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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate)
increase and increase in service)
availability charges by)
Southern States Utilities, Inc.,)
for Orange-Osceola Utilities, Inc.,)
in Osceola County, and in Bradford,)
Brevard, Charlotte, Citrus, Clay,)
Collier, Duval, Highlands, Lake,)
Lee, Marion, Martin, Nassau,)
Orange, Osceola, Pasco, Putnam,)
Seminole, St. Johns, St. Lucie,)
Volusia and Washington Counties.)

DOCKET NO. 950495-WS

VOLUME II
AFTERNOON SESSION

PROCEEDINGS: SPECIAL AGENDA
BEFORE: JULIA L. JOHNSON, Chairman
J. TERRY DEASON, Commissioner
SUSAN F. CLARK, Commissioner
JOE GARCIA, Commissioner
E. LEON JACOBS, JR.,
Commissioner
DATE: Friday, November 13, 1998
TIME: Commenced at 1:30 p.m.
PLACE: Betty Easley Conference Center
4075 Esplanade Way
Room 148
Tallahassee, Florida
REPORTED BY: RAY D. CONVERY, Court Reporter

ORIGINAL

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/FPF/DOCT...

P R E S E N T

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10 JOHN JENKINS, Marco Island Fair Water Rate Defense
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11 MICHAEL TWOMEY, Sugarmill Woods Civic Association
RON BROADBENT, Sugarmill Woods Civic Association
12 JOHN MAYLES, Sugarmill Woods Civic Association
RALPH NEELEY, Sugarmill Woods Civic Association
13 CHARLES STEPHENS, The Moorings and
The Moorings Homeowners Association
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P R O C E E D I N G S

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1 CHAIRMAN JOHNSON: We're going to go back on the
2 record, and, Commissioner Garcia, are you there?

3 COMMISSIONER GARCIA: Yes, I'm here.

4 CHAIRMAN JOHNSON: Great.

5 Before we go into the other issues, this is
6 probably an appropriate time to have the customers
7 come forward that wanted to comment on the issues.

8 MR. TWOMEY: Yes, Madam Chairman. Mr. John Mayles
9 and Mr. Ralph Neeley from Sugarmill Woods would like
10 to address you briefly. I'm not sure who they've
11 elected to have go first.

12 Gentlemen, if you could sit over -- did you want
13 to swear them or did you just want to hear from them,
14 or what's your pleasure, Madam Chairman?

15 CHAIRMAN JOHNSON: Do we need to swear them in?
16 No?

17 MR. JAEGER: No, we don't normally swear at a
18 special agenda conference.

19 CHAIRMAN JOHNSON: Okay. If you could, though,
20 state your --

21 MR. JAEGER: If tempers get hot enough, maybe so.

22 CHAIRMAN JOHNSON: If you could state your name
23 and address for the record, that will be helpful, and
24 then just begin your comments.

25 MR. NEELEY: Good afternoon, Commissioners. My

1 name is Ralph Neeley. I'm the chairman of the
2 Sugarmill Woods Civic Association Utilities Committee.

3 The gist of my message to you from the residents
4 of Sugarmill Woods is please do not impose the
5 surcharges recommended by your staff in Schedule 2 or
6 as amended in Schedule 6. We believe either of these
7 two schedules will generate revenue from Sugarmill
8 Woods in excess of revenues shown in Schedule 5. This
9 excess revenue appears to be a subsidy cost to
10 Sugarmill Woods in excess of Schedule 5 which would go
11 to other systems.

12 Based upon the history of the Public Service
13 Commission decisions in the 920199 case, refund case,
14 we doubt we would ever get a refund in the current
15 situation if the revenue requirement reverts to that
16 in Schedule 3. Our reasoning is simple. The utility
17 always gets monies due them. Either you pay or your
18 water is cut off. Conversely, monies paid to this
19 utility, to this utility have not been refunded to
20 customers due the refund.

21 In a case presently under appeal, the First
22 District Court of Appeals ordered surcharges and
23 refunds. Florida Water Services said such surcharges
24 were unfair and paid bus fares and for meals for nine
25 busloads of people facing surcharges to come to

1 Tallahassee to fight the surcharges.

2 Times have changed. Now Florida Water Services is
3 demanding those same customers pay surcharges to them
4 in advance on an unsettled case. I sincerely hope you
5 do not help them be unfair to their customers.

6 A few years ago the owners of Florida Water
7 Services moved into South Carolina and bought many
8 water systems, some meeting the requirements and some
9 were substandard. When they tried to raise the rates
10 of all systems to upgrade the substandard systems, the
11 South Carolina authorities refused to allow the rate
12 increases. The owners of Florida Water Services sold
13 the systems in South Carolina and moved out of the
14 state. South Carolina is well rid of these leeches.
15 I wish we were, too.

16 I thank you for your time.

17 CHAIRMAN JOHNSON: Thank you.

18 MR. TWOMEY: Mr. Mayles?

19 MR. MAYLES: Good afternoon, Commissioners. My
20 name is John Mayles. I live at 103 Douglas Street in
21 Homosassa. I have resided in Sugarmill Woods since
22 1989, and I am currently the chairman of our civic
23 association advisory committee on utilities. I am a
24 former president and board member of the association.

25 I was encouraged when the Commissioners agreed to

1 reschedule this conference from November 2nd, at the
2 same time giving your staff the opportunity to come to
3 Citrus County for the express purpose of explaining to
4 our residents the potential consequences if you decide
5 today to accept your staff's recommendations. I
6 attended the meeting in Lecanto on November 9th, and I
7 had to wonder this morning whether Mr. Hill and I were
8 at the same meeting.

9 I was disappointed and shocked by the inability
10 off your staff's spokespersons to provide an adequate
11 rationale or to clarify, let alone justify, their
12 recommendations. Neither were they prepared to
13 quantify the cost to ratepayers if the complex,
14 abstruse and self-serving rate structure proposed by
15 Florida Water Services is indeed adopted today.

16 I would like to think, Commissioners, that you
17 have been briefed on that disorganized and chaotic
18 meeting which, far from convincing the large crowd
19 present of the merits of the proposed agreement,
20 served only to convert the event into a public
21 relations fiasco for the Public Service Commission.
22 In the words of Senator Anna Cowan, all those present
23 were treated to so much gobbledygook for two long and
24 frustrating hours. The proposed rate formulas remain
25 convoluted, complicated and virtually impossible to

1 understand without full disclosure of all the costs
2 and consequences to each individual system.

3 I find it astonishing that only three months
4 before the rate hearing that was scheduled for
5 February, 1999, as we understood it, that staff should
6 recommend any formula involving payment of
7 surcharges. Even they recognize that a final decision
8 on this docket could result in Florida Water Services'
9 being ordered to make refunds to customers. Those
10 ratepayers throughout Florida who for too many years
11 have suffered the misfortune of having to deal with
12 Southern States Utilities, since renamed Florida Water
13 Services in a vain attempt to project a kinder and
14 gentler image, would justifiably be outraged if you
15 adopt this formula today.

16 There are some 70,000 customers in our state who
17 remain victims of the PSC decision in Docket 920199
18 which condemned them to pay increased rates to the
19 utility for a period of 28 months, subsequently
20 rescinded due to court decisions.

21 How many times and in how many hearings did we
22 hear in this very room the assurances of the utility's
23 own attorneys and spokesmen that in the unlikely event
24 the offending rates were ever overthrown, the
25 customers who had overpaid would be made whole? Well,

1 we are still awaiting the refunds subsequently ordered
2 by the PSC.

3 Please, Commissioners, do not let a similar
4 injustice be made even a remote possibility by the
5 decision that you reach today. Thank you.

6 CHAIRMAN JOHNSON: Thank you.

7 MR. ARMSTRONG: Madam Chair, if I might just
8 address a couple of comments that were made? And I
9 want to be clear on the record, obviously, because
10 Sugarmill's customers are our customers, and indeed
11 there have been lengthy adversarial positions
12 regarding the uniform rate structure, but I think the
13 record has to be made clear on a couple of matters.

14 Sugarmill Woods customers are paying among the
15 lowest water rates in the -- water rates in the state
16 of Florida at this time.

17 We have never been ordered by a court to make
18 refunds. Quite to the contrary, we have always been
19 successful in court in having Commission orders to
20 make us refund overturned. It's a fact, and we
21 continually hear and -- hear our men disparaged and
22 called leeches. We want to work with those customers.
23 We've often met with those customers at Sugarmill
24 Woods, and frankly we are concerned that we continue
25 to be labeled leeches, but I can state and I want to

1 state for the record that I've spoken with other
2 customers there who do not so refer to us.

3 The last point regarding the formulas being too
4 difficult to understand, we all know -- and I just
5 want to make sure it's properly reflected on the
6 record and that Sugarmill Wood's customers know that
7 they have been represented at all instances by not
8 only the Public Counsel's Office but and/or Mr. Twomey
9 and/or other counsel in each one of these matters.
10 While they individually might find these matters
11 complex, they have had counsel who do understand these
12 matters who have participated fully and have had their
13 say.

14 Now, it is not the position of any regulator nor
15 can the utility make sure that every single customer
16 understands, although we would like to make sure every
17 single customer understands. I myself wrote a letter
18 not long ago asking, do you want us to come out to
19 speak to y'all, and I haven't heard any response to
20 that letter, but I again offer that. I will come out
21 and do my best to let them understand and help them to
22 understand. However, these issues are complex, as we
23 all know, but they're regulatory issues, they are not
24 unique, and so I just want to make that offer once
25 again.

1 I just want to make sure that the record is
2 straight regarding we haven't made refunds. We
3 haven't been ordered to in a way that has not been
4 reversed by the court of appeals at this point in
5 time, or unless an order -- and that only relates to
6 Spring Hill and not Sugarmill Woods, this pending
7 appeal. We have always acted according to the law.
8 Thank you.

9 CHAIRMAN JOHNSON: Thank you, Mr. Armstrong.

10 Mr. Twomey?

11 MR. TWOMEY: Just very briefly. The point Mr.
12 Mayles was trying to make, the point he did make in my
13 view, is that he heard, as did his fellow residents of
14 Sugarmill Woods, as did others, for years that if they
15 were overcharged under uniform rates, there wasn't any
16 problem, they would get their refunds. They were told
17 that repeatedly. They were told by this Commission,
18 the Commission staff and the utility.

19 And at that point in these lengthy proceedings
20 when it appeared -- not when it appeared, when the
21 court reversed the uniform rates and it came back to
22 the Commission, the utility fought tooth and nail to
23 prevent the refunds and refunds were voted down by a
24 majority of this Commission. That's what Mr. Mayles
25 speaks to.

1 I don't think Mr. Mayles or his people are
2 interested in talking to members of the utility or
3 they otherwise would, I assume, have accepted their
4 invitation.

5 The level of the rates they pay to anybody else in
6 this state is irrelevant to this proceeding.

7 Lastly, the amounts that they would have to pay
8 under any of these scenarios remain complicated and
9 convoluted. This Commission was asked additional
10 information on behalf of these individuals by
11 Representative Argenziano. That information was not
12 forthcoming.

13 I challenge you as you go through this process, if
14 you go any further, and I would hope that you don't,
15 ask your staff to explain, under these various
16 schedules, who's going to get hit with what increases
17 if you accept the company's proposition, if you do the
18 -- if you have a hearing or you order the surcharges
19 and the prospective rate increase to cover the worst
20 case scenario, ask your staff who pays, because it's
21 not real clear. You need to ask them whether
22 everybody's going to pay, whether it's the people with
23 cap rates are going to pay some kind of an increase
24 under any of these scenarios or whether they get a
25 free ride. You need to ask the staff whether they're

1 going to modify these. You need to ask the staff if
2 they're going to change the so-called rate cap bands
3 and whether some people, despite the increases they
4 suggest, will get actual reductions.

5 Some of the outcomes as we've figured them -- and
6 there's myriad of them, which makes it more difficult
7 -- some of the outcomes are nothing short of bizarre,
8 but whatever they are, they're not clear to my folks
9 and they're not clear to me. Thank you.

10 CHAIRMAN JOHNSON: Thank you, Mr. Twomey.

11 MR. ARMSTRONG: Madam Chair, I just have a brief
12 response, because again it's suggested by Mr. Twomey
13 that this company and/or its attorneys have indicated
14 that refunds would be made, and that is not accurate.
15 We'll make refunds once required by law. We have
16 never to date been required by law to make those
17 refunds, so I just want to make sure we're very, very
18 clear on that, nor did we ever say we'd make refunds
19 unless required by law.

20 CHAIRMAN JOHNSON: Commissioners, I think before
21 the break -- and I want to thank the two customers for
22 their testimony.

23 Before the break there was a suggestion that we go
24 through the issues other than Issue 3. Is that the
25 will of the Commission, and then to follow issue by

1 issue?

2 MR. HILL: Certainly we can do that, Madam
3 Chairman. I guess the next would be Issue 4, and that
4 issue is, in light of the decision to mandate, what's
5 the appropriate action the Commission should take?

6 We wrote this recommendation after all of the
7 discussions with respect -- this recommendation was
8 written after all of the discussions on settlement
9 offers ended. As everyone is aware, there was another
10 offer that was filed yesterday, very close to the
11 first, and in fact we had two items that we believed
12 would cause this Commission not to be able to
13 unilaterally accept any offer from the company, as we
14 talked about. Those we believe dealt with recovery of
15 the revenue. We touched on it with the customers
16 speaking and Mr. Twomey touches on it periodically,
17 and that is rate structure.

18 Rate structure is not at issue in this. This is
19 not a brand-new filing in a brand-new hearing. Rate
20 structure is over with. One of our concerns with the
21 offer of settlement by the utility was that it would
22 have the utility collect the revenue in a manner other
23 than that adopted by this Commission and upheld by the
24 court, and that's what caused us to say the Commission
25 can't really come in and accept this offer.

1 One of the items we missed was gain on sale.
2 That's my fault. It got lost in the numbers. The
3 fact is, I drug that docket into this. From the very
4 first meeting we had on settlement discussions, I drug
5 that particular docket in. Certainly had we thought
6 of that when we were writing this recommendation, we
7 would have had a second problem, one, recovery of the
8 revenues, and second, the involvement of other parties
9 because of this other docket.

10 Nevertheless, we missed that, so I'll include it
11 now. Our problems with the offer of settlement was
12 the recovery of the revenue. We believed that any
13 deviation from the rate structure adopted by the
14 Commission and approved by the court will make you
15 susceptible, and in fact we believe you'll lose on
16 appeal anything you do that changes the rate
17 structure.

18 Given that, we were then left with, what are we
19 going to do? It's been remanded back. Our
20 recommendation is, quite simply, if you cannot accept
21 an offer of settlement that would be in the best
22 interests of all citizens, and recognizing that maybe
23 the best interests of one is not in the best interests
24 of a body, but if you can't accept something on behalf
25 of all customers, what should you do?

1 As I said earlier, there's a Category 1 that in
2 our opinion -- and I don't think there's any
3 difference amongst any members of staff -- you don't
4 have any choice, you have to do it. And so our
5 recommendation is that you go ahead right now and
6 authorize the utility to increase their rates to take
7 care of those Category 1 items and to surcharge
8 anything they need to surcharge. They are due those
9 monies, and any further delay just causes that to
10 grow.

11 And then there's the second part, the Category 2
12 items that, of course, in our perspective and in our
13 opinion we have lost but you've been given an
14 opportunity to win back. We believe, since you're not
15 able to accept an offer of settlement, that you should
16 go ahead and go to hearing, and we will try to win
17 everything we can for the customers.

18 Our recommendation goes beyond that in that, who
19 is going to hold the money? We've touched on that a
20 couple of times today, and while Mr. Twomey and I
21 believe even Mr. Shreve and the customers have said
22 they don't want the company to hold it and they'd
23 rather just wait and pay that bill if and when it's
24 due, that's not something I'm willing to recommend to
25 the Commission.

1 Rate structure can cause some very unusual things
2 in this very docket, and I'm -- I cannot recommend
3 that you go forward and not collect money and with the
4 chance that you go back to customers in the future and
5 say, you owe us four years' worth of consumption. I'm
6 sorry, I just -- in my heart of hearts I can't go
7 along with that. I'm the kind of person that wants to
8 pay it now. Don't come to me at the end of the year
9 and tell me I owe you money all of a sudden because
10 I'm not going to have it, and that was basically our
11 perspective, was, this money's in question if we go to
12 hearing.

13 Now, you can grant to it the utility and allow
14 them to collect subject to refund, and even though the
15 customers view that to be analogous to the decision in
16 199, I do not. This is money subject to refund. It's
17 not a matter of whether we decide a refund is due the
18 way 199 was done. If the only way we can have refunds
19 will be if there's surcharges -- and I don't remember
20 all of that right now, but it was a different issue --
21 our recommendation, in short, is that we go to
22 hearing, but that you go ahead and authorize the
23 utility to increase rates immediately to -- as though
24 the court had remanded it back and that the company
25 had won, the worst case scenario. Let them collect

1 that money prospectively and let them begin billing
2 the surcharges but place it subject to refund, and 18
3 to 24 months from now when it's all over with, if we
4 have been successful the third or fourth time with the
5 court and if they uphold the Commission, then there
6 would be refunds with interest. On the other hand, if
7 we go to court and we're not successful a third or
8 fourth time, the customers would not owe any more than
9 they had already paid, and that's basically our
10 recommendation in Issue 4, is go ahead and set it for
11 hearing. We'll go, we'll fight, we'll put on the best
12 case that we can. We will litigate the two issues
13 that the court has said we are allowed to.

14 COMMISSIONER JACOBS: On the issue of the annual
15 average daily flow, if you were to go to hearing,
16 that's an all or nothing proposition, and I guess this
17 goes back to the discussion that Mr. Twomey brought,
18 that we've essentially weighed the balance as -- that
19 the -- in terms of the company winning all, in other
20 words, we lost out on that in the courts, and so we're
21 awarding them surcharges as if we'd lost that.

22 MR. HILL: Yes, sir.

23 COMMISSIONER JACOBS: And so my question now is,
24 is there some middle ground there, or is that an all-
25 or-nothing proposition? Can we balance the kitty on

1 that in some way, form or fashion?

2 MR. HILL: I think what you're asking me,
3 Commissioner, is what the probabilities are of some of
4 these outcomes, and is the annual average maximum --

5 COMMISSIONER JACOBS: Actually not. Actually not.
6 What I'm saying is this, not necessarily whether or
7 not there's a probability of one outcome or the
8 other. I'm actually asking whether, in resolving
9 that issue, we have to go fully one way or fully the
10 other.

11 MR. HILL: No, sir. In my mind, if you open the
12 record and have another hearing and take evidence, it
13 would seem to me that staff and every other party can
14 put on whatever they want and that it may not be a
15 matter of annual average or max month. It might be
16 some minimum system required to serve. It might be --
17 who knows what we might get in the way of
18 methodologies or testimony. So I believe --

19 COMMISSIONER JACOBS: So your answer to my
20 question actually is yes, there could be some --

21 MR. HILL: Oh, yes, sir, I believe there could be
22 something that we -- no one's even dreamt of. I don't
23 believe you're going to be held to only one of two
24 possibilities that you have to litigate. I think the
25 issue that's been remanded back to you is the

1 appropriate way to determine used and useful.

2 Certainly we have some benchmarks in my mind that
3 we would have to prove. Number one, I believe the
4 court said that we apparently changed policy without a
5 reason, so obviously I think we're going to have to
6 address ourselves to that issue. Is there a
7 Commission policy or is it a staff practice? Was
8 there a change in that policy or practice or was there
9 not? So I think we've got some things that we have to
10 do in response to the court remand.

11 But then beyond that I think the next question is,
12 what's the appropriate way to do used and useful, and
13 I think the parties would be free to submit witnesses
14 and testimony to say neither way you considered it
15 last time was appropriate, this way is appropriate.

16 COMMISSIONER JACOBS: But in the context of this
17 docket, it probably is all or nothing. We have to go
18 with either -- what the court gave us in terms of
19 options?

20 COMMISSIONER CLARK: I agree with Commissioner
21 Jacobs on this. It appears to us they gave us the
22 option of going -- accepting a reversal or coming back
23 and proving that what we used was correct, not that we
24 have yet a third option to prove up a different way of
25 doing it.

1 MR. HILL: And if that is the case, then I think
2 that changes everybody's risk factor, because I
3 believe Mr. Twomey and Sugarmill Woods intend to
4 introduce a third option, and so that was not my
5 reading of it, and it may well be that legally, that
6 yes, that's exactly right. Again, I know there are
7 certain things with respect to our decision that we
8 have to do. There was an apparent change in policy.
9 I know we have to address it here and if we go.

10 MS. JABER: Commissioners, just to answer your
11 question from Legal's interpretation of this opinion,
12 the opinion is specifically silent as to if there is a
13 middle ground, but it's that silence that I think Mr.
14 Hill is basing his opinion on in our discussions with
15 him. What the court's opinion specifically says is,
16 "We reverse the order under review because the PSC
17 relied on a new method to determine the used and
18 useful percentage of wastewater treatment plant.
19 Here, as in Florida Cities --" and it quotes the
20 Florida Cities opinion where it talks about an
21 apparent policy shift. "While we do not rule out the
22 possibility that evidence can be adduced on remand to
23 show that calculating a used and useful fraction by
24 comparing average annual daily flows to the plant
25 capacity as stated on the operating permits is

1 preferable to the PSC's prior practice, we
2 nevertheless conclude that remand for the taking of
3 such evidence, if it exists, is necessary." So --

4 COMMISSIONER CLARK: Taking of such evidence, what
5 evidence, the evidence on what we used? It doesn't
6 appear to me to open up much beyond that.

7 MS. JABER: Well, that's something you need to
8 decide, but our reading is it's specifically silent on
9 what methodology could be used.

10 COMMISSIONER JACOBS: Okay. So the answer to my
11 original question really is, we can only look at one
12 option or the other for purposes of this docket? If
13 we were to do it -- for purposes of this issue here,
14 but if we were to do a rulemaking or something, we'd
15 have the whole spectrum available to us is I think
16 what Mr. Hill said at the end. So I think I
17 understand that.

