

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the matter of

Proposed Revisions to Rules

DOCKET NO. 911082-WS

- 25-30.020, 25-30.025, 25-30.030,
- 25-30.032, 25-30.033, 25-30.034,
- 25-30.035, 25-30.036, 25-30.034,
- 25-30.035, 25-30.036, 25-30.037,
- 25-30.060, 25-30.110, 25-30.111,
- 25-30.135, 25-30.255, 25-30.320,
- 25-30.335, 25-30.360, 25-30.430,
- 25-30.436, 25-30.437, 25-30-443,
- 25-30.455, 25-30.515, 25-30.565,
- NEW RULES 25-22.0407, 25-30.0408,
- 25-30.0371, 25-30.038, 25-30.039,
- 25-30.090, 25-30.117, 25-30.432
- to 25-30.435, 25-30.4385,
- 25-30.4415, 25-30.456, 25-30.460,
- 25-30.465, 25-30.470, AND
- 25-30.475; AND REPEAL OF RULE
- 25-30.441, F.A.C. PERTAINING TO
- WATER AND WASTEWATER REGULATION.

FIRST DAY - MORNING SESSION

VOLUME I

Pages 1 through 104

PROCEEDINGS:

HEARING

BEFORE:

- CHAIRMAN J. TERRY DEASON
- COMMISSIONER SUSAN F. CLARK
- COMMISSIONER LUIS J. LAUREDO
- COMMISSIONER JULIA L. JOHNSON

DATE:

Thursday, August 12, 1993



DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

1 TIME:

Commenced at 9:30 a.m.

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3 PLACE:

FPSC Hearing Room 106  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida

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6 REPORTED BY:

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## 1 APPEARANCES:

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5 Florida Waterworks Association and Florida Cities Water  
6 Company.

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21 CHRISTIANA MOORE, FPSC Division of Appeals,  
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24 behalf of the Commission Staff.

25

1 ALSO PRESENT:

2 CHARLES H. HILL, Director, Division of Water  
and Wastewater.

3 BILLIE B. MESSER, FPSC Division of Water and  
4 Wastewater.

5 PATRICIA W. MERCHANT, FPSC Division of Water  
and Wastewater.

6 BOB CROUCH, FPSC Division of Water and  
7 Wastewater.

8 MARSHALL W. WILLIS, FPSC Division of Water  
and Wastewater.

9 JOANN CHASE, FPSC Division of Water and  
10 Wastewater.

11 ANN CAUSSEAU, FPSC Division of Water and  
Wastewater.

12 PATTI DANIEL, FPSC Division of Water and  
13 Wastewater.

14 ROBERT TODD, President, Waterworks Association.

15 KIM DISMUKES, Office of Public Council.

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I N D E XEXHIBITS

	<u>Number:</u>	<u>Identified</u>	<u>Admitted</u>
4	3 (Staff) Aquisition Adjustments, PD-5 through PD-8	30	95
5	4 (Southern States) Acquisition Adjustments 1988 through 1992, Response to Staff Exhibit PD-8	31	95
7	5 (Southern States) Average Investment in Excess of Rate Base	31	96
9	6 (Scuthern States) Comments re Research of Acquisition Adjustment Polices of Other States (Filed in 891309-WS)	31	102
12	7 (Southern States) Working Capital Comparisons	32	103
13	1 Composite Exhibit		95
14	2 FWA's List of No Problems at Issue		95
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P R O C E E D I N G S

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

CHAIRMAN DEASON: Call the hearing to order, please. Where do we find ourselves. This is a continuation of hearings that we held back in May; is that correct?

MS. MOORE: That's correct. It's held pursuant to notice published in the Florida Administrative Weekly on July 23rd, 1993.

CHAIRMAN DEASON: Okay. Is there any need to read that notice again, or we've already constituted adequate notice?

MS. MOORE: It's adequate notice.

CHAIRMAN DEASON: Even though this is a continuation of a previous hearing, we'll go ahead and take appearances again.

MR. SCHIEFELBEIN: Good morning. Wayne Schiefelbein, Gatlin, Woods, Carlson and Cowdery, appearing on behalf of the Florida Waterworks Association and Florida Cities Water Company.

MR. HOFFMAN: Kenneth A. Hoffman, Messer Vickers lawyer firm. P. O. Box 1876, Tallahassee, Florida 32302, appearing on behalf of Southern States Utilities, Inc.

MR. MANN: Jack Shreve and Rick Mann Office of

1 the Public Counsel, 111 West Madison Street, Room 812,  
2 attorneys for the Citizens of the State of Florida.

3 MS. SUMMERLIN: Suzanne Summerlin, representing  
4 Staff.

5 MS. MOORE: Christiana Moore, representing  
6 Staff.

7 MR. HOFFMAN: Mr. Chairman, for the record  
8 I'll also enter an appearance on behalf of Mr. Joseph  
9 P. Cresse, Class B Practitioner, same firm, same  
10 address, on behalf of Southern States, who will be here  
11 later in the day to address a few issues.

12 CHAIRMAN DEASON: Thank you. Ms. Moore, how  
13 do you recommend we proceed at this point?

14 MS. MOORE: I believe there is a preliminary  
15 matter that Mr. Hill wants to speak to, it has to do  
16 with the used and useful rule, which is now scheduled  
17 for hearings in September on the 8th and 9th.

18 MR. HILL: Yes, Mr. Chairman. We had a  
19 meeting on August 2nd of all of the interested parties  
20 that chose to show up and discuss the data that's been  
21 collected, their analyses, and there were many  
22 suggestions made as to how we might better that rule.  
23 And it was the consensus of those in that meeting that  
24 we request that the hearings, September 8th and 9th,  
25 for Rule .432 not be held, and that we delay those and

1 allow us to do some more analysis before we come before  
2 the Commission, and I support that.

3 CHAIRMAN DEASON: Do the parties wish to  
4 comment on that?

5 MR. SCHIEFELBEIN: We would support that  
6 strongly.

7 MR. HOFFMAN: As would Southern States.

8 CHAIRMAN DEASON: Mr. Mann.

9 MR. MANN: Public Counsel had no objection to  
10 that, Commissioner.

11 MR. SHREVE: I do have a question. Are we  
12 talking about rolling the rule out; taking it out of  
13 this and refiling, reproposing. That was what I had  
14 understood was going to be the situation.

15 MR. HILL: That would not be my preference.  
16 If the Commission wants to take it out of this docket  
17 altogether, certainly you have the right to do that.  
18 My preference would be that we continue it with  
19 everything, but leave .432 in this docket. That does not  
20 necessitate anything other than leaving it in the docket.

21 CHAIRMAN DEASON: Would there be an advantage  
22 procedurally to roll it out?

23 MR. SHREVE: Time-wise, it might be easier to  
24 handle just to leaving it in, but you're dealing with a  
25 proposed rule that the Commission proposed, which has



1 been a moving target all along and nobody has got the  
2 same information or even knows where the rule is right  
3 now. And that's the case with some others too.

4 I don't know, I guess I've always felt that  
5 whatever the Commission proposes, or any group puts out  
6 as a proposed rule, should be what you intend to  
7 propose. And I don't think we're at that I point.  
8 That's the reason -- I thought that everybody had  
9 talked about taking it out completely and then  
10 reproposing it. But I was not at the meeting. I just  
11 misunderstood that, I guess.

12 COMMISSIONER JOHNSON: If we leave it in, but  
13 delay when we're going to hear it, can we rule on the  
14 other materials in here? Well, how do they become  
15 rules, if we still have them all rolled together? Or  
16 would they not become effective until we finish the  
17 used and useful rule on that?

18 MS. MOORE: No. You can adopt the remainder  
19 of the rules.

20 COMMISSIONER JOHNSON: And then send them to  
21 be published and all that?

22 MS. MOORE: Yes.

23 COMMISSIONER JOHNSON: Okay.

24 MR. SCHIEFELBEIN: If I might interject, I  
25 think there's an additional rule that should accompany

1 that delay, and technically I think it's set for  
2 discussion today.

3 As you know, 25-30.432 the used and useful  
4 rule, is what we're talking about in September and  
5 perhaps putting off. 25-30.433(6) regards the  
6 Commission's policy on whether or not to impute CIAC  
7 for connections included in a margin reserve. And it  
8 would seem that it would be appropriate to have that  
9 considered at the same time as you determine how you're  
10 going to calculate margin reserve and what type you're  
11 going to allow.

12 So I would ask that that particular rule be  
13 included in the future discussions that we're  
14 tentatively scheduling for the -- I think, October, and  
15 put that off as far as the hearing as well.

16 CHAIRMAN DEASON: Comments on that suggestion  
17 from Mr. Schiefelbein. Mr. Shreve.

18 MR. SHREVE: I think that makes sense. You  
19 can't very well make a decision on the margin reserve  
20 -- you're not going to say you're going to impute CIAC  
21 and then not have margin reserve and we're clearly  
22 pushing to not have it, so I think the cart is before  
23 the horse on that.

24 MR. HOFFMAN: Mr. Chairman, I think that  
25 conceptually the imputation of CIAC on the margin

1 reserve is tied into the used and useful proposals.  
2 However, I don't think that that particular proposal  
3 has suffered the type of moving target problems and  
4 other problems that have been associated with the  
5 package of the used and useful proposals. So our  
6 position would be that we would just as soon go forward  
7 with .433 in its entirety, because we think that the  
8 Commission will have enough input on the issue of  
9 whether or not CIAC should be imputed on the margin  
10 reserve through this hearing today.

11 CHAIRMAN DEASON: Does Staff have a viewpoint  
12 on the .433?

13 MR. HILL: Yes, Mr. Chairman. Sub 6 should  
14 be delayed with .432. Everything we deal with is a  
15 moving target. That's not the problem. The problem is  
16 .432 will allow you to decide whether you're going to  
17 allow a margin. .433 then discusses the issue of  
18 whether you're going to impute CIAC on that margin. I  
19 think you're getting the cart before the horse. If you  
20 say you're going to impute or not impute CIAC on the  
21 margin before you decide if there's going to be a  
22 margin, that doesn't make any sense.

23 CHAIRMAN DEASON: Commissioners, what's your  
24 pleasure? We have a proposal to delay all of .432,  
25 which deals with the used and useful, and we also have

1 a suggestion that we may want to include .433(6) in  
2 with the used and useful and delay that as well.

3           There's also a question as to whether it  
4 should be totally spun out of this rule proceeding into  
5 a separate docket, or leave it in with the  
6 understanding that we can go forward with the rules,  
7 propose those and have them published and they can be  
8 implemented while the used and useful sections are  
9 still under consideration. Is there a motion or  
10 suggestion? Which alternative?

11           COMMISSIONER LAUREDO: With leaving it as a  
12 whole, I don't see much difference between the two. I  
13 think procedurally it would be easier. As I understand  
14 it, we can approve of this or approve any part of it  
15 anyway.

16           CHAIRMAN DEASON: So we have a motion to  
17 delay used and useful and the imputation of CIAC and  
18 simply leave it in this docket but with the  
19 understanding that this is going to be considered at a  
20 later time and we would go forward with the remainder  
21 of the proposed rules.

22           COMMISSIONER CLARK: Second.

23           CHAIRMAN DEASON: Moved and seconded. All in  
24 favor say, aye.

25           (Chairman Deason and Commissioners Clark,

1 Lauredo and Johnson vote aye.)

2 CHAIRMAN DEASON: Very well. And we will  
3 take a look at the calendar and make the decision on  
4 when the used and useful portion of these rules will be  
5 heard, and I'm sure there will be proper notice.

6 Is there an anticipation that there may be a  
7 workshop scheduled?

8 MR. HILL: I anticipate having at least one  
9 more meeting or workshop or whatever you want to term it.  
10 But I want to get the data back out to all the parties,  
11 allow for analysis and then call another meeting or  
12 workshop prior to coming back to the Commission.

13 CHAIRMAN DEASON: Okay. Very well.

14 COMMISSIONER CLARK: I have a question. Are  
15 we through with other preliminary matters?

16 CHAIRMAN DEASON: I think so. There may be  
17 one. Let me raise the question. Ms. Moore, you put  
18 together a schedule of the rules that are yet to be  
19 considered in this phase of the hearing?

20 MS. MOORE: That's correct.

21 CHAIRMAN DEASON: Obviously, we've heard much  
22 in the previous session and even disposed of some  
23 rules, at least gave it some direction to Staff. We're  
24 past that point now. We have those rules that are yet  
25 to be considered.

1           During that process I believe some of the  
2 parties identified that some of those rules were, in  
3 their opinion, of a noncontroversial nature or at least  
4 were acceptable. And I think some of the other parties  
5 agreed with that and we have identified those as being  
6 rules that can be included in the final recommendation  
7 as they were proposed.

8           But I believe there were some rules that I  
9 believe Public Counsel was going to take a look at to  
10 see if they still needed to be heard at this phase of  
11 the hearing.

12           Would it be helpful to take a break at this  
13 time and have that reassessed by the parties to see if  
14 there's anything that still can be removed from this  
15 phase of the hearing and put into that category as  
16 noncontroversial, or are we already past that and we  
17 know we're going to have presentations and discussions  
18 on all remaining rules?

19           MS. MOORE: No. There are nine that were --  
20 that the Florida Waterworks Association announced were  
21 not -- they had no opposition to, and Mr. Shreve was  
22 going to take a look at that list and see. That would  
23 remove nine from the discussion today.

24           CHAIRMAN DEASON: Mr. Shreve, would that be  
25 helpful to take a break at this point and discuss those

1 with Staff and the parties?

2 MR. MANN: Yes, sir.

3 MR. SHREVE: Yes, sir. We were under the  
4 impression there were actually more than nine.

5 MR. SCHIEFELBEIN: I believe there were more  
6 than nine, and I could reconstitute my list. I don't  
7 have that list with me today.

8 MR. SHREVE: We can do that for you.

9 MS. MOORE: There were nine left that I  
10 thought Mr. Shreve needed to check further. There were  
11 more total, but some he agreed to.

12 CHAIRMAN DEASON: Right. There have already  
13 been a number that have been agreed to by the parties, and  
14 I think those have already been taken off of your list.

15 MS. MOORE: Right.

16 CHAIRMAN DEASON: Which is what we wanted.

17 What I propose to do at this point is to take  
18 about a ten-minute recess, let the parties sit down,  
19 reevaluate where we are at this point, and if there is  
20 some ground, some areas that we can remove from this  
21 phase of the hearing, I think it would be time well  
22 spent.

