

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
TALLAHASSEE, FLORIDA

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

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

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 31\*\*

DATE: December 15, 1998

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

BUREAU OF REPORTING

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## APPEARANCES:

KENNETH HOFFMAN, Esquire, and Brian Armstrong, Esquire,  
representing Florida Water Services Corporation

CHARLIE BECK, Esquire, representing Office of Public  
Counsel

MIKE TWOMEY, Esquire

JOHN JENKINS, Esquire, representing the City of Marco  
Island

STAFF RECOMMENDATION

Issue 1: In light of the Commission's vote on remand at the November 13, 1998, special agenda conference, what is the appropriate action that should be taken with regard to surcharges?

Recommendation: Recovery of the Category I surcharges should be accomplished through a one-time charge to the customers who were customers during the period of time in which the incorrect rates were in place. This should be accomplished by calculating a per-month base facility surcharge to be applied to each ERC. This base facility surcharge should be applied, by meter size, to affected customers for the period of time they were utility customers. In this way, the surcharges would be apportioned in such a manner that each affected customer would be held responsible for his or her pro-rata share. Further, the utility should recover the amount of revenue deficiencies due to customer attrition from the affected customers left remaining on Florida Water's systems as of the date of Category I rate implementation who were customers during the period of time in which the incorrect rates were in place. If protested, this should be made an issue in the scheduled remand hearing. The utility should be directed to provide the calculations of the surcharges to be applied to the affected customers within 7 days of the vote.

Issue 2: Should Florida Water Services Corporation be required to place the Category I rates in effect on a prospective basis and what are the appropriate rates?

Recommendation: Yes. Florida Water Services Corporation should be required to place the Category I rates in effect on a prospective basis as shown on Water Schedule No. 7 and Wastewater No. 7. The utility should submit a proposed notice and tariffs consistent with the Commission's decision for staff's approval within 7 days of the vote. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to 25-30.475(1), Florida Administrative Code. The rates should not be implemented until proper notice has been

received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of notice.

Issue 3: If the Commission approves immediate surcharges relating to Category I items, what tariffs and notice should be required?

Recommendation: If the Commission approves immediate surcharges relating to Category I items, Florida Water Services Corporation should be required to submit tariffs which reflect the Commission's decision. The tariffs should contain either the amount of the monthly base facility surcharge or any alternate methodology the Commission may approve. The utility should submit a proposed notice consistent with the Commission's decision for staff's approval within 7 days of the vote. The approved surcharges should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to 25-30.475(1), Florida Administrative Code. The surcharges should not be implemented until proper notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of notice.

Issue 4: Should this docket be closed?

Recommendation: No. The docket should remain open pending final disposition of the remand.

P R O C E E D I N G S

1  
2 CHAIRMAN JOHNSON: We will reconvene the agenda  
3 conference, and we are on Item 31.

4 COMMISSION STAFF: Commissioners, at the November  
5 13th special agenda conference concerning the  
6 disposition of the First DCA's mandate on remand of  
7 the Docket No. 950495 rate case, you voted to change  
8 Florida Water Service's rates prospectively to account  
9 for the items characterized as Category I items, which  
10 were the items that were unequivocally reversed on  
11 appeal. Among other things, you also asked staff to  
12 come back with a recommendation on how to calculate  
13 the surcharge required for those Category I items.  
14 Accordingly, Item 31 is staff's recommendation on what  
15 action should be taken with regard to the Category I  
16 surcharges.

17 We are recommending that Issue 1 should be PAA,  
18 and this is a change from what we recommended  
19 previously which we have made after further research  
20 and consideration. Various parties are represented  
21 and are here to speak. At the special agenda  
22 conference, you voted to allow the parties to  
23 participate with the length of time given to each  
24 party to be within the Chairman's discretion. Staff  
25 has one minor correction to make to the recommendation

1 and I will turn it over to Mr. Rendell for that.

2 MR. RENDELL: Yes, Commissioners, we need to make  
3 one minor modification. On Page 8, the second  
4 paragraph, the last sentence that begins with, "This  
5 percentage is also contained on Water Schedule No. 2,"  
6 we need to delete that sentence and we need to  
7 substitute the following sentence. "The resulting  
8 percentage to apply to the systems below the cap would  
9 be .53 percent for water and 4.14 percent for  
10 wastewater."

11 COMMISSIONER GARCIA: Could you repeat that?

12 MR. RENDELL: Sure. The resulting percentage to  
13 apply to the systems below the cap would be .53  
14 percent for water and 4.14 percent for wastewater.

15 CHAIRMAN JOHNSON: Okay. Are we prepared to hear  
16 from the parties?

17 COMMISSION STAFF: I'm sorry.

18 CHAIRMAN JOHNSON: Are we prepared now to hear  
19 from the parties?

20 COMMISSION STAFF: Yes, ma'am.

21 CHAIRMAN JOHNSON: Was that the only correction?

22 COMMISSION STAFF: Yes, ma'am, that was the only  
23 correction.

24 CHAIRMAN JOHNSON: Mr. Hoffman.

25 MR. HOFFMAN: Thank you, Madam Chairman and

1           Commissioners, my name is Kenneth Hoffman, and with me  
2           is Brian Armstrong, here this afternoon on behalf of  
3           Florida Water Services Corporation. And, Madam  
4           Chairman, I think I can be very brief in terms of my  
5           initial remarks. Let me begin by stating that the  
6           company supports the staff recommendation. Two items  
7           I would point out; number one, under your GTE decision  
8           on remand from the Supreme Court decision, the company  
9           would be entitled to collect interest on the  
10          surcharges on the Category I increase, and the company  
11          would be calculating the amount of the surcharges  
12          pursuant to the staff's recommendation and would  
13          include interest per your GTE order.

14                 Secondly, Commissioners, I want to bring to your  
15          attention there is a statement on Page 10 of the  
16          recommendation that directs the utility to provide  
17          calculations of the surcharges to be applied to the  
18          affected customers within 7 days of the vote.  
19          Practically speaking, that is not something that can  
20          be accomplished. The utility would need to wait until  
21          the effective date of the rate increase and the new  
22          rates, so we would just ask that in your order that  
23          you state something to the effect that the utility  
24          would be required to submit the surcharge calculations  
25          either as soon as possible or as soon as practicable

1 after the Category I rate increase becomes effective.

2 CHAIRMAN JOHNSON: Staff, any comments to that?

3 COMMISSION STAFF: Yes. Staff is not opposed to  
4 either one of these points. We agree that the  
5 surcharge would have to be calculated after the  
6 implementation of the Category I rates, so we are not  
7 opposed to that.

8 CHAIRMAN JOHNSON: Okay.

9 MR. HOFFMAN: And with that, Madam Chairman, that  
10 concludes my opening remarks. Thank you.

11 CHAIRMAN JOHNSON: Mr. Beck, would you like to go  
12 next?

13 MR. BECK: Yes. Thank you, Madam Chairman. My  
14 name is Charlie Beck with the Office of Public  
15 Counsel, and I would like to address two portions of  
16 the staff recommendation. The first item I would like  
17 to address is the recommendation that you charge  
18 current customers not only for their share of any  
19 surcharge liability, but you also add onto them the  
20 liability of other customers who have left the system.

21 And let me just give you a brief hypothetical of  
22 what the effect of that recommendation is. If there  
23 are five customers on the system and they each owe  
24 \$10, and three of them left, that means the two  
25 remaining ones would have to pay \$25 instead of the 10

1 that is attributable to them alone because they would  
2 have to pick up the charge for the other three people  
3 who had left. And we oppose that first because it is  
4 just fundamentally unfair to charge one set of  
5 customers for some other customers' bill. Also, the  
6 second reason we oppose that, I believe it is  
7 inconsistent with the Supreme Court's order that  
8 authorized surcharges in the first place.

9 In the GTE case, the court made an analogy to  
10 your refund provisions when they authorized the  
11 collection of a surcharge, and I would like to just  
12 briefly read a small section of the GTE case when they  
13 made that analogy to your refund provisions. It says  
14 that the PSC has acknowledged it has ability to  
15 closely tailor the implementation of refunds and to  
16 accurately monitor refund payments to ensure that the  
17 recipients of such refunds truly are those who were  
18 overcharged.

19 While no procedure can perfectly account for the  
20 transient nature of utility customers, we envision  
21 that the surcharge in this case can be administered  
22 with the same standard of care afforded to refunds.  
23 And that's important. They say they envision the  
24 surcharge being administered with the same standard of  
25 care of refunds, and in that point they concluded that



1 no new customers could be surcharged.

2 Now, your staff has correctly recommended that  
3 new customers here cannot be surcharged just as they  
4 couldn't in the GTE case, but it's not a very far step  
5 to go from making sure you have the right customers as  
6 the court required, but also making sure that the  
7 right customers pay the right amount.