18 COMMISSIONER GARCIA: Now you've confused me. I'm
19 of the opinion that we have to prove up what our order
20 said or we take what the court has told us, but I
21 don't think -- I don't think this is an opportunity to
22 design a different rate structure or take evidence on
23 different -- we either prove up our position to the
24 satisfaction of the court or we take their decision.

25 COMMISSIONER JACOBS: I agree, Joe.

1 CHAIRMAN JOHNSON: Any other questions on that
2 point? I guess staff would disagree, but I think the
3 Commissioners --

4 COMMISSIONER CLARK: Is that true on the other
5 one, too?

6 MS. JABER: It's similar language on the other
7 one.

8 What I was going to say, Commissioner Jacobs, is
9 that you have to remember the court only had before it
10 -- unless I'm wrong, Ralph, and correct me -- annual
11 average daily flow versus the max month. So in
12 reaching this conclusion, they were reaching the
13 conclusion based on the evidence or lack thereof that
14 was before them. So in taking more evidence on the
15 used and useful methodology, it's quite possible you
16 could have other testimony. I wouldn't recommend that
17 you specifically rule that out, but obviously it's
18 within your discretion.

19 COMMISSIONER GARCIA: Mr. Hoffman, do you agree
20 with that?

21 MR. HOFFMAN: No, I think that the order of the
22 court was very clear, Commissioner Garcia.

23 I disagree with the assertion that the order was
24 silent on these two issues. The court found that the
25 Commission had abandoned two prior policies that

1 addressed used and useful issues, and the court
2 remanded the case back to the Commission to -- and
3 placed the burden on the Commission to provide
4 evidence, if it can; if it can. It says that, said
5 that on both issues.

6 When the court was talking about the wastewater
7 treatment plant issue, the court said, "The PSC must
8 on remand give a reasonable explanation, if it can,
9 supported by record evidence as to why average daily
10 flow in the peak month was ignored." That's your
11 mandate from the court.

12 Move over to lot count. There the court says,
13 "For this policy shift, 2, the PSC must give a
14 reasonable explanation on remand and adduce supporting
15 evidence, if it can, to justify a change in policy
16 required by no rule or statute."

17 Then the court goes on to say, "That failing, the
18 PSC should adhere to its prior practices in
19 calculating used and useful percentages for water
20 transmission and distribution systems and wastewater
21 collection systems serving mixed use areas."

22 I think it's specifically addressed, and I think
23 the Commission would be going outside of its authority
24 if it essentially opens up these used and useful
25 issues to various proposals on remand.

1 CHAIRMAN JOHNSON: Mr. Twomey?

2 MR. TWOMEY: Well, it just depends on how much we
3 want to tie our hands here. I mean, the court looked
4 at these things and they said you have to go ahead --
5 by the way, I would urge you to read, reread if you
6 haven't read this recently because I hadn't read it
7 recently, the quote Mr. Stephens gave you from the
8 court's order, okay? "Remand for the taking of such
9 evidence is necessary," in parens, "(if it exists),"
10 but, "Remand for the taking of such evidence is
11 necessary." The court is saying, in my view, after
12 having not looked at this for a while, it's saying
13 you've got to take the evidence, that not doing it is
14 out.

15 I haven't read this thing for a long time and I
16 apologize, but, "Remand for the taking of such
17 evidence is necessary."

18 Now, is the court going to care? Is the court
19 going to care? Do they know enough to care? Do they
20 care enough about this to care? If the Commission
21 takes evidence on this and comes up with something
22 that's a shade off of whatever you call the exact
23 methodology that you called lot count, if you come up
24 with something that is -- that makes more sense than
25 what you did before and treats both sides perhaps more

1 fairly, as I suggest you can do with what you did for
2 Sugarmill Woods in 1992, which is eminently more
3 logical than either extreme here, if you come up with
4 something that's more fair for both sides and you take
5 evidence on it and you support it and you explain it
6 to the court, do you really think the court's going to
7 reject that and say, "No, we tied your hands to one
8 extreme or the other"? I don't think -- I don't think
9 the court would do that, and I don't think you need to
10 stretch to read this opinion that way.

11 So the answer, my answer to you is, Commissioner
12 Jacobs, can you do something in between, I think so,
13 if you take evidence and you rationally explain it to
14 the court. I don't think you're bound to either one
15 or the other.

16 Now, that said, if staff -- I'm not sure what the
17 staff's position is on this, but if Mr. Hoffman's
18 position prevails and says you can only do one or the
19 other, that's fine with me, too, because I think we
20 can -- we can and your staff has already told you
21 repeatedly they think they can defend successfully the
22 lot count, but I'm suggesting to you that you don't
23 need to tie your hands to that, and if you do
24 something rational and reasonable, the court won't
25 slap your hand for it.

1 MR. HOFFMAN: Madam Chairman, I just want to
2 clarify that my position is a position that's been
3 articulated by the Legislature under the
4 Administrative Procedures Act. The court reversed the
5 Commission on the lot count and the wastewater
6 treatment used and useful issues under the authority
7 of Section 120.68, paragraph (7), paragraph (e)3, and
8 remanded.

9 What does that paragraph say? It says, "The court
10 shall remand a case to the agency for further
11 proceedings when it finds that --" and the pertinent
12 part says, "the court's decision was inconsistent with
13 officially stated agency policy or a prior agency
14 practice if deviation therefrom is not explained by
15 the agency." That's what we're operating under on
16 remand, and that provides the parameters for the scope
17 of any hearing you may hold on remand.

18 MR. TWOMEY: Yes, Madam Chair and Commissioners,
19 but the key word, deviation, isn't explained. Now,
20 I'm not -- I'm urging you not to tie your hands on
21 this baby. You can go back and rehear this. The
22 court sent it back to you to give you a chance to
23 explain your deviation, and you can do that. That's
24 what -- I mean, this isn't a threshold issue anyway,
25 but you don't need to be tying your hands in a manner

1 that says you can't explain the deviation.

2 MR. HILL: Madam Chairman, I don't know that you
3 need to decide that now. I certainly will back up and
4 say that, after discussions with our Legal, I don't
5 know how we could have a third methodology that
6 explains why we changed the policy. So we'll go to
7 hearing and take care of it as we're supposed to, and
8 I didn't mean to cause any confusion here, and I don't
9 know that you have to make a decision as to what is or
10 isn't going to be allowed at the hearing at this
11 juncture.

12 CHAIRMAN JOHNSON: Thank you, Mr. Hill.

13 MR. SHREVE: Ms. Chairman.

14 CHAIRMAN JOHNSON: Yes, Public Counsel.

15 MR. SHREVE: Very briefly, even if you have a
16 policy in the past that's a non-rule policy, it would
17 have to be supported by evidence in the record.

18 COMMISSIONER GARCIA: Jack, could you speak into
19 the mike? I can't hear you.

20 MR. SHREVE: Yes, sir. Commissioner, Mr. Jaeger
21 wouldn't get out of my way.

22 The way I -- my view is that you go to hearing,
23 you take the evidence and see what the evidence
24 supports and that's going to be your decision. That
25 evidence may support the past policy, it may support

1 the decisions you made earlier, or it may support a
2 different deviation from the policy that you've had in
3 the past, but either way, whatever your decision would
4 be would have to be supported by the evidence, even if
5 it was past policy. So I think you'd be able to open
6 -- make that decision later. However, I don't think
7 it's one that you have to decide now as to where you
8 can go with it.

9 CHAIRMAN JOHNSON: Thank you.

10 Any other questions, Commissioners?

11 COMMISSIONER CLARK: I don't know that we've ever
12 had our presentations by the parties, the ten-minute
13 presentations that were to be given a length at your
14 discretion, and I think maybe at this point it's
15 appropriate to sort of go in order and hear from them
16 on this issue; and I believe in that sort of
17 discussion may be a discussion of the pros and cons
18 of the recommendation and why they think a different
19 way of approaching it is more appropriate.

20 CHAIRMAN JOHNSON: Mr. Cresse, are you going to --

21 MR. CRESSE: I'm unclear at this point in time as
22 to staff's recommendation. In the written
23 recommendation they said if we altered our proposal
24 they thought it was in the best interests of the
25 consumers, and I'm wondering is that still the

1 position of the staff that they think that the altered
2 proposal, if adopted by the Commission, is in the best
3 interests of the consumers of this utility?

4 MR. HILL: Yes. I guess we hadn't gotten there
5 yet, and no one had ever asked us what we thought
6 about it, but yes, and we can go into all the reasons
7 if you like, and maybe now is not the time.

8 CHAIRMAN JOHNSON: I'm not sure what you're saying
9 yes to. You're saying yes, that the modified --

10 MR. HILL: I think the offered settlement -- you
11 know, excluding the gain on sale problem, I think the
12 offered settlement from the utility is in the best
13 interests of the citizens.

14 CHAIRMAN JOHNSON: And it resolves the issues that
15 you had raised in Issue 4?

16 MR. HILL: Yes, ma'am.

17 CHAIRMAN JOHNSON: Okay.

18 COMMISSIONER CLARK: I guess I -- it seems
19 appropriate to me now that the staff's made their
20 recommendation -- this is like an agenda conference.
21 We've heard from them. Now let's go down the line and
22 hear from the parties.

23 CHAIRMAN JOHNSON: He was getting ready to.

24 COMMISSIONER CLARK: Oh, I'm sorry.

25 MR. HOFFMAN: Thank you, Madam Chairman,

1 Commissioners.

2 We believe that our proposal as modified serves
3 the public interest, and I want to explain to you why
4 we believe that. First, I want to go back and take
5 this step by step, and I want to start with the issues
6 the court reversed without any further opportunity for
7 hearing.

8 Three things that you had, three items: First,
9 you have the court's reversal of the Commission's
10 failure to treat reuse facilities as 100 percent used
11 and useful; second, you have the Commission's
12 adjustment to Florida Water's equity based on the one-
13 sided refund order that was reversed in another
14 appeal. The court reversed that, too. Then, third,
15 you have the Commission's confession of error in
16 connection with the used and useful methodology
17 employed for three wastewater treatment plants. These
18 three issues are what staff has been referring to
19 today as the Category 1 issues. These items result in
20 a required annual revenue increase of approximately
21 1.2 million and surcharges of approximately 2,850,000,
22 including interest on the surcharges at approximately
23 six percent, which the company would be entitled to,
24 and I'm talking about the interest under your GTE
25 remand order.

1 So it's a given -- and I think everyone that has
2 spoken today agrees with this -- it's a given that
3 we're looking at an annual revenue increase at minimum
4 of 1.2 million and surcharges with interest of 2.85
5 million if the new rates -- and that assumes the new
6 rates go into effect on December 13th of this year.

7 COMMISSIONER DEASON: Mr. Hoffman, let me
8 interrupt. You were quoting 1.2 million. I'm looking
9 at page 47 in the recommendation, and it shows 1.3.
10 Are you differing with staff's calculation?

11 MR. HOFFMAN: First let me say, Commissioner, when
12 I say 1.2 million, that's obviously an estimate, give
13 or take a few thousand, but the difference between my
14 1.2 million and the number that you're looking at on
15 page 47 of the recommendation is, as I understand it,
16 the number on page 47 including the 50 basis point
17 equity adjustment that has already been implemented.
18 In other words, in the final order when the Commission
19 decided this rate case, there was a downward
20 adjustment of 50 basis points with, I believe it was
21 a two-year period that's expired. And so now with our
22 price -- with our index filing for this year, we also
23 filed rates that recaptured that 50 basis points.

24 COMMISSIONER DEASON: Does staff agree with that?

25 MR. HILL: Yes, sir.

1 COMMISSIONER CLARK: Could you give me those
2 figures again?

3 MR. HOFFMAN: Commissioner, the annual increase on
4 the issues that were reversed without the opportunity
5 for further hearing are 1.2 million, and the
6 surcharges, including six percent interest, are 2.85
7 million, and that takes us into next month. That's as
8 of December of 1998.

9 COMMISSIONER DEASON: The 2.85 includes interest
10 calculated until --

11 MR. HOFFMAN: Commissioner, it begins when the
12 tariffs went into effect in December of '96 and runs
13 through December 13, 1998.

14 COMMISSIONER DEASON: And your 2.85 includes
15 interest during that period as well?

16 MR. HOFFMAN: Yes.

17 COMMISSIONER CLARK: How long would the surcharge
18 be in effect for?

19 MR. HOFFMAN: The surcharge under that scenario
20 would have been in effect for two and a quarter years.

21 COMMISSIONER JACOBS: That differs from the
22 calculation we have with staff which had it for two
23 years, is that correct? If seems like I would have a
24 lower number for them than --

25 MS. CHASE: Commissioner, the number that staff

1 has on page 47 is for two years only, and it's without
2 interest. The number you're hearing from Mr. Hoffman
3 has interest.

4 MR. HOFFMAN: Commissioner, Mr. Cresse is going to
5 hand out a document which is a summary of some these
6 numbers to make it easier, hopefully, for you to
7 follow me as I go along through my presentation.

8 Commissioners, putting the Category 1 issues to
9 the side for a second, let me move on to the two
10 remaining issues that were reversed and remanded to
11 the Commission. First the use of the lot count
12 method, which is a departure from prior Commission
13 policy.

14 The use of the lot count method, Commissioners,
15 will require you to convince the court -- and I am
16 assuming, which I think you need to assume here this
17 afternoon, that if this case goes to hearing, it's
18 going to appeal. The lot count method will require
19 you to convince the court that because a pipe passes
20 in front of an empty lot in providing service to homes
21 further down the street, then something less than the
22 full amount of that pipe and the investment in the
23 pipe could be utilized to serve those customers down
24 the street. That's what you're going to have to
25 convince the court.

1 Now, that's a position that ignores reality,
2 ignores the fact that there are minimum sized
3 facilities that the company is required to install in
4 order to provide service, and is discriminatory when
5 compared with how the Commission treats distribution
6 facilities for used and useful purposes for electric
7 and telecommunications companies.

8 If you stick with the lot count method and abandon
9 your prior policy of rejecting it -- if you advance
10 the lot count method, you're also going to have to
11 convince the court that a water distribution pipe that
12 provides service to a 200-unit hotel places the same
13 demand on a system as one 1,500-square-foot home. And
14 again, we think that ignores reality and ignores the
15 actual use of the system. That's why you've rejected
16 it in the past consistently, particularly for water
17 transmission and distribution systems and wastewater
18 collection systems that serve mixed use areas. You
19 rejected it twice in the case of the Marco Island
20 service area.

21 Now I'm going to move away from lot count, and,
22 Commissioners, I'm talking about why -- I'm at the
23 point now where I'm talking about I believe the
24 difficulties that you'll face on appeal, because I
25 think that goes into assessing the risk of going to

1 hearing and going through the appellate process and
2 having the tab on the surcharges run.

3 Now, on the wastewater treatment used and useful
4 issue, the matching concept that has now been twice
5 rejected by the court, as Mr. Hill pointed out,
6 ignores the actual levels of use. Remember, we're
7 talking used and useful. It ignores the actual levels
8 of use of a wastewater treatment system that must
9 satisfy peak and seasonal flows. The used and useful
10 concept is universal to all utility industries. In no
11 other industry is a utility denied recovery of
12 investment by applying average use. Ignoring that
13 additional facilities, additional capacity actually is
14 used by a utility such as Florida Water to meet peaks
15 ignores reality. No testimony could be presented
16 that this additional capacity was not used during the
17 test year.

18 We've talked a lot about the court's opinion. Ask
19 yourself this afternoon, how much confidence do you
20 have in pursuing these issues in light of the language
21 that the court used in their June 10 opinion? The
22 court said, "Proof that the Department of
23 Environmental Protection is now using different
24 language on the operating permit is not enough to
25 support a departure from prior PSC policy. As counsel

1 for the PSC admitted at oral argument, a change in
2 language on the face of the permit does not
3 necessarily bear any relationship to a change in the
4 actual capacity of any treatment plant. The use of
5 the PSC's new method to calculate used and useful
6 percentages is a shift in PSC policy which no change
7 in the wording of a permit justifies unless the
8 changes in the wording corresponds to a real change in
9 the operating capacity."

10 So the court goes on to say, "While we do not rule
11 out the possibility --" that's what the court's
12 saying, that there's a possibility. "While we do not
13 rule out the possibility that evidence can be adduced
14 on remand to show that calculating a used and useful
15 fraction by comparing average annual daily flows to
16 plant capacity as stated on operating permits is
17 preferable to the Commission's prior practice, we
18 nevertheless conclude that remand for the taking of
19 evidence, if it exists, is necessary."

20 The bottom line, Commissioners, I'm asking you
21 this afternoon to not ignore the language in the
22 opinion, the fact that the court on both issues casts
23 significant doubt on the Commission's ability to
24 justify these new policies. You have a tough case to
25 win on appeal.

1 Fast forward, Commissioners, to October 2nd. On
2 October 2nd, after you ordered the parties to try to
3 negotiate a settlement of this case, the company filed
4 a settlement offer which we also characterized as a
5 proposal to dispose of the mandate on remand. That
6 proposal consisted of the following: An across-the-
7 board increase in rates prospectively of 2.8 million.
8 That's the first thing. Secondly, the creation of a
9 regulatory asset to recover surcharges in the amount
10 of 4.4 million which would be recovered over a
11 five-year period beginning on the earlier of the
12 effective date of final rates in our next rate case or
13 three years down the road, October 13, 2001. Third,
14 that the company would recover this regulatory asset
15 in lieu of recovery surcharges. Fourth, that the
16 company would not seek recovery of additional rate
17 case expense incurred in this case following the
18 August 1, 1998, mandate from the First DCA. Fifth,
19 nor would the company --

20 COMMISSIONER DEASON: Could you repeat the third
21 one there?

22 MR. HOFFMAN: Yes. The company would not seek
23 recovery, Commissioner Deason, of additional rate case
24 expense incurred in this case following the First
25 DCA's mandate on August 21st of 1998. And, of course,

1 that rate case expense that I'm talking about includes
2 everything that's already been incurred on remand
3 would be incurred through hearing, would be incurred
4 through an appeal, possibly another remand. I don't
5 know.

6 Next, the gain on sale issue in our proposal, it
7 included a provision that Florida Water shareholders
8 would retain the gain on sale of the Orange County
9 land and facilities, that the docket opened to
10 investigate that would be closed and it would not be
11 reconsidered or revisited by the Commission.

12 And, finally, Commissioners, the last item of our
13 proposal was that the Commission would open up a
14 rulemaking docket to solve these problems on a
15 prospective basis, to establish rules, used and useful
16 rules that would allow water and wastewater utilities
17 the opportunity to recover prudently incurred
18 investments in their facilities.

19 Now, Commissioners, I should point out that we
20 were scheduled to go to special agenda on this some
21 six weeks back. It's been deferred twice, and because
22 of that deferral, we provided notice that the 4.4
23 million that we proposed to recover in the regulatory
24 asset has now been increased due to the passage of
25 time to 4,728,000. I'll call it 4.7 million.

1 Now, Commissioners, I want to move to that sheet
2 that I gave you because I want to compare the relevant
3 numbers.

4 COMMISSIONER CLARK: Mr. Hoffman, I need you to go
5 over the number for the surcharge to be charged after
6 three years or after the next rate case. What was
7 that amount?

8 MR. HOFFMAN: 4.4 million, and that is now 4.7
9 million. That's per our original proposal,
10 Commissioner Clark.

11 COMMISSIONER CLARK: And it was your proposal that
12 this be a regulatory asset?

13 MR. HOFFMAN: Yes, ma'am. And I'll provide some
14 explanation on that in a moment.

15 COMMISSIONER CLARK: Okay.

16 MR. HOFFMAN: Again, very briefly, let's go back.

17 It's a given Florida Water is entitled to a 1.2
18 million revenue increase and 2.85 million recovery of
19 surcharges, including interest. That's the minimum.
20 If you decide to reject the settlement proposal as
21 modified, the company is due these amounts
22 immediately, pursuant to the court's decision.

23 What's the maximum, what is the maximum risk for
24 customers if we go to hearing on these two issues on
25 remand and through the likely appeal and Florida Water

1 prevails on appeal? The maximum would be an annual
2 increase in rates of approximately 3.2 million, using
3 the staff's numbers, and the tab for the surcharges
4 with interest at six percent would increase to almost
5 \$12 million, and in all likelihood would exceed
6 \$12 million.

7 CHAIRMAN JOHNSON: Now, where are these numbers?
8 What are you reading from?

9 MR. HOFFMAN: Madam Chairman, I'm referring now to
10 the number that's under Column 7 of the total for
11 surcharges, the 11,860,000, and let me try and give
12 you a summary of how we calculate that.

13 If the company prevails on both issues ultimately
14 on appeal, the surcharges are going to run from
15 September of '96 when we filed our tariffs and they
16 became effective, through approximately January 1,
17 2001. Where do I get that date? I get that date by
18 saying we're scheduled to go to hearing in February.
19 We'll probably conclude our hearing process, file
20 briefs and have a final order issued July 1 of next
21 year. If you assume 18 months for a Florida Water
22 appeal, you're probably being somewhere between
23 conservative to reasonable. Our last appeal to just
24 bring it back to the PSC took 19 months, and obviously
25 we're still on remand. So the assumption there, and I

1 think it's conservative, takes us through January 1 of
2 2001.

3 What we did there was we took that time period,
4 September, '96, through 2001, that's four and a
5 quarter years, times two million, plus six percent
6 interest. That comes to approximately \$9 million.
7 That's on the lot count and the wastewater treatment
8 issue.

9 Now to the nine million I'll add the given, the
10 2.85 million in surcharges on the Category 1 issues.
11 Now I'm at roughly 11.85 million. To that I'm going
12 to add rate case expense on a remand on hearing and
13 through the appeal of at least 300,000. Now I'm over
14 12 million. I think it's conservative and reasonable
15 to estimate that surcharges will exceed 12 million.
16 The company is proposing to resolve this case for just
17 under 4.8 million out of a potential 12 million.

