The bigger issue that you raised, and I  
14 appreciate everyone's public service, to me is how long  
15 have you been calling companies about maybe purchasing  
16 abandoned systems? Is that appropriate for staff to do?  
17 I'm just not sure.

18           And I know you have good intentions, but you  
19 just brought up something that just made me think. I  
20 don't know that that is something that staff should be  
21 doing, because it could then indicate to the company  
22 that they would get a more favorable outcome or  
23 something, and I think that's inappropriate. As much as  
24 I appreciate -- because it is coming from your heart,  
25 and I don't think you understand the implications that

1 it has. I'm not sure that's something staff should be  
2 doing.

3 MS. DANIEL: Commissioners, I'm not  
4 encouraging companies to buy these small systems. I'm  
5 making companies aware, when I get phone calls from  
6 systems that we need help and they want to know where to  
7 look, I tell them --

8 COMMISSIONER ARGENZIANO: I'm not sure -- and  
9 I understand the good reasons why you're doing that, and  
10 I'm telling you I'm not sure it's appropriate. That's  
11 up to the Commissioners, I think, to decide.

12 MS. DANIEL: Certainly.

13 COMMISSIONER ARGENZIANO: And I know you don't  
14 like that answer, because I don't think you see the  
15 ramifications of what you're doing or what they could  
16 be, even though good intentioned. And I have no doubt  
17 they are done with good intentions, but I don't think  
18 you understand what that sends the message out, and I  
19 don't think it's appropriate.

20 CHAIRMAN CARTER: Thank you.

21 Commissioner Skop.

22 COMMISSIONER SKOP: Thank you, Mr. Chairman.

23 I had the same concern that I expressed in a  
24 briefing. I think it is well intentioned, but, again, I  
25 have some ethical concerns along that same line.



1           And, secondly, this whole notion that was  
2 mentioned about the rate bands, where you fall in the  
3 rate bands in terms of what that does to rates or  
4 whatever, I don't think it's irrefutable that rates are  
5 going up for this system. Where that falls in the grand  
6 scheme of things may move things up or down, but this  
7 system is operating in a revenue deficit currently.

8           And also, too, getting to a statute, and the  
9 last time I checked, I think, if they taught me in law  
10 school right, statute trumps rule. If you look at  
11 367.071, Paragraph 5, it says, "The Commission by order  
12 may establish the rate base for a utility or its  
13 facilities or property when the Commission approves the  
14 sale, assignment, or transfer thereof, except for any  
15 sale, assignment, or transfer to governmental  
16 authority."

17           You know, I would hold that by virtue of that  
18 statute, if there is something in the rule I don't like,  
19 the statute gives me statutory authority to modify and  
20 trump our rule. And along the same line that  
21 Commissioner Argenziano made, if we want to set that  
22 negative acquisition adjustment at a different number, I  
23 think 367.0715 gives us the ability to do so.

24           So maybe the best thing to do, I don't know,  
25 is to I defer this item and take it up later after staff

1 has some time to talk about it, or we can debate the  
2 statute, but if I got in a pinch and I needed an out, I  
3 would say statute trumps rule.

4 CHAIRMAN CARTER: Let me do this, and I may  
5 make a comment on what you just said, Commissioner, and  
6 I think that's obvious. But, staff, what kind of time  
7 frame are we on on this case procedurally?

8 MR. SAYLER: Mr. Chairman, there is no  
9 statutory time frame or requirement. Unlike tariffs  
10 where you have a time certain, with a transfer there  
11 isn't a deadline.

12 CHAIRMAN CARTER: Okay. Now, the next  
13 question -- I think Commissioner Argenziano asked this  
14 question before, and the thing about it is that if we  
15 were to not apply the rule -- we were to defer this case  
16 and not apply the rule as it currently exists to this  
17 case, but use a modified version of the rule, then that  
18 would be grounds for -- I forgot the terminology that  
19 you used.

20 MR. SAYLER: Retroactive rulemaking or  
21 retroactive application of a rule.

22 CHAIRMAN CARTER: Yes. So what gives me the  
23 kind of heartburn in terms of that is maybe we'll have  
24 to find something else. If we do defer it, we'll m have  
25 to find something within the confines of this docket

1 here to make a determination on versus modifying the  
2 rule. Is that correct? Do you understand my question?

3 MR. IMHOF: Yes, sir.

4 CHAIRMAN CARTER: Okay. If we were to defer  
5 the case, and say we're going defer the case and look at  
6 the rule and change the rule and then reapply that, then  
7 that would be retroactive application of a rule that has  
8 already been in place, right?