8 Your refund provisions to which the court made an  
9 analogy don't follow the procedure that your staff is  
10 recommending. Your refund provisions in your rule  
11 require that if a customer is entitled to a refund but  
12 is no longer on the system, the company has to mail a  
13 refund check to the last known billing address. Well,  
14 if your surcharge has to follow the standard of care  
15 of your refunds, I think it would follow that any  
16 surcharge would have to be collected from people who  
17 have left just as a refund would be sent to those  
18 people who have left.

19 What we would recommend --

20 COMMISSIONER DEASON: Mr. Beck, what is the  
21 incentive for someone to pay such a bill?

22 MR. BECK: Well, the company would then be --  
23 they would not have the ability to disconnect their  
24 water and sewer service, but it puts the company in  
25 the same place as anyone else, any other company would

1 be. There are standard credit collecting procedures  
2 that companies can employ, not only a letter but they  
3 could use bill collectors, for example, or they could  
4 send demand letters to the companies. They could --  
5 you know, I wouldn't want to tell the company how to  
6 do it, but there are certainly lots of procedures that  
7 every company employs to collect bills.

8 What we would recommend -- and I understand the  
9 Commission's concern that, well, with this  
10 recommendation maybe the company is just going to get  
11 stuck with a bunch of uncollectibles and that's not  
12 fair to the company. What we recommend is that you  
13 make the company go after or bill the customers who  
14 have left so that every customer pays their amount and  
15 not the amount of someone else, too. Make the company  
16 take diligent efforts to make those collections and to  
17 seek out. If, after doing that, they find that there  
18 is a large uncollectible that they can't make, even  
19 though they have made their best efforts to collect  
20 it, they could come back here and the Commission could  
21 address it at that point.

22 I believe there have been cases with refunds  
23 where the refunds couldn't be made and the Commission  
24 has said, well, apply to that CIAC. You could do  
25 something akin to that in this case as a possibility.

1 If the company came in and showed you they had made  
2 diligent efforts and they still couldn't collect,  
3 there are other things you could do at that point to  
4 make sure that the company is whole. So I believe  
5 there is a procedure where you can be fair to the  
6 customers and fair to the company at the same time.

7 COMMISSIONER DEASON: Well, I have a concern.  
8 You know, issuing refund checks and issuing bills is  
9 not a cheap proposition. There are costs involved in  
10 that. And if we go to all of the expense and trouble  
11 to first research someone's forward address to send  
12 them a bill, that we in all likelihood would  
13 anticipate that is not going to be paid, are we just  
14 not increasing costs, imposing costs when there is  
15 really not going to be a benefit derived?

16 MR. BECK: Well, there is a balancing act. On  
17 the one side are you just going to bill these bills  
18 that really aren't fair to the current customers on  
19 board at the present time, because --

20 COMMISSIONER DEASON: Which brings my next  
21 question. When we get to the bottom line when there  
22 is a refund situation and the refund cannot be made,  
23 it is the Commission's policy and it may even be law,  
24 I'm not sure, but that the company is not to the  
25 benefit from that. And we have interpreted that to

1 mean that then we would require a booking to CIAC.  
2 Would it not just be the most expeditious thing to  
3 require a regulatory asset or something to be booked  
4 and to have it be amortized over a period of time?

5 MR. BECK: I think it would be fair to all  
6 concerned if the company made at least a fair effort,  
7 like any other company would do, to collect the bill  
8 from the correct person before going to something like  
9 that. Surely that keeps the company whole to do that,  
10 but, you know, at what cost? You are just not  
11 collecting money that is out there and the company has  
12 made no showing of how hard that would be or not.

13 COMMISSIONER DEASON: Well, you know, I wish the  
14 court would have instructed us how they envisioned us  
15 to do this when they declared this policy on this, but  
16 obviously we are stuck with the mechanics of trying to  
17 do this and it just appears to me that asking the  
18 company to go to the time and expense, first of all,  
19 to research where these customers have moved to, and  
20 then to prepare a bill and to send it to them and  
21 anticipate collection and then referring that to a  
22 collection agency when in all likelihood those  
23 customers -- and granted there probably will be some  
24 customers who won't like it, but would pay the bill  
25 because they just felt like if they owe money to

1 someone they are going to pay it. But it seems to me  
2 that without the -- with them not being customers  
3 anymore, I know if I got a bill from a utility company  
4 that I no longer received service from, my inclination  
5 would be why didn't they bill me the right amount to  
6 begin with. You know, that's the first inclination,  
7 and the inclination is going to be, "I don't owe this  
8 money, they should have billed me the correct amount  
9 to begin with."

10 MR. BECK: No doubt nobody is going to like  
11 getting these bills whether they are a current  
12 customer or not. Commissioner, it may be that the  
13 company already has forwarding addresses. They would  
14 have to address it. It seems to me that when a  
15 company (sic) leaves the service territory there has  
16 to be a meter reading after the person has moved out  
17 to get the right number of gallons that the person has  
18 used. It seems to me in all likelihood they would  
19 have a forwarding address for that person to send the  
20 last bill to.

21 COMMISSIONER DEASON: Lots of times the customer  
22 deposits are for those reasons and things of that  
23 nature. Maybe we need -- the customer deposits from  
24 customers say, well, in anticipation of the fact that  
25 there may be some retroactive charges after you leave

1 the system, we are going to collect a deposit and then  
2 if there is not that when they leave the system then  
3 you can mail them a refund check. I mean, that's  
4 almost facetious, but that is the situation that the  
5 Supreme Court has put it us in.

6 MR. BECK: I understand the difficulty. There is  
7 a very difficult balancing act for the Commission to  
8 do in this case, but it just doesn't seem to me that  
9 the balance ought to be in letting the company recover  
10 those amounts that are owed from other customers and  
11 in one way or another just collecting it from the  
12 current customers without making any effort. Because  
13 whether you do it through a regulatory asset or  
14 additional surcharge, the ultimate effect is you are  
15 going to collect it from the current customers when it  
16 is a bill due from somebody -- you know, attributable  
17 to somebody else for use of their service during a  
18 past period.

19 And there certainly has been no showing by the  
20 company that this is not doable. That they can't send  
21 a bill and try to collect it just like any other  
22 company can. And I think if you do that and combine  
23 it with giving the company the ability to come back  
24 and show you at some point the efforts they have made  
25 and not collect, and then look at it at that point. I

1 think that would be the fair balance as I would see  
2 it.

3 COMMISSIONER JACOBS: Do you have any idea what  
4 the attrition is?

5 MR. BECK: I don't. There is no information in  
6 the staff recommendation that would show it. I know  
7 in the GTE case it was significant. There was quite a  
8 percentage increase in that amount because of that.  
9 And it's not in the recommendation, either, so I don't  
10 know who has that information or whether the company  
11 has it now.

12 COMMISSIONER JACOBS: Does the company have any  
13 idea what that attrition may be?

14 MR. HOFFMAN: Commissioner Jacobs, we would  
15 estimate that it is approximately 7 percent of our  
16 customers per year leaving the system.

17 COMMISSIONER JACOBS: Per year?

18 MR. HOFFMAN: Per year.

19 COMMISSIONER JACOBS: Now, when you say leaving  
20 the system, I assume that that means that they no  
21 longer -- this is not pertaining to those people who  
22 live part-time and who come back every year, this is  
23 actually residents who have moved away from the area.

24 MR. HOFFMAN: Right. The 7 percent number that I  
25 have used, Commissioner, as I understand it, is a

1 number that reflects customers who no longer take  
2 service from the utility period. Who at one time did,  
3 either during the entire year or during a portion of  
4 the year and who no longer take service. They are no  
5 longer a customer of the utility.

6 COMMISSIONER JACOBS: Okay. Thank you.

7 COMMISSIONER CLARK: Mr. Beck, I just wanted to  
8 be clear. You said in the GTE it was a substantial  
9 amount?

10 MR. BECK: Yes. I don't have the exact numbers,  
11 but it was -- as I recall, it was significantly larger  
12 than the 7 percent per year.

13 COMMISSIONER CLARK: That were not -- that we  
14 couldn't find to surcharge.

15 MR. BECK: No, you didn't look in GTE; you simply  
16 said anybody who is not there, we are going to bill  
17 the current customers. And that had the effect of  
18 increasing that surcharge by quite a bit. I think it  
19 ultimately turned out to be about \$9, and I think it  
20 was in the ballpark of five before that. Something  
21 like that. I don't have the exact numbers.

22 MR. HOFFMAN: Commissioner Clark, I've got those  
23 numbers.

24 COMMISSIONER CLARK: I would appreciate that.

25 MR. HOFFMAN: In GTE, which I'm glad has been



1 raised because it is the one very important piece of  
2 Mr. Beck's argument that he did not bring to your  
3 attention, which is that all of these arguments he has  
4 raised have been rejected by you about two years ago.  
5 And he did not bring that up to you, and that happens  
6 to be the facts of this particular situation.