18 Now, Commissioners, as you know, we've modified
19 our proposal, and let me get into that aspect of it.
20 First --

21 COMMISSIONER DEASON: Mr. Hoffman, before you get
22 into that, are you indicating that it's your estimate
23 that you would have additional rate case expense of
24 \$300,000?

25 MR. HOFFMAN: Yes.

1 COMMISSIONER DEASON: Under which scenario, or is
2 that all three scenarios?

3 MR. HOFFMAN: Commissioners, I'm estimating that
4 rate case expense would be at least 300,000 beginning
5 with the time of the issuance of the mandate through
6 the hearing process, through another appeal, lawyers,
7 experts, what have you, costs.

8 COMMISSIONER DEASON: So would that apply to
9 Scenarios 1, 2 and 3 or just Scenario 3?

10 MR. HOFFMAN: 3, just 3, Commissioner Deason,
11 because Scenario 2 was just a number to give you --
12 was just an estimate to give you what the surcharges
13 would look like through the hearing process, July 1 --
14 which I estimated to be July 1 of '99 for completion.

15 COMMISSIONER DEASON: Okay. And so I'm comparing
16 apples to apples, let me ask you this question: How
17 do you propose to treat the regulatory asset which you
18 now calculate to be 4.7 million? Does it continue to
19 accrue interest, or does it just sit in your rate base
20 or in your capital structure, however you're going to
21 treat it, with no interest being accrued until the
22 expiration of the three years or the next rate case?

23 MR. HOFFMAN: No interest. Under our proposal,
24 Commissioner Deason, we were setting a set, fixed sum,
25 foregoing interest, and saying we're going to create a

1 regulatory asset to recover 4.4 million, now 4.7
2 million, period, no accruing interest.

3 Our modifications, Commissioners. First, the
4 staff has asserted in their recommendation that the
5 2.8 million annual revenue increase which we included
6 in our offer should be allocated among the service
7 areas pursuant to the Commission and court-approved
8 capband rate structure, and we have no objection to
9 that modification.

10 MR. SHREVE: Commissioner, I really hesitate to
11 interrupt, but I think I have to --

12 COMMISSIONER GARCIA: I'm sorry, I can't hear
13 who's speaking.

14 MR. SHREVE: I'm sorry. There we go.

15 I think we have a problem here that we have to
16 face. In all settlement negotiations that we've ever
17 had in the past all settlement negotiation offers and
18 counteroffers, whatever, have been confidential. I
19 hesitated to raise the point because I think the
20 Commission's just considering whatever is on the table
21 as an offer at this point and not as a settlement
22 offer that's been going on through prior negotiations.

23 I think we have -- and I don't know how we got
24 away from that at this point, but that's been the
25 situation in every case we've ever had, and I think we

1 have to be very careful of that or we're not going to
2 have any other settlement negotiations.

3 COMMISSIONER DEASON: Well, I guess -- is Mr.
4 Hoffman divulging any confidential information which
5 was discussed during the settlement --

6 MR. SHREVE: Well, I guess he's leading up to
7 whatever they have on the table right now which is all
8 that's really relevant, I suppose.

9 What I'm saying is, you don't come in here and
10 say, we've made this offer and it was turned down,
11 somebody else made a counteroffer, you just don't do
12 that, and we have never had that. I think you want to
13 get -- and that's the reason I've hesitated to get
14 into it because I think you're trying to decide --
15 make a decision on what they have on the table. All
16 that is relevant at this point is what they have on
17 the table right now and not prior settlement
18 negotiations, because all of that was confidential,
19 and even in the very recent past we have had reporters
20 calling us when there have been negotiations going of
21 a confidential nature that you just couldn't reveal.

22 COMMISSIONER DEASON: I agree with that.

23 Mr. Hoffman, is there any need to relay to what
24 was negotiated? You're putting an offer in front of
25 the Commission at this point, and it's either a good

1 offer or it's a bad offer, and you want to convince us
2 that --

3 MR. CRESSE: Commissioner Deason, I was at all the
4 conferences that were held and so forth. At the
5 conference we had, there was no specific
6 understanding. I agree with Mr. Shreve that what is
7 discussed in a settlement negotiation usually stays
8 in the settlement room, but no counteroffers were
9 made, so we had nothing to discuss.

10 COMMISSIONER CLARK: Let me -- I understood what
11 Mr. Hoffman was discussing was what staff had rejected
12 in their recommendation from his prior offer, so we
13 aren't getting into the settlement discussions. Do
14 you understand it that way, Mr. Shreve? I mean, he's
15 just saying what he's modified by this letter and
16 today from what he filed with staff that they filed
17 their recommendation on. That's what I understood,
18 and so I don't think it complicates or addresses the
19 issue you're concerned about.

20 MS. JABER: Mr. Shreve's point is well taken,
21 though. We should all be cautioned to adhere to the
22 agreement we made at the first settlement conference,
23 which was not to divulge any sort of --

24 COMMISSIONER CLARK: Has Mr. Hoffman done that?

25 MS. JABER: So far not, but I think even Mr.

1 Shreve acknowledges that. He's just making sure we're
2 all cautioned of it. Is that correct?

3 MR. SHREVE: Well, particularly you don't need to
4 come in -- if somebody makes an offer, makes that
5 offer in settlement negotiations, you don't come in
6 and reveal at the Public Service Commission, "I made
7 this offer. I was willing to take half of what I
8 asked for." You just don't do that, and that's the
9 reason I've kind of stayed out of it to this point,
10 but I think we have to recognize that -- it's what
11 Mr. Cresse said about there being an agreement at that
12 point. We have never had a settlement negotiation
13 that it wasn't agreed that everything that was
14 discussed was confidential and you just can't reveal
15 it; and that's all I'm getting to, and I hesitate to
16 get into it, but if there is that offer on the table
17 at this point, I think that's what -- where we should
18 be, but it's not really going back into the settlement
19 negotiations.

20 MR. HOFFMAN: May I continue, Madam Chairman?

21 CHAIRMAN JOHNSON: Uh-huh.

22 MR. HOFFMAN: Again, just to bring you back to
23 where I was, the staff raised in their revised
24 recommendation the issue of the rate structure and
25 running the 2.8 million annual revenue increase

1 through the capband rate structure, and we exceeded
2 that modification.

3 Now, secondly, the staff asserts that the 4.4, now
4 4.7, million in surcharge revenues should apply only
5 to customers of record during the time the incorrect
6 rates were in effect. Now, we disagree with that.

7 As part of our offer that we filed on October 2nd,
8 we agreed to recover considerably less than the
9 potential total amount of surcharge revenue which
10 would be due as well as applicable interest if we were
11 to prevail ultimately on appeal on the lot count and
12 waste water treatment issues. Now, the surcharges, as
13 I said, that were recoverable in the regulatory asset
14 as originally filed were 4.4 million, and due to the
15 passage of time are now at 4.7 million. Our rationale
16 there was that by creating a deferred regulatory asset
17 designed to recover these revenues, that you would
18 have the authority to order the recovery of that asset
19 from all ratepayers similar to the recovery of other
20 deferred assets, such as rate case expense, which, for
21 example, is recovered over four years; however, you've
22 heard me say today we're trying to get to the finish
23 line. So to achieve a settlement consistent with the
24 staff's recommendation, we've modified our original
25 offer as follows:

1 First, the 4.7 million in surcharge revenues would
2 be recovered only from the customers of Florida Water
3 who received service during the time the incorrect,
4 and by that I mean the pre-settlement, rates were in
5 effect and are still customers as of the time the
6 surcharges begin to be billed.

7 That approach would be consistent with your remand
8 order in the GTE case, in the GTE vs. Clark decision.

9 Now, surcharges would be billed under our
10 modified proposal effective January 1, 2000, and they
11 would be billed for a period of two years. The
12 surcharges would be billed at the level of 5.6
13 million, which when adjusted for Florida Water's
14 annual attrition level -- and I'm talking about
15 attrition of customers leaving the system -- of
16 approximately seven percent --

17 COMMISSIONER JACOBS: So the attrition is the
18 difference between the 4.7 and the 5.6?

19 MR. HOFFMAN: Yes, sir.

20 COMMISSIONER JACOBS: Now, when I saw that, I was
21 kind of confused as to how -- can we quantify that in
22 some way, form or fashion?

23 MR. CRESSE: Seven percent a year is the annual
24 attrition, and if you run that through the seven
25 percent formula, you'll come up to about 4.784, very

1 close to the 4.728. In addition, I think Mr. Hoffman
2 was fixing to tell you that we would agree that there
3 would be a total true-up of that figure to the 4.728.
4 If we would collect more than that, it would treat it
5 like a refund. It could not be paid out. You adjust
6 your CAIC if you collect more. Likewise, if you
7 collect less than that, you adjust CAIC for the lower
8 collection figure. So there's no gain on anybody's
9 part above or below 4.728, even though we'd be billing
10 out at the 5.6. No customer would pay -- every
11 customer would pay less than they would have paid had
12 the rates been in effect from the beginning of time,
13 because we're talking about 27 months here, we're
14 going to bill out surcharges only for two years, 24
15 months.

16 MR. HOFFMAN: Madam Chairman, that essentially
17 concludes our presentation.

18 Let me wrap up my remarks before I ask Mr. Cresse
19 if there's anything he'd like to add by saying that
20 the first thing we're asking you to do is to approve
21 or modify the settlement offer. Secondly, if the
22 company's modified settlement offer is not approved,
23 then the company must be granted an immediately annual
24 revenue increase of approximately 1.2 million and
25 surcharges with interest, which runs to approximately

1 2.85 million.

2 Finally, Madam Chairman, there's a reference on
3 page 38 of the staff recommendation regarding the
4 filing of tariffs reflecting the surcharges, and we
5 would ask that you reject the proposition offered by
6 staff that the company must file revised tariff sheets
7 reflecting the surcharges that are ordered within 14
8 days of the date of the order or otherwise forfeit the
9 right to collect surcharges.

10 First of all, there's no authority for such a
11 requirement. Practically, I am told by the company
12 that it will take probably at least two months to
13 calculate surcharges on a customer basis and prepare
14 the tariffs.

15 So with that, Madam Chairman, that concludes my
16 remarks, and I think Mr. Cresse has a few things that
17 he'd like to add.

18 COMMISSIONER DEASON: Well, before Mr. Cresse
19 begins, it is your proposal that surcharges would be
20 calculated on a customer-specific basis?

21 MR. HOFFMAN: Not necessarily, Commissioner. I
22 think that's within your discretion. It could be done
23 on a flat-rated basis or it could be done on a per-
24 customer basis, and I would point out to you that if
25 you go back and look at the GTE situation on that

1 remand order, what you did there was you imposed
2 a one-time \$9.66 surcharge, and you imposed that same
3 amount on different customer groups who took local
4 service but who paid different rates. So, for
5 example, patch providers who paid at the B1 rate,
6 residential customers, flat-rated or otherwise, so --
7 and there are others that are referenced in the order,
8 Commissioner Deason.

9 I think it would be within your discretion to
10 derive a fair and equitable rate structure for the
11 imposition of the surcharges. We're just saying that
12 if we're talking about per-customer calculations, we
13 need at least two months to do that.

14 COMMISSIONER DEASON: Is staff wanting per-
15 customer calculations?

16 MR. RENDELL: Commissioners, we have the surcharge
17 rates that would apply to each period for each
18 customer's bill. What we don't have is individual
19 customer bills usage. So we already have the
20 surcharge rates, the incremental difference in the
21 revenue requirements for the surcharge amounts versus
22 what was allowed, so we already have that and it's
23 available to all parties.

24 COMMISSIONER DEASON: But that's to calculate the
25 aggregate amount of surcharge, not what each

1 individual customer will be charged in the form of a
2 surcharge?

3 MR. RENDELL: That's correct, because that would
4 relate back to their actual bills during that period,
5 and we don't have that information. That's over two
6 years of information in the company.

7 COMMISSIONER DEASON: And it's not your proposal
8 that each individual customer's surcharge be
9 specifically calculated based upon past consumption
10 and be so billed?

11 MR. HILL: That's correct, that was not -- maybe I
12 should -- we had a discussion, it might have been in a
13 hallway somewhere, at one point, and I think what we
14 were talking about were several things.

15 First of all, I think the statute does say the
16 utility's not allowed to collect anything that's not
17 an approved tariff, and so we began asking ourselves,
18 even though the Commission authorizes the collection
19 of surcharges, how were we going to get that taken
20 care of? Also, to the extent customers want to call
21 us and question, you know, fine, I'm getting this bill
22 and I'm looking at that -- you know, am I being -- we
23 would need to have a document that an analyst could go
24 to and say where are you, and this is the authorized
25 surcharge rate for this period of time, and perhaps

1 we've gone about it incorrectly.

2 You know, we'll take all the help we can get, but
3 in our mind we thought we could put in an approved
4 tariff a surcharge rate for each of those that would
5 be there so that we could take care of calls that we
6 might get from customers and we have an approved
7 tariff so we meet the statute, and we realize that
8 when the surcharge is over with, that tariff's no
9 longer needed and we'll cancel that thing and put it
10 in the back, but I guess it was more administrative or
11 clerical the way we looked at it.

12 But, no, we certainly didn't contemplate putting
13 in a customer's name or number and some amount. We
14 were only looking at the surcharge rates.

15 COMMISSIONER DEASON: Is that your understanding,
16 Mr. Hoffman, as to the way you envision it working?

17 MR. HOFFMAN: Commissioners, I'm not sure how the
18 surcharges would be applied until the Commission makes
19 its decision. I just wanted to provide notice of a
20 concern that if this were done on a customer-specific
21 basis, a part of it will be driven by consumption, and
22 it's going to require individual customer
23 calculations. A part of it would also be driven by
24 how long that customer would have been on the system.

25 For example, Commissioner, if you look at the

1 action you took in GTE pursuant to the Supreme Court's
2 decision, a customer, for example, who became a
3 customer of Florida Water, if this is done on an
4 individual customer basis, say in February of 1997,
5 would have a lower surcharge than a customer who had
6 been on the system prior to or on September 20th of
7 '96 when the rates -- when the rates went into effect.
8 So there's a lot of work to be done on it if it's done
9 on an individual customer basis.

10 MR. RENDELL: Commissioners, we never envisioned
11 that each individual customer's surcharge amount would
12 be in the tariff, just the surcharge rates per system.

13 COMMISSIONER DEASON: And you need two months to
14 do that, Mr. Hoffman?

15 MR. HOFFMAN: If I may have a moment?

16 MR. SHREVE: Commissioner, while Mr. Hoffman is
17 getting that information, was your question to the
18 staff whether or not the surcharge was going to be
19 across the board or how it was going to be
20 calculated? Is the surcharge going to be calculated
21 on an individual --

22 COMMISSIONER DEASON: My question was whether it
23 was going to be on an individual customer-specific
24 basis or was it going to be on a system basis?

25 MR. SHREVE: As far as the calculation?

1 COMMISSIONER DEASON: Yes, the amount of the
2 surcharge.

3 MR. SHREVE: The amount of the surcharge, and then
4 what was the answer as to how it would be applied on a
5 going-forward basis? Is that customer going to be
6 responsible for his calculated surcharge?

7 COMMISSIONER DEASON: I'll let staff answer it,
8 but I understand that it's going to be done on an
9 aggregate basis to come up with a rate, and then that
10 rate would be charged to all customers of that
11 system.

12 MR. RENDELL: Yeah, that -- let me try to clarify
13 it.

14 We calculated the surcharge rate that would go
15 into the tariff, and that's the difference in the
16 revenue requirements for the items that would go to
17 hearing versus what was allowed in the final order.
18 That, when you run it through the billing
19 determinants, comes up with a rate. Those rates are
20 applied for each period the customer's on the system
21 on a per-customer basis to come up with their
22 individual surcharge amount. We don't have the
23 capability to come up with the surcharge -- aggregate
24 surcharge amount per customer. All we have is the
25 capability to calculate the surcharge rate, and that's

1 what we envision going to the tariff. The company
2 would have to go through and calculate the customer
3 aggregate amount over the period that they were on the
4 system, and that information would be available for
5 staff to audit, to actually go in there and do a
6 sample of random audit for verification, but that's
7 not -- I think we've gone beyond what we intended to
8 put into the tariffs.

9 CHAIRMAN JOHNSON: I didn't understand that
10 explanation. You said that they -- we're going to
11 calculate a surcharge rate, put that in the tariff,
12 but as it relates to the individual customers, your --
13 they're going to be -- their assessment is going to be
14 a flat-rate assessment or --

15 MR. RENDELL: No, it would be done on a base
16 facility and a gallonage basis, and I have those -- I
17 have it done by period because there were some indexes
18 and some rate reductions, but you come up with, say,
19 three cents base facility and one cents gallonage
20 during a certain period, say September, '96, through
21 January, that on each individual customer's bill
22 they'd have to go back and look at the consumption
23 during that period, if they were on the system, and
24 come up with an amount for that period. I've gone
25 through and calculated that for every single period

1 that a rate change has occurred.

2 So I know the, I guess, the widgets to come up
3 with, which are the surcharge rates, but I won't know
4 individual customers' total liability because I don't
5 know how long they've been on the system. I don't
6 know their usage over that, you know, the period of
7 time they're on the system. So I've got the
8 individual rates. I don't have the total liability
9 amount per customer.

10 MR. JAEGER: I think what staff's trying to do is
11 comply with GTE v. Clark, and it says, "We conclude
12 that no new customers should be required to pay a
13 surcharge," and so rather than look at the customers
14 that were on the system and for how long they were on
15 the system, and that's our reading of GTE, is just,
16 you know, you can't just put a surcharge and you hit
17 all the customers on a going-forward basis. It has
18 to be customer-specific for if they were on the system
19 and how long they were on the system.

20 COMMISSIONER CLARK: I think if you refer us to
21 the schedules where you've done that, and then, as I
22 understand it, the new rates, if you were only a
23 customer for, say, half the time that the rates were
24 in error, that's -- you would get that new rate for
25 that amount of time.

1 MR. RENDELL: Commissioner, at the time the rec
2 was filed, I did not have that calculated because we
3 were trying to get all the different scenarios put
4 into the recommendation. I have that and Mr. Willis
5 will be passing it around. It has been available to
6 the parties. Only one party, the Office of Public
7 Counsel, has requested it, and I have given it to
8 them, but it is available and it will be passed out.
9 But, as you see on their schedules, it breaks it down
10 by service area, by period of time, and the reason why
11 there are so many different periods of time is
12 because this has been going on for two years, and
13 they've had two indexes and three or four rate
14 reductions, so I've had to go in there and calculate
15 it for every single period for each service area. So
16 this -- these rates -- so if you take -- if you refer
17 to the schedule --

18 MR. TWOMEY: Can I just interrupt and ask, is this
19 something brand new?

20 MR. RENDELL: No, sir, it's been available
21 approximately a week after the first rec was filed
22 back in September. It's been available to all
23 parties. It's stated in the recommendation that
24 staff will calculate it and have it available to all
25 parties. It's been in the recommendation that it's

1 available.

2 CHAIRMAN JOHNSON: Hold on one second. I know you
3 were trying to explain something to Commissioner --

4 MR. HILL: Madam Chairman, if I may, I think I
5 have a better clarification of Commissioner Deason's
6 question, and I think I have the answer but I don't
7 yet know how to articulate it. May I ask for just a
8 five-minute break so that we may speak for a moment,
9 and I think we can clarify it? And perhaps maybe
10 that's not necessary and Commissioner --

11 CHAIRMAN JOHNSON: Let's take a five-minute break
12 until 3:00.

13 (Brief recess.)

14 CHAIRMAN JOHNSON: Back on the record.

15 MR. RENDELL: Commissioners, if I might, in
16 staff's recommendation, we contemplated a customer-
17 specific surcharge, go back and look at the difference
18 in rates during those periods. We did that because
19 that was done in 445. That's the way the company
20 proposed to do it -- I mean, I'm sorry, it's not 445
21 -- in 199 when we looked at this surcharge issue.

22 Staff recommend a different methodology in 199 and
23 that would be consistent with the way we do final
24 orders in rate cases is you look at interim and you
25 look at the difference in revenue requirements on

1 final versus interim and you come up with a
2 percentage basis. It should get us to the same spot.
3 I mean, it's still customer-specific based on the
4 usage during the period they were on the system, but
5 it's done on a percentage basis as opposed to
6 individual base facility and gallonage. So there are
7 two methodologies out there that you should be aware
8 of.

9 COMMISSIONER DEASON: Well, I'm more confused now
10 than before. I thought I understood before, and now I
11 don't understand what you're saying.

12 MR. RENDELL: I apologize. You understood before,
13 I believe, that these base facility and gallonage
14 surcharges that were handed out are done on specific
15 service areas using the rate structure that was upheld
16 in the court and it was run through, and how it fell
17 out, that's how it fell out because of the rate
18 structure. There is some confusion on the part of
19 some of the parties with the negative amounts, that
20 there might be refunds. So there is another
21 methodology that you should be aware of that was
22 originally recommended back in the 199, approximately
23 two years that you look at a percentage basis, you
24 look -- the way you do a final order in a rate case,
25 you look at interim revenue requirement versus final

1 revenue requirement and you come up with a percentage
2 difference if it's less. Then you can apply that to
3 each individual customer's bills during that period.
4 It's just another methodology that is available.
5 So --

6 MR. HILL: Let me try to tie this --

7 COMMISSIONER DEASON: Well, what are you all
8 recommending? I mean, there's two methodologies.
9 What are you recommending we do?

10 MR. HILL: We're recommending now the less
11 difficult logistically that Mr. Rendell just brought
12 up. It was brought to our attention that in GTE you
13 did something a little different. You charged
14 basically everybody the same thing on the surcharge.
15 Well, you recognized that's because everyone that had
16 service for the same length of time basically had the
17 same obligation. We recognize that's not true here.
18 The same length of time does not equate to the same
19 obligation, but yet we don't think we have to go to
20 the lengths that we had originally recommended, and so
21 what Mr. Rendell is saying is that we would modify our
22 recovery of the surcharge to be a more simple method,
23 even though it is based on the individual's
24 consumption, but it wouldn't result in all of the
25 logistics of a per-customer calculation and recovery.