9 MR. IMHOF: That's right, and it's prohibited.

10 CHAIRMAN CARTER: Right. But I'm saying is  
11 that if we were to say, okay, we're going to defer the  
12 case, but we're going to look at it in the four corners  
13 of the document itself and see what's within here that  
14 gives us some discretion to maybe apply other parameters  
15 or to look at and identify what may be some  
16 extraordinary circumstances or things like that, maybe,  
17 we could still do that without having to get into  
18 whether or not we're applying a different rule or  
19 anything. That's the question I was asking.

20 COMMISSIONER ARGENZIANO: I think what you are  
21 saying is let's make sure we have defined the rule  
22 properly. Instead of deferring this to go create a new  
23 rule, let's look at the rule as it's written.

24 CHAIRMAN CARTER: And apply it to this case  
25 here?

1                   COMMISSIONER ARGENZIANO: Right.

2                   CHAIRMAN CARTER: That's what I thought you  
3 were saying, so I was trying to --

4                   COMMISSIONER ARGENZIANO: Right. And then the  
5 possibility of coming back if we have determined whether  
6 extraordinary cases, and if B applies here, and if it  
7 doesn't, even the thought -- excuse me, I have this  
8 awful bronchitis -- letting it go forward. I mean, we  
9 don't know if there is consumers out there who are going  
10 to contest it, and that could happen. If they are  
11 watching today, you know, that they may want to contest  
12 it. I'm not saying they need to do that, but that gives  
13 the opportunity for it all to come back up again.

14                   I don't know which way we want to go, but in  
15 the meantime if we could defer it to just really sit  
16 back and get a better understanding of what the rule is  
17 really saying, if some of these examples that we have  
18 talked about apply here and how they really apply to the  
19 rule, because I think there is a little bit of a  
20 misunderstanding about what the rule does and doesn't do  
21 as far as the 80 percent and the or part. And maybe we  
22 could do that rather than defer and say we are going to  
23 go change the rule.

24                   CHAIRMAN CARTER: And that's kind of where we  
25 were, as I mentioned earlier, about this balancing act.

1 We want to encourage companies to purchase these  
2 systems; we don't want to discourage that. And  
3 certainly we don't want to have, you know, people just  
4 abandoning systems and then customers can't get water,  
5 which is the lifeblood. You have got to have that.

6 And in the process of doing that, what I was  
7 just saying in the context of that we have to take each  
8 case based upon the facts and circumstances of that  
9 case. I mean, I'm comfortable with going wherever the  
10 Commission wants to go on this, but I do think that  
11 within the context of this case, we do have to deal with  
12 it under the law that was applicable at the time, the  
13 rules and all like that, but also the facts and  
14 circumstances of this specific case.

15 Commissioner Skop.

16 COMMISSIONER SKOP: Thank you, Mr. Chairman.

17 And, you know, I tend to agree. I don't  
18 support retroactive rulemaking, but I'd would like to  
19 get some clarification from our General Counsel.

20 I guess my understanding is a transfer  
21 requires the Commission to approve it. So, again,  
22 nothing is set in stone until it's approved. So I'm  
23 struggling to understand how this might be construed as  
24 retroactive application of the rule if this proceeding  
25 were deferred or stayed, and I'm not suggesting we do

1 that. But if it were deferred or stayed pending the  
2 outcome of rulemaking, it would seem to me that the  
3 Commission is taking no final action on the pending  
4 application, and so the rule in effect at the time in  
5 which the application was approved, or is it what  
6 controls the pendency of the application?

7 MR. IMHOF: (Inaudible. Microphone off.)

8 COMMISSIONER SKOP: All right, fine. Sobeit  
9 with that. I agree in principle with the Chairman, so,  
10 again, the Commission can move forward with this under  
11 the facts and circumstances at the time of the filing.  
12 That doesn't make it right, and it doesn't make it not  
13 protestable, but I also agree with Commissioner  
14 Argenziano. The time I think has come to revisit  
15 looking at this rule, and I would suggest maybe looking  
16 at limited rulemaking to address this issue.

17 One final question to legal counsel, and then  
18 I guess we can move to approve staff recommendation or  
19 whatever the Commission chooses to do. If I were to  
20 dissent on Issue 3 in terms of negative acquisition  
21 adjustment and base that on my delegated statutory  
22 authority under 367.071, Paragraph 5, where the  
23 Commission by order may establish a rate base for a  
24 utility or its facilities, I don't think I'm bound  
25 necessarily by the rule, if I feel the rule gives an

1 unintended result. Is that correct?

2 MR. IMHOF: Well, the cases are pretty clear  
3 that agencies must follow their own rules, that rules  
4 that have been properly adopted must be followed. So  
5 they have not been challenged, so the rule is in place,  
6 and then the remedy for the agency is to change the rule  
7 as going forward.

8 COMMISSIONER SKOP: I'm pretty rigid about  
9 following rules, and I respect that, and I hate to take  
10 exception to this, but I can't ignore the obvious. I  
11 can't, like, stick my head in the sand like an ostrich.