7 Back in GTE, the Public Counsel's Office asked  
8 you to become the phone police and you rejected that.  
9 And in rejecting that you took a look at that  
10 situation, and you said, you know, first of all, in  
11 the GTE Supreme Court decision the court said that it  
12 is mandating that GTE be allowed to recover its  
13 erroneously disallowed expenses through the use of a  
14 surcharge. And by going with a per customer  
15 surcharge, as Public Counsel argued for then, and is  
16 arguing for now, it would prohibit the company from  
17 recovering a portion of the erroneously disallowed  
18 expenses.

19 Now, Commissioner Clark, in direct reference to  
20 your question, in the opinion it states that at the  
21 end of the pertinent period, which I think there was a  
22 stipulation entered into between the Public Counsel's  
23 Office and GTE, there were approximately 1.9 million  
24 lines, access lines in service as of April 1 of 1995,  
25 and the surcharge approved by the Commission which

1           amounted to \$9.66 per line, was ultimately imposed on  
2           1.1 million local service access lines.

3           COMMISSION STAFF: And, Commissioners, if I may  
4           add to what Mr. Hoffman said, in your GTE order that  
5           you issued implementing the remand, you stated that as  
6           a result if we accept OPC's position, GTE would be  
7           required to try and locate possibly as many as 800,000  
8           customers who no longer received service. GTE asserts  
9           that it has no way to locate customers that left its  
10          system years ago and even if it could find them it has  
11          no way of making them pay the surcharge, and then you  
12          went on to say that we believe that such an  
13          undertaking would be burdensome and expensive.

14          In addition to be unduly onerous and impractical,  
15          we believe that the imposition of such a requirement  
16          on GTE would directly conflict with the Supreme  
17          Court's order, and we believe that any surcharge  
18          procedure that does not provide a reasonable assurance  
19          that GTE will recover its previously disallowed  
20          expenses violates the court's mandate. So you  
21          specifically rejected OPC's position, which was the  
22          same position that it is raising here.

23          COMMISSIONER JACOBS: What about the customers  
24          who weren't on the system? We're not talking about  
25          them, are we? You all are talking about those

1 customers that were on the system at the time, right?

2 COMMISSION STAFF: Correct.

3 COMMISSIONER JACOBS: -- so the new customers  
4 that wouldn't --

5 COMMISSION STAFF: Correct.

6 MR. TWOMEY: May I comment on this point, Madam  
7 Chair? I mean, since you are on that point, rather  
8 than a litany of points?

9 CHAIRMAN JOHNSON: Yes, Mr. Twomey. Let me ask  
10 Mr. Beck a question first, and then I will follow up  
11 with you. Mr. Beck, if I understand your argument,  
12 you are suggesting that as a first step that we  
13 require the company to go out and try to find these  
14 customers. But that if they -- to collect the monies  
15 from the customers that they are actually due from.  
16 But that if they can't, then perhaps we go to the  
17 point that Commissioner Deason raised with respect to  
18 the regulatory asset.

19 MR. BECK: Yes.

20 CHAIRMAN JOHNSON: So it's not that you are  
21 saying, at least on its face, if the company can't get  
22 their money you are saying that they have to make some  
23 effort to get those monies.

24 MR. BECK: That is our recommendation. Again, it  
25 seems that the attrition for Southern States is less

1 than it was in GTE from what the company has said here  
2 compared to the numbers in GTE, but we would urge you  
3 to at least let them -- or order them to make a  
4 diligent effort, and it may be sending a bill to the  
5 last known address, which they may already have from  
6 when the customers -- from the meter reading from the  
7 last customers. Make some effort to collect that  
8 money. At the end of that, then have them come back  
9 in and look at charging it against CIAC or putting in  
10 a rate base asset or something like that.

11 CHAIRMAN JOHNSON: And the cost of collection and  
12 pursuing those customers would be passed on to those  
13 same customers or through that -- if we ended up with  
14 a regulatory asset, we would have to add the cost of  
15 that collection to the regulatory asset?

16 MR. BECK: I think you could look at that. I  
17 would not necessarily agree with that. The cost of  
18 getting the surcharges as it is from current customers  
19 isn't going to be added. The cost of collection isn't  
20 being added to the surcharge here, I don't know why  
21 you would do it to the effort to send the bill to  
22 others, unless they showed it was some extraordinary  
23 amount that they had to go.

24 I think you ought to at least require a diligent  
25 effort and let them come back and show you that they

1 haven't been able to -- if it turns out that way,  
2 because you don't know it's going to turn out that  
3 way. They may have a fine collection rate. See what  
4 happens. But at least make the effort to charge the  
5 correct people the correct amount instead of just  
6 lumping it on in addition to the current customers and  
7 making them pay everybody else's bill. Because that  
8 just clearly is not fair to current customers.

9 CHAIRMAN JOHNSON: And I'm following on that  
10 point, it's just how we get -- how we get there to  
11 make sure that the appropriate people are paying the  
12 appropriate amounts. And it's a how we get there  
13 question. And, you know, on balance --- and I know  
14 Commissioner Deason just raised the issue, not that he  
15 was advocating, but he raised the question and the  
16 issue as to the regulatory asset, and my concern is I  
17 balance your argument with respect to some other  
18 alternatives is the cost that might be incurred in  
19 trying to do those collections when -- I don't know if  
20 it will be collectable or not, but I have a hunch.

21 If someone sent me one of those bills and I was  
22 gone, I don't think I would pay it. So that is a  
23 toughy. That is going to be real a toughy. But if we  
24 have another forum that is less -- you know, that they  
25 don't incur additional costs and it's a way to provide

1 the recovery that the court has determined that they  
2 are entitled to, that's the kind of balance that I'm  
3 making, so maybe later you can talk to me a bit more  
4 about that in this dialog. But I know that Mr. Twomey  
5 is anxious to make a comment.

6 MR. TWOMEY: Yes, ma'am. First, I want to give  
7 you and -- both you and Commissioner Deason more  
8 credit than you are apparently willing to give  
9 yourself. I think that if this utility or any other  
10 came to you with a letter and said here is a copy of a  
11 a portion of an order from the Florida Public Service  
12 Commission that says that for the 27 months you were  
13 our customer you were undercharged through error of  
14 the Public Service Commission, and this is the amount  
15 that you owe us, whether it's \$30, 45, or whatever,  
16 and it is a legally binding, legally owing bill to us,  
17 read the order, and we expect that you will pay us  
18 promptly.

19 If you don't, we will be mean as junkyard dogs  
20 like the rest of the people that work out there in the  
21 real non-utility competitive world. And we will come  
22 after you with collection people, and if we don't get  
23 it we are going to adversely affect your credit  
24 rating. That is all fair in the real world. If  
25 Commissioner Deason moved from this town and went to

1 Arizona and thought that just the mere fact that he  
2 changed his physical location would allow him to bail  
3 out on his Mastercard bill, he would have another  
4 think coming. It wouldn't happen. They would track  
5 him down and make him pay. The same thing can happen  
6 here.

7 The problem is that everybody -- too many people  
8 with this organization, and the utilities that come  
9 before you is they whine and moan and say it's too  
10 hard, it's too difficult, there are expenses  
11 associated with that. Let us just take the easy way  
12 out and put it on the backs of somebody who we have  
13 got our thumbs over, like usual, who if they don't pay  
14 it after you order it we can cut their stinking  
15 service off. That's how they think. And you all fall  
16 into it entirely too often.

17 So, what I'm suggesting to you is take seriously  
18 Mr. Beck's recommendation that you make the utility  
19 try and collect it. Make them show that they have  
20 gone through the usual and ordinary collection efforts  
21 that any other business would have to do that doesn't  
22 have somebody else that they can stick it on like they  
23 want you to do here. Make them show you that they  
24 have made the reasonable and prudent effort.

25 No one is going to suggest that someone should go

1 out and spend \$50 trying to collect 45. That would be  
2 imprudent on its face. But, don't stick it on the  
3 backs of my clients, Mr. Beck's clients, Mr. Jenkins  
4 and so forth because these people just happened to  
5 move and because these folks don't want to try and get  
6 them. Make them try and get it.

7 Now --

8 CHAIRMAN JOHNSON: Could you -- and I know you're  
9 not finished, and I will allow you to complete your  
10 thought there, but could you also address the cost of  
11 recovery, who would pay that. You know, going through  
12 the collection, hiring of a collection company and all  
13 of that.

14 MR. TWOMEY: Well, like -- first of all, like Mr.  
15 Beck, I would be reluctant to voluntarily say, yes,  
16 give them that money, but if it was proven that it was  
17 extraordinary, which it probably would be, and if it  
18 was prudent that the amounts they spent were prudent,  
19 I can see -- probably see having that recovery would  
20 seem fair. Probably if it was me, I would draft up  
21 some kind of tough letter, send it out to these  
22 people, and see what you get back and then give the  
23 rest of it to a collection firm, which would take a  
24 percentage, okay.