1 It's basically done on a per-system.

2 COMMISSIONER DEASON: Okay. The simpler way, what
3 are the mechanics of the simpler way?

4 MR. HILL: Yes, sir.

5 COMMISSIONER DEASON: What are they? How do you
6 calculate them?

7 MR. RENDELL: Okay. The way that it was
8 recommended before, you'd look at the revenue
9 requirement per service area final, which in this case
10 when I say final, I mean the revenue requirements for
11 the items going to hearing, compare it to revenue
12 requirements that was voted on at the Commission's
13 agenda, final agenda in the docket approximately two
14 years ago. You look at the difference in revenue
15 requirements to come up with the percentage basis.
16 That percentage is applied to each customer's bill,
17 total bill. You don't have to go in and calculate
18 gallons and all. You just apply that percentage to
19 the individual bills during that period and that would
20 be their individual surcharge amounts, and it still
21 gets back to the fact of how long they were on the
22 system, how much usage they had. So it's still per
23 customer, but you're eliminating one calculation
24 step.

25 It was staff's belief in the last docket that was

1 an easier methodology. The company wanted to go one
2 step further and go into individual customer usage per
3 month, and that became the methodology that they
4 proposed in that docket, but we did propose an easier
5 methodology. And that -- again, any of these
6 surcharges would be subject to audit and check by
7 staff since we don't have the capability to look at
8 individual usage and individual bills from that
9 period. So all of those amounts are subject to audit.

10 COMMISSIONER JACOBS: So they were calculated and
11 you'd come back in at what period of time?

12 MR. RENDELL: Well, they're not proposing to
13 collect it until the year 2000, so that gives at least
14 a year to do the audit and verification.

15 COMMISSIONER JACOBS: On what period of time to
16 which charges should apply?

17 MR. RENDELL: Yes.

18 CHAIRMAN JOHNSON: Any other questions on that
19 point, Commissioners?

20 COMMISSIONER DEASON: Well, yeah, I have some
21 questions. You say it's not going to be collected
22 until the year 2000.

23 MR. HILL: Yes, sir.

24 COMMISSIONER DEASON: Under what scenario, the
25 company's proposed settlement?

1 MR. HILL: Yes. Under our recommendation, we
2 would begin doing that now, and I'm sorry, there's
3 just so many things that have been talked about, but
4 yes, under the company's proposed settlement, they
5 would not begin billing that until the year 2000.
6 Under our recommendation, that would begin now.

7 COMMISSIONER DEASON: Well, I guess my bottom
8 line, customers on the same system would be charged
9 the same rates, or is it that individual customers
10 that would be charged different rates based upon
11 their past consumption and what liability they have to
12 the company?

13 MR. HILL: It is my understanding that the
14 customers will pay in accordance with what they owed,
15 their consumption. The rate may be the same, but
16 again, since their consumption varies, the actual
17 amount they pay will differ.

18 COMMISSIONER DEASON: But there will be a
19 surcharge rate and that same rate will apply to all
20 customers of the same system?

21 MR. HILL: Yes, sir, that was my understanding.
22 Yes, sir.

23 COMMISSIONER DEASON: And you calculate that rate
24 based upon the difference in revenue requirement?

25 MR. HILL: Yes, sir.

1 MR. RENDELL: Well, if I might, that methodology
2 would contemplate what was handed out. That's the
3 rates that would charged per individual customer. The
4 other methodology wouldn't come up with the rate.
5 It's all done with percentages, so there is no rate to
6 put in the tariff the other way. That's not -- you
7 can't calculate an individual rate that way. It's
8 done on a percentage basis of what was used during
9 that period.

10 The rates you're talking about for individual
11 customers is what was handed out. Each customer pays
12 the same rate but their consumption's going to vary on
13 the total liability.

14 MS. CHASE: Commissioner, if I might, you're
15 either going to calculate new surcharge rates, which
16 would be a base facility and gallonage, and apply it
17 to every customer's bill during that period of time,
18 or you're going to calculate a percentage based on the
19 difference between the revenue requirement that we're
20 calculating here versus the final and apply that
21 percentage, that same percentage per system to every
22 customer's bill during that time. So either way
23 you're doing it customer-specific. You're either
24 going to do it by percentage applied to every
25 customer's bill, or you're going to do it a specific

1 base and gallonage charge applied to every customer's
2 bill. That's the choice, and I think at this point
3 we're saying the percentage is a cleaner way of going
4 and easier --

5 COMMISSIONER DEASON: So we can disregard this?

6 MR. HILL: Yes, sir.

7 MS. CHASE: If you do a percentage, you can
8 disregard that.

9 MR. RENDELL: What I'm saying is there's two
10 methodologies, one's easier than the other, and the
11 percentage is easier. This is more complicated.

12 CHAIRMAN JOHNSON: The one you just passed out is
13 the more complicated one that you all are not
14 supporting?

15 MR. RENDELL: That's correct.

16 COMMISSIONER CLARK: Let me ask you, when you do
17 the percentages, if you have a person who was a
18 customer for half the time that the lower rates were
19 in effect, do they only have that percentage applied
20 for half the surcharge period?

21 MS. CHASE: They would have it applied to the
22 bills that they actually bill.

23 COMMISSIONER CLARK: So if they were only there
24 half the time --

25 MS. CHASE: Yes.

1 CHAIRMAN JOHNSON: And that's how we'd get into --
2 and I hope I'm not confusing these two methodologies
3 again, but the surcharge rate per system, but when we
4 get -- then we'll have a rate. This is what we're
5 going to do, right? This is the one you did propose?
6 We'll have a rate but that rate will be applied to
7 each customer based upon their consumption in the
8 past?

9 MS. CHASE: Right.

10 CHAIRMAN JOHNSON: And that's it?

11 MS. CHASE: And that's it.

12 CHAIRMAN JOHNSON: And where are the numbers --
13 don't you all have some -- wasn't there a document
14 that reflected something, or is this the same thing
15 I've been looking at the whole time? Do we have a
16 rate schedule?

17 MS. CHASE: We have rates going forward, yes,
18 Commissioners, Schedules, I think it's 2A and 2B
19 attached to the recommendation are the rates going
20 forward BFC and gallonage, with the total remand, 3A
21 and 3B are the rates going forward with just the
22 admission of errors and corrections mandated by the
23 court.

24 CHAIRMAN JOHNSON: Okay. And these are the rates
25 that we would use?

1 MS. CHASE: These are the actual rates we would
2 use going forward.

3 CHAIRMAN JOHNSON: And when Chuck said earlier we
4 don't -- I guess some customers -- we were asking
5 customer-specific, and he was saying we don't have
6 that because that's based on consumption and that's
7 the information that the companies will have to
8 provide?

9 MS. CHASE: That's correct.

10 CHAIRMAN JOHNSON: I'm following you.

11 COMMISSIONER DEASON: Now, you indicated in answer
12 to a previous request question that the rates are
13 based upon past consumption.

14 MR. RENDELL: The total liability of each
15 individual customer.

16 COMMISSIONER DEASON: Okay. The total liability
17 of each individual, and they're added together in
18 aggregate to come up with the surcharge amount for
19 that system, or each individual customer's got a
20 liability that he or she is responsible for and they
21 pay down that liability until it's zero? What are you
22 saying, which method?

23 MS. CHASE: We're talking about the surcharge now,
24 not the rates going forward.

25 COMMISSIONER DEASON: I'm talking about the

1 surcharge, too.

2 MS. CHASE: Okay. The surcharge amount, the
3 dollar amount is based on the annual dollar amount
4 that we've estimated using the rate case numbers, that
5 -- because we're comparing --

6 COMMISSIONER DEASON: And your dollars in terms of
7 revenue requirements?

8 MS. CHASE: Right, the increase in the revenue
9 requirement based on the rate case. That gives you a
10 percentage. That percentage you would go back and
11 apply to every customer's bill during that time.
12 That's where it gets to be customer-specific, and it
13 would be increased by that amount.

14 MR. RENDELL: And I think what we're saying --
15 we're both saying --

16 COMMISSIONER DEASON: But how do you charge that
17 to the customer so that the actual revenue stream
18 flows to the company from current billing? How is it
19 charged to the customer?

20 MR. RENDELL: We were recommending they charge
21 over the same period of time that it was collected,
22 two years. They begin charging as soon as possible
23 and charge that over a two-year period.

24 COMMISSIONER DEASON: But it would be based upon
25 current consumption?

1 MS. CHASE: No.

2 MR. RENDELL: Based on past consumption.

3 MS. CHASE: It's past consumption for the
4 surcharge. You go back to that bill that they had and
5 say, November of '96, and you recalculate that bill.
6 They paid whatever it is they paid. You adjust it by
7 the percentage that --

8 COMMISSIONER DEASON: So they have not -- they
9 cannot affect their bill whatsoever by changing their
10 consumption? They're stuck?

11 MS. CHASE: No, they cannot, they cannot, not for
12 the surcharge, that's correct.

13 COMMISSIONER DEASON: And that's probably, in my
14 opinion, the flaw in the Supreme Court's decision, in
15 that this is retroactive ratemaking.

16 MR. HILL: Yes, we agree.

17 MS. CHASE: I don't think we'd disagree with that.

18 MR. SHREVE: Commissioner, if you calculate the
19 amount, as I understand it, that is due from each
20 system, do you have some reductions in rates?

21 MR. RENDELL: If you look at individual -- if you
22 go in and calculate individual rates based on the rate
23 structures upheld by the court, there is some rate
24 reductions. That's because of band shift, because
25 some service areas shift bands, and that's just a

1 function of the rate structure.

2 But getting back to what you were saying, we're
3 both saying the same thing. You're going to have a
4 total dollar amount each customer's responsible for
5 and he pays it off until it's zero. I think we're
6 saying the same thing, I'm just not explaining it very
7 well.

8 MR. SHREVE: If there is a cap and a system is
9 above the cap, they're capped out, you calculate how
10 much that system owes after calculating the usage for
11 each one of the customers?

12 MR. RENDELL: For the capped systems there should
13 be no increase in rates and no surcharges.

14 COMMISSIONER DEASON: And why is that, because
15 that was the structure that was approved before?

16 MR. RENDELL: Yes.

17 COMMISSIONER DEASON: And we're assuming the court
18 is saying that because they approved that structure,
19 that those -- even though we have a remand situation
20 and we've got the increased revenue requirements, some
21 customers are going to see no increase whatsoever?

22 MR. RENDELL: That's correct.

23 COMMISSIONER DEASON: And some customers would see
24 a decrease, yeah. See, I think that shows the flaws
25 within the capband methodology, right? I mean, on the

1 surface that doesn't appear to be reasonable.

2 MR. TWOMEY: Commissioner Deason, let me just
3 interject one thought, please, and that is, I think
4 it's consistent with the direction you may be going.
5 Your staff wants to suggest the court blessed or
6 sanctified that capband rate structure.

7 MR. HILL: Yes, sir, they did.

8 MR. TWOMEY: I must say again, your staff wants to
9 suggest that the court blessed it or sanctified it.
10 Okay, I would suggest --

11 MR. HILL: I'd say --

12 MR. TWOMEY: I've got the floor.

13 I would suggest to you that the court tolerated
14 that rate structure and at best they approved it, and
15 the notion of going back through this -- these
16 machinations and making it so that some people -- by
17 sticking to that cap that some people don't get any
18 rate increases because of whatever you end up doing
19 here or whatever you end up doing through a hearing is
20 farfetched at best, and then they would have you -- if
21 you query them enough, they would tell you that not
22 only are they not sufficiently satisfied to see that
23 some people don't get rate increases and that other
24 people like my clients pick up the slack once again,
25 but that some people at least in theory would get rate

1 reductions in the process. Figure that,
2 Commissioner.

3 MS. CHASE: Commissioner, our logic in calculating
4 the rate increase here was that if the court remand --
5 the court remanded and said you made errors, they
6 deserve this much revenue requirement, not the lower
7 amount that you gave them, so our logic was, back when
8 we made that decision, if we were to calculate the
9 rate with that lower revenue requirement, using the
10 capband rate structure, what would it be? So we
11 recalculated the capband rate structure with that
12 little revenue requirement.

13 MR. HILL: As if that all happened back at that
14 point in time, and it is our belief that if you do
15 anything otherwise, then you open yourself up to be
16 overturned in the court for changing the rate
17 structure, and perhaps that's not your belief.

18 COMMISSIONER DEASON: Well, I'm having difficulty
19 understanding how an overall increase in revenue
20 requirement equals rate reductions for some
21 customers.

22 MR. HILL: Because of the capband rate structure.
23 Theoretically, Commissioner, we can go to
24 hearings, win for Marco Island, reduce their revenue
25 requirement, drop them into another band and increase

1 everybody else's rate. This was recognized by the
2 Commission as a step in a direction of uniform rates.
3 It's not stand-alone rates and it's not uniform rates,
4 it's something in between, and I don't think anybody
5 thought that this was a panacea. It appeared to be a
6 compromise at the time, but it is a result of the
7 capband rate structure, and again, you know, we're a
8 couple of years down the road, and we can't recommend
9 anything that would cause us then to change that,
10 because it is our belief we'll end up in court and we
11 will be overturned on rate structure.

12 COMMISSIONER DEASON: So you're saying, then, that
13 by the court's acceptance of the capband rate
14 structure, this Commission has no discretion
15 whatsoever, just, for example, if there's an overall
16 requirement as a result of this remand, which we know
17 there will be some, it's just a question of how much,
18 that we just could not apply a general percentage to
19 everybody's established bill or else calculate a
20 uniform cents per thousand gallons and then charge it
21 to all customers until the amount of the surcharge is
22 collected? That's not within our discretion?

23 MR. HILL: Yes, sir. What we're saying is that
24 the rate structure was appealed by the parties in this
25 docket, and the rate structure was upheld by the

1 court. The way that we approach it is that having
2 been overturned, we are placed back in time when that
3 original decision was made, and if you aren't here in
4 time, the court said you were wrong back there, and to
5 come in here and to try to do some percent across the
6 board, that is, in our opinion, a violation of the
7 rate structure, and what we have to do is go back in
8 time to when the Commission made their final decision
9 and change those numbers as if you had that
10 information at that point in time, and we believe that
11 doing anything else leaves you subject to appeal,
12 and --

13 COMMISSIONER DEASON: Well, I think it just shows
14 the arbitrary nature of this capband rate structure,
15 which I know the Commission adopted, but which I
16 disagreed with at that time, and I still disagree with
17 it, but nevertheless, if you -- to have an overall
18 increase in total company revenue requirements and you
19 go through and you turn the crank of this mechanism
20 and the result is some customers get a rate
21 reduction --

22 MR. HILL: Yes, sir.

23 COMMISSIONER DEASON: -- that is extremely
24 difficult to explain.

25 MR. HILL: It's difficult to explain, but it

1 certainly is not arbitrary. They are grouped by like
2 rates, as we explained back in the rate case,
3 Commissioner. You know, there were eight groupings
4 there, and if you get a system that moves out of one
5 and into another, their rates are going to go down or
6 up, and it is a result of the rate structure, and if
7 there were a single uniform rate, well, then you could
8 apply a percentage of increase across the board to
9 everyone because everyone would pay the same rate, but
10 we don't have that. If you had stand-alone it would
11 be simple, but we aren't at either extreme.

12 MR. TWOMEY: Commissioner, let me just add this,
13 please. You found the rate structure that you did,
14 agree or disagree with it, based upon the revenue
15 requirement that the total company got, okay? Now, my
16 view is -- I mean, I don't want you to do any of this
17 stuff, obviously, I want you to have a hearing and
18 I'll say my piece later, but you found that \$52 and
19 the \$65 and the bands you did based upon the rate
20 structure -- the rate -- the revenue requirement,
21 total company, that results and that you approved,
22 okay? To suggest to me that after you have to
23 increase the revenue requirement, whether it's because
24 you want to give them more money because they agree to
25 take more money and the court says you have to give

1 them more money in their revenue requirement, that
2 raises the total company revenue requirement by X
3 amount or X plus, and it seems to me, and I'm not
4 going to be shy about that, it's idiotic to suggest
5 that you have to stay with a \$52 or \$65 in the face of
6 an increased revenue requirement that drives the whole
7 process.

8 Now, that ain't a legal question, in my view,
9 although I'm a lawyer, and -- it's a common sense
10 view, and I'm not sure who's practicing law down
11 there, but I'm going to tell you that I -- well, I
12 don't want you to do it, that you're not bound in any
13 view by this \$52 business. You can do what makes
14 common sense if you're going to increase the revenues,
15 and you don't need to be reducing people's rates.

16 MR. HOFFMAN: Madam Chairman, just one quick
17 comment. It's a reiteration of what I said before,
18 and, Commissioner Deason, let me only address the
19 surcharges, and let me point you back to your GTE
20 case, and on remand what you did there was you said,
21 one time, \$9.66 per line to be imposed on whom? And
22 now I have it in front of me. Flat and measured
23 residential and business access lines, network access
24 registers, semi-public coin lines, patch lines and
25 shared ten and service trunks. Different rates,

1 different rate structures, but the same \$9.66 per
2 line.

3 COMMISSIONER DEASON: Right, and it was a much
4 simpler situation because it was not usage-based, it
5 was a flat amount. It was based -- if it was based
6 upon any parameter, it was based upon time, and it was
7 a flat amount to all customers based upon access to
8 the system. If you were a customer during that period
9 of time -- if it was during the whole period of time,
10 I assume it was the nine dollars and something. If it
11 was part of the period of time, it was maybe something
12 less.

13 MR. HOFFMAN: There obviously were a whole bunch
14 of scenarios that you could have gone through. You
15 could have given a higher surcharge to patch a
16 provider that has a higher monthly rate than a
17 residential provider. You didn't do any of that.
18 You just took the existing customer base at this time,
19 who were then customers at the time the wrong rates
20 were in effect, and said 9.66 per line for all local
21 service customers with different rates and different
22 rate structures.

23 COMMISSIONER DEASON: And when we did that, the
24 court did -- didn't then say, oh, that's a change in
25 rate structure so we've got to overturn you.

1 MR. HOFFMAN: Nobody appealed that.

2 COMMISSIONER DEASON: Nobody appealed that.

3 COMMISSIONER CLARK: Mr. Twomey, what do you think
4 about that, that you just do a flat percentage and you
5 apply it across the board like we did in the GTE --

6 MR. TWOMEY: I think then you'll really be asking
7 for trouble, because you've got some people -- first
8 of all, the company -- the utility doesn't have a dog
9 in this hunt. They get the same amount of revenues
10 irrespective of who it comes from, and they really
11 shouldn't be heard on it, in my view, but you've got
12 -- and as Commissioner Deason pointed out, the GTE
13 situation was entirely different. You've got a
14 situation here where I forget now how many months
15 we're dealing with, whether it's 27 or 28 or whatever
16 -- it could be more or less depending upon what we're
17 looking at here. You've got some people here that may
18 have been -- and the GTE case says you can't charge
19 people that weren't customers, so -- but you may have
20 a customer that came on line with this company in the
21 last two months of the 27-month period. That's the
22 hypothetical, okay?

23 Now, if you went and just did a pro rata deal
24 where you took the total revenues due, whatever it is,
25 a divide it by the number of customers, you might come

1 up with \$300, okay, and you charge somebody that's
2 been on a system for two months a flat rate per capita
3 surcharge of \$300 --

4 COMMISSIONER CLARK: No, no, no, that's not what
5 I --

6 MR. TWOMEY: I'm sorry, I misunderstood you, then.

7 COMMISSIONER CLARK: No, that's not what's being
8 recommended. As I understand it, in effect, say, for
9 one system, you would come up with a monthly charge
10 of, say, 20 cents that would apply to everyone, but it
11 would only apply -- if they were only there half the
12 time, they'd only be charged 20 cents for half the
13 time instead of applying -- instead of saying under
14 the capband structure, if they're already at the cap,
15 they can't get charged, you would say yes, they can
16 get charged, they're going to be charged that amount
17 but only for the time they were --

18 MR. TWOMEY: So you're saying it would be a charge
19 per month, not based on consumption?

20 COMMISSIONER CLARK: I think that's one way to do
21 it.

22 MR. TWOMEY: You could do that, and I just think
23 that -- I think in my mind that what's happened here
24 is, if you find any -- let's talk about the monies
25 that are nondiscretionary, okay. My clients on the

1 equity deal, we've calculated they owe on the stuff
2 they have to pay and are willing to pay one half of
3 one percent of the rate increase, okay? Now -- and
4 that's based upon something they've done in the past,
5 and I think the fairest way -- I'm trying to answer
6 your question by saying what I think is fair. I think
7 the fairest way is, if you had a widow, which they
8 have some there, who scrimps on her consumption, and
9 in the last four years has only used 2,000, 3,000
10 gallons a month, that she ought to pay a lower total
11 overall increment of what's due from that system than
12 somebody that maybe irrigates their lawn, has a double
13 lot or something and uses 20,000 or 30,000 gallons a
14 month, and if you have a flat rate of some kind, it
15 hits all customers equally, irrespective of what their
16 prior consumption was.

17 COMMISSIONER CLARK: Well, what if we did a flat
18 rate per thousand gallons of consumption?

19 MR. TWOMEY: Well, then I think you get real close
20 just taking a -- if I understand what the staff has
21 proposed, I don't like what they're doing, but if they
22 take and calculate -- each system has to recover so
23 much revenue to give back to the company on
24 surcharges, and they say -- so -- say it's \$200,000
25 from system X, and they look at what the consumption

1 was in the past and they figure out that it was so
2 much per thousand gallons, which is what they're
3 doing, I think, essentially, and then they would just
4 -- that's how they would -- they'd go back and look at
5 what the consumption was --

6 COMMISSIONER CLARK: What I'm saying is you would
7 do that and make no adjustment. If it goes beyond the
8 capband, so be it. It's just going to be a surcharge
9 for a certain period of time. It doesn't do violence
10 to the rate structure that was appealed. It's a
11 surcharge just like the surcharge in the GTE.