23 COMMISSIONER LAUREDO: Wasn't there also in  
24 that element just some legislative cleanup, did we take  
25 care of that before? There were three areas as the

1 breakout of this, the big picture was; noncontroversial,  
2 legislative consistency, and the third, you know, the ones  
3 that we need to make policy decisions.

4 In other words, there were some rules that  
5 just simply needed to be cleaned up language-wise.

6 MS. MOORE: Yes.

7 COMMISSIONER LAUREDO: Is that something you can  
8 put in this recess so we can get them out of the way?

9 CHAIRMAN DEASON: I think a number of those  
10 probably have already been addressed previously.

11 COMMISSIONER LAUREDO: Okay.

12 MS. MOORE: Yeah. I think so. They were  
13 already considered.

14 There is one other matter that Ms. Summerlin  
15 would like to talk about, it's that land ownership  
16 issue with the 99-year lease. That affects a number of  
17 rules and I think it can be taken care of quickly. And  
18 that might be the only issue in those, the remaining,  
19 some of the remaining controversial ones.

20 CHAIRMAN DEASON: Very well.

21 MS. SUMMERLIN: Okay. At the last hearing  
22 session the Florida Waterworks Association had comments  
23 that related to a lot of the rules where we have a  
24 phrase that discusses what needs to be presented in  
25 terms of proof of ownership of land. The Waterworks



1 Association had suggested that the "phrase 99-year  
2 lease" be removed, and that a term for "easement" as  
3 being acceptable be added. And the Staff has looked at  
4 that in the interim period and we are still -- although  
5 we recognize the concerns that the Waterworks  
6 Association has presented regarding the fact that it  
7 would be good to have the least-cost conveyance  
8 available to any utility when it's trying to prove the  
9 ownership of land. We are concerned that we are not  
10 really prepared right now to say that an easement would  
11 be an acceptable idea. But we intend to do some real  
12 serious research in this area, and when we are  
13 completely through with that research, we will be back  
14 to you all if we think that there is an appropriate  
15 change that can be made in that direction. But right  
16 now the Staff would not have a problem removing the  
17 phrase, such as the "99-year lease." Right now it  
18 says, "long-term lease, such as a 99-year lease," and  
19 that is a phrase that simply is an example of what an  
20 appropriate long-term lease would be.

21 I think as we talked about the last time, the  
22 Commission has allowed something of a term that's less  
23 than 99 years. However, we have always taken the view  
24 that the most appropriate long-term lease would be 99  
25 years. And my view would be that we would continue

1 with that idea, but it does not mean that there's not  
2 any flexibility at all.

3 We see this as an effort to compromise with  
4 the Waterworks Association at this point. But we need  
5 to do more research to come and tell you that it's okay  
6 with us that an easement would be an acceptable thing  
7 or any other possible lesser period of time for a lease  
8 or, you know, what we have in the rules right now.

9 I will go through and list the rules where  
10 this particular idea relates, so that we will have that  
11 on the record. It's 25-30.033(1)(j), and then  
12 .034(1)(e), .035(6), .036(2)(d), .037(2)(q), .037(3)(i)  
13 .038(4)(n), .039(2)(i), and .433(10), and .436(4)(i),  
14 and we're proposing this concept that we just stated  
15 for all of those.

16 CHAIRMAN DEASON: As I recall the discussion,  
17 I think the Waterworks was primarily concerned with  
18 that language being included in the rule as an example  
19 and that it may be interpreted as being more than just  
20 an example. And Staff, you're proposing that such as  
21 "a 99-year lease" terminology be removed, and in the  
22 meantime you're going to be doing further study on the  
23 use of easements as being a tool to comply with the  
24 policy contained in that rule.

25 MS. SUMMERLIN: I do think it's important to

1 say we don't see this as a substantive change to this  
2 rule. We still believe that the standard long-term  
3 lease would be 99 years, but we -- this would simply  
4 acknowledge that there is flexibility and that it has  
5 been used in the past.

6 CHAIRMAN DEASON: Is there any objection to  
7 Staff's suggestion concerning the language on 99-year  
8 leases?

9 MR. SHREVE: There would be no indication as  
10 to what a long-term lease would be?

11 CHAIRMAN DEASON: That language is proposed  
12 not to be in the rule, but I think it's Staff's  
13 intention to continue to look for and hopefully obtain  
14 and encourage 99-year leases. But that that would not  
15 be the -- obviously would not be the only alternative.

16 MR. MANN: Commissioner, I don't understand why  
17 then, with that guidance presently in there, and with  
18 Staff looking and considering 99 years as what they would  
19 envision as a long term, that the wording doesn't stay.

20 COMMISSIONER CLARK: I mean it does just say  
21 "such as" and that's what we have been looking at, and  
22 on an individual case you can always come in and say  
23 this is equally valid as a basis for finding there is  
24 sufficient ownership interest.

25 MR. SCHIEFELBEIN: I believe those rules are

1 written in such a way where it says that what you're  
2 looking for is documentation that the utility is going  
3 to have continuous access to its plant site. So if  
4 somebody comes in arguing something is a long-term  
5 lease but it's obvious that in ten years, or something,  
6 20 years, whatever, there's still going to be a need  
7 for service and they don't have any assurances of  
8 access to that site, that that would not be adequate.

9 COMMISSIONER CLARK: You didn't answer the  
10 question. What's wrong with leaving "such as a 99-year  
11 lease"?

12 MR. SCHIEFELBEIN: Well, I think probably the  
13 most important thing that's wrong with that is the  
14 message that -- not so much that it affects your  
15 policy, but the message that it sends to utility  
16 owners, and we're talking about little utilities. I  
17 think they are who are negotiating to have access to  
18 the plant site. And may find themselves at an economic  
19 disadvantage, where someone will say, "Well, you'd better  
20 negotiate a 99-year lease with me and that's going to cost  
21 you this," and they look at the rule, they don't have much  
22 sophistication and that's what they go with, which may not  
23 be a -- not a cost-effective way of approaching it. I  
24 think to the Commission itself and to more sophisticated  
25 utilities, it's not going to make any difference. But, I

1 feel a lot better about --

2 COMMISSIONER CLARK: But one could argue that  
3 there's more guidance to them if they are  
4 unsophisticated. They know if they get a 99-year lease  
5 they're going to be all right.

6 MR. SCHIEFELBEIN: That's true. But --

7 COMMISSIONER CLARK: And wouldn't you agree  
8 that a 99-year lease is a fairly standard legal lease  
9 requirement?

10 MR. SCHIEFELBEIN: I don't believe so at all,  
11 no. Not in the areas of plant sites or anything like  
12 that, no. It's sort of -- almost a legal cliché when  
13 you think of a long-term lease, but I don't think as a  
14 practical matter that's common at all.

15 CHAIRMAN DEASON: Commissioners, we're going  
16 to take ten at this point. This is something the  
17 parties can maybe discuss when they look at some of the  
18 other issues and bring back to us. We'll take ten.

19 (Brief recess.)

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21 CHAIRMAN DEASON: Go back on the record. Ms.  
22 Moore, I understand that the discussions have  
23 identified at least three more rules which perhaps do  
24 not need further discussion at this point?

25 MS. MOORE: That's correct. Those rule are

1 25-30.360, 25-30.4385 and 25-30.470.

2 CHAIRMAN DEASON: I'm sorry could you repeat  
3 the last two, again, please?

4 MS. MOORE: 25-30.4385 and 25-30.470.

5 CHAIRMAN DEASON: Before we broke, we had a  
6 discussion concerning of the use of the phrase such as  
7 a 99-year lease when describing land ownership and  
8 access to facilities. Do you think it would be helpful  
9 at this point for the Commission to give some direction  
10 as to why we wish to proceed, or has there been some  
11 type of an agreement reached amongst the parties  
12 concerning that question?

13 MS. MOORE: No agreement has been reached.

14 CHAIRMAN DEASON: Commissioners, do you  
15 desire at this point -- it may be helpful to perhaps  
16 get that issue behind us if there is any desire to give  
17 direction to Staff. If there is no desire, I suppose  
18 it will be an open issue and will be included in  
19 Staff's recommendation for further discussion at the  
20 special agenda coming up.

21 COMMISSIONER CLARK: This is the 99?

22 CHAIRMAN DEASON: The question on the 99-year  
23 lease phrase. Whether that phrase should be included  
24 or excluded at this point. I take it that --

25 COMMISSIONER CLARK: I think it should be

1 included, and I think you can predict that's the way  
2 I'll vote. I don't think it changes a thing. It gives  
3 more direction to people; but, by the same token, I'm  
4 very willing to consider other ownership or lease or  
5 easement types that are cheaper but will accomplish the  
6 same thing. And I want to make that very clear.

7 COMMISSIONER JOHNSON: I feel quite  
8 comfortable with the language. It is written as "a  
9 such as" so it's not a mandate, and I think it's pretty  
10 clearly written as an example. And it's not a mandate  
11 and it does clarify, so I would also tend to believe  
12 that we should leave it in.

13 CHAIRMAN DEASON: Any objection then to  
14 leaving that language in? At this point then the  
15 direction from the Commission is to leave that language  
16 in. Obviously, this is something that can be  
17 considered again at the special agenda.

18 MS. SUMMERLIN: Fine.

19 CHAIRMAN DEASON: Ms. Moore, at this point do  
20 you think it would be best to go rule by rule beginning  
21 with the list that you have prepared?

22 MS. MOORE: Yes, I think that would be the  
23 most orderly way to proceed, numerically, with the --

24 CHAIRMAN DEASON: Let me, at this point, put  
25 everyone on notice that we've had a request that Rule

1 30 -- I'm sorry, 30.433 be taken up later today. So if  
2 we get to that, it may be necessary to delay that a  
3 little bit later today.

4 I think that one of the representatives for  
5 Southern States has indicated that they would like to  
6 be here. I think Mr. Cresse indicated that he would  
7 like to be here when that particular rule session is  
8 brought up; is that correct?

9 MR. HOFFMAN: That's correct.

10 CHAIRMAN DEASON: What I would propose to do  
11 at this time is to begin Rule 30.0371. Ms. Daniel, I  
12 believe that --

13 I'm sorry, Mr. Schiefelbein?

14 MR. SCHIEFELBEIN: Pardon me.

15 CHAIRMAN DEASON: I thought you had a  
16 comment.

17 MR. SCHIEFELBEIN: I did but I bursted out  
18 there. Excuse me.

19 COMMISSIONER LAUREDO: Let me understand, I'm  
20 lost, Mr. Chairman. The stuff that the four others  
21 that we had just, let's say, agreement on, did we just  
22 approve them?

23 CHAIRMAN DEASON: Basically, since the  
24 parties indicated they had no problems with the rules  
25 as proposed, it was my intent that we would just simply



1 have Staff include those rules as they were originally  
2 proposed in the final recommended version. But if  
3 there's a desire for further discussion at this point --

4 COMMISSIONER LAUREDO: No, I just couldn't  
5 keep up with her. If I could just take a minute to  
6 give me the rules again. I only got the 30.4385. What  
7 are the other three?

8 CHAIRMAN DEASON: I think there's a total of  
9 three.

10 MS. MOORE: There's a total of three. It's  
11 30.360.

12 COMMISSIONER LAUREDO: 30.3.

13 MS. MOORE: .360.

14 COMMISSIONER LAUREDO: Miscellaneous charges,  
15 correct?

16 MS. MOORE: I'm sorry?

17 COMMISSIONER LAUREDO: The miscellaneous  
18 charges?

19 CHAIRMAN DEASON: That would be refunds,  
20 30.360.

21 MS. MOORE: That's refunds.

22 COMMISSIONER LAUREDO: Okay. I can't find it  
23 so let's just go to the next one.

24 MS. MOORE: The next one is .4385.

25 Additional rate information required in application for

1 rate increase.

2 COMMISSIONER LAUREDO: And what happens when  
3 we approve this? Do you go ahead and publish them  
4 already or do we wait till the end?

5 COMMISSIONER CLARK: You bring them back to  
6 agenda.

7 MS. MOORE: You bring them back to special  
8 agenda in October for a vote to adopt.

9 COMMISSIONER LAUREDO: Okay.

10 MS. MOORE: And did you get the last one,  
11 .1470, which is calculation of rate reduction after  
12 rate case expense is amortized?

13 COMMISSIONER LAUREDO: Okay.

14 CHAIRMAN DEASON: Rule 30.0371, Ms. Daniel.

15 MS. DANIEL: Commissioner Clark, you  
16 requested some information regarding acquisition  
17 adjustments and the revenue impact that would result in  
18 the event that those acquisition adjustments were  
19 approved. I have prepared some exhibits, I have extra  
20 copies if someone does not have a copy, PD-5, -6, -7  
21 and -8. And in Exhibit PD-5 I've shown positive and  
22 negative acquisition adjustments that were not --

23 COMMISSIONER CLARK: Do I have that?

24 MS. MOORE: They were distributed several  
25 weeks ago for review.

1 MS. DANIEL: Just to give you an overview  
2 then of what it is that you have, I looked back at  
3 transfers that had taken place over the past five years  
4 so this may not be an all-exclusive list because I  
5 didn't look at where acquisition adjustments may have  
6 been discussed in a rate case. I found that over the  
7 last five years the Commission had granted two positive  
8 acquisition adjustments. You see a third there, South  
9 Waterfront Park, that happened back in 1986. So it  
10 wasn't in the five-year spectrum that I was looking at  
11 specifically.

12 So over the last five years, the Commission  
13 has granted two positive acquisition adjustments that I  
14 could find and one negative acquisition adjustment.  
15 And I'll point out that on the negative acquisition  
16 adjustment, it was not as a result of a truly purchase  
17 price. It had to do with a tax-free exchange that  
18 occurred, so it wasn't truly a purchase/sale type  
19 agreement.

20 Again, just to give you an overview of all of  
21 this, the next three pages of schedules deal with  
22 acquisition adjustments that were not approved;  
23 negative, positive and then a page just of Southern  
24 States' acquisitions.

25 What I've given you on these schedules, the

1 columns indicate the purchase price when the transfer  
2 occurred, the net book value before an acquisition  
3 adjustment was decided, the amount of the acquisition  
4 adjustment if one had been granted and what the revenue  
5 impact would be.