25 There wouldn't be -- once you did your first



1 effort, I think there wouldn't a lot of expense  
2 because the collection people would take it on a  
3 contingency essentially. But when all is said and  
4 done and they have demonstrated to you, whether it's  
5 six months from now or 12, they come back in and say,  
6 okay, we got 55 percent of it, more than we thought  
7 when he started this. We would like to collect the  
8 other 45 percent. In theory, I wouldn't be opposed to  
9 seeing it go to a regulatory asset, CIAC, if you will,  
10 which is the way you treat excess refunds, by the way  
11 usually. And I would suggest even a step further that  
12 you put that in some central office account so that it  
13 was distributed to everybody on a -- like overhead  
14 costs, okay.

15 Now, the refund business, if a utility has to  
16 make refunds, and Mr. Deason said your rules from the  
17 statute provide that the utility can't benefit from  
18 that. You don't say, which would be the converse or  
19 the mirror image of this thing, you don't say in a  
20 refund situation, okay, we've got a million dollars to  
21 refund, we only found 900,000 in the current  
22 customers, let's go ahead and pro rata give more back  
23 to the current customers. That would be the fair way  
24 to do it if you were doing the reverse image of what  
25 your staff recommends here, is that if you are going

1 to hit my clients up for stuff that they are not  
2 responsible for because someone else moved out, you  
3 ought to give them somebody else's refund when you  
4 can't find them. But that is not suggested. I mean,  
5 it's heads you lose, tails we win, that kind of thing.

6 So I don't think that's fair. It ought to be  
7 into a CIAC account. Now, Mr. Hoffman read you some  
8 portion of this GTE decision. He says I'm glad Mr.  
9 Beck brought that up because Mr. Beck didn't tell you,  
10 okay. There is that little note in his voice that's  
11 there sometimes, that suggestion that Mr. Beck did  
12 this on purpose. That's how I interpreted it. I  
13 don't know how you interpreted it. Mr. Beck didn't  
14 tell you this. Mr. Hoffman is wrong. Mr. Beck didn't  
15 leave anything out on purpose if that was his  
16 insinuation, and he is wrong about the opinion, ladies  
17 and gentlemen.

18 What the opinion says in relevant part is  
19 Paragraph 1, or the first page of the opinion, we  
20 reversed the PSC's order implementing our remand. We  
21 mandate that GTE be allowed to recover its erroneously  
22 disallowed expenses through the use of a surcharge.  
23 It goes on to say, however, no customer should be  
24 subjected to a surcharge unless the customer received  
25 GTE services during the disputed period of time. No

1 place in the decision, while it says that you can't  
2 charge new customers who didn't receive service, no  
3 place in that decision does it say that you can't  
4 attempt to charge it to those that have left, okay.  
5 Unless you approve a tariff just like any regular rate  
6 case, okay, this company or no company can charge a  
7 rate that is not approved by tariff by this  
8 Commission.

9 I read that sentence, the first sentence I read  
10 to say you approve a tariff, a surcharge in a tariff  
11 that is designed to recover everything, all the  
12 revenues from the customers that were affected that  
13 benefitted from being undercharged, including the ones  
14 that have since left. The 7 percent of them, whatever  
15 it is. And they now have an approved legal rate that  
16 is binding, the same as if it is the law of Florida,  
17 and they send it out to their current customers who  
18 they have the big thumb of disconnect on, and then  
19 they also send it out to the last known address of the  
20 customers that have left.

21 The post office in my recollection will forward  
22 mail for at least 12 months, maybe 18, and the letters  
23 go there. And they take regular collection type  
24 deals, okay. But the point is that when you approve a  
25 rate in a regular rate case, you don't guarantee them

1 the -- you don't guarantee them the certainty that  
2 they will recover the revenue as represented by the  
3 rate, do you? I mean, you all know that. You say  
4 that over and over. If you don't you should. Joe  
5 Cresse back there used to say it all the time. We  
6 ain't guaranteeing them nothing. We're giving them an  
7 opportunity to collect it by the approval of this  
8 surcharge, and they can take it out legally binding  
9 and try to collect it from those who should pay  
10 because those are the people that benefitted from the  
11 undercharge. So I would encourage you not to relapse  
12 into this business of looking into  
13 the expenses and looking for excuses and so forth for  
14 not doing it without first making them try.

15 CHAIRMAN JOHNSON: Thank you, Mr. Twomey.

16 MR. TWOMEY: I have more, but on a different  
17 subject.

18 CHAIRMAN JOHNSON: Okay. Mr. Beck.

19 MR. BECK: Yes, I had a second point briefly,  
20 Commissioners. And that is the staff at one point in  
21 its recommendation proposes that you issue this as a  
22 proposed agency action, but then they also recommend  
23 that the utility submit a proposed notice and tariffs  
24 within 7 days of the vote and that it be effective for  
25 service after that. I don't see how you reconcile

1 those two. If you put it out as a proposed agency  
2 action you have to give us a chance to protest the  
3 proposed action agency action before the rates become  
4 effective. So we would ask you that the effective  
5 date be made so that if a protest is made the tariffs  
6 won't be effective. And that's all I have, thank you.

7 MR. HOFFMAN: Madam Chairman, may I respond to  
8 Mr. Twomey's statements?

9 CHAIRMAN JOHNSON: No, why don't we wait. You  
10 will probably have a lot more to respond to, and I  
11 will allow you to respond to all of the comments.

12 MR. JENKINS: Madam Chairman and members of the  
13 Commission, I'm John Jenkins with the firm of Rose,  
14 Sundstrom and Bentley here today on behalf of the City  
15 of Marco Island. The city's position is that we  
16 support the staff's recommendation with one exception,  
17 which I will speak to in just a minute.

18 The recommendation is financially more beneficial  
19 to the customers down there, so that's what you are  
20 going to hear from the various customer groups, how it  
21 affects them. And it is beneficial to Marco Island,  
22 but I think also from the standpoint of the  
23 Commission's action in the best interests of all the  
24 customers, I think it is essentially consistent with  
25 the GTE surcharge case. It is implementable by the

1 utility. It is understandable by the customers, it is  
2 verifiable by the PSC staff down the road, and I  
3 think, as the staff points out, it's probably a step  
4 further down the road toward uniform rates if that is,  
5 in fact, the Commission's goal for this utility.

6 The one item where we would differ from the staff  
7 recommendation is on the issue that you have just been  
8 hearing about. I won't go over some of the comments,  
9 I think Mr. Beck and Mr. Twomey did a pretty good job  
10 on that. I think rather than simply place the  
11 additional cost or surcharge on the existing customers  
12 out there, that it's reasonable on their behalf for  
13 the utility to at least make some effort to collect  
14 these monies owed from the customers who owe them. I  
15 don't think -- I mean, I think that that effort may be  
16 at a minimum sending a bill to those customers at the  
17 last known address, but I think that some effort has  
18 to be made to collect that money.

19 I think perhaps this case in hearing the argument  
20 today is a little bit different from the GTE case  
21 factually at least in the sense that it appears that  
22 the attrition rate in this case is substantially lower  
23 than it was in GTE, and the surcharge is quite a bit  
24 higher. So I think it should make you a little more  
25 cautious to simply add those additional costs to the

1 customers that are remaining on the system. I think  
2 that certainly there will be some of those customers  
3 that the utility will not be able to recover the  
4 surcharge from. I think it's reasonable at that point  
5 to allow the utility to -- whether it's through a  
6 decrease in CIAC, or an increase in rate base, or the  
7 creation of a regulatory asset to, in fact, recover  
8 the costs for the surcharges that they have not  
9 collected. And I would agree that that to me is sort  
10 of logically the flip side of the refund mechanism  
11 that the Commission has used in the past.

12 I think it's probably also reasonable to  
13 allow in that regulatory asset the costs of --  
14 reasonable costs of collection that the utility has  
15 used to try to collect the surcharges from the  
16 customers who are no longer on the system. That  
17 concludes my comments, thank you.

18 CHAIRMAN JOHNSON: Thank you. Mr. Twomey.

19 MR. TWOMEY: Yes, ma'am. Let me say first that I  
20 would ask you to consider modifying your staff's  
21 recommendation that whatever surcharge amounts you  
22 come up with be collected through a one-time charge.  
23 I would submit to you there are a lot of families out  
24 there that are on fixed incomes, there are widows,  
25 there are single families or single parent families.

1           There are a lot of folks out there that are -- you  
2           have heard testimony who are reeling under the current  
3           cost of their water and sewer services in addition to  
4           the other monthly costs, whose budget could not take a  
5           \$44.55 hit without some drastic modification I would  
6           submit to you.

7           If you remember the gentleman, and I think all of  
8           you were there in St. Petersburg who counted his  
9           pennies in relation to the Crystal River case and  
10          showed you how his budget works.