12 MR. TWOMEY: Oh, I see, so it's just above the 52.

13 COMMISSIONER CLARK: Right.

14 MR. TWOMEY: I don't have any problem with that.
15 I mean, I'm just suggesting to you that if -- and I
16 think that's fair. I think that at some point the
17 amount of money you take back from customers ought to
18 be in some relation to what they used during the
19 period under consideration.

20 COMMISSIONER DEASON: Mr. Twomey, let me ask you
21 this, and you may have answered it. Assume for a
22 moment the only issue before us is the Category 1 that
23 we have no discretion about, and the company -- the
24 court has said the company's position prevails, grant
25 the increase. If that was only issue before us, how

1 would you propose that we would go about setting rates
2 to collect that surcharge amount?

3 MR. TWOMEY: Okay. I think the -- you've got, I
4 think it was 1.2 or 1.29 million, whatever it is, take
5 that amount. You would bear -- to be consistent with
6 the capband system somewhat, you would take a look at
7 how much revenue -- in other words, you could look at
8 what the relative revenue requirement of all the
9 systems are to the total revenue prior to the appeal,
10 and then you could take a ratio of that to the 1.9 or
11 1.29, whatever it is.

12 COMMISSIONER DEASON: So you would do it on a
13 system by system -- say if for system A there was a
14 ten percent differential between revenue requirement
15 before the appeal and revenue requirement after the
16 appeal, a ten percent difference in revenue
17 requirement, how would you collect that from
18 customers?

19 MR. TWOMEY: I would take it and I would apply it
20 to all the systems, including the cap systems, and
21 take it from each system.

22 COMMISSIONER DEASON: I thought you just said you
23 would do it -- you would look at, say, system A and
24 you would say revenue requirements before the appeal
25 is this, revenue requirements after is that. There's

1 a ten percent requirement for that system, regardless
2 of whatever capband it was in, whether it was at the
3 maximum or not, regardless of that. How would you
4 collect that, or would it make a difference in your
5 mind whether they were --

6 MR. TWOMEY: I don't think I was clear in my
7 answer to you. What I was saying was, if the -- if,
8 say, Sugarmill Woods was ten percent of the total of
9 the company beforehand, okay, and then you wanted to
10 -- no, I'm sorry. When you look at the equity
11 adjustments, the staff's already made -- calculated
12 rates for doing just the nondiscretionary stuff, and
13 I'd go exactly with that, the way they've done it.

14 COMMISSIONER DEASON: The way they have already
15 calculated the nondiscretionary --

16 MR. TWOMEY: Yes, sir, just for the discretionary,
17 or the nondiscretionary, but I would take an increment
18 out of that for all the systems they were giving
19 increases to and give a proportionate share to the cap
20 systems, of which there are quite a few. Does that
21 make sense?

22 If I understand the staff's recommendations on
23 just the discretionary amounts, I think in their
24 attempt to be true to the cap system, they didn't give
25 any increases to the cap systems. Is that correct?

1 Or that's my understanding. And I think that some
2 amounts should come from all the people that were
3 given increases and go to the cap people, call it a
4 surcharge so they share in increased revenues, but
5 otherwise take the remaining revenues and apply them
6 as the staff did system by system.

7 MS. GERVASI: Commissioners, we would caution you
8 against deviating from the capband rate structure in
9 calculating the surcharges because of the fact that
10 the capband rate structure is the law of this case.
11 This case was remanded on other grounds. The capband
12 rate structure for this docket was upheld on appeal,
13 and --

14 COMMISSIONER DEASON: Well, it may be that we can
15 get the parties -- if we can't get them to agree to
16 the numbers, maybe we can get them to agree to
17 methodology, whatever the numbers are, and it may be
18 that we're not that far apart. I don't know. Is that
19 something the parties have talked about, and there's
20 no common ground there either, or is there common
21 ground?

22 MR. HOFFMAN: We haven't talked about it.

23 COMMISSIONER CLARK: I would point out one other
24 thing, Ms. Capeless, and ask you to respond -- Ms.
25 Gervasi, excuse me -- and ask you to respond to that,

1 because in the GTE case we had a rate structure and
2 the rates were different for business, they were
3 different for residential, and we just added a
4 surcharge which was the same so you had a rate
5 structure in effect there, and in effect you treat the
6 surcharge as something different, set apart from the
7 rate structure, and by adding a surcharge you haven't
8 violated the previous rate structure.

9 MR. HILL: I think, Madam Chairman -- and I don't
10 know, I might get things thrown at me, but we've been
11 discussing it, and I believe that we could support
12 viewing changing rates on a prospective basis which is
13 rate structure that we do have concern about, I think
14 we can view the surcharge differently as a finite
15 amount. It is not -- and in fact, when we were
16 discussing whether there should be a tariff, we
17 recognized it's not a rate that they're applying to
18 customers, it's really a back-billed total dollar
19 amount. And so I think where we are is that we could
20 view the surcharge back-bill as being something
21 different than the prospective increase in rates, and
22 therefore it could be handled differently or be
23 covered differently.

24 COMMISSIONER CLARK: It would seem to me that your
25 -- that handling the surcharge for rates not

1 previously collected is different from setting rates
2 on a prospective basis, and I'm -- it may be that your
3 argument with respect to the rate structure would be
4 true with respect to the prospective rates.

5 CHAIRMAN JOHNSON: Public Counsel?

6 MR. SHREVE: Do the surcharge rates bear a
7 relationship to the going-forward rates based on the
8 same amount of money and the same issue?

9 COMMISSIONER GARCIA: Jack, I can't hear you all.

10 MR. SHREVE: I'm sorry, I apologize. Now I
11 apologize. I'm sorry.

12 Does the surcharge -- you have a going-forward on
13 the \$1 million issue, the \$1.2 million issue, you have
14 a surcharge based on that. Is there a relationship
15 between the surcharge and going-forward rates?
16 Because I'm looking here and I see some where there is
17 no surcharge yet there's an increase in going-forward
18 rates. I see some where if -- now, let's say a
19 billion dollars on this and it's for the sewer systems
20 is on the undisputed items, you'd go from 52.34 up to
21 54.68 if you've got just the nondisputed ones. If you
22 went to all the items and gave them \$2 million instead
23 of \$1 million, then it would come down to 52.98.

24 COMMISSIONER DEASON: I think that's the result of
25 the capband rate structure.

1 MR. SHREVE: All right. If you go over to the
2 surcharges, you have some people who receive a rate
3 increase on a going-forward basis which I would
4 suppose means those people would have on their
5 surcharge, but there is no surcharge increase, in some
6 cases it actually looks like a decrease in the
7 surcharge but they received an increase in the rates.
8 How would you be able to calculate and see if these
9 rates were correct? Maybe we'll need to do that. I
10 don't know.

11 COMMISSIONER CLARK: If we postpone the surcharge
12 for a year we have a year to figure it out.

13 MR. ARMSTRONG: I have a clarification. What Mr.
14 Shreve was referring to, is that what the staff has
15 backed off of, these sheets, is that what he's
16 referring to?

17 COMMISSIONER DEASON: I think staff's no longer
18 endorsing these particular rates, if I'm not
19 mistaken, these sheets that were handed out.

20 MR. SHREVE: They may no longer be endorsing, but
21 I suppose we're talking about the same amount of
22 money.

23 COMMISSIONER DEASON: And that's the reason I --
24 now, we can debate all we want about what the dollar
25 amounts should be, and we may end up going to hearing

1 on that. I don't know what the result of that's going
2 to be, but it appears to me that we probably could at
3 least agree how to collect the money, whatever that
4 amount is. We've all disagreed that it should be zero
5 or it should be twelve million, but it looks like we
6 could agree on how it should be collected, and it
7 looks to me like a simplest methodology that could be
8 explained to customers would be the methodology that
9 would prevail.

10 MR. CRESSE: We're very flexible. We proposed the
11 flat percentage across the board, 4.83 percent on a
12 going-forward basis, and staff indicated that was not
13 satisfactory, and we said we'll go with your method.
14 I think you'll find the company willing to do anything
15 that's remotely reasonable and fair. I think you
16 could -- I think you could do a 4.83 percent across
17 the board, and I'll let the lawyers tell you if that's
18 legal or not, but it's simple, straightforward, it's
19 making up a revenue deficiency to spread evenly among
20 all customers in proportion to what they're already
21 paying, and it wouldn't be evenly because the rates
22 are not the same.

23 COMMISSIONER DEASON: Now, would that percentage
24 be applied to existing rates and those rates applied
25 to past consumption or those rates applied to future

1 consumption to recover --

2 MR. CRESSE: What we have proposed is we would
3 take that rate and apply it to all bills sent out to
4 customers from the period of September, '96, to
5 December, 1998. That's the maximum that that customer
6 would owe us for past billings. To the extent those
7 customers are gone, we can't collect that. They've
8 already left. That's our turnover factor, and we have
9 tried to collect that from the customers who remained,
10 but no customer --

11 COMMISSIONER DEASON: Did the Supreme Court say
12 you could do that, Mr. Cresse? Did the Supreme Court
13 say that you could increase those customers that
14 remain on the system to pay for those that left the
15 system? Did the court say that?

16 MR. CRESSE: I'm not a lawyer and I haven't read
17 that, but I've got a good one here on my left, your
18 right, and I think he's fixing to answer your question
19 and I think the answer is yes.

20 MR. HOFFMAN: Commissioner Deason, that's what the
21 Commission ruled in interpreting and applying the
22 Florida Supreme Court decision. That was back when
23 you were hearing arguments from GTE, you know, we
24 don't want to be the phone police and so forth, and
25 you started out, you had 1.9 million customers when

1 the incorrect rates were in effect, and you had 1.1
2 million customers when the surcharges were to be
3 imposed, and you accepted GTE's and rejected the
4 Public Counsel's position on that issue, and said,
5 despite the fact that it's mathematically going to be
6 a higher number, we can't take action which would
7 result in a disallowance of the recovery of the
8 expenses that the court said GTE was allowed to
9 recover. We've got to allow them to recover those
10 expenses. So you applied the \$9.66 to the 1.1
11 million.

12 COMMISSIONER DEASON: Was that appealed?

13 MR. HOFFMAN: No, sir, that was not appealed.

14 CHAIRMAN JOHNSON: Mr. Shreve?

15 MR. SHREVE: Mr. Hoffman is right in that. I
16 think you were wrong then when you did that. I think
17 the GTE case, in allowing those past surcharges to be
18 collected, was wrong, but I think what it was saying
19 was you have to do equity for the company and let them
20 be entitled to the money that they were entitled to
21 receive. However, I think the GTE case also would
22 have said you deserve to give some equity to the
23 customers, and that doesn't mean having a customer
24 that did not owe a surcharge pay it for someone else.
25 I think equity goes both ways, and I don't think it

1 goes just to the company. So I think the GTE case
2 could stand for that same thing, that the present
3 customers should not have to pay for surcharges for
4 someone else. They do owe it to the company. The
5 company can try and collect it, and if they don't get
6 it, let them use it in the next rate case as a bad
7 debt expense.

8 MR. HOFFMAN: Commissioner Deason, what the
9 Commission said -- and now I'm going to read from the
10 order. What the Commission said was, in talking about
11 this issue, it said, "As a result, if we accept OPC's
12 position, GTE will be required to try to locate
13 possibly as many as 800,000 customers who no longer
14 receive service. GTE asserts that it has no way to
15 locate customers that left its system years ago, and
16 even if it could find them, it has no way of making
17 them pay the surcharge."

18 The Commission went on to say, "We believe that
19 such an undertaking would be burdensome and expensive.
20 In addition to being unduly onerous and impractical,
21 we believe that the imposition of such a requirement
22 on GTE would directly conflict with the Supreme
23 Court's order."

24 The Commission went on to say that, "We believe
25 that any surcharge procedure that does not provide a

1 reasonable assurance that GTE will recover its
2 previously disallowed expenses violates the court's
3 mandate."

4 MR. TWOMEY: Let me just note, Commissioners, that
5 when my neighbor has got a Monkey Ward's credit card
6 and skips town, Ward's doesn't tack it onto my direct
7 bill. I mean, the -- I didn't participate in the GTE
8 case, but the notion of not inconveniencing a utility
9 to make them look for people that left town that owe
10 them money is one that I would urge you not to repeat.

11 MR. ARMSTRONG: And that same argument was made by
12 Public Counsel in the GTE decision and rejected
13 squarely by the Commission as well.

14 MR. SHREVE: It was, and the Commission was wrong
15 then.

16 MR. CRESSE: Thank you, Chairman. Let me just
17 make an observation on this whole issue. It seems to
18 me that in both cases where the utility has collected
19 it and has to make a refund, what you do is you
20 require them to try to find where those people are,
21 pay it off, and then there's always some people that
22 you can't find. What you do on a refund is you say,
23 okay, take that that you couldn't refund and credit it
24 to the benefit of all customers. That's what you do,
25 just as regularly as you require a refund.

1 What happens when you haven't been allowed to
2 collect what you should have been allowed to collect
3 during a period? You do the same thing, you bill
4 those customers that you can bill, and those that you
5 can't bill will be paid by the general body of
6 ratepayers. So a refund works one way and a prior
7 payment or a surcharge works the same way. It should.
8 That way you're fair to everybody and equally fair.

9 MR. SHREVE: Well, in that case, if the utility
10 can't find the customers, let them come back later and
11 tell us which ones they couldn't find.

12 COMMISSIONER DEASON: Yeah, but Mr. Cresse, in
13 that case when there's money left over to be refunded,
14 we don't then collect that and give a little bit more
15 to every customer that did get a refund. We just book
16 it CAIC.

17 MR. CRESSE: Exactly.

18 COMMISSIONER DEASON: But what you're suggesting
19 here is that you actually bill customers more to pay
20 for their neighbors that moved away from town.

21 MR. CRESSE: We're suggesting we true up -- what
22 our recommendation said was we true up CAIC. We bill
23 it out and true it up is what we suggested.

24 COMMISSIONER CLARK: So if you don't collect -- if
25 you don't collect the surcharge from some customers,

1 that will mean the amount in true-up to CAIC will be
2 less?

3 MR. CRESSE: Yes.

4 MR. SHREVE: If we could use that theory, then we
5 could go ahead and bill the customers and what we
6 don't collect we'll take off of CAIC.

7 COMMISSIONER CLARK: I think that's what he
8 suggested.

9 MR. CRESSE: I don't think it's exactly what I
10 suggested, because Jack's grinning too much for that
11 to possibly be true. He didn't know I was looking at
12 him head on, and I could always tell when he's not
13 being exactly straight. His mouth's running.

14 MR. SHREVE: I think we can probably accept what
15 Mr. Cresse said. Let them go ahead and bill, and what
16 they can't collect, lower the rate base.

17 COMMISSIONER CLARK: Just so I'm clear, but on the
18 adjustment we have to make for revenues going forward,
19 that's one adjustment, and you would do that
20 consistent with capband rates. If you do that
21 consistent with the capband rates, does that mean that
22 some customers' rates will go down?

23 MR. ARMSTRONG: That's correct.

24 CHAIRMAN JOHNSON: Which customers' rates? And
25 show me that on a schedule.

1 MR. RENDELL: There are several that would go
2 down.

3 COMMISSIONER CLARK: I need to see -- tell me what
4 schedule I should be looking at.

5 MR. RENDELL: Well, there is not a schedule that
6 shows current rates, since there's been so many rate
7 changes since 1996. What I can do is give you -- I
8 have a schedule showing bills at 10,000 gallons based
9 on the rates coming out of the final order, the rates
10 for the errors and reversals.

11 COMMISSIONER CLARK: I thought I saw something
12 attached to the schedules where we had cap bands, we
13 have the bands.

14 MR. RENDELL: Yes, we can use that. 4A and 4B --
15 I apologize, I forgot that schedule was on there --
16 will show -- what it's doing is showing the different
17 bands and the different rates at 10,000 gallons, the
18 bills at 10,000 gallons.

19 COMMISSIONER CLARK: Right, actually that should
20 be on B? No, A --

21 MR. RENDELL: 4A is for water and 4B is for
22 wastewater, so Amelia Island would be one that would
23 experience a rate decrease. I believe Crystal River,
24 high.

25 COMMISSIONER CLARK: And they experience a rate

1 decrease because they would move to a different band?

2 MR. RENDELL: That's correct, because the way the
3 bands work -- the systems were banded was based on
4 comparable bills, and if these adjustments change
5 their bills because of revenue requirement, it would
6 move them to a different band. So it's a function of
7 the rate structure.

8 MR. TWOMEY: Commissioner Clark, let me give you a
9 really good, jump-out-in-your-face illustrative
10 example. On page 4A, if I may, Schedule 4A, at the
11 top, the left-hand column, if I understand the staff's
12 exhibit correctly, the previous -- the existing band,
13 before you make any decisions here, grouped my client,
14 Sugarmill Woods, with Pine Ridge, which is also in
15 Citrus County, and Amelia Island, and they had a
16 \$15.10 bill for 10,000 gallons, final order. The
17 recommendation they're putting before you on this
18 particular schedule, whatever it means, would drop out
19 Amelia Island, which is beyond my comprehension yet,
20 and it would take them down from the 15.10 they had
21 before, and in the face of increased revenues for just
22 about everybody else, they would get a reduction to
23 \$14.32. They would take -- so they'd take them out of
24 the three-system group with Sugarmill and Pine Ridge.
25 Those people would be moved into another grouping and

1 would jack their rates up from 15.10 to 19.47. So the
2 same people they were before, increased revenues, one
3 group gets about a 80 cent rate reduction and the rest
4 of them get huge increases.

5 COMMISSIONER CLARK: Let me ask a question to
6 staff on this. Why do you simply not move the bands
7 by the amount of the increase necessary?

8 MR. RENDELL: The way that the rates are set, it's
9 looked at like bills, and those ranges were
10 demonstrated in staff's recommendation and voted on
11 and approved by Commission. If you were to move the
12 bands, you're going to be moving the criteria that the
13 rates were set up on, and we'd view that as a change
14 in rate structure.

15 COMMISSIONER CLARK: That doesn't make any sense
16 to me.

17 MR. HILL: You voted specifically when we made
18 issues in the rate case on how you would handle
19 indexes and pass-throughs in the future and that type
20 of thing, and in fact we looked at exactly what you're
21 talking about. That's what you decided to do on pass-
22 throughs. Indexes would apply across all bands to
23 everyone in the company, pass-throughs would apply to
24 just those systems within the bands, and one of the
25 things we looked at was, why can't we just take this

1 and put it on the bands? And the answer again is
2 simple. The approach we took -- and you maybe
3 disagree with it, and I assume -- and you're welcome
4 to do what you like, but we said, the court said we
5 erred, and had we had the correct information back
6 when we did rates, that's really what we need to do.

7 So we said, we can't make that leap of faith and
8 say we're going to apply this, the way you decided how
9 to do an index or how to do a pass-through, that that
10 would violate it, that we need to go back in time, but
11 we did contemplate exactly what you're talking about.

12 MS. CHASE: Commissioner, one other piece of
13 information that may be not clear, the court, when it
14 remanded those issues back, did not affect all systems
15 the same way on a stand-alone basis, and the beginning
16 of capband is the calculated, the stand-alone rate.
17 The stand-alone -- you know, and it goes through the
18 modified. You do the stand-alone, you cap at 52 for
19 water, 65 for wastewater, you throw the remaining
20 amount that you couldn't correct on the ones that were
21 not capped and then group them.

22 So not all of these systems -- and that is why
23 some of these bands changed, too, because some of
24 these systems on a stand-alone basis got a different
25 amount of an increase than some of the others that

1 changed their costs, their basic costs, and then after
2 you flow it through the rate structure, the bands come
3 out differently.

4 MR. TWOMEY: I don't want to make my closing yet,
5 Commissioner, but I just wanted to ask, do you
6 understand what she's saying? On the nondiscretionary
7 items you were reversed on or you had admitted error
8 to, for which somebody has to pay something, there are
9 some very specific items like reuse that you were
10 reversed on that apply to specific systems, that have
11 no application to all the rest of them, and you could
12 either -- if you were going to ignore your capband
13 rate structure, you would make those increases
14 applicable to those very specific systems. If you
15 want to, in my view, if you want to maintain some
16 adherence to the capband, then you'd take those
17 revenues and put them in those bands alone that share
18 those revenue requirements, but you wouldn't -- in
19 answer to your earlier question, Commissioner Deason,
20 you wouldn't just arbitrarily spread them to every
21 capband that didn't previously share in the revenue
22 requirements of the band.

23 COMMISSIONER CLARK: Yeah. Let me ask that
24 question. If you, instead of readjusting the bands,
25 you just said, well, this particular adjustment, say,

1 for reuse, affects this utility within these bands,
2 and then you just spread it throughout the band --

3 MR. HILL: Like I said, that is the way you voted
4 to handle an index, but with all due respect, we did
5 disagree that you can legally do that now.

6 COMMISSIONER DEASON: I mean, isn't that kind of
7 arbitrary? It kind of depends on the luck of which
8 other systems you've got in your band from the
9 previous decision.

10 MR. HILL: I don't know. The court said it wasn't
11 arbitrary, you know, they specifically in their
12 language said this was not an arbitrary method. So
13 that is the result of the method is that it starts
14 with the stand-alone, and to the extent -- you know,
15 again, if we go in and manage to win all the issues
16 for Marco, that's going to change their stand-alone
17 and it will change their modified stand-alone and it
18 will change the band that they're in, and
19 theoretically you could win nothing but Marco Island
20 and they will drop bands and everybody else's rates
21 would go up.

22 COMMISSIONER JACOBS: If that's the case, then in
23 that example where you had the reuse that was in one
24 system, the stand-alone would have had all of -- would
25 have reflected all of that, is that correct?