12 So if the Commission moves to approve the  
13 staff recommendation, I would respectfully dissent on  
14 Issue 3. And, you know, even not withstanding our rule,  
15 I do think the statute affords me additional discretion  
16 that would justify my dissent.

17 CHAIRMAN CARTER: Commissioner Argenziano.

18 COMMISSIONER ARGENZIANO: What is the statute  
19 that gives the delegation -- gave delegating authority  
20 to the agency for that specific rule?

21 MR. SAYLER: The statutory authority is cited  
22 for the acquisition adjustment rule, the specific  
23 authority is Chapter 351.27, Subparagraph 2, 367.121 --

24 COMMISSIONER ARGENZIANO: Start from the  
25 beginning again.

1 MR. SAYLER: Sorry.

2 COMMISSIONER ARGENZIANO: What's the specific  
3 statutory --

4 MR. SAYLER: The specific authority is Chapter  
5 350.127, Subparagraph 2 -- Subsection 2, excuse me. And  
6 367.121, Subsection 1, Subparagraph F, or (1)(f).

7 COMMISSIONER ARGENZIANO: Thank you.

8 CHAIRMAN CARTER: Commissioner Skop.

9 COMMISSIONER SKOP: And also to Mr. Sayler, if  
10 you could read the law implemented. I think that the  
11 statute I referenced is the first statute of the law  
12 implemented, is that correct?

13 MR. SAYLER: That is correct, you were citing  
14 from 367.071, Subparagraph 5.

15 COMMISSIONER SKOP: Thank you.

16 CHAIRMAN CARTER: Okay. Commissioners, what's  
17 the pleasure of the Commission?

18 COMMISSIONER ARGENZIANO: I move to defer  
19 until we find out what the rule -- if the rule, as it  
20 stands, not changing the rule, to make sure that we  
21 have -- each Commissioner has an understanding of where  
22 the rule really applies as to this case. And  
23 particularly -- in particular the Paragraph (3)(b) to  
24 see if the end -- I mean, the or -- I guess the  
25 80 percent -- wasn't there still an outstanding question



1 on --

2 CHAIRMAN CARTER: Do you want to just say  
3 Subsection 3, (3), because that is pretty much --

4 COMMISSIONER ARGENZIANO: Yes.

5 CHAIRMAN CARTER: We'll do it that way.  
6 Commissioners, we have got motion on the floor. Is  
7 there a second?

8 COMMISSIONER McMURRIAN: I'll second it.

9 CHAIRMAN CARTER: We're in discussion.

10 Commissioner McMurrian, you're recognized for  
11 discussion.

12 COMMISSIONER McMURRIAN: And I will just say I  
13 second it, because I believe when a Commissioner wants  
14 to get more clarification on something that's before us,  
15 and if it is not time sensitive, then generally I like  
16 to honor that. And it definitely wouldn't hurt to take  
17 a closer look for any of us at the rule before we make a  
18 decision.

19 I will say, and you can probably tell by my  
20 comments I was prepared today to perhaps be an ostrich  
21 on Issue 3, because I do believe that the rule applies.  
22 I believe -- and we've talked a lot about statute  
23 trumping the rule, and I do think a statute trumps a  
24 rule, but I think our rules are based on what the  
25 statutes say, and we need to follow our rules.

1           I think that we have drawn attention to it,  
2           and I don't mean to hold up the show, but, again, I feel  
3           strongly about the subsidy levels and affordability  
4           levels and I just feel this compounds the problem. So,  
5           again, maybe the company will step forward and be a  
6           white knight, but we'll see.

7           CHAIRMAN CARTER: Thank you.

8           Commissioner Edgar for a comment.

9           COMMISSIONER EDGAR: Thank you, Mr. Chairman.

10          I support the motion as well for reasons very  
11          similar to what Commissioner McMurrian has described.  
12          For the years that I have had the honor of participating  
13          in these deliberations, I also have, I think, every time  
14          I was able to support any Commissioner's desire for  
15          additional information if there was any way that we  
16          could do so.

17          I am, however, somewhat troubled by some of  
18          the descriptions that I have heard today. I don't  
19          personally appreciate the description or the analogy to  
20          animals. If I vote for this, I'm not being an ostrich.  
21          I have read the law; I have read the rules; I have read  
22          the case; I have read the description; I have heard the  
23          discussion today. I may disagree, but I would ask that  
24          the animal descriptions to ceased, quite frankly.