11          COMMISSIONER GARCIA: By the way, he is dead.  
12          Just so you know, that gentleman died.

13          MR. TWOMEY: He did.

14          COMMISSIONER GARCIA: Yes.

15          MR. TWOMEY: I'm sorry to hear that. But,  
16          unfortunately he is probably not the only person like  
17          that in our state. And all I'm suggesting to you is  
18          that a single hit in my view is not reasonable. You  
19          ought to consider -- if not recovering the monies over  
20          the full period of time in which they were perceived,  
21          which would be 27 months, I would recommend that you  
22          do at a minimum over 12 months. A lot of folks in  
23          this state have much smaller incomes than many of us  
24          in these rooms.

25          The next thing is that -- pardon me.



1           COMMISSIONER DEASON: Mr. Twomey, let me ask you  
2 a question.

3           MR. TWOMEY: Yes, sir.

4           COMMISSIONER DEASON: We heard Mr. Hoffman  
5 indicate earlier that there was -- according to the  
6 GTE decision, there is the requirement for interest,  
7 and I understood some comments to say that the company  
8 was going to pursue whatever interest they were due.  
9 And I take it that you -- when you advocate spreading  
10 it, you do realize there probably would be interest  
11 associated with that. Is it your position that should  
12 be incorporated into spreading that over a period of  
13 time or not?

14           MR. HOFFMAN: I think as a matter of law -- I  
15 mean, you pay -- on refunds you make them pay  
16 interest. I think as a matter of law -- in your  
17 practice and rules they are probably entitled to  
18 interest. I am just suggesting to you -- and so I'm  
19 not going to quibble about whether they are entitled  
20 to interest. I think it's clear that they probably  
21 are.

22           I'm just suggesting to you that if you get -- if  
23 you get the family out there, some of these people  
24 that we have heard testimony from over the last five  
25 or six years who have come in and told you they don't

1 flush the toilet but a couple of times a day, a \$45  
2 hit could be devastating to their budgets. And if it  
3 throws anybody in a situation where they don't pay  
4 their bill and these people come and disconnect them,  
5 then we are looking at reconnect fees on top of it.

6 I'm just suggesting to you that I don't think a  
7 one-time -- we are not talking about a \$9 surcharge as  
8 was the case in GTE, we are talking about something in  
9 the neighborhood of \$45 if you follow your staff. I  
10 think it's too much for a one-time hit and I would  
11 encourage you to have some longer period, whether it  
12 is six months, 12, or more, and recognizing that there  
13 is a little bit more added for interest.

14 I would like to ask you to get away from what the  
15 staff suggests somewhat repeatedly in the  
16 recommendation that you are going to uniform rates,  
17 and to ask you to disavow the motion that you have the  
18 authority to shift monies back and forth amongst  
19 various service areas of this utility across the state  
20 for various means that you find worthwhile.

21 COMMISSIONER CLARK: Let me ask staff a question  
22 on that point. As I recall in this case, that there  
23 was an issue on the policy matter of moving to uniform  
24 rates, that we should have as a policy moving to  
25 uniform rates, right?

1 COMMISSION STAFF: Yes, ma'am.

2 COMMISSIONER CLARK: And as I recall that was a  
3 unanimous decision that that should be our direction.

4 COMMISSION STAFF: And that was enunciated in the  
5 final order that was on appeal.

6 COMMISSIONER CLARK: Okay. And what has the  
7 court said with respect to uniform rates in its  
8 decision on its own notion overturn the prior SSU  
9 case, what was the language they used?

10 COMMISSION STAFF: Let me pull that out.

11 COMMISSIONER CLARK: Okay.

12 MR. TWOMEY: What they said, Commissioner Clark,  
13 while she is looking at it, as I recall, was that the  
14 level of -- what you did in this case, which involved  
15 a level, a maximum level of -- as was purported to the  
16 court of 6.7 or 7 percent, somewhere in that  
17 neighborhood of four subsidies from one group wasn't  
18 legally objectionable or words to that effect. My  
19 recollection is that they didn't approve uniform  
20 rates, let alone approve uniform rates under any level  
21 of subsidy transfers.

22 COMMISSIONER CLARK: They did recede from their  
23 decision that we did not have the authority to  
24 implement uniform rates.

25 MR. TWOMEY: What they receded from -- I think we

1 are saying the same thing, is they didn't say you had  
2 authority to do uniform rates as I read it. They said  
3 the reason they gave for saying you didn't have  
4 uniform rate authority the first time around wasn't a  
5 valid reason for kicking it out. But my larger point  
6 is this, I just wanted to ask you, I mean, you know my  
7 clients, all of them that were affected by uniform  
8 rates paid substantially higher subsidies than they  
9 are paying under the cap band. They don't like cap  
10 bands, but they are not egregiously opposed to helping  
11 other folks out up to a certain level. Mr. Hanson  
12 (phonetic), as you may recall years ago, testified  
13 that they were willing to chip in 5 percent, I think.

14 All I'm asking you to recognize is that you have  
15 to recognize there should be constraints on this  
16 business of transferring money from one group to the  
17 other, and that we are going to challenge you on it.  
18 And I'm only saying it here whereas in the legislature  
19 and the courts or whatever we get the law changed if  
20 we have to or try. In the context of today's item,  
21 I'm just asking you to be mindful of the fact that you  
22 don't necessarily have the free will or authority to  
23 pass monies back and forth. And in that regard I  
24 wanted to  
25 say --

1           COMMISSIONER DEASON: How would you have us do  
2 it, Mr. Twomey?

3           COMMISSIONER DEASON: How would I have you do  
4 what you are doing today?

5           COMMISSIONER DEASON: Yes. To fulfill the  
6 requirements under the GTE decision, how would you  
7 have us structure it?

8           MR. TWOMEY: Well, first, I would calculate, as I  
9 said a moment ago, I would calculate the surcharges so  
10 that it assumed that all the customers that were  
11 served during the time period, that is anytime, are  
12 assumed to be paying their pro rata share. I wouldn't  
13 go in assuming that there is some that aren't going to  
14 pay.

15           Secondly, as your staff apparently agrees, if I  
16 read their recommendation properly, even the folks  
17 that are in the capped systems ought to have to pay  
18 something. And that's how -- I think I read the  
19 recommendation clearly. If I read it correctly, on  
20 Page 31 of the recommendation for water service areas,  
21 for example, I understood your staff to be  
22 recommending that all of the customers of the  
23 utilities -- of the utility and all service areas  
24 would pay 12 cents per factored ERC irrespective of  
25 whether they are in the capped systems or not. And I

1 checked with Mr. Rendell, and he said that was the  
2 case.

3 So on that point I think it's appropriate that  
4 you make even the people in the capped systems pay  
5 something, and preferably pay something that reflects  
6 their fair share, pro rata fair share of what was  
7 imposed as a result of the reversal and the  
8 confessions of error.

9 The problem I have is when you look at that page,  
10 at Water Schedule No. 5, they got to that figure --  
11 for example, if you just start from the bottom and go  
12 up and you look at the Wooten system, the final order  
13 cap band revenue and the remand cap band final revenue  
14 for admissions and error is identical because under  
15 the cap band methodology the staff assumed that there  
16 wouldn't be any increase. Which presumably ignores  
17 the fact that they had some responsibility for the  
18 equity adjustment that the court made, if nothing  
19 else. As consequence, on a stand-alone basis, so to  
20 speak, your staff shows that the change in revenue  
21 requirement to be zero dollars of the factored ERCs to  
22 be 295 and the surcharge on a stand-alone basis to be  
23 zero.

24 Now, I don't know what their revenue increase  
25 would be for equity alone if the staff calculated, but

1 it is capable of doing that, and then you would have  
2 some other number out there that would show what their  
3 surcharge should be. And the same would be true for  
4 every line, every service area that you have on this  
5 page and the proceeding page that shows a zero. And  
6 of necessity, calculating the individual service area  
7 surcharges for those people would make all the rest of  
8 them lower. All the rest of them they didn't show  
9 there. It would make all the rest of them lower  
10 because you got those other numbers by transferring  
11 the related revenues from the cap people, okay.

12 So to finish answering your question, I think  
13 that the preferable way to do this is not to use the  
14 12 cents that the staff shows below, okay, and it's  
15 clear to see why. The individual system revenue  
16 requirements generally are lower for my clients than  
17 the 12 cents. And just using the Sugarmill Woods  
18 example alone is 8 cents. But I would urge you to go  
19 one step further and have your staff calculate what  
20 the revenue requirements were as a result of the order  
21 on remand in the reversals and figure out a surcharge  
22 for each and every system, and then make that  
23 surcharge applicable to each of those systems, which  
24 would have the effect, again, of pulling all of those  
25 down.