1 MS. CHASE: Correct, on the stand-alone.

2 COMMISSIONER JACOBS: Now, then, when you cap it
3 and now you're going to have some surcharges that are
4 going to be applied, and I assume your intent was that
5 -- to base it on some error on reuse calculation, am I
6 hearing you saying that on the surcharge that theory
7 doesn't apply? Or do you want to apply that across
8 the bands as you would normally?

9 MR. HILL: If I understood you correctly, what we
10 have said is that we could view the two differently,
11 one as an increase in rates prospectively, and that we
12 believe needs to stay with the rate structure, but
13 that the surcharges we now do -- we will go along
14 with, you could recover those monies in a different
15 manner because they are not rates, rate structure.
16 It's really a collecting of a -- it's back-billing.

17 COMMISSIONER JACOBS: Okay.

18 CHAIRMAN JOHNSON: And, Bobbie, that's Legal's
19 opinion?

20 MS. REYES: I know it's Chuck's legal opinion.

21 MS. JABER: I didn't hear your question.

22 CHAIRMAN JOHNSON: Is that Legal's opinion? I
23 just want to make sure on the record.

24 MS. JABER: Yes, yes, he has my okay. I would
25 tell if you he said anything wrong. So far he's

1 absolutely correct.

2 The distinction is prospectively we are trying to
3 go back and put in the elements that the court has
4 said we erred in disallowing or using a methodology
5 that was wrong. So that's a recalculation of rates
6 using the same rate structure.

7 The compromise that Chuck is referring to is based
8 on Commissioner Clark's idea, well, let's just call
9 the surcharge a surcharge. It involves no rate
10 structure recalculation, it's just a back-billing for
11 the amount that the utility was entitled to collect
12 during that period.

13 CHAIRMAN JOHNSON: Okay. But the prospective, we
14 can't do that because it's not -- you can't use the
15 same analogy because you don't see that as a
16 surcharge, it's more of a revenue requirement so it
17 goes to the rate structure issue?

18 MS. JABER: We're not recommending that you
19 legally can't do it. Our recommendation is that you
20 should not do it because, number one, the capband rate
21 structure was upheld on appeal and you should not
22 revisit it. As a matter of fact, our recommendation
23 says that if you do something that involves a
24 recalculation of the rate structure, you should make
25 that PAA, and again we're recommending that you stay

1 away from that.

2 And then just from a policy standpoint we don't
3 want to lose sight of the fact that you have already
4 made the decision that in this utility the goal, where
5 you want to be eventually might be a uniform rate, and
6 the capband rate structure is one step toward that.
7 So based on all of those reasons, staff recommends
8 that you stay with the capband rate structure going
9 forward.

10 CHAIRMAN JOHNSON: That's a policy recommendation
11 but not a legal recommendation? I thought, when you
12 started that sentence --

13 MS. JABER: No, it's both. We're saying legally
14 this court has upheld -- legally this court has upheld
15 the capband rate structure, so it's my recommendation
16 that you stay with that, and calculating the rates
17 prospectively to include those items where we erred
18 should include allocating those elements using the
19 capband rate structure.

20 In addition to that, from a policy standpoint,
21 you've made this decision to use the capband rate
22 structure as a step towards uniform rates, and you
23 shouldn't deviate from that.

24 CHAIRMAN JOHNSON: Any other questions,
25 Commissioners?

1 MR. TWOMEY: I'm happy to go in order. I mean, at
2 some point I guess we're still going to get -- the
3 utility had 25 or 30 minutes of closing. I think
4 we're going to get our --

5 CHAIRMAN JOHNSON: We may be prepared to go to the
6 next. Well, were you finished, Mr. Hoffman?

7 MR. HOFFMAN: I was, Mr. Madam Chairman. I think
8 Mr. Cresse had a few remarks he wanted to add to my
9 comments.

10 MR. CRESSE: I'll be very brief, Madam Chairman.

11 I wanted to talk to you about if, when this
12 matter goes back to hearing, the question of the lot
13 count and the alternative -- well, not alternative,
14 annual average daily flow, the problems that the
15 Commission's going to face and the fact that I don't
16 think if -- when you really understand the issue, the
17 thing would have to go to court. Somebody may appeal
18 you, but the fact of the matter is I don't think
19 you'll find an engineer in the country that will stand
20 before you under oath and tell you that a pipe passing
21 a vacant lot that is used every day to serve people
22 downstream is not used and useful.

23 I told -- during the break I told Mr. Twomey and
24 Mr. Shreve that we'd put them in the house two doors
25 down and take the pipe out of the vacant lot and see

1 how well they could be served, and they didn't want to
2 buy me on moving into that house.

3 The other thing that I think will happen is that
4 you're going to be called upon to justify the
5 distinction you make between water and sewer companies
6 and telephone companies and electric companies. There
7 has never been a case in the history of Florida with a
8 question of a distribution line passing a vacant lot,
9 whether it was used and useful or not, it just has
10 never come up. People know it's used and useful, and
11 the same thing, the same principles apply to water and
12 sewer companies. Telephone lines pass vacant lots and
13 they're not questioned as to being used and useful.
14 Why would a water and sewer line be questioned as to
15 being used and useful?

16 Let me talk some about the average annual daily
17 flow, and incidentally, the company did not ask for
18 all lines passing vacant lots to be treated as used
19 and useful. They adjusted their request to what has
20 been your practice in the past as opposed to your new
21 practice which you adopted in this case. They said
22 that they would use an ERC method as opposed to a
23 vacant lot method, and the ERC method just -- all it
24 does is recognize that a larger meter has -- uses
25 greater capacity than a residential meter, and that's

1 pretty simple and straightforward. A four-inch meter
2 used more capacity than a one-inch meter or a three-
3 quarter-inch meter, and I think everybody would
4 concede that.

5 Treatment plant. The way you treat the treatment
6 plant is the average annual daily flow. That means
7 any capacity that they use at any given time when the
8 system is utilized more than the annual average, which
9 is at least half the time, is not considered used and
10 useful. That investment is not considered used and
11 useful. I don't think whenever you contrast that with
12 what you get out of an electric generator, which is --
13 on average electric generators are used and useful --
14 are used about 50 percent of the time, that's the
15 total capacity factor of your electric generating
16 plant. If you did the same thing to electric
17 companies that you're trying to do to water and sewer
18 companies you would not allow but 50 percent of their
19 investment to be recovered from current rates, and
20 you're not going to do that.

21 I mainly mention that because I don't think these
22 issues are all one way. I think they run the very
23 high risk that when you thoroughly understand what
24 the impact of these decisions are and you compare it
25 with what you're doing in telephone companies, you

1 compare it with what you're doing in electric
2 companies, that you will find that more line and more
3 plant is used and useful than the company even
4 requested in the last rate case.

5 And I mean that all seriously, because they had
6 adjusted their request to what your previous practice
7 was, and what I'm trying to tell you is your previous
8 practice denies the company an opportunity to earn a
9 fair rate of return on its prudent investment which is
10 used and useful in the public service, and I think
11 that's what will come out in the hearing.

12 And we don't object to having a hearing. We've
13 asked you to adopt rules so we'll know what the
14 policies are and guide ourselves accordingly. We hope
15 to enter into that rulemaking with a clean sheet of
16 paper and hope to be able to convince you that what
17 I've just said is something that's fair and
18 reasonable. Thank you.

19 CHAIRMAN JOHNSON: Thank you.

20 Marco Island, were you going to make argument?

21 MR. JENKINS: Pardon?

22 CHAIRMAN JOHNSON: Were you going to make
23 argument?

24 MR. JENKINS: Yes, ma'am --

25 CHAIRMAN JOHNSON: Okay. Go ahead.

1 MR. JENKINS: -- if it's appropriate at this time.

2 Madam Chairman and members of the Commission and
3 Commissioner Garcia, this is John Jenkins for the City
4 of Marco Island.

5 I think that it's appropriate that I'm seated
6 today between Mr. Twomey and Mr. Hoffman. I think
7 that somehow reflects my position in this case.
8 Certainly I'm new to this and the City has only
9 recently been involved since the remand and we've been
10 involved, though, in the settlement meetings and
11 discussions, and I've seen a couple of things during
12 that, and one is that, you know, this case has been
13 dragging on for a long time and there's a sense that
14 there needs to be some finality and that lends toward
15 not going back to hearing on this.

16 The other is that it's clear to me that you can't
17 satisfy all the parties in this case. Just having sat
18 through these settlement agreements, there's virtually
19 no way that's going to happen.

20 What I did, though, is look at the financial
21 impact of the, first, the staff's revised
22 recommendation with the two changes that they
23 proposed; and second, the revision to the original
24 settlement offer that the utility proposed yesterday,
25 and the decision, as far as I was concerned, is to

1 look at the financial impact of not going to hearing
2 and accepting the revised staff recommendation, and
3 that in this case now includes a slight reduction from
4 what the utility would otherwise be entitled to if
5 they received the full benefit of their used and
6 useful argument versus going to hearing on this case.

7 And the -- what I've seen since I've been in there
8 is, first, the District Court opinion which indicated
9 that the Commission did not have sufficient support
10 for changing their methodology, and the alternative
11 was therefore that the utility should be entitled to
12 essentially everything that they asked for in terms of
13 their used and useful, what they've requested in their
14 MFRs in this case. Then I heard the staff come out
15 quite adamantly at a prior agenda conference arguing
16 that they could support the positions on remand,
17 including the lot count and so forth, and I was
18 somewhat surprised at how strongly they felt about
19 that, but that was the position at the time. Now
20 there seems to be more support for this settlement
21 offer which is again closer to the -- what the utility
22 is asking for as far as a complete win on the used and
23 useful issues.

24 That's made it difficult for me to quantify what
25 the final outcome might be if we were to go to hearing

1 on this thing. It's also made it difficult for me to
2 feel comfortable that whether or not you have before
3 you competent and substantial evidence to decide, that
4 you can just go with what's in the record at this
5 point without going to hearing on this.

6 COMMISSIONER CLARK: I'm sorry. What do you mean
7 by "competent and substantial evidence"?

8 MR. JENKINS: Well, Commissioner, it's not clear
9 to me that the only alternative here may be the, let's
10 say, the lot count methodology. My view, frankly,
11 before today was to view the opinion of the court as
12 not carving such a narrow remand that you simply go
13 back and look at whether you can support the lot count
14 method, for example, but rather to simply reopen the
15 used and useful issues; and on that basis I looked at
16 it with an eye toward whether, for example, even if
17 the lot count were inappropriate, could the utilities
18 support 100 percent of their request for used and
19 useful? And it seemed to me that there's a -- at
20 least in my mind there's a question about whether that
21 might be the case, and that's what I'm weighing
22 against going -- that's the benefit of going to
23 hearing, to determine whether or not that one of these
24 other methods are appropriate or the method that the
25 utility is proposing is appropriate, but that the

1 actual outcome of that hearing may be something
2 somewhat different than the MFRs that they filed and a
3 complete win for the utility.

4 So I guess where that left me was, despite the
5 fact that there's, I think, a sense that you want to
6 move this case forward and get some closure, that a
7 rehearing would be appropriate on just these narrow
8 issues that the court remanded. I realize this has
9 been a contentious case, and it seems like that's
10 quite a -- not something anybody's looking forward to
11 here, but nevertheless, those are a couple of narrow
12 issues that the court has identified on remand, and it
13 seems to me those could be -- rehearing could be had
14 on those issues.

15 I think the position of the City of Marco Island
16 today is to -- we were in favor of the original offer
17 of settlement. I don't know if that's gone by the
18 boards at this point, but that was the -- the utility
19 joined in that. Excuse me, the utility and the
20 customers -- actually at that point it was the Fair
21 Water Rate Defense Committee joined in that offer of
22 settlement. Up until yesterday that was the
23 settlement that was on the table. That was the --
24 what was identified in the staff recommendation. I
25 don't see any problem with discussing that settlement

1 at today's agenda conference.

2 If the Commission is not going to support that, we
3 would argue for a reopening of the record on the lot
4 count and AADF issues, and as far as the surcharge
5 goes, simply that you do not implement a surcharge on
6 the used and useful or what's called today the
7 Category 2 issues, but rather that that revenue
8 requirement be put off until after hearing.

9 COMMISSIONER CLARK: Mr. Jenkins, let me just ask
10 you, it seems to me that you were in favor of what the
11 utility had recommended and was analyzed in Issue 3
12 for the staff, is that correct, your part, the people
13 you represent?

14 MR. JENKINS: The original offer of settlement?

15 COMMISSIONER CLARK: The one that's discussed in
16 Issue 3.

17 MR. JENKINS: Yes.

18 COMMISSIONER CLARK: Okay. Now, as I understand
19 it, the modifications made in this letter and then
20 today are more favorable to the customers. So are you
21 still in favor of the offer?

22 MR. JENKINS: No, they're not more favorable to
23 the Marco customers.

24 COMMISSIONER CLARK: And why are they not more
25 favorable?

1 MR. JENKINS: Well, the first issue of the two the
2 staff identified, what's called the rate structure or
3 capband issue --

4 COMMISSIONER CLARK: I don't think that's part
5 of --

6 COMMISSIONER JACOBS: Yeah, they took off the --

7 MR. JENKINS: The utility's revised proposal
8 accepts the changes the staff made.

9 COMMISSIONER CLARK: Okay. So you would -- you
10 agree with the original proposal and not the
11 modification staff is seeking?

12 MR. JENKINS: That's right.

13 COMMISSIONER CLARK: Okay. Anything else?

14 MR. JENKINS: Just that we be allowed to address
15 the interim refund issue under Issue 7, and we'll get
16 to that later.

17 Marco Island is one of the areas in which an
18 interim refund -- and may be the only one that was
19 specifically addressed in the opinion dealing with
20 the, what's the appropriate level of that refund.
21 Issue 7 essentially puts that off until a decision is
22 made on these other issues, and I'd like the
23 opportunity to address that when the time comes.

24 COMMISSIONER CLARK: Okay.

25 CHAIRMAN JOHNSON: Mr. Twomey?

1 Thank you, Mr. Jenkins.

2 MR. TWOMEY: Thank you, Chairman Johnson,
3 Commissioners. I wanted to address a couple of things
4 that Mr. Cresse said first.

5 First, I want to say if he wants to say those
6 things, he can say them here, fine, today. He ought
7 to show up or get an engineer and say them in a
8 hearing. Those are the kind of things -- he said he
9 didn't object to a hearing. I guess he was talking
10 about a rule hearing, though, which we're not
11 interested in because my clients aren't interested in
12 fighting the whole industry on SSU-specific factual
13 situations, but the kind of arguments he gave you
14 about mixing in telephone companies with generating
15 plant and all that kind of stuff, that belongs in a
16 hearing, and he suggested that once y'all understood
17 what was going on here, if I heard him correctly, or
18 understood the issues, then you'd come down their
19 way.

20 Now, that's for a hearing, not for an agenda
21 conference and not deciding on a hearing.

22 Secondly, he made -- if I heard him correctly, he
23 said that the Commission has never looked at
24 disallowing pipe in front of an empty lot in water and
25 sewer cases, if I heard him correctly. I may not

1 have, but irrespective of whether he said that or not,
2 that statement, if I understand what you all do, is
3 not true. You use the lot count all the time when
4 you've got non-mixed-use systems, and when you've got
5 systems that -- where you've got some fool developer
6 that built 1,000 -- lines for 1,000 lots and has got a
7 house on this end and a plant at this end, you deny --
8 when it's non-mixed use, you deny all kinds of that
9 rate base using your lot count methodology, when
10 you've got apples to apples.

11 So I think what he said -- he knows an awful lot
12 of good stuff that ought to be said in a hearing and
13 see if he can't convince you and let us try and rebut
14 some of his wisdom in a hearing.

15 Now, the -- using -- if I could borrow Senator
16 Cowan's language or phrase of gobbledygook, I think
17 the transcript of this agenda conference, which has
18 gone on way too long, as you're painfully aware, is
19 full of it. I think y'all -- this transcript of this
20 meeting today will show Chuck Hill apologizing for
21 things they missed, like the gain on sale issue, and
22 then this, this, and that, and we deserve help and
23 that kind of stuff. We've had the company fire off a
24 modification to their offer as late as yesterday. The
25 staff brings in new documents and schedules mid-

1 afternoon today that succeeds in thoroughly -- if I
2 gauged his reaction correctly, thoroughly confused
3 Commissioner Deason who usually gets these things as
4 easily as others. Confusion has reigned today, and if
5 y'all understand what's before you, you're following
6 it a lot better than me. I don't think the record's
7 going to show that y'all know what's before you to be
8 voted on in many cases.

9 Now, I'm going to suggest to you that you can save
10 yourself a lot of grief today if you follow some of
11 the initial steps your staff recommended to you and go
12 to hearing, and let me address some of the specifics.

13 You've got before you, as the staff has told
14 you and I think the rest of us would agree,
15 nondiscretionary issues the court has reversed you on
16 that you can't reconsider, and discretionary issues.
17 It's clear to me that the court has said that the
18 utility is due certain revenue increases as a result
19 of the nondiscretionary items and you ought to give
20 them those monies and you ought to give them as soon
21 as possible because it serves to decrease the
22 surcharges that we know they're going to get, and I
23 emphasize "we know." They're entitled to that money.

24 You ought to be careful that you collect those
25 nondiscretionary revenues from the people that are

1 responsible for them. I'll tell you, and you can ask
2 the staff if I'm not close to right here, my client,
3 Sugarmill Woods, only share responsibility, in their
4 view, on the equity adjustment, okay, which would give
5 them a one-half of one percent, .5, a one-half of one
6 percent increase in their current rates. They're
7 happy to pay that and give it to the company on a
8 prospective, going-forward basis, as well as be
9 surcharged for whatever the period under consideration
10 is.

11 They don't want to have to pay for reuse projects
12 which y'all were reversed that they're not concerned
13 with and aren't in their specific systems or in their
14 cap bands. Likewise, they don't think it's fair that
15 they should have to pay more than one-half of one
16 percent because of the fact that people that are in
17 capped systems, of which there are quite a few, should
18 get a free ride on this whole deal, this whole remand
19 process.

20 So to recap there, you ought to give them the
21 money that you have no choice on. You ought to do it
22 as straightforward and as soon as possible, but again,
23 taking care to make sure that the people -- only the
24 people that are responsible for incurring the revenue
25 amounts have to pay them on a prospective basis and/or

1 surcharge basis. Give them the money, though.
2 They're entitled to it.

3 COMMISSIONER DEASON: How do you go about
4 calculating that, Mr. Twomey, when you say only those
5 customers responsible?

6 MR. TWOMEY: Well, again, the -- my clients are
7 only -- they don't have a dog in the reuse hunt and
8 they shouldn't be paying for something you were
9 reversed on for some other system someplace else.

10 COMMISSIONER DEASON: Do you not agree that under
11 the capband rate structure that if you happen to be
12 grouped or if you're unlucky enough to be grouped with
13 another system which has a tremendous impact due to,
14 for example, the reuse decision, do you -- how do we
15 handle that?

16 MR. TWOMEY: Then you go ahead -- if you want to
17 maintain truth in observance of the capband, you make
18 them pay. My people aren't -- reuse isn't in their
19 capband, so go ahead and do that if you want to.
20 They'll take whatever's in their capband on this
21 nondiscretionary thing. We don't like the capband,
22 but if you want to maintain true to it, then find out
23 what's in the capband, put it in there and charge them
24 their capband rates.

25 Again, I'm urging you don't let the people in the

1 caps have a free ride, for the reasons I gave you
2 before. You made those caps based upon a perceived
3 revenue requirement. It's going up. The caps ought
4 to go up. Whether it's \$52.20 or whatever, they ought
5 to share in the pain on the result of this remand.

6 Now I'd like to move on to the discretionary
7 stuff. Your staff likes to -- we're not even talking
8 a half empty glass here, we're talking less than a
9 half empty glass, and all this testimony makes me --
10 it just tires me out, but you don't have any choice on
11 the nondiscretionary. The court said you've got to
12 give it to them, okay?

13 Now, there's some clear distinction between the
14 nondiscretionary where you've got to give it to them
15 and the discretionary where you don't have to, where
16 you can have a rehearing.

17 Mr. Stevens pointed out by reading the opinion,
18 the language of the opinion, that it seems clearer
19 than ever now to say you've got to have a hearing and
20 go ahead and take evidence and see if you can't
21 approve it. Whether you have to or not, you should,
22 but you haven't lost that yet. The status quo being
23 maintained right now is that the company isn't
24 entitled to the money. They're not entitled to any
25 more money until you issue a final order finding so.

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That's even true with the nondiscretionary stuff.

So I'm not sure how we got here. I'm not sure why my clients got shifted out of the capband. We thought all along that it was the course and efforts on the part of your staff to make us settle easier by taking us out of Amelia Island and jacking up our rates more. Be that as it may, on the discretionary stuff, you've got some additional issues here. One is whether you have a hearing or you don't have a hearing.

Now, if I was -- I'm saying to you, and others will, I think, the court says have a hearing. What's the down side? It's your order. You said, four of you that addressed the issue and only Chairman Johnson didn't speak to it, at the last agenda conference I heard four of you say that if there wasn't a settlement, a successful settlement, that either you would vote for a hearing or you'd be inclined to vote for a hearing. Your staff said at the last agenda conference they were rarin' to go. It's still in writing. They can -- they were urging you to have a hearing. They can prove up this stuff once again, okay.

You can't go wrong, Commissioners, doing that. You can avoid a lot of this confusion that you're facing right now by having a hearing. If you find

1 that what you did was correct, as we maintain, you so
2 find in your final order and you put the burden on the
3 court to reverse you. You make them the fall guy with
4 the customers, okay? That's what we're saying you
5 should do, not to make them the fall guy, but because
6 it's the correct thing to do. If you don't have a
7 hearing when the court has clearly given you the
8 opportunity to have a hearing and find for no
9 additional discretionary dollars for the Commission, I
10 think you've done yourself a disservice, you've done
11 the customers a disservice, you've done my clients a
12 disservice. All the people that were in the meeting
13 that Senator Cowan sat in, the 250 of them, they said
14 to a person they didn't want you taking their money
15 and giving it to this company until you found that the
16 company was entitled to it legally. They didn't buy
17 Chuck Hill's argument that it was in their best
18 interests.