6 On that revenue impact, there's no  
7 sophisticated analysis there. We simply assumed that  
8 the revenue impact would be some function of a rate of  
9 return, and we assumed a 10% rate of return just for  
10 putting this schedule together. So, for example, on a  
11 positive acquisition adjustment for Jacksonville  
12 Suburban, they did receive a \$118,000 positive  
13 acquisition adjustment when they purchased St. John's  
14 North. If they earned a 10% return on that additional  
15 investment, it would affect their total revenue on an  
16 annual basis by \$11,833.

17 CHAIRMAN DEASON: Well, let me ask you a  
18 question on that. What about income taxes on the  
19 return?

20 MS. DANIEL: I did not include any of that.  
21 I just gave you a 10% number. I did not look at the  
22 annual reports of these companies because these  
23 transfers occurred back a number of years ago, and so  
24 forth. And we don't know where they would be today, so  
25 I didn't know what target point in time to choose.

1           CHAIRMAN DEASON: So just for clarification,  
2 you've ignored income taxes and you've ignored  
3 depreciation expense.

4           MS. DANIEL: Correct. Just assumed a 10%  
5 return on investment as an exclusion. Ignored  
6 depreciation and income taxes.

7           I believe Southern States did have a response  
8 to the particular exhibit PD-8 that identified some  
9 systems that Southern States has acquired over the last  
10 five years.

11          CHAIRMAN DEASON: Mr. Hoffman.

12          MR. HOFFMAN: Mr. Chairman, let me ask you a  
13 procedural question first. It would seem as though it  
14 might be a good idea to identify these exhibits by  
15 number and place them into the evidentiary record. I  
16 think that the exhibit that you're looking at now,  
17 prepared by Staff, has been filed with the Division of  
18 Records and Reporting. Southern States has filed their  
19 exhibits that were requested but the Division of  
20 Records and Reporting -- but for the purpose of record,  
21 we may want to start identifying these and putting them  
22 into the record, identifying them as separate exhibit  
23 numbers.

24          CHAIRMAN DEASON: I have no objection to  
25 doing that. I believe we've already identified two

1 exhibits. We have the composite exhibit. And I  
2 believe that we've identified Exhibit 2, a list of  
3 rules which the Waterworks Association had no objection  
4 to. Is that correct, Ms. Moore?

5 MS. MOORE: That's my recollection of my  
6 records, yes.

7 CHAIRMAN DEASON: We will identify it then as  
8 Exhibit 3 the exhibit prepared by Staff, and there is a  
9 cover memo dated June 25, 1993, to all interested  
10 parties from the Division of Water and Wastewater. And  
11 it's the exhibit dealing with acquisition adjustments.  
12 They have been further identified as PD-5 through PD-8.  
13 It will be Exhibit No. 3.

14 (Exhibit No. 3 marked for identification.)

15 CHAIRMAN DEASON: Mr. Hoffman, have you made  
16 a filing which you would like to have identified with  
17 an exhibit number?

18 MR. HOFFMAN: Yes, Mr. Chairman. I think  
19 while we're on the subject of acquisition adjustments,  
20 I should identify three filings that we made that we  
21 would ask to be placed into this record.

22 The first -- and I'll hand out copies of  
23 these -- is a document entitled "Southern States  
24 Utilities, Inc., Acquisition Adjustments 1988 through  
25 1992, Response to Staff Exhibit PD-8." And I'll hand

1 out a copy of that, if I could get a number for that.

2 CHAIRMAN DEASON: That will be Exhibit No. 4.

3 MR. HOFFMAN: The next, Mr. Chairman, is a  
4 two-page exhibit. And the first page it says,  
5 "Southern States Utilities Summary of Estimated SSU  
6 Average Investment in Excess of Rate Base." I believe  
7 this was requested by Commissioner Clark.

8 CHAIRMAN DEASON: That will be identified as  
9 Exhibit No. 5.

10 MR. HOFFMAN: The last, also I think  
11 requested by Commissioner Clark, is a filing that  
12 Southern States made in Document 891309-WS, which was  
13 the Commission's acquisition adjustment policy  
14 investigation docket. They are comments Southern  
15 States filed which contained Southern States' research  
16 of acquisition adjustment policies in other states.

17 CHAIRMAN DEASON: That will be identified as  
18 Exhibit No. 6.

19 (Exhibit Nos. 4 through 6 marked for  
20 identification.)

21 MR. HOFFMAN: Mr. Chairman, if I can have a  
22 moment, I would like to pass these around.

23 CHAIRMAN DEASON: Yes.

24 COMMISSIONER LAUREDO: "The Estimated Average  
25 Investment in Excess of Rate Base," is that No. 5?

1 CHAIRMAN DEASON: That's No. 5.

2 COMMISSIONER LAUREDO: You did not move the  
3 working capital?

4 MR. HOFFMAN: No, sir. I can do that now as  
5 well. I was just doing the one.

6 CHAIRMAN DEASON: That's fine. Let's just  
7 wait until we get to that.

8 MR. HOFFMAN: I think we've already dealt  
9 with the issue of working capital, Mr. Chairman. The  
10 Working capital exhibit was not requested at the  
11 Company, it was something the Company thought it might  
12 be appropriate to put into the record; and all it does  
13 is show the difference in the one-eighth O&M and the  
14 balance sheet methods, what the results would have been  
15 for the Company's last three rate cases. So if you  
16 would like me for housekeeping purposes to pass it  
17 through, to have that identified, I'll pass that out  
18 now.

19 CHAIRMAN DEASON: We'll identify that as  
20 Exhibit 7. If you could go ahead and distribute it,  
21 that would be fine.

22 (Exhibit No. 7 marked for identification.)

23 MR. HOFFMAN: Thank you. Mr. Chairman, those  
24 are all the exhibits that we have.

25 COMMISSIONER CLARK: Can I ask a question on



1 Exhibit 8? You have one-eighth O&M and then you have  
2 adjusted one-eighth O&M method. What is the adjusted  
3 -- which one is the method we currently use?

4 MR. HOFFMAN: The method that was used in the  
5 rate cases, Commissioner Clark, was the one-eighth O&M  
6 method.

7 COMMISSIONER CLARK: Okay. What is adjusted?

8 MR. HOFFMAN: The adjusted one-eighth O&M  
9 method, Commissioner Clark, takes your one-eighth O&M  
10 and adds your differed expenses, your unamortized  
11 differed expense.

12 COMMISSIONER CLARK: Is that something  
13 somebody's recommending?

14 MR. HOFFMAN: Yes, that was part of a  
15 discussion at the last hearing as to whether or not we  
16 should use the balance sheet, the one-eighth O&M or  
17 some combination. Specifically, what we were calling  
18 the adjusted one-eighth O&M, which would permit  
19 recovery of your working capital under your formula  
20 method, plus your differed debits, your unamortized  
21 prudently incurred expenses.

22 COMMISSIONER CLARK: This is the one Staff  
23 opposed?

24 MS. MERCHANT: The formula method one-eighth  
25 of O&M is what Staff proposes, the second option that's

1 shown. And I would just like to point out, I've seen  
2 this earlier today and the balance sheet method, you  
3 know, we have not audited this; we have not examined  
4 the details of any of these accounts so none of these  
5 amounts in the top section are -- I mean, you know,  
6 based on Staff's --

7 COMMISSIONER CLARK: I realize this. That's  
8 the Company saying what it would have been in the  
9 balance sheet.

10 And refresh my memory. The Staff is not  
11 proposing the adjusted O&M because those are -- that  
12 has something to do with interest earned and interest  
13 owed? I'm trying to remember what the discussion on  
14 the adjusted one-eighth was.

15 MS. MERCHANT: What the Staff's position on  
16 using the adjusted one-eighth O&M, the companies are  
17 proposing that you add in some deferred debits and you  
18 get a return on those amounts also.

19 We are as basically saying that the formula  
20 method is a proxy for calculating what the working  
21 capital would be. And the adjusted method kind of  
22 takes a portion of the balance sheet, takes for debits,  
23 which are the positive additions to the balance sheet  
24 method; and it doesn't consider any of the deferred  
25 credits that would be the negative portion of the

1 working capital calculation.

2 COMMISSIONER CLARK: All right. Thank you.

3 CHAIRMAN DEASON: Okay. Technically, at this  
4 point, we're still on Rule .0371. We are revisiting  
5 that so that Staff could provide the information that  
6 was requested. We also got some additional information  
7 from Southern States Utilities.

8 Is there any further discussion or comments  
9 of any of the parties on .0371?

10 MR. SHREVE: Yes, sir.

11 CHAIRMAN DEASON: Okay. Mr. Shreve, go right  
12 ahead.

13 MR. SHREVE: Commissioner Clark, this  
14 originally came up in the hearing where you made the  
15 request for the information when we discussed the  
16 Southern States case.

17 Obviously -- and I assume you are aware that  
18 the Deltona purchase and the Lehigh Acres purchases are  
19 both left out of the Staff's calculations here, which  
20 are the largest two purchases.

21 I thought it was very clear from your request  
22 and your remarks that you wanted all of those.

23 MS. DANIEL: Commissioner Clark, rate base  
24 was not set in either of those transactions. They were  
25 transfers within the organizational control. We don't

1 set rate base, so it would not lend itself to inclusion  
2 in the analysis.

3 MR. SHREVE: Then I assume that you weren't  
4 interested. You voted on this as an issue in the  
5 Southern States case and gave them a rate base with a  
6 return on that rate base, and I thought the question  
7 was comparing the purchase price to the rate base.  
8 That is the largest single purchase that would be  
9 represented here. And it was also an issue in the  
10 Lehigh Acres.

11 CHAIRMAN DEASON: Well, I guess I'm confused.

12 MR. SHREVE: I am, too.

13 CHAIRMAN DEASON: Was there a rate base set --

14 MS. DANIEL: In the rate case.

15 CHAIRMAN DEASON: -- that was different than  
16 purchase price in each of those cases?

17 Are you saying there was not even a purchase  
18 price involved?

19 MS. DANIEL: Purchase price was not  
20 considered; they simply looked at the rate base.

21 CHAIRMAN DEASON: Okay. There was a purchase  
22 price, though, that was different from rate base?

23 MS. DANIEL: I believe so.

24 CHAIRMAN DEASON: And that's the classic  
25 definition of an acquisition adjustment, is it not?

1 MS. DANIEL: Mr. Shreve is correct. I was  
2 looking at the transfer issue and I did fail to  
3 consider the rate base that had been set during the  
4 most recent rate case.

5 MR. SHREVE: That was the agreement at the  
6 time of the transfer that rate base would be set in the  
7 next case. And I would submit this Commission still  
8 hasn't taken a good look at what the purchase price  
9 was. And I do not think -- I would object to the  
10 Staff, at the proper time, to the Staff paperwork going  
11 in because it is incomplete; it doesn't have the Lehigh  
12 Acres information or the Deltona. And, Commissioner  
13 Clark, I thought you were specifically asking for that.

14 COMMISSIONER CLARK: Is this Exhibit 3?

15 MR. SHREVE: Yes.

16 COMMISSIONER CLARK: It does not include the  
17 Lehigh? (Pause) What was the other one?

18 MR. SHREVE: The Deltona purchase by Southern  
19 States. And that was specifically discussed at the  
20 time you made the request.

21 COMMISSIONER LAUREDO: That would be Marco  
22 Island?

23 MR. SHREVE: Marco Island, St. Augustine  
24 Shores, which they have sold and picked up a \$6 million  
25 profit, Silver Springs Shores, Deltona, quite a few

1 others. A very, very large purchase.

2 And I would also wonder if Mr. Hoffman has  
3 anyone that can answer questions about the documents  
4 that he's turned in here. For instance, he has Deltona  
5 systems investment, 79101. Is that the purchase price?  
6 And if so, I would certainly question that and like to  
7 have somebody to answer some questions under oath on  
8 that.

9 CHAIRMAN DEASON: Which exhibit is that, Mr.  
10 Shreve?

11 MR. SHREVE: The one that Mr. Hoffman turned  
12 out, Exhibit 5.

13 COMMISSIONER LAUREDO: No. 5.

14 MR. SHREVE: For the Deltona Systems that's  
15 listed there as 79101 and rate base for filing 67172?

16 I would submit to you that possibly what they  
17 have done there is throw in the commitment that they  
18 had to make to the Deltona developers to take over some  
19 responsibility that Deltona had to serve some lots  
20 where they came in charging an astronomical hookup fee  
21 at one point; and it developed a great deal of  
22 controversy and they backed off, and they finally  
23 worked out a side deal with Deltona.

24 I would like for Mr. Hoffman to just tell us  
25 what that figure represents.

1           MR. HOFFMAN: Mr. Chairman, I want the record  
2 to be clear that the issue of the rate base of the  
3 Deltona systems -- and that is looking at the purchase  
4 price and consideration paid for the Deltona systems  
5 and the rate base to be established for ratemaking  
6 purposes -- was intensely litigated in Southern States'  
7 last two rate cases; that is, Docket Nos. 920199 and  
8 920655, which was the Marco Island case.

9           Secondly, I don't have anyone from the  
10 Company here to respond to these two questions on this  
11 exhibit. I did not prepare it myself.

12           The only response I could give, when Mr.  
13 Shreve asked what is meant by investment, is to look at  
14 the first paragraph under "Notes" where it says, "SSU's  
15 investment is a combination of consideration paid, plus  
16 liabilities assumed at time of acquisition plus  
17 additions since acquisition. It does not include the  
18 assumption of off-balance sheet liabilities or the  
19 out-of-pocket cost of acquisitions."

20           COMMISSIONER LAUREDO: May I ask you, for  
21 those of us who don't understand, "consideration" is a  
22 legal term, a contractual term. Does that equate to  
23 purchase price?

24           MR. HOFFMAN: I think that you could say that  
25 consideration equates to purchase price if you're

1 saying purchase price is the amount of cash you paid;  
2 the liabilities you assumed; just intercompany  
3 liabilities, for example, in the case of the Deltona  
4 systems, that were forgiven; all the types of  
5 considerations flowing from one party to another in  
6 exchange for the purchase of the water and wastewater  
7 systems.

8 COMMISSIONER LAUREDO: And out-of-pocket  
9 acquisition costs is expenses related to the purchase?

10 MR. HOFFMAN: Yes.

11 COMMISSIONER LAUREDO: Deducted from the  
12 purchase price?

13 MR. HOFFMAN: That, I don't know, because I  
14 wasn't involved in that. But "out-of-pocket cost of  
15 acquisitions," the way that I understand it, would be  
16 such things as closing costs.