1           So, I think I was clear, though, that Schedule 5  
2           seems a reasonable way to do it, but not using the  
3           overall average of 12 cents, using the standby, or the  
4           stand-alone calculation and making -- with the caveat  
5           that you would calculate the stand-alone surcharge  
6           levels for all the capped systems. But because, and I  
7           think it's going to be difficult for you to explain to  
8           most of the customers of this utility why some folks  
9           would incur additional revenue liabilities and not see  
10          any increase in their rates. That's how I would  
11          recommend you do it.

12           COMMISSION STAFF: Commissioner Clark, to answer  
13          your question about what the court stated concerning  
14          uniform rates, the court specifically overruled Citrus  
15          County's finding that there was no statutory basis for  
16          its earlier conclusion that uniform rates particularly  
17          within groups of systems that have comparable costs of  
18          providing service must depend on a finding that  
19          facilities and land used to provide water and  
20          wastewater services are functionally related.

21           COMMISSIONER CLARK: Okay.

22           MR. RENDELL: And one point further, the court  
23          also acknowledged that the cap band was an  
24          intermediate step towards uniform rates.

25           COMMISSIONER CLARK: What did it say?



1 MR. RENDELL: It states that when it upheld the  
2 cap bands, it says, "Instead of doing so, the PSC  
3 perhaps looking over its shoulder at the Citrus County  
4 decision, took the intermediate step of setting rates  
5 that are uniform only within each of several groups of  
6 systems."

7 COMMISSIONER CLARK: Okay.

8 MR. TWOMEY: Which means that you said that was  
9 your procedure, not that they said it.

10 COMMISSIONER CLARK: But they affirmed the cap  
11 band rates.

12 MR. TWOMEY: They affirmed the cap band rates.  
13 And the only thing I'm saying in this context,  
14 Commissioner Clark, is that I wanted you to -- to urge  
15 you to try and stay away as much as possible from the  
16 notion that you can take from one group of people, my  
17 clients in particular, but remembering that under the  
18 strict uniform rates over half of the customers of  
19 this utility had four subsidies of varying size, and  
20 all I'm saying is I would ask you to try to get away  
21 from that, and whenever you can go to making people  
22 pay the costs that they incur and not shift them to  
23 somebody else.

24 COMMISSIONER CLARK: Well, is what you are saying  
25 that we should recede from our decision that moving to

1 uniform rates is the correct way to go?

2 MR. TWOMEY: I'm not saying that right here. I'm  
3 saying try and wipe that notion out that you can do  
4 all of this stuff and shift money whenever you feel  
5 like it to other people. You don't need to say  
6 anything about what your final order is and  
7 everything, I'm just talking about how that -- the  
8 notion is entwined in your staff recommendation, don't  
9 worry about doing this because we are going to uniform  
10 rates, and I'm saying hold your horses, don't get too  
11 -- don't get caught up in the business that you can do  
12 all of this because, one, we don't think it's right,  
13 and it's not necessary. That's all I'm saying.

14 CHAIRMAN JOHNSON: Mr. Twomey, did you have any  
15 more to add? Staff.

16 MR. RENDELL: Yes, I would like to make a couple  
17 of points. One point, Mr. Twomey, I believe, was  
18 advocating that we do a stand-alone basis, and staff  
19 should calculate these. Staff calculated these, but  
20 we didn't include this because, as pointed out on Page  
21 11, we didn't believe that this would be appropriate  
22 because we did acknowledge uniform rates was the goal.  
23 If anything, we think you should -- if you don't  
24 accept staff's recommendation of doing it  
25 across-the-board, that you should stick to some type

1 of resemblance to the current rate structure and that  
2 would be charge the ones under the caps.

3 A couple of other points. On the regulatory  
4 asset or the adjustment to CIAC, staff would like to  
5 point out that there is an additional requirement that  
6 was placed upon the Commission by the Supreme Court  
7 and that would be that any future customers could not  
8 pay in any of the -- any of the revenue shortfall. If  
9 you were to create a regulatory asset or if you were  
10 to make adjustments to CIAC which would therefore  
11 increase rate base, all future customers would have to  
12 pay in this, and we don't believe that would be  
13 consistent with the GTE decision.

14 We would like to also point --

15 COMMISSIONER CLARK: Mr. Rendell, let me ask you  
16 about that, because if we do when they can't make a  
17 refund, we allow them to credit -- let me see.

18 MR. RENDELL: Credit CIAC.

19 COMMISSIONER CLARK: -- credit CIAC, so that  
20 reduces rate base. In effect, new customers benefit  
21 from that.

22 MR. RENDELL: Yes. And the rationale --

23 COMMISSIONER CLARK: So if we do that same thing  
24 are we --

25 MR. RENDELL: The rationale is that the utility

1 has that money, and so instead of giving it -- who to  
2 give it to, what they do is you credit CIAC which  
3 would decrease rate base and the theory is that it  
4 would benefit the customers in the future by lowering  
5 rates. The reverse of that on a surcharge is you  
6 would debit CIAC, which would increase rate base,  
7 which would increase rates over all the customers.  
8 And to do so, the utility would have to come in for a  
9 rate case to recoup that and increase the rates.

10 One additional point is the interest would  
11 continue to accrue, when they try to go out and  
12 collect from these customers it's going to continue to  
13 accrue and then that is also going to have been to be  
14 recouped from the current customers or from the  
15 customers who are still on the system. So that's two  
16 additional points that I would like to make.

17 COMMISSIONER CLARK: Mr. Rendell, I want to be  
18 clear. It's your view that the case, the GTE case  
19 would not allow us to debit CIAC for the amount of  
20 surcharge we could not collect?

21 MR. RENDELL: That was my understanding, that in  
22 GTE any future customers could not be charged that.  
23 It's the existing -- they had to receive service  
24 during that time. So once you make a regulatory asset  
25 or you debit CIAC and you pass that on into future

1 prospective service rates, future customers are  
2 paying.

3 COMMISSIONER CLARK: How do you reconcile that  
4 with the fact the court seems to say that to the  
5 extent you can you match what you do in refunds, and  
6 in refunds you credit CIAC, and in surcharges why  
7 can't you debit them? I don't see that that would  
8 necessarily violate the GTE case.

9 MS. JABER: Commissioners, you don't reconcile  
10 it. As a matter of law, GTE is very specific that no  
11 new customers will receive a surcharge. We are  
12 quoting. That is something that the GTE court said,  
13 which was the Supreme Court of Florida.

14 COMMISSIONER CLARK: We're not going to surcharge  
15 new customers.

16 MS. JABER: Right. I can get to it quickly.

17 COMMISSIONER CLARK: So you disagree with Mr.  
18 Rendell.

19 MS. JABER: No, we are saying the same thing. We  
20 are saying the same thing. What Troy was saying to  
21 you was to do anything to CIAC related to the  
22 surcharge has the effect of affecting all of the  
23 customers, which includes new customers, and GTE says,  
24 however, no customer should be subjected to a  
25 surcharge unless that customer received GTE services

1 during the disputed period of time.

2 COMMISSIONER CLARK: And you are reading  
3 surcharge to mean you can't create a regulatory asset.

4 MS. JABER: Right, because the creation of the  
5 regulatory asset has the effect --

6 COMMISSIONER CLARK: I understand that, but I  
7 think you are being extremely --

8 COMMISSIONER DEASON: I think that's reading a  
9 lot into the opinion that is not there. I mean, there  
10 is a basis for that opinion on the opinion, but the  
11 opinion does not precisely say that.

12 CHAIRMAN JOHNSON: Because, Lila, taking it to  
13 the logical extreme, if there was one customer left,  
14 you would have to assess that one customer the entire  
15 amount, and if that customer couldn't pay, you  
16 couldn't do anything else. So how would the company  
17 ever recover?

18 MS. JABER: Well, I think what staff is  
19 recommending is our recommendation on how the utility  
20 would recover, which is that the rest of the customer  
21 base ends up paying. The customers that have received  
22 service during that period.

23 CHAIRMAN JOHNSON: Right. I'm saying if there  
24 was only one customer left on the system.

25 MS. JABER: Oh.

1           CHAIRMAN JOHNSON: You get to a point because you  
2 can't do the CIAC, what do you do? Because the court  
3 said -- you know, I'm taking an extreme example, but  
4 that example does lead you down that road that that's  
5 it. And then the company can't recover because that  
6 one customer wouldn't pay it, but you can't get it any  
7 other way. So we have got to have -- there has got to  
8 be a logical way to get through this one.

9           COMMISSIONER JACOBS: Do I take it that you  
10 disagree with the premise that the decision -- Mr.  
11 Twomey's conclusion that the decision does not say --  
12 does not preclude going and trying to find the folks  
13 who were there? Even though you can't surcharge new  
14 customers, are you in agreement with the idea that it  
15 does not preclude your going to find the folks who  
16 were on the system?