19 Now, you ought to have the hearing. Staffs' given
20 you reasons why you shouldn't: Ease of expense, save
21 time, additional rate case out the window. I don't
22 buy that they're going to have \$300,000 in additional
23 stuff, even if they hire a bunch of \$500-an-hour
24 lawyers. Even if they do, you've got to rule that
25 it's prudent and reasonable, and my clients are

1 willing to take that chance. We're willing to fight
2 and try again to prove again what we thought we proved
3 in the last case. If you don't have a hearing, you
4 open yourselves up to intense criticism by virtually
5 all customers for not doing so. Now, I don't think
6 there's any reason why you shouldn't do that.

7 Now, on the reasons for reopening the record and
8 taking additional evidence, again, y'all said you were
9 going to do it or said words to somewhat of that
10 effect, or you were inclined to. Staff said you
11 should have done it, and they can prove their point,
12 okay? It's win-win. As I said a minute ago, you
13 can't go wrong. You've taken every possible step to
14 protect the consumers, taken additional evidence. You
15 can't go wrong with additional evidence, can you? If
16 you learn more stuff, can you go wrong by learning
17 more and hearing more witnesses? You avoid the
18 consumer outrage by doing that, okay, which is going
19 to be, I think, intense. Then you get all this
20 information and you make your decision and you go on,
21 okay.

22 Now, the staff says that if you go ahead and have
23 the hearing, that out of their concern for the
24 customers -- which really means they don't want to go
25 through the grief of anybody having to order big

1 surcharges that weren't noticed before, okay. You
2 know, we had that problem when all the people came in
3 before, and the solution to that, Commissioners, is
4 the problem before is that customers came in and said
5 they weren't on notice that they might have these
6 surcharges, okay. Do you know how you cure that? And
7 the customers recognized this down in Lecanto, and
8 Senator Cowan said it specifically, and that is you
9 give them notice right now. If you're going to go to
10 hearing on this, as we want you to do, you have the
11 company put out notices and say, hey, we're going to
12 go to hearing on this. We're going to take evidence
13 as the court allowed us to, and in the event you lose,
14 you may be facing some surcharges, but I would
15 guarantee you, I think I can, that there's not a
16 customer of this utility that would want you to take
17 money from them now and back-bill them in two years
18 for something that they haven't yet won.

19 Now, let's be more specific. This is a statutory
20 -- it's a creature of statute. You all can only do
21 the things specifically that you're allowed to by
22 statute or those that are necessarily implied. You
23 don't have the authority, Commissioners, in my
24 estimation, and I haven't heard a peep out of your
25 staff or anybody else cite you the authority that

1 says that you can, just out of your concern for
2 yourself or the customers, approve tariffs that allow
3 a utility to charge rates that you have not yet
4 legally found that they're owing, and that's what
5 you'd be doing if you allow this company to
6 prospectively charge customers for rates on money they
7 might win after a hearing, and surcharge people.

8 It is remarkably close to the Crystal River 3
9 situation, only there is less validity for what you'd
10 be doing here --

11 COMMISSIONER CLARK: Let me ask you, then, you are
12 saying we do not have the discretion to not hold a
13 hearing?

14 MR. TWOMEY: I'm saying -- first of all, I'm
15 saying you should hold a hearing. I believe the court
16 opinion says -- now that Mr. Stevens pointed out again
17 that you should hold a hearing, the court says that.

18 COMMISSIONER CLARK: My question is, is it your
19 legal opinion that we do not have the discretion to
20 not hold a hearing, that we must hold a hearing on the
21 two issues?

22 MR. TWOMEY: Yes, I think you should have the
23 hearing, but to go back to my last point --

24 COMMISSIONER JOHNSON: Let me -- you're saying --

25 COMMISSIONER CLARK: Is it your legal opinion --

1 MR. TWOMEY: Yes, yes, ma'am.

2 COMMISSIONER CLARK: -- that we have no discretion
3 and we must hold a hearing?

4 MR. TWOMEY: You must hold the hearing.

5 CHAIRMAN JOHNSON: Mr. Twomey, you're saying, if
6 we hold the hearing, though, we have no legal
7 authority to collect the revenues and hold them
8 subject to refund?

9 MR. TWOMEY: Yes.

10 CHAIRMAN JOHNSON: That's the other point --

11 MR. TWOMEY: Yes, and that's the key point I want
12 to get across to you, because the only place you've
13 ever been allowed to do that is in interim rate
14 situations, okay, and until there was a statute
15 specifically -- Mr. Cresse remembers this stuff.
16 Until there was a statute specifically allowing for
17 interim rates, you all didn't do it. The Commission
18 didn't do it, with maybe a couple of exceptions here
19 and there, but you couldn't do it, and that the
20 statute lets you give interim rates without an
21 evidentiary hearing that conclusively proves that
22 they're entitled to the rates. What the staff is
23 suggesting that you do here is say, on the utility's
24 best day, if you go to hearing, on the utility's best
25 day they might win ten, eleven, twelve million dollars

1 or whatever, and therefore, out of an abundance of
2 caution, we want you to go ahead and charge the
3 customers for that now so you won't have to back-bill
4 them later, and what I'm saying to you -- I'll ask you
5 right now, ask Mr. Jaeger, Ms. Jaber, the rest of
6 them, what legal authority do you have for approving
7 rates in which you have not made an evidentiary
8 finding that the utility is entitled to it, and they
9 won't be able to give you an answer, in my view,
10 because there is none, because it is blatantly
11 illegal, in my view.

12 CHAIRMAN JOHNSON: Do you want us to answer that
13 now or wait until the end of your argument?

14 MR. TWOMEY: We'll give them a while to think.
15 I'd recommend that we wait.

16 So you can't do that, Commissioners.

17 Now, Chuck Hill got up and he tried to tell those
18 250 people that that was in their best interests. He
19 told them a couple of times, okay? He said, you know,
20 if we don't do it, we'll be coming back in two years
21 and asking for big surcharges, you know, and you'll
22 want my resignation then, to which one lady in the
23 front said, "Let's have it now." But you don't have
24 the authority to do that, okay?

25 So to sum up, there are lots of reasons why you

1 should go ahead and have a hearing. You should give
2 them the money they're due from the right customers.
3 You should order a hearing to hear the things and to
4 try -- give your staff a chance to reaffirm the record
5 on those two points, give us a chance. The Public
6 Counsel said that he'll redouble his efforts and
7 they'll make a case on those two issues if there's a
8 hearing. Give us a chance there. Order the hearing.
9 Give them only the money they've won so far, and
10 recognize that you just can't willy-nilly give them
11 money that you haven't found that they're entitled to
12 yet, and so don't have any surcharges. If they win,
13 then give them the money, then.

14 And lastly, these people are suggesting that maybe
15 they're entitled to eleven or twelve million dollars
16 on their best day, all of which they're very confident
17 about, but they're willing to settle for four or
18 whatever it is. Come on, you know these people as
19 well as I do. If they thought they had a New York
20 minute's chance of getting that money, they'd be going
21 after this. They wouldn't be giving us stuff in the
22 interests of their clients, their customers. So have
23 a hearing, no surcharges. Thank you.

24 CHAIRMAN JOHNSON: Thank you, Mr. Twomey. Staff?

25 MR. JAEGER: Commissioners, we have given

1 temporary rates in other than staff-assisted rate
2 cases or file and suspend. I think Venture Associates
3 -- it's in Docket No. 930892-WU, and it was an
4 amendment of certificate, and we gave temporary rates
5 in that case. Also we've given temporary rates in
6 emergency situations. I think 367.011(2), it says,
7 "The FPSC shall have exclusive jurisdiction over each
8 utility with respect to its authority, service and
9 rates." .011(3) says the regulation of utilities is
10 declared to be in the public interest, and this law is
11 an exercise of the police powers of the state for
12 protection of the public health, safety and welfare,
13 and the provisions of this chapter shall be liberally
14 construed for the accomplishment of this purpose. And
15 then 367.121(1)(a), you know, it's the duty and the
16 Commission has the power to prescribe fair and
17 reasonable rates.

18 What the staff was doing here on the Category 2
19 issues, the AADF and lot count, we were saying we've
20 lost already. Right now it stands in the lost
21 position. We can recover it or we may win if we go
22 back to hearing, but we were saying go ahead and give
23 them these temporary rates subject to refund, and that
24 way that keeps the utility from having this churn,
25 keeps us from getting into another surcharge

1 situation, and it will stop any additional
2 accumulation of surcharge, which is -- we realize that
3 a lot of customers say, well, I might move out of this
4 system, I might die tomorrow, and therefore they
5 aren't too worried about that, but we do believe you
6 have the power to grant temporary rates, and you have
7 done so in others where they have specifically given
8 you the interim rate.

9 MR. TWOMEY: Madam --

10 CHAIRMAN JOHNSON: I'm going to let him finish. I
11 think he's got some more to say.

12 MR. JAEGER: OPC did -- they argued and they
13 argued with the City of Cape Coral, but in Venture
14 Associates the Commission found that it did have
15 implicit authority, in Section 367.011(3), Florida
16 Statutes, to grant Venture temporary rates, and I
17 think that would conclude my argument there.

18 CHAIRMAN JOHNSON: Now, say that again. You said
19 we had implicit authority?

20 MR. JAEGER: Implicit authority in Section
21 367.011(3), Florida Statutes, to grant temporary
22 rates.

23 COMMISSIONER CLARK: What's the date on that?

24 MR. JAEGER: The statute?

25 COMMISSIONER CLARK: No, the case.

1 MR. SHREVE: Is that pending in any other case?

2 MS. JABER: Sorry?

3 MR. SHREVE: Was that a case pending at the time,
4 or was that just an isolated instance where you ruled
5 on a couple of issues?

6 MS. JABER: No, actually Venture was mine so I can
7 tell you more about it.

8 It was a certificate case, an amendment, and the
9 Commissioners with the prospective rate requests, you
10 found that in the event that we went to hearing and it
11 was determined that the utility was entitled to a
12 certain amount of revenue, you were going to let them
13 collect the rates in the form of a temporary rate, and
14 that would protect the utility and the customers
15 because that amount would be held subject to refund.
16 You have done that on several occasions. This is
17 nothing more than a temporary rate, and the legal
18 authority, the statutory authority we have always
19 cited and you have always confirmed is 367.011, as Mr.
20 Jaeger has cited, in addition to 367.021 which
21 discusses the Commission's broad authority to set
22 just, fair and reasonable rates.

23 CHAIRMAN JOHNSON: And you believe that that's
24 sufficient under today's more restrictive APA and
25 statutory provisions?

1 MS. JABER: Yes.

2 CHAIRMAN JOHNSON: When -- the language that Chuck
3 and I discussed earlier that we were trying to -- that
4 we may be forwarding to the Legislature to give us
5 specific authority, why do we think we need specific
6 authority if we think we have specific authority, or
7 did we just want to clarify something?

8 MS. JABER: Well, no, with our legislation it's a
9 bit different. You -- in the final recommendation in
10 a rate case, you are in effect going to be, if the
11 legislation passes, approving two sets of rates, one
12 rate based on whatever rate structure you ultimately
13 find appropriate, but a second set of rates based on
14 the utility's requested revenue requirement using the
15 Commission-approved rate structure, and that is
16 something that specifically is not taken into account
17 in the statute, you know, that approval of two sets of
18 rates in the event that there is an appeal, and this
19 is different. You have had an appeal. You've got a
20 mandate.

21 MR. JAEGER: When we issue a final order, we don't
22 have the court telling us that we're wrong. Here
23 we've got the court telling us we've been wrong. Of
24 course, we have the ability to fix it, apparently.

25 CHAIRMAN JOHNSON: Okay. I know you want to make

1 your arguments. Did you wrap up your rebuttal?

2 MR. TWOMEY: Just I wanted to respond to that.
3 This is the first I've heard of any temporary rate
4 business, and I would suggest to you that if you've
5 done it before you've done it in small cases and
6 you've gotten away with it. I would not -- I would
7 not be engaging in making temporary rates in any cases
8 when you have either specific interim rate authority
9 or actual rate authority and there's not a petition
10 for rates. But I would just say to you I wouldn't
11 hang my hat in this case on doing something that's
12 going to outrage every customer of this utility on
13 your staff's suggestion that the broadest statutory
14 grant in Chapter 367 gives you the implicit authority
15 to do this. That is, in my view it is dangerous
16 beyond belief, and I wouldn't do it.

17 These people over here will get -- if they win
18 this case, the utility will get its money eventually.
19 They will get surcharges if they win and they will be
20 able to compel payment of the surcharges because the
21 people will have their services shut off if they
22 don't. I would not use what I view as a flimsy
23 argument to find that you can go ahead and willy-nilly
24 increase rates by three, four, five, six million
25 dollars on that basis.

1 MS. JABER: Commissioners, if perhaps I could
2 point out one more thing, turning to the opinion
3 itself, the very opinion that has us here at agenda
4 today, Southern States Utilities vs. PSC, "The
5 Legislature has given the PSC very broad authority to
6 determine rates. In determining rates, see Citizens
7 v. Public Service Commission, holding analogous
8 statutory provisions pertaining to electric and
9 telephone utilities." The Legislature, the court has
10 recognized your broad authority in determining rates
11 for purposes of ratemaking. That's why I don't think
12 this question hinges on a legal interpretation of
13 whether or not you have the legal authority to collect
14 this temporary rate or whatever we want to call it.

15 It really is, as a matter of policy, do you want
16 the utility to collect those revenues now, or do you
17 want to wait until the hearing is over? What Chuck
18 was saying is, it was staff's recommendation that it's
19 more efficient to do it now. The utility collects
20 it. They have to support it by a corporate
21 undertaking, I believe. It's held subject to refund.
22 That's really where staff was coming from. And it's
23 up to you as a matter of policy to determine if this
24 is the right time or not.

25 CHAIRMAN JOHNSON: Thank you.

1 Public Counsel?

2 MR. SHREVE: Thank you. I'll try to be brief.

3 Just about everything has been said at this
4 point. We think there should be a hearing. We think
5 probably you'd want to go ahead and grant the
6 approximately 1.3 million in the rate increases and
7 the surcharge to cover the nondisputed items.

8 I assume at this point that we're not talking
9 about the settlement, anyway, since it doesn't -- I
10 don't know even exactly what is on the table and what
11 would be accepted by the company if you were to cut
12 things down, so I don't think you're in a position to
13 vote on that.

14 COMMISSIONER GARCIA: Jack, please, into the mike,
15 because you're coming in and out.

16 MR. SHREVE: Sorry, Commissioner. Is that better?

17 COMMISSIONER GARCIA: Much better.

18 MR. SHREVE: Let me talk about the authorization
19 for increases. What I will describe to you is in the
20 nature of an interim increase. I don't know of any
21 situations where you have not either granted an
22 emergency increase and followed it up with a hearing
23 or something in the nature of an interim increase.
24 You have that authority. This is not that case.
25 You've already given this company an interim rate

1 increase early in the game. That's all past. I don't
2 think there is any situation where you ever granted a
3 rate increase to a company on an issue where you have
4 found against the company and found with the
5 customers. I don't believe in this situation you can
6 say you have lost. And certainly in relying on your
7 staff and their representations earlier, you have not
8 lost, and I think we can rely on that.

9 As a practical matter, you heard the discussion a
10 little while ago on how these surcharges and the
11 increases of rates are going to be given. I don't
12 think any of us really understand that, and I can
13 accept that. I have an understanding of the capband
14 and how that all came about. If you, but if you grant
15 the 1.3 million and the surcharge, it will go ahead
16 and that will be spread about in whatever methodology
17 has supposedly been approved by the courts the way
18 Chuck and the staff wants to keep it under the
19 capband. So they'll present a further appeal on that.
20 But if you then in addition grant the \$3.29 million
21 and the surcharge that goes along with it, and the
22 bands are manipulated and the people within the bands
23 are manipulated because of that, then if we take the
24 staff at their word that they can prevail in this
25 issue, how are you ever going to determine what kind

1 of a refund you can make? There's no way you can do
2 it.

3 Citrus Park, their rates right now are in the
4 neighborhood, for a 6,000 gallon sewer, \$52. If you
5 grant them -- if you grant the \$1 million or just the
6 nondisputed items, their rate for 6,000 gallons would
7 be about \$54. If you grant the 3,000 or \$3 million or
8 all of the items, it then becomes \$65, or a total
9 increase of \$13 or \$10 over the first one.

10 The point I'm making is, if the staff is staying
11 with their capband mechanism and every time there's a
12 change in rates you're going to shift one group from
13 one cap to another or one band to another, if you do
14 prevail, then you're not going to have any idea how to
15 make the refunds and you'll never justify it.

16 However, if you go to the hearing and you prevail, you
17 don't have that problem. If the Commission prevailed,
18 if we prevailed and the customer prevailed, then you
19 don't have to worry about the refund, about the
20 increase in rates going forward or with the surcharge;
21 and in that situation, if the company prevailed, then
22 you would go forward. You won't have to worry about a
23 refund. They will collect the money on whatever
24 mechanism is set up and whatever's fair.

25 I think as a practical matter, you'd go on to the

1 hearing, you'd postpone the decisions that have to be
2 made on how you're going to handle the massive part of
3 it, because if you go to that and then the customer
4 prevailed, you'll never get it straightened out again.
5 There's just no way it's going to happen, and I do not
6 believe -- and I would challenge anybody to be able to
7 explain to you how the refunds would come back now or
8 later.

9 As far as fair and reasonable rates, if that's
10 what you're supposed to be setting, there are fair and
11 reasonable rates set now, based on your earlier
12 decision, and I think that's where you'll go after
13 we've completed the rehearing.

14 I don't think you have the authority for the
15 increases on these individual issues like this. This
16 is not an interim rate increase. This is a not an
17 emergency. This is something that you're going to
18 make a decision on.

19 I think that's about it. It's been a long day for
20 you. Thank you.

21 MR. DEASON: Mr. Shreve, let me ask you, you agree
22 that the Category 1 changes, the nondiscretionary,
23 that those should be implemented as soon as possible.
24 How do you recommend they be implemented as far as
25 rate structure is concerned?

1 MR. SHREVE: I don't have a recommendation for you
2 on that. I can see where the staff wants to maintain
3 their capband because it's already been appealed. I
4 don't understand how they were placed into the bands,
5 how things were changed. I think one of the problems
6 that comes about is when you -- you have the bands,
7 but evidently they're taking people and putting them
8 from one band to another because of the change here.
9 Some of the bands -- you know, in some of these
10 calculations you pay less the more the revenue is
11 given to the company, and it doesn't really make a lot
12 of sense, and that's my point about if you go all the
13 way at this point, you can forget about ever
14 straightening it out, and nobody's ever going to get
15 it.

16 I don't really have a recommendation for you
17 because I don't understand exactly how the staff
18 accomplished what they did on these rates. I think
19 I'd have to just depend on the calculations they've
20 done.

21 COMMISSIONER DEASON: But you don't object to
22 using the capband for the Category 1 increases?

23 MR. SHREVE: I'm not going to get into the rate
24 structure argument one way or another on this. I'm
25 arguing primarily about the amount that's going to be

1 granted to the company, and just by looking at things,
2 I think if you grant more than just that initial
3 amount right now, there's going to be so much
4 confusion if the customers prevail, you'll never get
5 it back, where if you don't give it to them now, there
6 will be no problem in them getting their money in the
7 future.

8 CHAIRMAN JOHNSON: Can staff respond to that
9 point? And by that point, I mean the last point, and
10 he made it a couple of times with respect to, if we go
11 to hearing and we try to hold this money subject to
12 refund, his point is that it is going to be
13 incredible, if not impossible, to determine who should
14 receive what refunds.

15 MR. RENDELL: Well, we've calculated the rates for
16 just the errors, the ones in Category 1, and that's on
17 Schedule 3A and 3B. We've calculated the rates for
18 the items going to hearing, which are Category 2,
19 that's Schedule 2A and 2B.

20 The refunds will be the difference in the rates
21 applied to the bills during that period of time.
22 That's the way I envision it occurring.

23 MR. SHREVE: But what about --

24 COMMISSIONER DEASON: This customers --

25 MR. SHREVE: -- according that the rates that they

1 would have owed had that additional amount not been
2 put on there, because in Citrus Park you've got a
3 difference of \$13 a month and you'd have to back up,
4 recalculate everything and start over.

5 MR. RENDELL: Well, the rate's been calculated. I
6 don't know what other rates need to be calculated.

7 COMMISSIONER CLARK: I think what he's saying is,
8 if it makes an adjustment in the bands --

9 MR. RENDELL: That's right.

10 COMMISSIONER CLARK: -- then what did -- then you
11 have to go back and recalculate the bands with only
12 the 1s, the Category 1s.

13 MR. RENDELL: They've been calculated. It's
14 Schedules 3A and 3B. The way -- if I can just clarify
15 real quickly how the rates are calculated, we had to
16 go back to the methodology that was done in the final
17 order to do their rates. All we did was take the new
18 revenue requirements based on these items and follow
19 it through that methodology and the rates fell out
20 where they fell out. There's -- to us there's no way
21 that we could change that methodology and not be
22 appealed up to the District Court of Appeal, and
23 that's the way we've consistently done it on every one
24 of the categories and on settlement offer. It's been
25 calculated three times.

1 MR. SHREVE: Commissioner -- and that's what I
2 understand to be the case. They have the methodology
3 they want to stay with. The only problem is, with the
4 different levels of revenue approved for collection by
5 the company on an ongoing basis and in the surcharge,
6 those all change between. If you go with one area,
7 one level, you're going to have one calculation and
8 one set of rates. If you go to another one, you're
9 going to have a tremendously different calculation.
10 If you throw those both in at this time and then the
11 customers win and they get a refund, you're going to
12 have to go and back up to the first band and make your
13 calculations on that, and it's not going to work.