17 CHAIRMAN DEASON: Let me ask you a question.  
18 The rate base column, Column B, that is after  
19 consideration of used and useful adjustments?

20 MR. HOFFMAN: Yes. That's my understanding,  
21 Mr. Chairman. And that was the purpose of the exhibit.

22 CHAIRMAN DEASON: So that the purpose of this  
23 exhibit is not to show whether the effect of  
24 acquisition adjustments show there is investment in  
25 excess or less than rate base, it's just to show the



1 effect of acquisition adjustments and used and useful.

2 COMMISSIONER CLARK: Yeah. The  
3 representation made by Mr. Armstrong was, although they  
4 had acquisition adjustment, they paid less for rate  
5 base. I mean, less for the assets than were achieved  
6 in rate base. The used and useful adjustment reduced  
7 the investment on which they could earn.

8 MR. HOFFMAN: My understanding, Commissioner  
9 Clark, is a little bit different. I think that what  
10 Mr. Armstrong was trying to say was that the amount,  
11 the consideration, that Southern States paid for the  
12 systems exceeds the amount presently in rate base for  
13 the systems by X number of dollars.

14 COMMISSIONER CLARK: And that was due, part  
15 of that was due, to a used and useful adjustment.

16 MR. HOFFMAN: Right.

17 COMMISSIONER CLARK: Right, okay.

18 MR. SHREVE: Wait.

19 COMMISSIONER CLARK: Mr. Shreve, let me ask  
20 you something on Exhibit 3. Your concern is --

21 MR. SHREVE: Commissioner, before you get off  
22 of that last, could I have an explanation? We're  
23 talking about the purchase price is being represented  
24 -- supposedly, which I don't think it's accurate here.  
25 I think the purchase price was probably \$7 to \$9

1 million less than they asked for or less than they were  
2 granted as a rate base at the time of the purchase.

3           However, is what you are saying is that  
4 you're representing the purchase price at the full  
5 amount and then the rate base after a used and useful  
6 adjustment is made?

7           CHAIRMAN DEASON: That's my understanding.

8           MR. SHREVE: Yeah.

9           COMMISSIONER CLARK: That's what I asked for.  
10 He made that representation.

11           MR. SHREVE: That's what you asked for just a  
12 minute ago, you mean. From him?

13           COMMISSIONER CLARK: No. The last hearing  
14 Mr. Armstrong made the representation, although --  
15 well, their purchase price was less -- well, you can  
16 explain it.

17           MR. HOFFMAN: I think the representation that  
18 he made was that the amount that the Company has paid  
19 for the systems exceeds the amount presently in rate  
20 base for those systems.

21           COMMISSIONER CLARK: That's right, that's it.  
22 And that's what this was intended to show.

23           MR. SHREVE: So you're mixing apples and  
24 oranges. You're not applying a used and useful  
25 adjustment to the original purchase price, even

1 according to them.

2 COMMISSIONER CLARK: That's correct, and  
3 that's the way I understand it. That's what he  
4 represented and I just wanted to see some documentation  
5 of it, that's all.

6 COMMISSIONER LAUREDO: Well, I'm confused.  
7 They are opposite. Consider the word "investment" is  
8 not necessarily purchase price.

9 MR. SHREVE: I would submit you need a total  
10 breakdown of whatever they are calling an investment  
11 before you can relate that.

12 CHAIRMAN DEASON: Well, it's obvious  
13 "investment" is not purchase price, because it does  
14 include additions since acquisition; and that's one of  
15 the main issues in the acquisition adjustment is  
16 whether systems are bought at a discount because they  
17 need substantial additional investments. And this  
18 investment column, then, is correct; it is not strictly  
19 purchase price. Purchase price is included, it is not  
20 the only thing; that's my understanding.

21 Is that correct, Mr. Hoffman?

22 MR. HOFFMAN: That is also my understanding  
23 of what that column represents.

24 COMMISSIONER LAUREDO: I think I also  
25 understand the explanation to me that the contingent

1 liabilities that they assume, in essence, is deducted  
2 from the purchase price.

3 You see, where I'm confused is I'm just, I  
4 don't want to say I'm an old country lawyer, I just  
5 wonder how much actually somebody wrote a check for.

6 MR. SHREVE: Right.

7 COMMISSIONER CLARK: Okay.

8 COMMISSIONER LAUREDO: And that's the  
9 confusion. The way it's explained there, it's correct,  
10 but it's a very interesting semantical gymnastics there  
11 because it puts in the liabilities assumed as part of  
12 the purchase price, as a consideration of purchase.  
13 But anyway, I'll focus on it as I go along. But it  
14 isn't really purchase price. Very carefully worded.

15 COMMISSIONER CLARK: Mr. Shreve, on Exhibit  
16 3, where would you include the Lehigh and Deltona  
17 information? That would be on PD-8?

18 MR. SHREVE: I think so.

19 COMMISSIONER CLARK: Okay. I just wondered.

20 And, Staff, let me ask you something. Let's  
21 just look at the first one.

22 The purchase price was \$5,000. The net book  
23 value was 24,000. And an adjustment, if there had been  
24 adjustment, it would have been 19, but there was none,  
25 right?

1 MS. DANIEL: There was none.

2 COMMISSIONER CLARK: So, in effect, the  
3 revenue impact was that, per year, \$1,968 more in  
4 revenue are paid than would have been paid if we make  
5 the adjustment.

6 MS. DANIEL: That is correct, Commissioner.

7 COMMISSIONER CLARK: It always seems to me  
8 that positive and negative are backwards in this thing.

9 Would you please amend this exhibit? Can you  
10 do it now to include the Lehigh and Deltona?

11 MS. DANIEL: The trick with the Deltona  
12 systems is at this point they no longer own some of  
13 those systems. So that when we had the last rate case,  
14 rate base would have been set that did not include some  
15 of the systems that were included in the purchase. And  
16 it was the purchase of stock, not assets. I can do it,  
17 it will just have some little discrepancies.

18 COMMISSIONER CLARK: Okay.

19 MS. DANIEL: I can do it, it will just have  
20 -- you'll understand.

21 COMMISSIONER CLARK: You can footnote the  
22 explanations you think are needed. And would you add  
23 those two to Exhibit PD-8?

24 MS. DANIEL: I'll be happy to.

25 COMMISSIONER CLARK: How long will that take

1 you to do it?

2 MS. DANIEL: I don't know. I'll look for  
3 that information. It will have to come from the rate  
4 case docket. That's where the rate base was set.

5 COMMISSIONER CLARK: Is there someone  
6 upstairs who can be doing that and bring it down when  
7 they get it done?

8 MS. DANIEL: Yes, Commissioner, there is.

9 COMMISSIONER CLARK: Okay. I would just like  
10 to have it done and have this exhibit complete so that  
11 there's, you know, that all that information is in.  
12 Because just to see that impact.

13 MR. SHREVE: Commissioner, I would suggest,  
14 too, that in establishing that that you start with the  
15 purchase price, cash paid, the check that was written,  
16 and then be able to add anything else that Southern  
17 States wants to add to it so that you know what it is  
18 that you're talking about.

19 COMMISSIONER CLARK: Well, I would just ask  
20 Staff for make the adjustments to the Lehigh and  
21 Deltona on the same basis as these other ones are done.

22 MS. DANIEL: "These other ones" being my  
23 exhibit or Southern States' exhibit?

24 COMMISSIONER CLARK: No, your exhibit, not  
25 Southern States.

1 MS. DANIEL: My exhibit.

2 COMMISSIONER LAUREDO: Could you look into,  
3 while you're amending that -- I hate to do this, but  
4 there was an allegation that one of the Deltona  
5 properties, I guess South Augustine?

6 UNIDENTIFIED SPEAKER: St. Augustine Shores.

7 COMMISSIONER LAUREDO: Was subsequently sold  
8 for a substantial profit?

9 COMMISSIONER CLARK: That was an issue in the  
10 case, wasn't it, in Lehigh, and was it in Marco Island?

11 MR. WILLIS: Yes.

12 COMMISSIONER JOHNSON: Let me make sure I  
13 understand what PD-8 is actually telling us.

14 Is this the case where there was no  
15 acquisition adjustment --

16 MS. DANIEL: That's correct.

17 COMMISSIONER JOHNSON: -- it wasn't asked  
18 for, it wasn't given, we went with net book value. But  
19 had they asked for it --

20 MS. DANIEL: This is what would have  
21 happened.

22 COMMISSIONER JOHNSON: -- would have  
23 happened.

24 COMMISSIONER CLARK: They would not have  
25 asked for it. (Laughter)

1           The only times we have made an acquisition  
2 adjustment in the past the five years is indicated on  
3 PD-5.

4           There is one negative, meaning the revenue  
5 needed to pay by the ratepayers has decreased, and  
6 there are three positive ones, meaning they paid more  
7 than they would have paid if we just went with net book  
8 value.

9           MS. DANIEL: I will say again that I looked  
10 at transfer dockets, Commissioner Clark. If something  
11 has been done in a rate case, I was not able to detect  
12 that. But I'm not aware of it and I do follow the  
13 Commission rate cases, so there is a possibility that I  
14 have let --

15           COMMISSIONER CLARK: Okay. To my knowledge,  
16 there haven't been very many acquisition adjustments.

17           COMMISSIONER LAUREDO: These are the  
18 acquisition adjustments only as to Southern States  
19 systems?

20           COMMISSIONER CLARK: No, no, no. I'm on Page  
21 PD-5.

22           (Simultaneous conversation.)

23           COMMISSIONER CLARK: None of them are  
24 Southern States, as a matter of fact.

25           MS. DANIEL: Commissioner Lauredo, were you



1 directing me to give you some additional information in  
2 regard to St. Augustine Shores? I didn't come to a  
3 conclusion as to something that I needed to give you on  
4 that.

5 COMMISSIONER LAUREDO: No. Just write out  
6 for me -- I know that it was in the rate case, I don't  
7 remember. There was a purchase price with or without  
8 an adjustment, and it was subsequently sold after a  
9 rate case? After we set a rate base? And there was a  
10 profit made. Is that what I heard somebody say?

11 COMMISSIONER CLARK: Well, we never set a  
12 rate base because it wasn't under our jurisdiction; is  
13 that right?

14 MR. SHREVE: That was in St. Johns County,  
15 Commissioner, and --

16 COMMISSIONER CLARK: Do we regulate --

17 MR. SHREVE: we do not -- at this point we  
18 did before that --

19 COMMISSIONER CLARK: Who knows?

20 MR. SHREVE: No. They took it away after St.  
21 Augustine Shores but it was sold to the city or county  
22 down there.

23 COMMISSIONER LAUREDO: Well, let me tell you  
24 the reason I wanted it and it would be an interesting  
25 thing for me to see. Because my concern -- not an

1 educated concern, just a gut feeling concern -- I don't  
2 want to be in the business of making fair and difficult  
3 and painful adjustments to rate base as we have more  
4 and more acquisitions of small systems, just to have  
5 somebody spin off and turn around and make profit.  
6 Just so that you understand where I'm coming from.

7           There is a philosophical quirk in the road  
8 about how I would vote as long as I know reliability  
9 and service quality and management excellence, et  
10 cetera, that comes from a Southern States type to  
11 somebody taking advantage of under-value assets coming  
12 in there making basically financial transactions.

13           COMMISSIONER CLARK: That's the reason for us  
14 not allowing positive acquisition adjustments.

15           COMMISSIONER LAUREDO: Okay. Well, It's just  
16 that it's --

17           COMMISSIONER CLARK: Because even though you  
18 came in and the land may be valuable but the system's  
19 net book value is -- the market value may be \$50,000  
20 but its net book value is \$10,000, if you pay \$50,000,  
21 you eat it. The real rub comes when they pay less if  
22 for it and they get to have a return on investment that  
23 is equal to the net book value.

24           If that were turned around, if they paid  
25 \$10,000 for something that had a net book value of

1 \$50,000, likewise, we wouldn't adjust it; it would  
2 still be a \$50,000 rate base. And that's been an issue  
3 forever.

4 MR. SHREVE: Forever. But I would differ  
5 with your characterization of the reason you don't do  
6 the positive acquisition adjustments. I would say it  
7 was because that is what had been invested in the  
8 system and the costs that was necessary to serve the  
9 customers was the reason there was not a positive  
10 acquisition adjustment.

11 COMMISSIONER CLARK: Well, and, likewise,  
12 with not having a negative at one point, and that was  
13 what was invested in the systems --

14 (Simultaneous conversation.)

15 MR. SHREVE: I think it's been a real fallacy  
16 of the Commission to always think you had to look at  
17 both at the same time. I think you have to look at  
18 them separately; because if you have a purchase by a  
19 utility and you only pay \$10,000 for a \$40,000 system,  
20 there usually is a reason for it. And that company  
21 only has a \$10,000 investment and, I think, should only  
22 be entitled to a return on that.

23 They are two different things. I think you  
24 should separate them and not say you do one because of  
25 the other, but look at both of the concepts logically.

1 There are situations like the one in Jacksonville  
2 Suburban where there was a positive acquisition  
3 adjustment; it was needed; they could not buy it for  
4 the price that they wanted to, and the customers and  
5 the legislators wanted them to buy it. That was the  
6 reason there was a positive acquisition adjustment.

7 I don't think you look at one and say, "We  
8 always do the other because we do one of them." I  
9 think you need to look at both of them and see the real  
10 reason for it.

11 COMMISSIONER CLARK: With that, we are on  
12 Rule 30.0371.

13 Patti, did you want to provide more  
14 information on that? We discussed this the last time.

15 MS. DANIEL: Would you like for me to just  
16 kind of quickly go back through --

17 COMMISSIONER CLARK: Yeah.

18 MS. DANIEL: -- what we have here in terms of  
19 the proposed rules?

20 COMMISSIONER JOHNSON: Let me ask a quick  
21 question.

22 Is this proceeding, at least with respect to  
23 this rule, set up in such a way that we will not be  
24 hearing any testimony from the parties that testified  
25 before?

1           What's the gentleman's name from Southern  
2 States, Guastella?

3           MR. HOFFMAN: Guastella.

4           COMMISSIONER JOHNSON: Guastella.

5           MR. HOFFMAN: He is not here. We understood  
6 that the acquisition adjustment issue was finished  
7 apart from any comments the parties had on Staff  
8 exhibits or any other exhibits placed in the record.  
9 So for that reason, we didn't bring Mr. Guastella back.  
10 But the only other issue he covered in his comments was  
11 used and useful.