17          MR. RENDELL: I don't disagree with that. I  
18 think the utility could go after them. I think from a  
19 practical standpoint for them to go out and try to  
20 trace down the people that left, it may not be  
21 practical, and it does do additional expenses. They  
22 could try it and then whatever is left over they could  
23 come back to the Commission and then add that onto the  
24 surcharges. I'm not saying I don't think they can do  
25 it; they could do it, I'm just looking at it from a

1 practical standpoint.

2 COMMISSION STAFF: There is no legal prohibition  
3 against doing that. I think it would be within your  
4 discretion to do that if you chose to.

5 MR. RENDELL: And that would be an option if they  
6 were to go out and try to collect as much as possible  
7 and then come back. I had one other point on the  
8 amount of time, the staff is recommending a one-time  
9 charge because of the continued attrition. If the  
10 Commission were to look at an extended time period --

11 COMMISSIONER GARCIA: Mr. Rendell, couldn't we do  
12 something in terms of -- I guess, I don't think  
13 Commissioner Deason was advocating it, but if you  
14 leave you are subject to the company taking that money  
15 from your deposit?

16 MR. RENDELL: That's true, but under the deposit  
17 rule, if you are a customer for 23 months you  
18 automatically get your deposit back. So if a customer  
19 is on there for 27 months, he already has that deposit  
20 back.

21 COMMISSIONER GARCIA: You're right.

22 MR. RENDELL: Now, I mean, theoretical -- and  
23 also as a customer left, they usually take that  
24 deposit and apply it to the last months bill. What I  
25 was getting at for the amount of time, I would



1 advocate if the Commission does agree with the  
2 one-time charge, maybe a three-month, over three  
3 months. I would not go any -- I wouldn't go up to a  
4 year, because that 7 percent attrition still applies.

5 COMMISSIONER GARCIA: It just occurs to me that  
6 if the company -- trying to be a little bit creative,  
7 because I can understand Mr. Twomey's concern, I think  
8 it's all of our concerns, including staff's -- there  
9 has got to be a way that the company can, you know,  
10 obviously it's sort of like car insurance; if you pay  
11 it all up front, you don't have to pay a financing  
12 charge for the monthly installments. And perhaps the  
13 company would simply send out a statement whereby it  
14 basically said, look, you can pay us the 45.55 or  
15 whatever the price is now or you can pay us \$50 at  
16 paying us, you know, so many dollars a month until  
17 this is resolved.

18 But to sort of just show up -- I mean, if you  
19 will recall, I mean, when we first started discussing  
20 this refund issue, I brought up the point, in fact, I  
21 was the one that suggested people just change the name  
22 of their bill to their wife, and we may see a little  
23 bit of that here. But, hitting them all at once is  
24 not going to make it any easier to collect this.

25 I mean, I understand what you are trying to say,

1 but what we've got to try to do is something whereby  
2 the company gets its money and at the same time we are  
3 a little bit flexible with these people, because \$55  
4 on top of already very expensive water bills is a big  
5 burden for them to have to carry.

6 MR. RENDELL: And I think if it had been higher,  
7 around -- you know, not picking a magical number, but  
8 100 or more, you know, I think we would have  
9 reconsidered. But whenever it was around 40, and I  
10 can't imagine it being over 60 or \$70, then we looked  
11 at the one-time fee. But I would agree that you could  
12 give them the option. You know, legally they could  
13 disconnect them, but I think they don't want to lose  
14 those customers. I mean, where would they be if they  
15 disconnected everyone? You know, then they are going  
16 to be out future revenue. So I don't think  
17 practically they are going to go out and disconnect.

18 COMMISSIONER GARCIA: But I'm just trying to  
19 avoid clearly --

20 COMMISSIONER CLARK: I have a question on that.  
21 Can you give them the option, can you say here is the  
22 surcharge, it's \$44, you can pay it all at once or you  
23 can do it over three months, is that going to be a  
24 difficult thing for the utility to implement?  
25 Personally, if it were something on my bill, I would

1 like the option of paying it all at once.

2 COMMISSIONER GARCIA: Especially if there is an  
3 economic incentive, and clearly there is some carrying  
4 costs with not collecting the money all up front, so I  
5 would assume part of what maybe the company would want  
6 to do is, you know, put some kind of promissory note  
7 in the bill and say, you know, if you're not going to  
8 pay it, just sign here and we are going to charge you  
9 on a monthly basis. We will break it up to three  
10 months, six months, whatever it is, but that way you  
11 have also got their signature that they are  
12 responsible for it and you collect it one way or  
13 another.

14 I mean, I only bring this up, you know, be it --  
15 Mr. Twomey made the point but, you know, we have all  
16 sat through these hearings and there are people in  
17 these areas who could easily pay this surcharge and  
18 wouldn't even think about it twice. But there were  
19 some areas here where they would be hard pressed to  
20 come up with \$50. So if we can give them an option, I  
21 think it behooves the company so that we can just keep  
22 this process moving along.

23 MR. ARMSTRONG: Commissioners, if I could address  
24 that. We could give the option of a three-month or a  
25 six-month period. I just want to be clear, too, under

1 the staff's numbers, which don't include everything,  
2 but if you look at the staff recommendation for water  
3 customers on a five-inch meter who were customers for  
4 the entire 27-month period, we are talking about  
5 \$3.24, the surcharge. If they are water and  
6 wastewater, then the number goes up to the 44 or \$45  
7 level.

8 COMMISSIONER GARCIA: Right.

9 MR. ARMSTRONG: Most of the customers we're  
10 talking about here are only water customers, water  
11 only customers.

12 COMMISSIONER GARCIA: Right.

13 MR. ARMSTRONG: So it is \$3.24 for most of them.

14 COMMISSIONER GARCIA: We're trying to -- and I  
15 see that, and I would assume that anybody who gets a  
16 \$3 surcharge won't -- most of them, and I have run  
17 into customers who would pick it off right away if  
18 it's a penny off, but most of them would pay it  
19 without even reading the bill for the \$3. But it is  
20 the larger sum, which as you know in some of these  
21 areas is a tough get. And that's why I think we were  
22 not talking about that obviously. We don't want to  
23 float \$3.50 for a few months. We want to get that out  
24 of the way so we don't end up in this cycle that the  
25 more you guys speak about it the worse it seems.

1           MR. ARMSTRONG: Commissioner, we would be  
2 amenable to a three or six-month option being offered  
3 to the customers.

4           COMMISSIONER GARCIA: Okay.

5           COMMISSIONER DEASON: You said three or six-month  
6 option?

7           COMMISSIONER GARCIA: Three to six.

8           MR. ARMSTRONG: You know, whatever the  
9 Commissioners desire regarding like three or six  
10 months, whatever your desire is. You know, we do have  
11 a budget billing process already that we offer to our  
12 customers, so we would implement it through that.

13          CHAIRMAN JOHNSON: Mr. Hoffman.

14          MR. HOFFMAN: Thank you, Madam Chairman. With  
15 your permission, I'm going to burden this record for  
16 just a moment and respond to Mr. Twomey's what I  
17 believe to be inappropriate personal remarks directed  
18 at me in response to my initial presentation.

19          CHAIRMAN JOHNSON: That's fine.

20          MR. HOFFMAN: I want to make it clear,  
21 Commissioners, that after listening to Mr. Beck's  
22 argument, and Mr. Beck is the attorney for the  
23 customers, and he is their advocate, and I am the  
24 attorney for the utility and I am their advocate,  
25 there was no mention of the GTE remand decision of

1 this Commission. I don't know whether it was  
2 intentional or unintentional and I don't care. I'm  
3 not here to speculate on Mr. Beck's strategy and  
4 arguments. But I thought it was very important for  
5 the Commissioners to understand that the arguments  
6 that Mr. Beck was making this afternoon have been made  
7 before and have been rejected. And that is why I  
8 brought that fact to your attention.

9 You know, Commissioners, it was Commissioners  
10 Clark, Deason and Garcia who heard the GTE remand  
11 proceeding and who entered that order. I don't know  
12 if these three Commissioners were aware of the fact or  
13 recall the fact that those arguments were made and  
14 rejected and I brought that to your attention.  
15 Commissioner Jacobs, you were not on the Commission  
16 then, and I was bringing that to your attention.  
17 Commissioner Johnson, Chairman Johnson, of course, you  
18 were on the Commission then, but you were not on that  
19 panel and I was bringing that to your attention. And  
20 that is why I brought that fact to your attention.

21 Secondly, let me move on to more substantive  
22 remarks. I think that the staff has pointed out that  
23 the longer we go with this thing interest accrues and  
24 costs accrue. And I don't think that that is in the  
25 best interests of our customers. I would also point

1 your attention, Commissioners, to the recent appellate  
2 court decision from our 1995 rate case where there  
3 were two reversals by the court because a prior  
4 Commission policy was changed without any  
5 justification in the record.

6 And I would argue to you, Commissioners, that you  
7 have a policy in place in applying the GTE decision.  
8 And, again, what the GTE court said was that GTE must  
9 be allowed to recover its erroneously disallowed  
10 expenses through the use of a surcharge.