25          And, secondly, I have not heard anything from

1           So I'm comfortable with that, but, again, I  
2 agree that if a Commissioner would like more time, and  
3 it seems like there are several of us that might like to  
4 do that, that we should honor that. So I second the  
5 motion to defer it. I don't know exactly how to limit  
6 it, what we look at. I would just say defer the item  
7 for us to consider the matter further. And I'm not sure  
8 exactly about what we were talking about with the --

9           CHAIRMAN CARTER: Commissioner Argenziano,  
10 would that be appropriate to you to defer the item?

11           COMMISSIONER ARGENZIANO: Yes, that would be  
12 great. I appreciate that.

13           CHAIRMAN CARTER: And your second would be  
14 consistent with that?

15           COMMISSIONER McMURRIAN: Yes. Thank you.

16           CHAIRMAN CARTER: Commissioner Skop, we're in  
17 debate.

18           COMMISSIONER SKOP: Thank you, Mr. Chairman.  
19 And I support the motion.

20           Again, I was prepared to just move forward,  
21 and I think at the end of the day the rule will probably  
22 control, but I guess my perspective is if the rule  
23 yields unintended consequence then perhaps it is best to  
24 fix the loophole before this becomes a standard business  
25 model.

1 the discussion today from our legal staff altering the  
2 recommendation that is in here as to the interpretation  
3 of the rule. And I also don't agree with the  
4 description of loophole. So, again, I support  
5 absolutely, since there are no legal or time constraints  
6 that have been made clear to us, giving the opportunity  
7 for additional thought, as I always do. But I would ask  
8 that we continue to be sensitive to our descriptions.

9 CHAIRMAN CARTER: Thank you, Commissioner.

10 And this is a fairly interesting perspective  
11 here, and sometimes things come before us that are  
12 fairly cut and dry, but every now and then, you know,  
13 things are going to be complicated, and that's why we're  
14 here.

15 We are here to balance the perspective on the  
16 economic development of these companies as well as the  
17 responsibility of fair and just rates for the consumers,  
18 and sometimes things are just not cut and dry. And that  
19 is why we have human beings as Commissioners as opposed  
20 to robots and that's a good thing. That's a good thing.

21 COMMISSIONER ARGENZIANO: Although that may be  
22 coming.

23 CHAIRMAN CARTER: Call me old school, but I  
24 will fight it with every -- by then I'll have my little  
25 walker, and I'll be fighting it all the way.

1 Commissioner Skop, you're recognized.

2 COMMISSIONER SKOP: Thank you, Mr. Chairman.

3 I just want to extend an apology to  
4 Commissioner Edgar. Again, the animal reference was  
5 merely the ostrich rule, which I intended for my own  
6 view as it pertained to me. No offense should be, I  
7 think, taken or attributed to suggesting that that, you  
8 know, had to do with any of my colleagues. That was  
9 just my own personal opinion with respect to, you know,  
10 looking at the situation in the totality, noting that we  
11 had the subsidization issue and the affordability issue,  
12 and all I was merely suggesting is from my perspective  
13 and my perspective alone.

14 It troubles me, you know, just to look at this  
15 issue in isolation. And I respect the rule, but, you  
16 know, no offense was intended or should be taken from my  
17 comments. And so I'll offer an apology, although I was  
18 not trying to offend anyone.

19 CHAIRMAN CARTER: Commissioners, we're in  
20 debate. We're in debate. We have got a motion, we have  
21 got a second. We're in debate. Any further debate?  
22 Any further comments? Any further questions? All in  
23 favor of the motion, let it be known by sign of aye.

24 (Simultaneous aye.)

25 CHAIRMAN CARTER: All those opposed, like

1 sign. Show it done. And, Commissioners --

2 Commissioner Argenziano.

3 COMMISSIONER ARGENZIANO: I will also ask, and  
4 I know we have mentioned it, if we can -- I don't know  
5 if it has to be formally or not, just to have a review  
6 of the rule to see if we need to incorporate something  
7 additional, not only to cover what it was originally  
8 intended for, but maybe some of the newer circumstances.  
9 If there is something we can add to the rule or some  
10 type of workshop.

11 CHAIRMAN CARTER: Do you want to do that  
12 individually, or do you want staff to do it to the  
13 Commission as a whole or --

14 COMMISSIONER ARGENZIANO: I would think to the  
15 whole, to the whole Commission.

16 CHAIRMAN CARTER: Commissioners, we'll have to  
17 find an appropriate time, and since this is not time  
18 sensitive, we could probably plug it in, so don't hold  
19 me to a date right now.

20 Mr. Saylor.

21 COMMISSIONER ARGENZIANO: No problem.

22 MR. SAYLER: I understand that we would need  
23 to open up a workshop or something along that nature,  
24 and that is something that we can discuss with you  
25 further regarding that.

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CHAIRMAN CARTER: We'll try to find an appropriate time.

Commissioners, it has been a great day. We have done some good work. Actually great work for a very busy agenda, and with that we are adjourned.

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STATE OF FLORIDA )

: CERTIFICATE OF REPORTER


COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 17th day of April, 2009.

  
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