12           COMMISSIONER JOHNSON: That raises some  
13 concern with respect to this issue because after  
14 receiving Staff exhibit -- I was not aware of the  
15 history, and more importantly I was not aware of the  
16 cases in which -- I think we did a breakdown of  
17 Southern States where an acquisition adjustment had not  
18 been requested one way or the other. And as I look  
19 through all of the documents, one of the first  
20 questions that came to mind after the gentlemen's  
21 testimony, he kept saying, "Well, your policy is an  
22 incentive for us. We need this policy because without  
23 this policy we wouldn't buy" -- and tell me if I'm  
24 mischaracterizing, but I interpreted him to say we  
25 wouldn't have so actively bought other utilities, and

1 that we're doing this public good, and, therefore, we  
2 need the policy to stay as it was. But then as I look  
3 at the record here, it looks as if whether we took out  
4 that language absent ordinary circumstances, whether we  
5 had that in or not, you all would have acted the same  
6 way. So I wasn't following his logic.

7 MR. HOFFMAN: Commissioner, I'm not sure if I  
8 understand where you're going, and I personally can't  
9 tell you what would have motivated the company back  
10 when these purchases were made. I think I know enough  
11 to represent that the company believes, and has  
12 believed and continues to believe that the Commission's  
13 current policy provides an incentive to the company to  
14 go out and purchase other utility systems, including  
15 developer-driven or other types of distress systems.

16 COMMISSIONER JOHNSON: How so?

17 COMMISSIONER CLARK: Commissioner Johnson, is  
18 your question -- at the time the acquisitions were made  
19 by Southern States, we didn't have a rule. Yet they  
20 went ahead and purchased it.

21 COMMISSIONER JOHNSON: We had a policy, I  
22 guess Cresse might have said, "Well, there was this  
23 wonderful policy out there that protected us and this  
24 is the reason why we made these purchases, but they  
25 didn't benefit by that policy.

1 COMMISSIONER CLARK: Why didn't they benefit?

2 COMMISSIONER JOHNSON: Because they didn't  
3 ask for the acquisition adjustment.

4 COMMISSIONER CLARK: They didn't want one.

5 MR. HOFFMAN: But, Commissioner -- excuse me.  
6 If the company was in a situation where it was looking  
7 to purchase a utility that had a rate base of \$100 and  
8 the proposed purchase price was \$60, the company would  
9 not ask for an acquisition adjustment.

10 COMMISSIONER JOHNSON: And you're saying --

11 MR. HOFFMAN: The company would -- excuse me,  
12 would only ask for one if the proposed purchase price  
13 was more than \$100.

14 COMMISSIONER JOHNSON: And in the instances  
15 where you all are making purchases it would not have  
16 worked to your advantage to ask.

17 MR. HOFFMAN: That's correct. That's  
18 correct. The policy works to the advantage of the  
19 utility and, we believe, the customers in terms of  
20 relieving customers from poorly run utilities, because  
21 with that policy the utility is certain that apart from  
22 extraordinary circumstances, using my example, its rate  
23 base would not be \$60; it would be the net book value  
24 of \$100.

25 COMMISSIONER LAUREDO: The central question

1 that still alludes me -- let me see if I can -- what  
2 we're doing here, for example, stepping back to the big  
3 picture, is supposedly codifying into rule policy. And  
4 what we have here is you're happy with the current  
5 policy. But you basically, as the company, would  
6 rather see it in a rule so that, in essence, they will  
7 have the flexibility of judging on a case-by-case  
8 basis, because policy to me, anyway, is a lot more  
9 fluid than a rule. And one cannot be ignorant of the  
10 fact that there will be changes in this Commission.  
11 And the fact that the Commission as it now sits has  
12 only been together less than a year. So, you know, I  
13 talked about this in the early hearing. I mean, I have  
14 a philosophical problem with precluding flexibility.  
15 And your argument is --

16 COMMISSIONER CLARK: The legislature has  
17 directed us that once you have a policy that you are  
18 following consistently, you must adopt it in rules so  
19 that people who appear before the Commission,  
20 regardless of whether the same Commissioners are on the  
21 Commission, can be reasonably certain of the outcome --  
22 the regulatory treatment of what they do. That doesn't  
23 mean you can't change the policy. And I think Mr.  
24 Shreve has indicated that with respect to where they  
25 purchase for less, that there should be some



1 consideration given to adjusting the net book value to  
2 reflect that lesser investment. And that's been the  
3 debate all along.

4 COMMISSIONER LAUREDO: You're going further  
5 than I want to. I want to kind of get to first base  
6 first and say why I think there's more flexibility than  
7 the legislative intent to codify policy and my  
8 definition of what policy is.

9 I mean, I don't remember whether I had input  
10 into each one of these policies. I've been here a year  
11 and a half and another Commissioner has been here less.

12 COMMISSIONER CLARK: Well, no, it's been  
13 around for ten years and to that extent none of us  
14 have.

15 COMMISSIONER LAUREDO: Well, so that just  
16 illustrates my point. And how do you balance that,  
17 though, with the very legitimate company argument of  
18 predictability? That's the dilemma for me. You know,  
19 you need to have some sort of predictability  
20 environment. And my answer comes right back, it says,  
21 well, that is -- you know, that's an inherent -- one  
22 part of me says, that's one of the inherent risks you  
23 take for being a utility. You take very few others. I  
24 mean, you have a fairly good range or opportunity to  
25 earn a return because you're a regulated utility with a

1 monopoly service. So I have a problem with it  
2 philosophically, you know, and I'm particularly  
3 concerned if we were sitting here -- I mean I'm looking  
4 down to next year, we'll have one or two new  
5 Commissioners and I just don't know whether we -- I'm  
6 troubled by that throughout this whole thing.

7 COMMISSIONER CLARK: Then we shouldn't have  
8 rules at all is the logical extension of what --

9 COMMISSIONER LAUREDO: This is a massive  
10 undertaking. This is not just taking --

11 COMMISSIONER CLARK: You're right.

12 COMMISSIONER LAUREDO: I wouldn't just say  
13 this is another rule. I don't mind passing rules.  
14 First of all, it's a massive undertaking intellectually  
15 anyway for all of us to do. But I guess we'll just  
16 have to move along.

17 I just want to get on the record again that  
18 that -- although, Commissioner Johnson did not state it  
19 quite so. I mean, that first premise, if the policy is  
20 fine and you made your choices based on that exhibit  
21 one way or the other, what's wrong with keeping the  
22 policy a little longer, I guess.

23 MR. SHREVE: And Commissioner, one thing I'm  
24 sure Commissioner Clark will tell you is that these  
25 policies that are in these rules are not necessarily

1 ones that this Commission had a few years back.  
2 Particularly the working capital, which you're  
3 changing, has already been fluctuating. You also have  
4 in here some changes in the rules that are not even  
5 Commission policy recently.

6 COMMISSIONER CLARK: I agree with that  
7 completely.

8 MR. SHREVE: So, I mean, you know, you're  
9 really shooting at a moving target on this thing here.

10 The big thing here, I think you've expressed  
11 it exactly right. And Mr. Hoffman represented that  
12 it's good for the customers.

13 I don't think Southern States has always been  
14 out there looking to do what's best for the customers.  
15 I think in some instances they do, and I think that's a  
16 good business for them to do that when they do. But  
17 this Deltona purchase is a very poor example. This was  
18 a situation where the Deltona developers were going  
19 under. The only really money-maker they had was the  
20 utility, and that's what Southern States made the deal  
21 for. They walked away with a working utility that was  
22 in good shape and that's the reason they wanted it.

23 And I think when the true numbers come out  
24 and you get this, you're going to see that in the  
25 purchase price, if you compare apples to apples, that

1 their cash or the check that they wrote, was about \$7  
2 million to \$9 million less than the rate base that they  
3 came in at that time; start adding the other things to  
4 it, and keep apples to apples and oranges to oranges,  
5 you're going to see that the reason they did it, they  
6 came in, the reason they didn't request an acquisition  
7 adjustment is because they do not want a fair return on  
8 their investment. They want it on a large one.

9 COMMISSIONER CLARK: Staff, let me ask you a  
10 question: Have we ever had a rule on acquisition  
11 adjustments?

12 MS. DANIEL: I don't believe so, Commissioner  
13 Clark.

14 COMMISSIONER CLARK: Have we previously  
15 presented a rule to the Commission on acquisition  
16 adjustments?

17 MS. DANIEL: I believe the investigation  
18 docket two years ago was the first attempt to move  
19 towards rulemaking on this issue. I'm not aware of a  
20 previous one.

21 COMMISSIONER CLARK: That just shows I've  
22 been here too long. I think there has been one back in  
23 the early '80s. And, Jack --

24 MR. SHREVE: A rule?

25 COMMISSIONER CLARK: No, an attempt to get a

1 rule. I mean, there -- I can think of a number of things  
2 that just hang around as proposed rules. With respect --

3 MR. SHREVE: I think there's always even been  
4 a split on your Staff. I've had your Staff come to me  
5 and say, "You better get involved in this. Look how  
6 much they paid and what they're doing to you on it."

7 COMMISSIONER CLARK: With respect to the  
8 working capital, Mr. Shreve is absolutely correct, we  
9 started out with a rule that said one-eighth of 1%. We  
10 then went to a balance sheet and now we're back to --

11 MR. SHREVE: Policy; policy, not a rule.

12 COMMISSIONER CLARK: One-eighth of 1%.

13 COMMISSIONER LAUREDO: You know, I don't want  
14 my comments -- I have a tendency to think out loud, and  
15 I'm really only thinking. I'm just kind of laying out  
16 for the parties my conflict. I see merit on both  
17 sides.

18 I mean I am very -- I believe that one of the  
19 incumbent responsibilities of the Commission is to have  
20 some degree of predictability, so that people have a  
21 knowledge of where to go.

22 And I have -- and I don't know how Public  
23 Counsel feels, but I happen to think that in the real  
24 world, when you get out of all of these things, the  
25 tendency towards having what objective and reasonable

1 people would clearly agree are good run companies with  
2 a good reputation nationally, are coming in and taking  
3 what would otherwise be trouble systems, is in the best  
4 interest of the ratepayer and is in the best interest  
5 of the state of Florida. Whether or not people want to  
6 see it today.

7 I mean, because a lot of decisions we make,  
8 the benefits will accrue long after we leave here. So  
9 we will always get, as we normally do, the hit of rate  
10 increases and bringing systems up to economics. But  
11 it's still, going back even further philosophically, I  
12 mean, you can actually make an argument, "why do you  
13 need a Public Service Commission for?" I mean, if we  
14 keep going into this rule, we'll just have a little  
15 computer and if it matches the rules, makes the rules.  
16 I'm pushing for diversity in this Commission, because I  
17 mean, human beings do bring the fine-tuning.

18 Now, water and wastewater, again in the real  
19 world, particularly concerns me because that's an area  
20 where I think this state, in the next ten years, is  
21 going to have to do something at the macro political  
22 level. At the legislature, which I know that you keep  
23 telling me that we need to go to. Because we have got  
24 a water crisis in this state, and nobody wants to deal  
25 with it except poor suckers on this Commission who have

1 to deal with it in terms of the economics.

2 So what I'm telling you philosophically, I'm  
3 kind of torn. And whenever I see an industry that is  
4 going through transformation, from an industry point of  
5 view or from the business point of view and from a  
6 public policy point of view, I'd like to preserve as  
7 much flexibility as possible.

8 I happen to think like a businessman and  
9 that's the best thing. Because the circumstances  
10 you're arguing for today may not be there three years  
11 from now for Southern States. But I can understand  
12 that businessman want to say, okay, "I want to follow  
13 the rules, because I don't want to go in there and  
14 invest and then the five guys up there will change in  
15 the middle -- you know, change from baseball to football  
16 on the third inning. I'm just expressing the tension; I'm  
17 not saying I'm going to rule one way or the other, I'm  
18 just saying it's a real moving target.

19 COMMISSIONER CLARK: My notes show some  
20 changes to Subsection 4, or maybe changes I was  
21 thinking about. Are there any changes Staff has  
22 suggested to Subsection 4?

23 The Paragraph 4 where the buyer demonstrates  
24 that --

25 COMMISSIONER CLARK: Uh-huh.

1 MS. DANIEL: I don't have anything in my  
2 notes, Commissioner Clark.

3 COMMISSIONER CLARK: All right. Here is my  
4 concern, it says, "The Commission may establish rate  
5 base based upon competent, substantial evidence  
6 reconstructing and estimating the original cost of  
7 plant in service and the amount of contributions in aid  
8 of construction." And I have a note, "And making  
9 appropriate adjustments thereto."

10 I think my concern was there may be further  
11 adjustments you would make to the rate base, not just  
12 original plant and amount of CIAC, such as depreciation.

13 MS. DANIEL: Such as?

14 COMMISSIONER CLARK: Depreciation. I'm just  
15 concerned that this is read to be that it's original  
16 cost of the plant and CIAC with no reflection of  
17 depreciation.

18 MS. DANIEL: I can see where you would read  
19 that taking the words literally. I am certain the  
20 intent was to include depreciation and the amortization  
21 of the CIAC as well.

22 COMMISSIONER CLARK: Yeah. Yeah. And I  
23 think you need to say something like that.

24 MS. DANIELS: Okay.

25 COMMISSIONER CLARK: You need to indicate that



1 what you're going to do is try to establish the original  
2 cost of the plant, establish how much was paid by the  
3 investors, and then bring it forward to reflect the  
4 depreciation and the other changes that occur over time.

5 MS. DANIEL: Okay. We'll look at correcting  
6 language on that.

7 COMMISSIONER LAUREDO: So you wanted to add  
8 the words "and make adjustments thereto"?

9 COMMISSIONER CLARK: Appropriate adjustments  
10 thereto.

11 COMMISSIONER LAUREDO: And that's broad  
12 enough.

13 COMMISSIONER CLARK: Yeah. But -- and I had  
14 a star by the -- this is Subsection 1, "The Commission  
15 shall also consider the condition of the utility assets  
16 purchased in deciding if their purchased assets should  
17 be removed from the rate base calculation."

18 MS. DANIEL: Commissioner Clark, we had a  
19 lengthy discussion on that at the last hearing date on  
20 this.

21 Frankly, if we're trying to do a rule that  
22 codifies current Commission policy, that probably is a  
23 sentence that we should not go forward with right now.  
24 It is, I believe, too controversial and perhaps should  
25 be looked at on a case-by-case basis.