14 MS. CHASE: Commissioners, it's true they may
15 shift bands with whatever revenue you come out of the
16 hearing or ultimately the appeal process, but it's
17 still going to be a rate for that system versus the
18 rate they're being charged today and there would be a
19 refund, but regardless of that and regardless of how
20 complicated it is, it's going to be complicated
21 whether or not it's a refund that's being calculated
22 or it's the surcharge that's being calculated. It's
23 the same calculation. It's just going to go up or
24 down. It's either going to be a refund or a
25 surcharge.

1 MR. SHREVE: However, if the customers win, there
2 is no calculation because there is no surcharge and no
3 refund.

4 MR. HILL: I'll stipulate to that.

5 MR. SHREVE: Chuck and I just made your decision.

6 CHAIRMAN JOHNSON: We're going to take a 15-minute
7 break.

8 (Brief recess.)

9 CHAIRMAN JOHNSON: We're going to go back on the
10 record.

11 COMMISSIONER GARCIA: Madam Chairman, if I might,
12 I wanted to ask a few quick questions.

13 CHAIRMAN JOHNSON: Yes.

14 COMMISSIONER GARCIA: One of the things that's
15 worrying me is that we're gambling too much here.
16 This has been a long case. We've spent a lot of time
17 on it, staff has spent a lot of time on it. We
18 finally got a decision from the court, and I'm worried
19 that Mr. Twomey's sort of taking us back into it when
20 we have here what I believe is somewhat of a good
21 opportunity to settle with the company. It may not be
22 the best, but leaving the gain of sale issue out,
23 right, of their settlement offer, tell me how that
24 compares with the possibilities that the customers
25 have under us accepting the settlement or going Mr.

1 Twomey's way?

2 MR. HILL: Certainly, Commissioner Garcia, earlier
3 in the day at some point someone asked, you know, did
4 we support the company's offer of settlement.
5 Absolutely. The gain on sale causes a problem because
6 it does involve other parties, but when we looked at
7 the settlement offer, it just -- it is in the best
8 interests -- it may not be in the best interests of an
9 individual or Mr. Twomey's client, but when we look at
10 it, the company is basically saying that they will
11 take \$1.9 million less.

12 I'm not as optimistic. You know, we can look at
13 half full glasses or half empty glasses, and the
14 bottom line is I am very cautious and I am very
15 worried, and I have no intention to talk about
16 probabilities, but I am concerned about the time that
17 we have taken to get here and the time we will take in
18 the future, and the continuation of the liability, and
19 comparing that with the offer of the company to take
20 significantly less, I believe -- I think we've got to
21 look very hard at that, and it is my opinion, and
22 staff all met this morning and we went around, all the
23 way around, saying, what do we think of it, is this
24 something that we would support? And unanimously we
25 said yes, absolutely, to bring this to a close and to

1 end it they are willing to accept less. It's not the
2 best of all worlds to anyone, but yes, this is
3 something that is a good and that we would support.

4 Again, the gain on sale, Commissioner, now that
5 throws a wrench in the gears.

6 COMMISSIONER CLARK: That's not in here anymore.
7 They've agreed that that docket -- as I understand it,
8 that the docket would be closed, but it doesn't
9 foreclose that from being taken up at another point.

10 MR. HOFFMAN: Correct.

11 COMMISSIONER GARCIA: Is that correct, Mr.
12 Armstrong?

13 MR. HOFFMAN: That's correct, Commissioner Garcia.
14 That was our amended proposal in connection with that
15 issue.

16 COMMISSIONER GARCIA: So the issue before us here
17 -- and I'm sorry, Commissioner Clark, but I just want
18 to -- the issue before us is the company is making an
19 offer on settling something that the court threw back
20 to us. Would you see that as being correct, Lila? Is
21 Lila there?

22 MR. HILL: Yes, just a moment, sir.

23 MS. JABER: Commissioner Garcia, someone was
24 talking to me as you were speaking.

25 COMMISSIONER GARCIA: All right. I'm going to

1 repeat it in my inarticulate way, but usually
2 Commissioner Clark restates whatever I say in a much
3 more articulate way, so I'll give it another try.

4 What we have before us now that the company has
5 agreed to remove the gain on sale issue as part of the
6 settlement is the company has offered us this
7 settlement, it is a settlement between us and the
8 company. No one else's procedural rights are affected
9 here except this Commission and whether it's willing
10 to support or defend its order, correct?

11 MS. JABER: That is our recommendation, yes. That
12 is our recommendation.

13 COMMISSIONER DEASON: Let me clarify something. I
14 thought the company said that they modified their
15 offer to simply have the gain on sale issue postponed
16 to the next rate case, which I assume that means close
17 the investigation, don't do anything, and then it is a
18 relevant issue in the next rate proceeding?

19 MS. JABER: That's the way we took it.

20 COMMISSIONER DEASON: That's everybody's
21 understanding as to what they said?

22 MS. JABER: That was our understanding.

23 MR. SHREVE: Commissioner, I have a problem with
24 that. Once we get a decision on this gain on sale
25 issue, which is about \$4 million, we will want that

1 implemented as soon as possible. No wonder the
2 company wants it delayed. Now, you may have the
3 ability to go ahead and reach some type of -- make a
4 final decision today that you could put out in a final
5 order, but that right -- you do not have the right to
6 close that docket. If you want to put some things out
7 in a PAA, that's one thing, and we'll have a look at
8 that --

9 COMMISSIONER GARCIA: No, no, wait, wait, Jack. I
10 agree with you, and that's why I began by restating
11 the issue, and I thought Mr. Hoffman agreed with me.
12 The gain on sale issue is not part of the offer. If
13 it isn't, Mr. Hoffman or Mr. Armstrong, then I don't
14 think we can reach an agreement because we're
15 affecting others rights.

16 MS. JABER: Yeah. I understood Mr. Garcia's
17 question, Mr. Shreve, to be notwithstanding the gain
18 on sale, could we move forward, and --

19 MR. SHREVE: I understand that from Commissioner
20 Garcia, but if the Commission is -- not you,
21 Commissioner Garcia, but if the Commission is thinking
22 about closing the docket on the gain on sale that is
23 very important to the customers -- it may even offset
24 the surcharges we're talking about -- then I do not
25 think you have the right to close that docket, if you

1 want -- you have a decision that you can make on going
2 forward on a hearing on what you're going to do on
3 some of these surcharges, but you're not going to --
4 you don't have the right to close that docket.

5 COMMISSIONER GARCIA: Jack, I agree with you 100
6 percent right now. So the question is squarely left
7 in Florida Water's hands. I'm willing to make a
8 motion we have to exclude this gain on sale issue and
9 accept the settlement that you've made this Commission
10 because it does not affect anyone else's substantial
11 interests.

12 MR. TWOMEY: It does, Commissioner. Madam
13 Chairman --

14 CHAIRMAN JOHNSON: Hold on, Mr. Twomey. At the
15 appropriate time --

16 COMMISSIONER GARCIA: I am speaking directly now
17 to Mr. Hoffman and Mr. Armstrong. Now let me finish
18 my point.

19 If they don't want to accept this, then we go down
20 the other road, and that, as you know, this case could
21 take years, so what I want to do is reach a settlement
22 on this case with the company, as long as we're not
23 affecting anyone else's interests, and is that all
24 right with the company?

25 MS. JABER: Commissioner Garcia, let me try to

1 articulate what you're attempting to do. You want the
2 utility to agree we're going to leave the gain on sale
3 docket open and deal with that docket, correct?

4 COMMISSIONER GARCIA: I think the company's smart
5 enough to realize that gain on sale issue is a
6 longstanding policy of this Commission, and while it
7 would have been nice to have settled it here, we
8 cannot do it, so the company has a very simple issue
9 before it. If it's willing to give up this gain on
10 sale issue, leave that docket open, it's longstanding
11 Commission policy and we'll deal with it when we get
12 to it, and we will settle this -- I hope I can get
13 three votes, but we settle this out today and the gain
14 on sale docket remains open and we deal with that.

15 If not, the other alternative is, my motion is to
16 go forward, to hold hearings, to take two years, and I
17 am not going to vote to collect the money from the
18 customers. So then we will be at a surcharge point if
19 the company is so confident two years from now.

20 What I am saying to you, Mr. Armstrong, or to your
21 client which I hope is somewhere in there, is that
22 let's settle this out. You know the policy of this
23 Commission on gain on sale. I think it's been there
24 for a while, but that's yet to be determined and we
25 cannot affect someone else's rights.

1 CHAIRMAN JOHNSON: Mr. Armstrong -- I'm going to
2 let you speak, Mr. Twomey, but I want to make sure
3 that this motion is clarified, and I know that
4 Commissioner Garcia did have an outstanding issue on
5 the gain on sale that would remain an open docket for
6 us to address.

7 MR. ARMSTRONG: I've gotten advice to ask for the
8 motion to be clarified for the record if I could.

9 COMMISSIONER GARCIA: Mr. Armstrong, here's the
10 motion: I accept the settlement offer in its totality
11 with the exception of the gain on sale. That docket
12 remains open.

13 MR. ARMSTRONG: Okay. And I have a couple of
14 comments. Number one, I think it's a false premise
15 that the Commission has no discretion in that regard
16 and cannot do it, absolutely false. Number two,
17 longstanding policy, if you look at the recent
18 reversals by the court of appeals, if there's anything
19 that's been said, it's that there aren't any --

20 COMMISSIONER CLARK: Mr. Armstrong, I don't think
21 he's debating the issue with you. He's asking you how
22 you feel about it.

23 MR. ARMSTRONG: I'm just giving the company's
24 point of view, and that's all I can do.

25 COMMISSIONER CLARK: Is that a rejection on

1 his --

2 CHAIRMAN JOHNSON: Because he has another motion.

3 COMMISSIONER GARCIA: Mr. Armstrong, if you could
4 take a moment, all right, if we have to call
5 Minnesota, we'll call Minnesota, but what we want to
6 try to do is settle this. I understand that, you
7 know, we've gone through a lot of backwards and
8 forwards on this, your company, this Commission, the
9 citizens, the ratepayers, Mr. Twomey, everyone, and
10 I'm saying to you I appreciate greatly the offer
11 you've made today, but the gain on sale is not
12 central to the issue we're looking at today, and it
13 affects others' rights, and if that's what you want to
14 do, I'm fine. I mean, Mr. Twomey's telling me he's
15 willing to roll the dice one more time. I don't want
16 to roll the dice anymore.

17 The citizens that he represents to a large part
18 have retired. They live on fixed incomes, they
19 need certainty, and I'm asking you to give us that
20 certainty.

21 MR. ARMSTRONG: Commissioner, I've heard loud and
22 clear what you've said. I'd dispute some of your
23 recitations. However, I need to speak to the client
24 to authorize these kinds of things. I came in with
25 direction not to do that, but I will make the phone

1 call if I could be given some time to do that, because
2 I think I have to make that --

3 COMMISSIONER CLARK: Before he does that, I want
4 to ask another question. I have -- I'm very concerned
5 about how we do the rates, and I think Commissioner
6 Deason suggested that, you know, if we can maybe
7 decide on -- make a decision with respect to the
8 revenues, that we can say to the parties, can you come
9 up with an agreeable rate structure, and --

10 COMMISSIONER GARCIA: That was my next
11 suggestion. I agree with you, Commissioner Clark, and
12 I think that what we have before us is a bit too
13 complex, and in the spirit of what we're trying to do
14 -- and I expect that what you're speaking to is
15 directly the surcharge issue -- that we should
16 simplify that. We should go back and allow the
17 parties to get together and put it up on the next
18 agenda -- all the parties that need to be noticed are
19 sitting in the room -- in terms of designing a
20 surcharge method that's simple, easy to understand by
21 all those that are going to be surcharged.

22 COMMISSIONER CLARK: Well, I guess I wouldn't
23 limit it to the surcharge. I would limit it to the
24 prospective charge and the surcharge.

25 COMMISSIONER GARCIA: The prospective charge

1 being?

2 COMMISSIONER CLARK: Well, you have two
3 components, two decisions on this that -- for
4 instance, with respect to Category 1, you've got to
5 change the rates on a prospective basis to account for
6 that change in revenue requirement, and then you have
7 to have a surcharge to account for the revenues that
8 were not collected. And I'm just saying I think both
9 -- how to allocate those both should be open to
10 further negotiation and possible settlement.

11 COMMISSIONER GARCIA: I agree.

12 MS. JABER: Our concern about that with respect to
13 the prospective rates is that may result in a change
14 in the rate structure and certainly -- moving demands
15 around, but --

16 COMMISSIONER CLARK: I understand that. It seems
17 to me the parties may be able to agree on it and we
18 may decide that we don't think that's the best way to
19 go, but if we have some agreement, it may be the best
20 way to go.

21 MS. JABER: And we would agree with you normally.
22 The problem is not every customer served by this
23 utility is a party to this docket.

24 COMMISSIONER CLARK: They could be, though.

25 COMMISSIONER GARCIA: Yeah, but the surcharge,

1 it's only existing customers if I'm not mistaken,
2 right?

3 MR. ARMSTRONG: Commissioners, if I may, too,
4 before I speak with my client, if you're going to give
5 me that opportunity, I would like to -- the first
6 question that's going to asked is what is the
7 longstanding PSC policy, and I'd like to have that
8 recited for me so I can recite it accurately to my
9 client.

10 COMMISSIONER GARCIA: If I'm not mistaken, the
11 longstanding -- Chuck, why don't you state the
12 longstanding policy of the PSC?

13 MR. HILL: It's my understanding that typically
14 what has happened, unless there was some sharing of
15 costs or the subsidies involved, that the gain on sale
16 went to the owners of the utility and not the
17 customers. That's my understanding of the decisions
18 that have been made.

19 COMMISSIONER CLARK: If it was in the rate base
20 that was supported by the customers who are still part
21 of the utility, then they -- then it goes back to the
22 system and it doesn't go to the shareholders, is that
23 correct?

24 MR. HILL: I'm not sure if I can agree with that.
25 Maybe Mr. Willis can.

1 MR. SHREVE: Commissioner, I think there must be
2 some misunderstanding of this so-called longstanding
3 policy, because the last time there was a decision
4 made on gain on sale that was within the jurisdiction
5 of the Commission, a loss on sale was absorbed in the
6 rates of the customers and that was with Southern
7 States in Lake County, so that longstanding policy
8 would mean we win.

9 COMMISSIONER GARCIA: And that's why we're going
10 to keep that docket open, but I think Chuck stated
11 what --

12 COMMISSIONER CLARK: I don't think it's as clear-
13 cut as we might think.

14 MR. WILLIS: Commissioners, in the cases that I've
15 been involved in, and I think I've been involved in a
16 good number over the last 20 years, when this has come
17 up, the Commission has always looked to whether or not
18 the customers that are still present on the system
19 shared in any of the costs of that system that's being
20 sold. For instance, St. Augustine Shores was sold,
21 but at that point in time there was not a uniform
22 rate. There were no subsidies going back and forth
23 between systems, and the present customers or the
24 customers that were left on with, at that time,
25 Southern States Utilities had no sharing in the costs

1 of St. Augustine Shores, and the Commission made the
2 determination that the company should retain those
3 gains on sale. That's the way that I have seen the
4 decisions come out from the Commission, is that we've
5 always looked to see if the present customers still
6 remaining have shared. If they have shared, from my
7 past experience, the Commission would look to bring
8 part or all of those costs back in to the present
9 customers and allow them to share on that gain, too.

10 COMMISSIONER CLARK: It's an adjustment to rate
11 base, right?

12 MR. WILLIS: An adjustment to rate base or an
13 amortization over a period of time, which would
14 amortize back that by reducing the expenses of the
15 present customers over a period of time as determined
16 by the Commission.

17 COMMISSIONER JACOBS: Are you going to look at --
18 you would be looking at customers on from the '96 time
19 frame until '98? That's when the capband --

20 MR. WILLIS: Are you talking about the gain on
21 sale, Commissioner?

22 COMMISSIONER JACOBS: Yes. When you look to -- if
23 the customers were to prevail, who would be the
24 relevant audience over which that distribution would
25 occur?

1 MR. WILLIS: Well, it would be current customers.
2 It would be the customers that were left --

3 COMMISSIONER JACOBS: I thought you said you would
4 look to see if they participate -- if they were on the
5 system at the time.

6 MR. WILLIS: That's something that would have to
7 be determined by the Commission at the time, and I'd
8 hesitate to say how you'd divide up and decide who got
9 a portion of that gain on sale, because normally it's
10 amortized to the current customers. I don't know that
11 you would go back and give refunds. I don't know of
12 a case where the Commission has gone back and refunded
13 to customers due to a gain on sale.

14 COMMISSIONER CLARK: I think you may be talking
15 past each other in the sense that if -- what we've
16 said in the past, as I understand it, if it was part
17 and parcel of the system that was supported by the
18 general body of ratepayers, then they benefit from the
19 gain on sale. If it was not part of that, then it
20 does go to the shareholders. It didn't matter whether
21 that individual customer was on the system. It was
22 the general body of ratepayers.

23 MR. WILLIS: It's the general body of ratepayers,
24 correct.

25 COMMISSIONER CLARK: And I -- just by way of

1 explanation to you, Mr. Armstrong, you need to look at
2 that case and you need to look at -- it would be my
3 view that whatever the policy has been is what would
4 be applied and you need to decide if you can live with
5 that.

6 CHAIRMAN JOHNSON: Let me -- I'm going to allow
7 Mr. Twomey to --

8 MR. CRESSE: The current policy --

9 CHAIRMAN JOHNSON: One minute, Mr. Cresse. I'm
10 going to allow Mr. Twomey to speak, and I understand
11 your client and your dilemma. Commissioner Garcia has
12 asked a correct question, if you could, and I think it
13 went more to the issue of keeping the docket open so
14 that the issue can be explored. These may be some of
15 the discussions that will occur during that
16 proceeding, but the first is the willingness to say
17 yes, we have this docket and we hold a proceeding, and
18 that's the question that I think he had suggested that
19 you talk to the folks in Minnesota and that this not
20 be the forum for deciding that. And I'm going to
21 allow Mr. Twomey to speak, because he has been anxious
22 for the last several minutes, before we go to Mr.
23 Cresse.

24 MR. TWOMEY: Thank you.

25 First, let me apologize for my interruption of

1 Commissioner Garcia's discussion, and I apologize, but
2 the reason I blurted out as I did is I understood what
3 Commissioner Garcia said basically as a preface to his
4 motion was his understanding that he apparently took
5 from Ms. Jaber that the Commission could accept this
6 settlement from the company, call it what you will,
7 their offer, accept this without affecting the
8 substantial interests of any other party, and -- now,
9 that's what you understood, right, Commissioner, if I
10 may ask you?

11 COMMISSIONER GARCIA: Mike, that's what I
12 believe. That's what I believe. I think that as long
13 as we do not affect your interests -- I don't agree
14 with your legal theory that the court gave us an
15 opportunity to hold a hearing and that we have no
16 choice but to hold the hearing.

17 MR. TWOMEY: Yes, sir. But what I wanted to say,
18 because I wanted to respond more to Ms. Jaber's advice
19 in response to your question, it's my position that
20 you cannot accept this settlement. Think about it.
21 You can't accept this settlement without affecting the
22 substantial interests of every customer of this
23 utility.

24 Now, you can decide to go ahead and accept the
25 settlement if you want to, but if -- Ms. Jaber said

1 that she thinks you can do it without affecting my
2 client's substantial interests and Mr. --

3 COMMISSIONER GARCIA: I think what we're speaking
4 to is not necessarily -- obviously, I'm going to
5 affect your client's monetary position, I'm going to
6 affect the company's monetary position. I'm affecting
7 a lot of things, but I am not affecting your
8 procedural due rights. We have this decision before
9 us from the court, and the court gave us two things --
10 gave us an option: Either we went with their
11 interpretation or we hold hearings to try to justify
12 our interpretation of --

13 MR. TWOMEY: Yes, sir, I understand your
14 distinction. I misunderstood what you were saying,
15 substantive rights versus procedural rights. I don't
16 agree with you, but it's not my time to debate you on
17 that, but you will affect our substantial rights.

18 Thank you.

19 CHAIRMAN JOHNSON: Commissioner Garcia, I believe
20 that Mr. Armstrong left the room to go make a call,
21 and, Senator Cowan, did you have some statements to
22 make?

23 SENATOR COWAN: Thank you for the -- I have been
24 sitting here pretty much holding my tongue all the
25 meeting and I've been listening to all the different

1 issues being addressed, and I was hoping that it would
2 come back to what the real issue here is, and I've
3 seen a lot of differences in trying to digress into
4 different issues, but really and truly I'm hoping that
5 the Public Service Commission will keep to the issue
6 before it, and that is in the order, and not digress
7 with potential proposals that were not even given to
8 customers or the Public Counsel aside from today, and
9 I quite understand the anxiety and the desire by the
10 Commission and the staff to settle the issue.

11 Certainly coming back through another marathon
12 meeting is not something that I want to do and I'm
13 sure it's not something that you all want to do, but
14 when I listen to this from the outside and I see all
15 the different parties, I see an agreement and I
16 certainly see an agreement on the Category 1 issues,
17 obviously. There's not such an agreement on the
18 methodology, Commissioner Deason, but I don't think
19 that that is something that is a major problem. I
20 think the money is the same. It's just a matter of
21 how it's distributed, and you're quite adept at doing
22 that with all your different rate cases.

23 I also see a relative agreement by the parties,
24 maybe with the exception of the utility and the staff,
25 but I see an agreement with going to hearing on the

1 Category 2 issues, and the reason why I say that is
2 because that is still not completely decided, and what
3 you're trying to do is play a gamble, you know, are we
4 going to win it and, you know, you might as well just
5 put the money on the stock market because you can't
6 really judge what the answer's going to be.

7 (Transcript continued in Volume No. III.)
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