1 COMMISSIONER JOHNSON: What sentence is that?

2 COMMISSIONER CLARK: This is the last  
3 sentence in Subsection 1.

4 My recollection is that this is something you  
5 would consider whether or not the Utility was  
6 purchased. If they have assets that are not used and  
7 useful, then you make a determination as to -- let me  
8 just -- something that -- a plant that had to be  
9 abandoned because they had to hook up. That's no  
10 longer used and useful. It needs to come out of rate  
11 base. Then your decision on how to treat it depends on  
12 whether or not --

13 MS. DANIEL: Prudency issues.

14 COMMISSIONER CLARK: Prudency issues.

15 MS. DANIEL: I agree, Commissioner Clark. I  
16 don't believe the Commission needs that sentence in  
17 that rule to accomplish that either.

18 COMMISSIONER CLARK: Okay. But I want to be  
19 clear that, you know --

20 MS. DANIEL: That is an important issue.

21 COMMISSIONER CLARK: It would be looked at the  
22 same way it would be looked at in any case, whether or not  
23 everything in rate base should remain in rate base.

24 MS. DANIEL: I agree.

25 COMMISSIONER CLARK: Mr. Shreve, let me ask

1 you a question about this rule. Do you think it is an  
2 accurate reflection of Commission policy as reflected  
3 in the last five years?

4 MR. SHREVE: .0371?

5 COMMISSIONER CLARK: Yeah.

6 MR. SHREVE: It probably is an accurate  
7 reflection of the Commission policy, but not of the  
8 Commission that sits now necessarily. And I would  
9 assume the Commissioners that vote now are going to be  
10 voting their own policy out.

11 COMMISSIONER CLARK: And your recommendation  
12 would be that we change the policy and reconsider how  
13 we would treat negative acquisition adjustments.

14 MR. SHREVE: Absolutely.

15 COMMISSIONER LAUREDO: Or to treat it on a  
16 case-by-case basis.

17 MR. SHREVE: On a case-by-case basis. And I  
18 think what Commissioner Lauredo said earlier about  
19 there being some common sense approach to this, I think  
20 is exactly right.

21 In every one of these situations, maybe you  
22 have a rundown system and you need someone to take it  
23 over. You need to take a look at that. Also with the  
24 understanding that if they pay a lower purchase price,  
25 you're always going to add the cost of the improvements

1 to the rate base. That's going to cost the customers  
2 too. There are a lot of things to think about like  
3 that. Maybe the Deltona was not that situation. Maybe it  
4 was just a money-maker, where perhaps the Company should  
5 not get a return on millions of dollars that they do not  
6 have invested, although it's been left out of here. Same  
7 thing with Lehigh Acres in the adjustments there.

8 I think the one logical part of the argument  
9 is, that it does take away some of the incentive for  
10 them to purchase something. Maybe there should even be  
11 some type of an incentive, but I don't think it means  
12 recovering on a tremendous investment that is just not  
13 there. I mean I think you need some logical approach  
14 and logical view of this thing without just --

15 COMMISSIONER LAUREDO: Yeah, but you can't  
16 take the position, Mr. Shreve, that they -- we've got to  
17 let them have the gravy too sometimes. I mean otherwise,  
18 we're not going to throw them the bone every time.

19 MR. SHREVE: I agree. I, frankly, think what  
20 they are really entitled to is what they have invested.  
21 That gives them a return, a fair return, usually a  
22 generous return on their investment with no risk. If  
23 things go wrong, they come back in here. Half of their  
24 customers move away, they come back in here. They're  
25 not like the corner grocery store. However, we even

1 put in there, and I think perhaps something like this,  
2 said, okay, if the purchase price is less than the rate  
3 base, then give them that incentive because it is going  
4 to be a benefit to the customers. Let them recover on  
5 20% of the difference. That always gives them more  
6 than they've invested.

7 COMMISSIONER JOHNSON: How did you reach your  
8 split?

9 MR. SHREVE: I don't think you're entitled to  
10 that. But I think there is some logic to say, okay, if  
11 the utilities are going to sit there and say we are not  
12 going to do what's best for the customer unless we get  
13 a return on a larger amount than we actually pay for.  
14 And I say, okay, give them the bone. And I said 20%  
15 because I don't think it should be 50 and I don't think  
16 it should be 100%. But that would always -- if  
17 somebody out in private enterprise goes out here, they  
18 get a return on their investment or whatever they earn  
19 there. But if you say, okay, you make an investment,  
20 you're going -- the customers will benefit, the law  
21 says the utility is entitled to a return on their  
22 investment. In this case we'll say, "Okay, we're going  
23 to give you a benefit because you're coming in and  
24 purchasing this system, we're going to give you 20% of  
25 the difference." That would give them a reason to get

1 that purchase price as low as they could so the  
2 difference would be larger, and then you could come up  
3 with the 20% of that difference.

4 I think something like that would make sense  
5 and be logical, give them a benefit, give the customers  
6 a benefit, and take away the arguments that are really  
7 there.

8 COMMISSIONER CLARK: And we do that all the  
9 time. We do that in electric utilities, and we did it  
10 in the Southern Bell rate case, you know, were they can  
11 cut a good deal and do a good job. Everybody shares.

12 MR. SHREVE: Right. Not in the rate base  
13 situation, but, yes, I agree.

14 COMMISSIONER CLARK: Have we ever given that  
15 any thought because it does, you know, it does create  
16 some discomfort to say the least when you have such a  
17 large discrepancy between what was purchased and what  
18 the assets are, and does it make sense to say put a cap  
19 on -- you won't make an adjustment if it's within 20%  
20 of net book value.

21 COMMISSIONER LAUREDO: And then share after  
22 that?

23 COMMISSIONER CLARK: And share after that.

24 MS. DANIEL: That would be so difficult to  
25 put in a rule, Commission Clark. And I believe the

1 language that we're proposing gives you the flexibility  
2 to look at that. Now, there are some other things that  
3 we might want to consider.

4 COMMISSIONER CLARK: Why would that be  
5 difficult, if net book value either exceeds --

6 MS. DANIEL: Choosing the percentage.

7 COMMISSIONER CLARK: That would maybe -- I  
8 don't think that's going to be difficult except in the  
9 sense that you wouldn't have necessarily a  
10 well-reasoned basis for choosing it, but we do that all  
11 the time. We have 80% --

12 (Simultaneous conversation)

13 You know, we have, what is it, 40 and 60 in  
14 the Southern Bell case in the off-system sales for  
15 electrics, you know, the customers. I think the  
16 Utility gets 80 and customers get 20 or visa versa.

17 MS. DANIEL: There may be some other  
18 quantifiable measures that could be used. For example,  
19 in Southern States, the Exhibit 6 that they've offered  
20 today, there was discussion of how other states look at  
21 quantifiable measurable advantages to customers is a  
22 way to address what goes into rate base. Is management  
23 going to be better, what will happen to the rates of  
24 the customers, will there be some benefit there?

25 COMMISSIONER CLARK: That seems to me a worse

1 case than putting a percentage in there.

2 COMMISSIONER LAUREDO: The problem still is  
3 on the --

4 COMMISSIONER CLARK: You'll accomplish  
5 nothing by your rule.

6 COMMISSIONER LAUREDO: The incentive to  
7 regulation or the sharing element of the incentive to  
8 regulation of established companies, it really revolves  
9 around efficiency and management efficiency. And  
10 that's what really is a philosophical thing behind it.  
11 Here we have -- the problem is how do we encourage  
12 well-run companies from acquiring a system and moving  
13 into a more efficient --

14 COMMISSIONER CLARK: And yet be far in the  
15 sense when there's an enormous difference between the  
16 net book value on what they pay that maybe it's an  
17 indication that the customers have somehow been  
18 disadvantaged for some time.

19 MR. HILL: If I may, Commissioner, we thought  
20 about that and we certainly can write any rule you  
21 would like to us write. A splitting 20/80, we're  
22 indifferent.

23 There was some legislation, I believe, last  
24 session and I think one of the things that certainly we  
25 think about when we look at a rule like this -- and we



1 have discussed it at length previously -- and that is  
2 the costs that go into the purchase itself.

3 A lot of times there are NOBs from DER, there  
4 are fines that DER will not -- and you would really  
5 need to speak to those companies that used to purchase.  
6 And I think if we look over the past 24 months I think  
7 it stopped in this state anyway. I don't really think  
8 the companies are out there buying anymore.

9 COMMISSIONER CLARK: Why not? Do you know?

10 MR. HILL: No, you'd have to talk to them.

11 COMMISSIONER CLARK: My recollection is  
12 there's some allegation or some representation that the  
13 reason it's not being done is because of uncertainty as  
14 to how it will be treated by the Commission.

15 MR. HILL: That's what I've heard, but,  
16 nevertheless, there was some legislation last year that  
17 recognized and, in fact, it came very close to what  
18 you're talking about now, but it talked about some  
19 expenses incurred and that those would be amortized  
20 over a certain period of time.

21 And I think that's something that, you know,  
22 if this Commission wants to look at a purchase price,  
23 rate base, whichever is less than a sharing, throwing  
24 bones around and that, then I think you need to also  
25 look at what expenses are incurred because it's my

1 understanding from the discussions at all the various  
2 workshops is that it's more than just the purchase  
3 price involved. It costs -- whoever is buying that  
4 system, it costs them a lot more than whatever is  
5 written on a piece of paper. They've got to try to  
6 negotiate with the counties and the cities to get  
7 service, to get the fines and penalties taken away.  
8 They've got legal battles with DER and EPA and all of  
9 those expenses they look at when they come up with a  
10 purchase price. And I think that's something that this  
11 agency would need to -- if you're going to adopt a rule  
12 that has --

13 COMMISSIONER LAUREDO: And that's what they  
14 mean by "assumed liabilities in the note"? I mean,  
15 other than balance sheet liabilities, is that also just  
16 regular intangible liabilities, like outstanding fines  
17 and unpredictable legal costs.

18 MR. HILL: And I think as long as that's  
19 considered in some fashion --

20 COMMISSIONER LAUREDO: You're making a great  
21 case for not having a rule; for my philosophy of having  
22 flexibility as a high standard.

23 MR. HILL: I can live with that as well.

24 COMMISSIONER LAUREDO: So that five minds can  
25 say what's best in the state in 1994 and 1995. It may

1 not be the best policy in '95 what is in '93. We may  
2 have Boeing Aircraft decide to get into the water and  
3 sewer system and come up with -- I mean, I think it's a  
4 particular fluid industry. I mean, isn't it? Don't  
5 you think, in Florida? I mean, besides the fact that  
6 it is fluid, but the development has gone on.

7 MR. HILL: I think that should the Commission  
8 want to not have a rule and handle it on a case-by-case  
9 basis, then that's exactly what we'll do. I think they  
10 are going -- with the requirements that are in place  
11 now and that get stricter on a daily basis. I think  
12 we're going to have small systems that look for some  
13 sort of help. And I think that it's going to be  
14 incumbent upon this agency. And at some point that  
15 issue will be in front of and you in front of  
16 legislators and everyone else of small systems; those  
17 customers saying, "We don't have service. We're going  
18 into abandonment. Our quality of service is  
19 degrading." And at the same time, the City and  
20 County won't do anything about it. "They don't want  
21 us, they won't buy us, they won't take us." And I  
22 think at that point, we're going to need to look at  
23 trying to put together some policies that address that  
24 issue.

25 And I've got no problem in putting together a

1 rule that codifies current Commission practice on  
2 acquisitions. I've got no problem changing and saying  
3 whatever this Commission wants in the way of a policy  
4 and a rule so that the players know in advance what's  
5 going to happen. I don't have any problem with that.  
6 And if this Commission says, "We don't want any kind of  
7 rule and we'll just take it as it comes up," and then  
8 that's what we'll do as well. I think you can go any  
9 way. I think it's best that the players know what's  
10 going to happen.

11 MR. HOFFMAN: Commissioners, if I could make  
12 a few comments? I think that you hit the nail on the  
13 head when you asked the question how do we encourage  
14 the purchase of poorly-run utilities by well-run  
15 utilities. I think that's what this issue is all  
16 about.

17 And it's our position that the policy that  
18 you've had in place over the years has proven to be a  
19 good policy and has provided those results and that  
20 everyone, including the customers and particularly the  
21 customers, will be better off if that policy is placed  
22 into a rule because that certainty will be out there as  
23 to what the Commission's policy is.

24 Now, Mr. Shreve said that the law says the  
25 utility is entitled to a return on their investment.

1 Now, in the acquisition adjustment docket that the  
2 Commission had about two years ago, there was an order  
3 entered in the beginning of 1992; the Commission looked  
4 at that question.

5           What did the legislature mean by the word  
6 "investment"? And the Commission concluded that it did  
7 not mean the purchase price paid by the purchasing  
8 utility, whether it's higher or lower than the net book  
9 value of the assets. The Commission concluded that the  
10 word "investment" meant the net book value of the  
11 assets. And that has been part of the reasoning behind  
12 the Commission's decision to continue the policy of not  
13 imposing any adjustment to rate base unless there are  
14 extraordinary circumstances.

15           And the bottom line is if you continue that  
16 policy and put it in a rule, customers will not be  
17 harmed. They can only benefit by the purchase of their  
18 system by a better run utility. If their rates were  
19 based on a rate base of \$100 and their system is  
20 purchased for \$60.00, and your policy or your rule  
21 preferably says "Well, those rates would continue to be  
22 set based on a rate base of \$100," those customers  
23 haven't lost.

24           If improvements were needed, they were needed  
25 before the purchase and they'll be needed after the

1 purchase so there's really no impact there. The rate  
2 base, whether or not the system is purchased, will be  
3 affected by prudently incurred improvements and  
4 additions.

5 And the only other thing that I wanted to say  
6 was Mr. Shreve was talking a little bit about Deltona  
7 systems.

8 I don't want to leave the wrong impression.  
9 My understanding, and I think the Commission's orders  
10 prove out my understanding of that situation, is that  
11 when those systems were purchased, shortly before they  
12 were purchased or right around at the time they were  
13 purchased, this Commission was conducting a quality of  
14 service inquiry into those systems in order that a  
15 number of improvements be made. And that evidence was  
16 in the Macro Island rate case that you sat on.

17 In addition, there were some consent orders  
18 entered into between the utility and the DER after the  
19 purchase, which have required significant investments  
20 by the utility. So this utility was in need of  
21 significant improvements at the time it was purchased  
22 by Southern States.

23 Secondly, the question of whether or not  
24 there should be an acquisition adjustment with respect  
25 to the Deltona systems was, in fact, litigated, and

1 intensely litigated, between the Company and Public  
2 Counsel in the last two rate cases in the Southern  
3 States rate case and the Marco Island rate case. And  
4 in both cases the Commission found that there should  
5 not be an acquisition adjustment.

6 COMMISSIONER CLARK: Let me ask at this  
7 point. Is there any more comment on this rule from the  
8 parties?

9 MR. SHREVE: Yes, Commissioner.

10 COMMISSIONER CLARK: This is the last go  
11 around and then we'll move on.

12 MR. SHREVE: Good, yes, Commissioner. I'll  
13 be the last one.

14 COMMISSIONER CLARK: Do you want to be the  
15 last one. If you do, then I'm going to go to Staff and  
16 the utilities.

17 MR. SHREVE: It doesn't matter to me whether  
18 I'm the last one or not. I was just kidding when I  
19 said the last one.

20 COMMISSIONER CLARK: Go ahead.

21 MR. SHREVE: One thing, I don't disagree with  
22 everything Mr. Hoffman said. He neglected to tell you  
23 that in the scenario that he pointed out where a  
24 company purchases a system for a low amount compared to  
25 the rate base, compared to the net book value, then the

1 company walks away a windfall.

2           When you take a look at that, compared to the  
3 Southern States case and the rate increases or the  
4 revenue increases that were placed, that the Company  
5 walked away with and that could have been modified by a  
6 great deal if they had only been held to a fair return.  
7 That's a different story.

8           I don't disagree with Mr. Hill when he starts  
9 talking about expenses in an acquisition, and that has  
10 been discussed.

11           Mr. Hoffman was handling the case at the time  
12 but in the -- not this past Southern States case but  
13 the one before -- Southern States actually asked for  
14 all those expenses in addition to net book value when  
15 they had paid less for the systems. They didn't do it  
16 in this last one because that argument actually came  
17 out -- and Mr. Hill was there and Mr. Hoffman was not  
18 there -- in some arguments where we were having before  
19 some legislators concerning that legislation. This  
20 last rate case they took that out.

21           So I think expenses do need to be considered;  
22 and if you're going to set that up, they should be  
23 reimbursed for those or amortized or something like  
24 that. There, again, I think that's fair if, in fact,  
25 they were doing a good job in the purchase, trying to



1 lower that rate base and incur the expenses that's  
2 okay. That was not what Southern States tried to run  
3 the first time.

4 I think it's just about -- I think everybody  
5 understands exactly what the situation is here. Mr.  
6 Hoffman lays out the situation where there's a  
7 poorly-run utility and that's all the utilities want to  
8 talk about. That is not always the situation.

9 You take Grand Terrace that Southern States  
10 acquired for \$32,900: it's got a net book value of  
11 81,257. The revenue impact calculated by the Staff was  
12 4,832, but if you assume a 20-year depreciation, you  
13 have to double that. So that's going to be  
14 approximately 9,600. We're talking about a low income  
15 system in Lake County that was brand new and turned  
16 over by the developer to Southern States.

17 So possibly there are situations where  
18 there's a poorly-run system that something needs to be  
19 done and they need additional investment, but I will  
20 guarantee you that every time that additional  
21 investment is made the utilities are going to add that  
22 to the rate base. It's going to happen. So it's just  
23 not the situation in every case.

24 MR. TODD: Commissioner Clark, my name is  
25 Robert Todd and I'm representing the Florida Waterworks

1 Association.

2 I just wanted to make one comment, and I  
3 think Commission Laredo talked about it a moment ago,  
4 is I sit on the Governmental Relations Committee for  
5 the National Association of Water Companies. And this  
6 is not a problem with the acquisition of small systems  
7 that's generic to Florida alone; it's a problem across  
8 the United States.

9 And we had Sharon Gasgon and Jim Groff down  
10 from NAWC at an Internal Affairs meeting earlier this  
11 year to talk about some of the changes that are coming  
12 into rules and the regs, from out of the EPA, that are  
13 going to affect our industry and add a lot of cost to  
14 the -- particularly the small companies.

15 I can tell you my company has less than 100  
16 customers, and lead and copper testing is costing me  
17 about \$250 per customer per year, although I'm not  
18 allowed that much because I'm under the capacity of the  
19 systems.

20 But those companies that actually will have  
21 100 customers per year and never any more and have  
22 built a very small company, and that's really I think  
23 the gist and the point of this discussion and the  
24 argument, those customers will always have that problem  
25 unless those costs are aggregated with the bigger

1 companies such as Southern -- they're a good example --  
2 but Jax Suburban is another and there's a bunch of them  
3 in Florida.

4 Unless we provide those on a stand-alone  
5 basis, those customers cannot bear the cost of  
6 regulation and service as well. And I think you'll  
7 find that problem as being exacerbated year in and year  
8 out as new regulations for contaminants, the maximum  
9 contaminant levels are established.

10 Consequently, our trade association, we're  
11 working with NARUC as well, are trying to develop ways  
12 to encourage the acquisition; and we're working with  
13 the Environmental Defense Fund and others on the  
14 environmental side of the political debate to encourage  
15 the acquisition of these small companies so that they  
16 can be with a big company that has a financial strength  
17 that to take that cost and spread it out amongst many,  
18 many customers.

19 And I think if you go ahead and set some sort  
20 of policy saying that there is no available -- there  
21 will always be a negative acquisition adjustment or no  
22 available positive acquisition adjustment you're  
23 defeating the purpose of what we're all working for and  
24 trying to get these little people that cannot perform  
25 on their own.

1                   COMMISSIONER LAUREDO: But that's not what  
2 we're discussing today. We're discussing keeping the  
3 policies in place and/or codify it. That's the  
4 dividing line, not that one is --

5                   COMMISSIONER CLARK: But he's saying without  
6 some assurance that that will be the policy, we will  
7 not have large companies taking over smaller ones.

8                   COMMISSIONER LAUREDO: Look, you all know how  
9 pro business I am. But, you know, you can't give me  
10 this argument -- you know, there's just so much you can  
11 push me on this argument, guys.

12                   If we decided to be in the utility business,  
13 these are the rules. And part of the benefit is,  
14 you're a monopoly. I mean, let's go back to the  
15 history of regulatory bodies.

16                   I mean, don't push that issue of  
17 predictability too much on me because then you're going  
18 to have a reverse reaction. I mean there are some  
19 inherent risks and they are -- we are substitutive for  
20 free market economies, who have much more vicious  
21 rules. Free market tends to be very -- than  
22 regulatory.

23                   MR. TODD: And even in the regulatory  
24 environment, sir, I would tell you that a customer will  
25 not spend more than a certain amount of money for

1 water.

2 COMMISSIONER LAUREDO: Well, the point I'm  
3 saying -- but the central point of my conflict is  
4 taking away the flexibility of a Commission to make  
5 these judgments on company-specific cases and  
6 time-specific circumstances.

7 And the county argument is one of  
8 predictability, which I sympathize with but don't push  
9 it too hard because it pushes me right out of the  
10 envelope of the industry you're in. If you want it to  
11 be that kind of predictability, I guess you can only  
12 move to Cuba, because centrally-run economies are  
13 falling apart all over. That was 100% predictability;  
14 failure.

15 I mean, so there's some risks that are  
16 incumbent on your industry, and you cannot always have  
17 a zero-risk posture. You already have a relatively  
18 low-risk posture by being a monopoly. Let's don't  
19 forget the big picture. But I want to tell you  
20 something. Because I just had an occurrence recently,  
21 you know,

22 You know, I happen to think the industry --  
23 and I'm on a NARUC committee and I applaud what you are  
24 doing and all that stuff. But, you guys, we all are  
25 missing the boat on public education. This is the most

1 salient example of a lack of public support for what  
2 would otherwise be reasonable and prudent public  
3 policy.

4 I mean, you just look around you, you try to  
5 impose -- you just talked about it, basically you  
6 didn't say it, but economy of scales. And somebody  
7 came up with a creative idea of having statewide rates  
8 to try to buffer, you know, rate shock over it; I mean,  
9 it got zero public support. Do you agree with me?

10 This Commission has been kicked around the  
11 state for trying to do something that in the long term  
12 you would say is a prudent thing to do.

13 What I'm telling you is you cannot push  
14 public policy too far ahead of public support. And in  
15 the area of water, you know, it's just so far behind  
16 that I have taken the position -- I actually voted on  
17 the one case, and I'm always inclined to even adopt it  
18 as a general policy from now on -- to create chaos. I  
19 mean, vote against everything so that in three years  
20 from now we're going to have -- and then some public  
21 policy body other than us is going to respond --  
22 whether it's the EPA, whether it's the state  
23 legislature, that they cannot continue to pass on costs  
24 and the buck stops here.

25 And nobody has taken the time, much less the

1 industry -- I mean, it should be a big part of your  
2 Association -- to educate the public about the facts.  
3 You know, they get the more sensationalist view of  
4 things.

5           We're all selfish. You know, if we're in  
6 Community A, and I've got higher rates than this  
7 statewide plan, we don't care about Communities B, C,  
8 D, E and F. But we've got to do a better job. And it  
9 can't be just this Commission. I mean, you as an  
10 association need to do that because, obviously, that's  
11 the dilemma we're in.

12           The legislature is not dealing with it; the  
13 other regulatory bodies are not dealing with it; the  
14 economic regulatory body, namely us, are the ones that  
15 wind up bringing the numbers up to match. You know, I  
16 just think we have to be in this together and I don't  
17 see that at all.

18           You know, that's why I tried to solicit from  
19 Mr. Shreve, you know, some commitments about general  
20 tendencies. Are we or are we not serving the public  
21 good by trying to bring companies that are well-known  
22 and well-run to take over systems? And, you know,  
23 they'll have some bones and they'll have some beef. I  
24 mean, that should be our policy. And then our  
25 disagreements can be as to exactly what the numbers

1 are, whether you should get \$10 or \$5.

2 But we should at least have a consensus that  
3 we're -- I mean, we're moving, we're all serving the  
4 same people. I don't sense that in water. It's just  
5 so conflicting. And I don't see the Association  
6 helping, to be honest with you, in that public debate.  
7 Maybe you have got to go back to the Association and  
8 try to help this Commission and subsequent commissions  
9 deal with it, because it's going to get worse in the  
10 next few years.

11 Madam Chairman, I just wanted to know, on  
12 this proposed thing that you're working on, was  
13 prepared by Staff or not, the order of business today?

14 COMMISSIONER CLARK: Yeah.

15 COMMISSIONER LAUREDO: On the first one, it  
16 talks about other states' practices and we should have  
17 had our discussion on this limited to that, which is  
18 the only thing we haven't talked about under section  
19 30.371. It reads --

20 MS. MOORE: Southern States' exhibit.

21 COMMISSIONER LAUREDO: About their practices  
22 in the state of Florida?

23 COMMISSIONER CLARK: No, in other states.  
24 Did we get that as an exhibit?

25 MS. MOORE: Yes, that's Exhibit 6, I believe.



1                   COMMISSIONER CLARK: Okay. Are we finished  
2 with .0371?

3                   MS. DANIEL: Commissioner Clark, may I point  
4 out two points to that rule? And then you may discuss  
5 them or not as you wish.

6                   In my testimony, I offered Exhibit PD-4; and  
7 this addresses something that Mr. Shreve discussed just  
8 a few minutes ago. I suggested adding the language in  
9 Paragraph (2) where it currently says, "In the absence  
10 of extraordinary circumstances," and so forth, "shall  
11 not affect the calculation of rate base," a second  
12 sentence would be added to that line item, "In  
13 determining the purchase price of the utility, the  
14 Commission may consider the prudently incurred  
15 acquisition costs." Those are the items that Mr.  
16 Shreve spoke to a few minutes ago, that there are  
17 things associated with acquiring a utility, engineering  
18 inspections and so forth, that are not a check written  
19 in the purchase of the utility.

20                   COMMISSIONER CLARK: Do we do that now?

21                   MS. DANIEL: We have done it once that I can  
22 detect. It is in one of these Jacksonville Suburban  
23 transfers, the positive acquisition adjustment included  
24 in one of my exhibits.

25                   COMMISSIONER CLARK: I'm not inclined to --

1 MR. SHREVE: Maybe I misunderstood.

2 COMMISSIONER CLARK: No. I think what she's  
3 trying to -- I don't think you misunderstand. What she  
4 is saying is adding, when you suggested that there may  
5 be -- if you allow a negative acquisition adjustment,  
6 that it may be appropriate to allow some of the cost of  
7 acquisition, but I don't think you were ever advocating  
8 that they be allowed when you have --

9 MR. SHREVE: You give them --

10 COMMISSIONER CLARK: Unless you do.

11 MR. SHREVE: You let them pay low, give them  
12 a rate base high, and then add the expenses to it?

13 COMMISSIONER CLARK: Yes.

14 MR. SHREVE: That was Mr. Hoffman.

15 (Simultaneous conversation.)

16 MR. SHREVE: I beg your pardon?

17 MS. DANIEL: This doesn't say whether it  
18 would be positive or negative. You were advocating in  
19 the case of a negative, rather than giving the negative  
20 acquisition -- that you would give the negative  
21 acquisition adjustment but allow --

22 (Simultaneous conversation.)

23 MR. SHREVE: What I was saying was that I  
24 think expenses are -- it's fair game to consider those  
25 when you get the pot right in the first place, but you

1 don't let them walk away with what they tried. We  
2 never did even identify what those expenses were. I  
3 never did figure out what a "Topeka fee" was that they  
4 had added to those things.

5 MS. DANIEL: Not a good one to move forward  
6 with. No problem.

7 COMMISSIONER CLARK: Well, my feeling about  
8 the rule is the rule, as currently drafted, does  
9 reflect what I understand the policy to have been for  
10 at least ten years. What you have just suggested is  
11 not part of that policy and my preference would be that  
12 it not be in there.

13 MS. DANIEL: Okay.

14 COMMISSIONER CLARK: I would simply suggest  
15 we leave the rule as close as possible to the past  
16 policy and then the Commissioners can vote it up or  
17 down at the agenda.

18 MS. DANIEL: Okay. Let me try one other  
19 point.

20 In Paragraph (3) of that rule, "If requested  
21 by the acquiring utility," and that's an important  
22 phrase in my comment. "If requested by the acquiring  
23 utility, rate base, including any acquisition  
24 adjustment, will be determined in the order approving  
25 the transfer." My point here is that in the statute,

1 in Chapter 367.071, it says, "The Commission may set  
2 rate base in a transfer," and we're proposing to adopt  
3 a rule that puts the Commission in a more restrictive  
4 posture than the statute.

5 COMMISSIONER CLARK: You know, I don't know  
6 one way or the other as to where the utility may have a  
7 reason for wanting their rate base established now as  
8 opposed to a rate case. And if you are suggesting  
9 this, I guess you are saying that the  
10 Staff --

11 (Simultaneous conversation.)

12 MS. DANIEL: The Staff does not have a  
13 problem with it.

14 COMMISSIONER CLARK: Oh, you want to take it  
15 out?

16 MS. DANIEL: I would like to take that out.  
17 I believe that we can work with the Utility if there is  
18 a good reason to set rate base.

19 COMMISSIONER CLARK: I have no problem with  
20 taking (3) out.

21 MS. DANIEL: Taking it out. That is my  
22 recommendation.

23 MR. SHREVE: Here again, I would like to see  
24 that. Did I just hear that it is going to be totally  
25 up to the utility if it's there -- if requested by

1 them?

2 MS. DANIEL: I'm suggesting that that's  
3 what's in the rule as it is proposed, and that I think  
4 that that's --

5 (Simultaneous conversation.)

6 MS. DANIEL: -- appropriate for it to be up  
7 to the Utility, that it needs to be up to the  
8 Commission and that Paragraph (3) be taken out.

9 COMMISSIONER CLARK: Any problem?

10 MR. SHREVE: I would like to take a look at it.

11 COMMISSIONER CLARK: Okay.

12 MR. SHREVE: I agree that the Commission  
13 should be the decision makers and not be in a position  
14 to be limited to whether the utility requested it or  
15 not.

16 COMMISSIONER CLARK: Okay. Does that  
17 conclude .0371?

18 MR. SCHIEFELBEIN: Excuse me. I don't think  
19 I need to belabor this any further, but I'm a little  
20 less than crystal clear as to what was discussed on  
21 this rule at the last hearing and what's been discussed  
22 here today. And there is certainly some overlap with  
23 the rule on transfers, and I just wanted to say for the  
24 record in our May 17 filing on behalf of the  
25 Association, I don't really think you need to look at

1 it right now, but on Pages 7 through 12 or, excuse me,  
2 13 of the supplemental comments of Mr. Frank Seidman,  
3 he goes into a point-by-point rebuttal of some of the  
4 concerns expressed about other aspects of this rule by  
5 Public Counsel.

6 I just wanted you to be aware that that's  
7 there. I don't think we need to get into it today.

8 COMMISSIONER CLARK: Okay.

9 MR. SCHIEFELBEIN: Thank you.

10 MR. MANN: Commissioner?

11 COMMISSIONER CLARK: Do we need to go --

12 MR. MANN: I'm sorry.

13 COMMISSIONER CLARK: We're through with that  
14 rule. We're through with .0371. Is that correct?

15 MR. WILLIS: Yes.

16 COMMISSIONER CLARK: Mr. Shreve, I thought,  
17 gave the closing remarks on behalf of Public Counsel.

18 MR. MANN: Well, my concern was with an  
19 exhibit that was submitted by Mr. Hoffman that we had  
20 comments on. Maybe it would be procedurally more  
21 appropriate to object to that exhibit and then make our  
22 comments at the time that the exhibit is moved. If you  
23 would prefer that, I will delay that.

24 COMMISSIONER CLARK: I show none of the  
25 exhibits as being moved into the record.

1 MR. MANN: Correct. That's why I was  
2 unsure, and still am, procedurally where --

3 COMMISSIONER CLARK: Let's get it over with,  
4 let's move everything up to this point into the record.

5 MS. MOORE: I thought Exhibit 3 had.

6 COMMISSIONER CLARK: What about Exhibit 1,  
7 the composite exhibit?

8 MS. MOORE: That was at the May hearing.

9 COMMISSIONER CLARK: All right. Well, at any  
10 rate, show Exhibit 1 admitted.

11 (Exhibit No. 1 received into evidence.)

12 COMMISSIONER CLARK: Exhibit 2 is FWA's list  
13 of no problems at issue. Show that admitted.

14 (Exhibit No. 2 received into evidence.)

15 COMMISSIONER CLARK: No. 3 is Staff's  
16 negative acquisition adjustment. Any objection? Show  
17 that admitted.

18 (Exhibit No. 3 received into evidence.)

19 COMMISSIONER CLARK: Exhibit 4 is Southern  
20 States' Response to Staff's Exhibit PD-8. Any  
21 objection to that one? Show that admitted.

22 (Exhibit No. 4 received into evidence.)

23 Exhibit 5 is Southern States' Summary of  
24 Acquisition Investment.

25 MR. MANN: Commissioner, I understood Mr.

1 Shreve to have an objection to that. Unfortunately, I  
2 am unable to speak to precisely what his objection is  
3 to that Exhibit 5.

4 COMMISSIONER CLARK: You know, I'm at  
5 somewhat of a loss because this is a rulemaking  
6 hearing, and I'm going to let it in for what it shows.  
7 And you can comment on what you believe are the lack of  
8 validity in it. And I think the record should reflect  
9 that it was an exhibit that I had requested.

10 (Exhibit No. 5 received into evidence.)

11 COMMISSIONER LAUREDO: We spent about half an  
12 hour discussing his concerns of --

13 COMMISSIONER CLARK: Yes.

14 COMMISSIONER LAUREDO: -- the identification  
15 of price paid rather than the investment, and I think  
16 we have benefited from that discussion.

17 COMMISSIONER CLARK: How about Exhibit 6?

18 MR. MANN: Exhibit -- I'm sorry? Exhibit 6  
19 we do object to. And I would like an opportunity for  
20 Ms. Dismukes to make some comments about that exhibit  
21 that trouble us.

22 COMMISSIONER CLARK: Go ahead.

23 MS. DISMUKES: Thank you. I just have a few  
24 comments. I just want to put their memorandum or brief  
25 into perspective. I went back and reviewed a great



1 many of the orders that the Company reviewed in order  
2 to come up with what appears to be a representation  
3 that this Commission's policy on acquisition adjustment  
4 is consistent with other states.

5           And if you go back and review the orders that  
6 they did the research on, what you will find is that  
7 the majority of those decisions, we're dealing with  
8 positive acquisition adjustments; and that in those  
9 situations, the commissions required a certain kind of  
10 tests that had to be met prior to allowing a positive  
11 acquisition adjustment. There was very seldom any  
12 situation where negative acquisition adjustment was  
13 even addressed in those orders.

14           COMMISSIONER CLARK: Okay. This is just  
15 legal research. To the extent that, you know, if you  
16 want to file something that points that out or point it  
17 out in your brief, but I'll let you go ahead so we have  
18 it now.

19           MS. DISMUKES: Okay. I mean, to me, I read  
20 it; I got an impression; I went back and did the  
21 research; I thought I would bring it to the  
22 Commissioners' attention.

23           COMMISSIONER CLARK: Do you have that?

24           MS. DISMUKES: I have all the orders that  
25 Southern States provided to us in the Southern States

1 docket that was a function of what this --

2 COMMISSIONER CLARK: Let me ask you, are  
3 those all the orders that they rely on in here?

4 MS. DISMUKES: Yes. They also --

5 COMMISSIONER CLARK: I would like to have a  
6 copy. If it's all right, can we just attach them to  
7 Exhibit 6? Oh, there's lots of them? Well, then,  
8 let's admit Exhibit 6.

9 COMMISSIONER LAUREDO: Well, why don't we  
10 just focus on the central point of her objection so  
11 that I can, I mean, file it away up here is the most  
12 important file.

13 COMMISSIONER CLARK: Okay.

14 MS. DISMUKES: I don't think we have an  
15 objection. I just think that we wanted to --

16 COMMISSIONER LAUREDO: No, I mean, the  
17 different point of view.

18 MS. DISMUKES: -- make a comment in the sense  
19 that the memorandum gives, to me, it gives the  
20 impression that this Commission's policy is consistent  
21 with other commissions' policies.

22 COMMISSIONER LAUREDO: With other  
23 commissions' policies?

24 MS. DISMUKES: Right. All I'm saying is I  
25 did review those orders. The vast majority of those

1 orders related only to positive acquisition  
2 adjustments, They did not relate to negative  
3 acquisition adjustments.

4 COMMISSIONER LAUREDO: Other states' orders?

5 MS. DISMUKES: That's correct. And that in  
6 many instances it wasn't water and sewer companies, it  
7 was telephone and electric companies. So when the  
8 Staff, for example, mentioned that, you know, you could  
9 go to a policy or establish something where you had to  
10 meet certain tests before a negative or a positive  
11 acquisition adjustment would be made, those were done a  
12 lot in your big electric cases where they were  
13 purchasing another electric company and the Commission  
14 wanted to ensure that there were some benefits and it  
15 had to be quantifiable benefits.

16 That's a lot different, in my opinion, than  
17 water and sewer companies where you don't have the  
18 financial resources to go in and do in-depth, detailed  
19 studies. And to do that in some of these smaller  
20 cases, I think, would be a pretty difficult thing to  
21 do, even if you could quantify it. But I just wanted  
22 to point that out.

23 I won't say anything more about this memo and  
24 I don't want to overstep my ability to speak, but there  
25 is one other thing I would like to say if I can just do

1 it real quickly.

2 Southern States has somewhat represented that  
3 they have quit making acquisitions because they're  
4 uncertain about this Commission's policy. In the  
5 Southern States docket, we --

6 COMMISSIONER LAUREDO: Wait a minute. Excuse  
7 me. I didn't hear that.

8 COMMISSIONER CLARK: I heard it last time.

9 MS. DISMUKES: Okay. That's the impression I  
10 got.

11 COMMISSIONER LAUREDO: Oh, but not today.

12 MS. DISMUKES: Because the policy was so  
13 uncertain or the Commissioners were so uncertain, this  
14 Commission was uncertain, okay, that they have quit  
15 making acquisitions. And I think if you read the  
16 transcript, that will be reflected.

17 All I want to say is that in the Southern  
18 States case we entered into the record an exhibit, that  
19 I would be happy to provide, that showed the Company's  
20 attempted acquisition adjustments in '88, '89, '91 and  
21 I believe in '92. And in '91, my memory is rough, but  
22 I believe they attempted to acquire between 10 and 20  
23 systems.

24 And one other point. When we had the  
25 deposition of the gentleman that did the acquisitions

1 for the Topeka Group, he said that they were on the  
2 verge of a major acquisition in the state of Florida.  
3 They could not divulge the information to us because of  
4 the confidential nature of it. We didn't press it, but  
5 there was something going on that recent.

6 So I just wanted to put their comments in  
7 perspective.

8 COMMISSIONER CLARK: When was the deposition?

9 COMMISSIONER LAUREDO: I remember that.

10 MS. DISMUKES: It wasn't the Marco case. It  
11 was the Southern States case. And I would venture it  
12 was within February of this year?

13 COMMISSIONER CLARK: No, of last year.

14 MS. DISMUKES: The hearings were September of  
15 '92? September of '92. And that I won't take any more  
16 time. But I thought it was important that I think  
17 there is some indication that they are still out there  
18 acquiring -- or attempting to acquire, maybe not making  
19 an acquisition.

20 MR. HOFFMAN: Commissioner, if I could just  
21 very briefly respond?

22 I think that the research that was included  
23 in these comments accurately represents the orders that  
24 are referred to. In the comments, the purpose of the  
25 research was to provide citations to the Commission of

1 other statutes and orders, and to provide some analysis  
2 of those orders. And I don't think there is anything  
3 that is inaccurately stated in these comments. That's  
4 the first thing.

5           The second thing, with respect to some other  
6 information that Public Counsel may present with  
7 respect to Southern States' interests or attempts at  
8 acquisitions over the last year or two or three, I  
9 think that you have to keep in mind that those are  
10 acquisitions -- those are attempted acquisitions or  
11 inquiries into acquisitions which never took place.  
12 And the reason or one reason that those acquisitions  
13 may not have taken place is the Company's feeling of  
14 uncertainty about the current policy not being codified  
15 as rule. But I can't represent to you that that was  
16 not why a specific acquisition did not take place. All  
17 I'm saying to you is that you would have to keep that  
18 factor in mind as well.

19           COMMISSIONER CLARK: Okay. I'm going to  
20 allow the exhibit in which consists -- it's legal  
21 research and I'll let it in just as that. That's  
22 Exhibit 6.

23           (Exhibit No. 6 received into evidence.)

24           COMMISSIONER CLARK: Exhibit 7, which is the  
25 working capital computations, any objection to that?

1 Show that admitted.

2 (Exhibit No. 7 received into evidence.)

3 COMMISSIONER LAUREDO: At the expense of  
4 delaying this, I don't want to leave this point because  
5 it is a very important point to me and it came up in  
6 the GDU, one of the things I was on, I can't remember.  
7 And my concern about that company and how we put it up  
8 to economics, and then being subject to acquisitions.  
9 And I don't want to get any further along, but I've  
10 heard rumors about along those lines.

11 Are you stating that the Topeka Group, to be  
12 even more corporate, is not looking to do acquisitions?  
13 Because I know, I do reading like annual reports, that  
14 is part of the management objective of the Topeka  
15 Group's holding company to expand aggressively into  
16 water and wastewater as a profit center. And you're  
17 saying now that as it relates to Florida, they do not  
18 have that corporate objective because some degree of  
19 uncertainty?

20 MR. HOFFMAN: I can't make that statement to  
21 you, Commissioner.

22 COMMISSIONER LAUREDO: Well, that's what I  
23 thought you couldn't but it keeps floating around. I  
24 wish somebody would put it to bed one way or the other.

25 MR. HOFFMAN: Well, I can go back and find

1 out. That was a statement made by my co-counsel, Mr.  
2 Armstrong, who works in-house, and he is privy to that  
3 information; I am as well. But I simply cannot stand  
4 here before you today and make that statement because I  
5 just don't know.

6 COMMISSIONER CLARK: It's 12:00. Let's take  
7 a break until 1:00. And we'll take up .037.

8 (Lunch recess.)

9 (Transcript continues in sequence in Volume  
10 II.)

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