11 COMMISSIONER CLARK: I'm confused, Mr. Hoffman.  
12 You're saying what we did in GTE has established  
13 policy that if we determine that it would be  
14 appropriate for you to at least attempt to get this  
15 money from customers who have left the system, that we  
16 would have violated that policy?

17 MR. HOFFMAN: Correct. Now, that policy,  
18 Commissioner --

19 COMMISSIONER CLARK: You know, it's just one  
20 case. The one and only time we have done it.

21 MR. HOFFMAN: Well, it's obviously out there for  
22 a reason, Commissioner. I mean, it's your precedent.  
23 It's something everybody has an opportunity to read.

24 COMMISSIONER CLARK: It seemed that we determined  
25 the facts in that case given the fact that there was

1 800,000 customers they would have to go after, and  
2 given the size of it we may have determined that is  
3 correct. I would agree with you that if we choose not  
4 to do that we would have to formulate and enunciate  
5 why we believed it was appropriate to do it  
6 differently.

7 MR. HOFFMAN: And that's the point that I'm  
8 trying to make. And, you know, you raised the  
9 attrition factor, Commissioner Clark, and that has  
10 been discussed by Mr. Twomey and I think by others.  
11 And there is a difference there. The company has an  
12 attrition factor of roughly 7 percent, whereas in GTE  
13 it went from 1.9 million customers down to 1.1  
14 million. But I would argue to you that, if anything,  
15 that mitigates toward retaining your current precedent  
16 I'll call it, that the amount of disallowed expenses  
17 must be recovered in total by the utility from the  
18 customers who took service during the period of time  
19 the erroneous rates were in effect. And I would point  
20 out to you, Commissioners, that with respect to the  
21 issue of a regulatory asset, that may not allow that  
22 recovery. A regulatory asset, if that is established,  
23 would not allow recovery unless and until there is  
24 another rate case filed by the company. And that  
25 concludes my remarks, thank you.



1           CHAIRMAN JOHNSON: Thank you. Questions,  
2           Commissioners.

3           COMMISSIONER DEASON: Yes, I have a question.  
4           I'm looking at the recommendation on the bottom of  
5           Page 11, talking about staff could have done it on a  
6           stand-alone basis, but recommends against that. Why  
7           is that improper? Why is it improper to do it on a  
8           stand-alone basis?

9           MR. RENDELL: Well, staff -- we had to look at  
10          our original recommendation where we said stick with  
11          cap end rates, and then we have to look at different  
12          options and variations. To go to stand-alone  
13          completely undoes any type of rate structure we have  
14          now, which would be the cap band. We did make this  
15          statement that uniform rates --

16          COMMISSIONER DEASON: When you say undo, what do  
17          you mean by that? The cap band rate structure would  
18          stay in effect -- we're just talking about for  
19          purposes of surcharge.

20          MR. RENDELL: Yes.

21          COMMISSIONER DEASON: How does that undo the cap  
22          band rate structure?

23          MR. RENDELL: Well, if you were to do  
24          stand-alone, you are going to be looking at each  
25          individual systems revenue requirement, so there would

1 be absolutely no subsidies, there would be no caps,  
2 there would be nothing. You would just go back to  
3 stand-alone. So we made the calculations --

4 COMMISSIONER DEASON: For purposes of calculating  
5 the surcharge?

6 MR. RENDELL: On the surcharges. So we believed  
7 that wasn't appropriate to do that, and that to do  
8 anything besides across-the-board you would at least  
9 go back to some resemblance of the cap band, in other  
10 words, you would go -- you would charge to the systems  
11 below the cap and at least leave the caps as is and  
12 then do some type of stand-alone underneath the cap.  
13 And that's what we included in our recommendation.  
14 So, that's as far as staff believed would be  
15 appropriate to go the other direction. We wouldn't go  
16 one step further, and go to the stand-alone. That was  
17 staff's belief.

18 COMMISSIONER JACOBS: In that effort you would be  
19 trying to allocate the total surcharge according to  
20 the revenue requirements under each cap, right?

21 COMMISSION STAFF: On a stand-alone basis, yes,  
22 you would be --

23 COMMISSIONER JACOBS: No, no, no. Under the  
24 method that you just described.

25 MR. RENDELL: Yes. What you would do, you would

1 go ahead and do the first step of the cap band or the  
2 modified stand-alone rate structure where you would  
3 calculate stand-alone rates and you would cap the ones  
4 at \$52 on water and 65 on wastewater. You would  
5 spread the revenue deficiency over the other systems  
6 so that you would be comparing the cap band revenue  
7 requirement to the cap band revenue requirement, not  
8 the stand-alone revenue requirement.

9 COMMISSIONER JACOBS: Now maybe we can go on to  
10 what you were going to say.

11 COMMISSION STAFF: What I was going to add to  
12 that as far as the reason not to is that, of course,  
13 the rates going forward are cap band rate structure  
14 rates, and we believe that it was -- especially given  
15 the magnitude of the amount of the surcharge, we felt  
16 it was reasonable to calculate a surcharge that  
17 includes everyone including the cap systems if it was  
18 the same amount of surcharge.

19 But if you go back and do a stand-alone, we are  
20 thinking to the customers and the customer confusion  
21 and the questions that will have to be answered to  
22 them, if their rates are not increasing because they  
23 are capped, but yet they are going to get this  
24 surcharge that is based on the stand-alone revenue  
25 requirement that is not used for anything except this

1 calculation of the surcharge, I mean, I don't know how  
2 you explain that to the customers. Why would they get  
3 a larger surcharge than some of the other customers  
4 when their rates aren't going up, but yet the rate is  
5 an appropriate rate, it's the cap band rate.

6 We felt like going as far as giving everybody the  
7 same level of surcharge maybe violates the cap band  
8 rate structure or whatever, but at least it's a  
9 one-time thing and it's understandable and you can  
10 explain it to customers, and the magnitude isn't that  
11 great as compared to, you know, if it were larger than  
12 that that may be a little bit more difficult to  
13 explain.

14 COMMISSION STAFF: And one other --

15 COMMISSIONER JACOBS: Do we know how many  
16 customers are going to be -- will incur both the water  
17 and the wastewater surcharges? I mean, how many  
18 systems, I'm sorry, not how many customers.

19 MR. RENDELL: I haven't done the comparison. It  
20 would be the systems in Schedule -- Wastewater  
21 Schedule No. 5, they are also on Water Schedule No.  
22 5, or water and wastewater --

23 COMMISSIONER JACOBS: A rough percentage of the  
24 total.

25 MR. RENDELL: I really don't know. One other

1 point on the stand-alone, it appeared that there was  
2 one water system and one wastewater system that would  
3 get a slight decrease, and we wanted to stay away from  
4 a refund surcharge analogy, so that was one other  
5 further reason we didn't want to do a stand-alone.

6 COMMISSIONER DEASON: Okay. I have another  
7 question. Mr. Beck indicated that we need to somehow  
8 reconcile this being a PAA order and the requirement  
9 for tariffs to be effective within 7 days. How does  
10 staff propose to address that?

11 MR. RENDELL: Well, after further consideration,  
12 realizing that the company cannot make the surcharge  
13 calculation until the rates go into effect anyway,  
14 what I would propose is go ahead and place the  
15 prospective rates into effect, let the company begin  
16 to calculate. You have 20 days to get the order out,  
17 21 days to get the -- for the protest period. You  
18 could go ahead and notice the customers that a  
19 methodology was approved on a PAA basis. You could go  
20 ahead and include that in the first notice. That  
21 would be about 41 days for the protest period and the  
22 order to come out. By that time the company should  
23 have the calculations and they could hold off billing  
24 until then.

25 I understand through conversations with them that

1 it may take about that amount of time anyway because  
2 you want at least one full month of billing under the  
3 new rate to go back and look at records to see who  
4 dropped off the system. So I don't foresee that as a  
5 problem. That you go ahead and put the rates in  
6 effect, you notice the customers of the methodology,  
7 and then you wouldn't bill them for the surcharge  
8 until the protest period is over. If the order is  
9 protested, that it will be made an issue in the  
10 hearing, and we recommended that. So I don't see a  
11 problem reconciling that.

12 COMMISSION STAFF: That is if it is protested it  
13 would be made an issue in the hearing.

14 MR. RENDELL: Yes, I'm sorry.

15 COMMISSIONER DEASON: Mr. Beck, you just heard  
16 that explanation. Does that address your concerns?

17 MR. BECK: I'm not sure I understand it, to be  
18 perfectly honest. If you protest it, it can't be made  
19 effective.

20 MR. RENDELL: No, I didn't say make it effective.  
21 The rates go into effect, they are final action  
22 because the Commission voted on the prospective rates  
23 go into effect. They have already voted, that's Issue  
24 No. 2. They have to go into effect. Once they are in  
25 effect for a month, then the company can go back and

1 do its calculations on surcharges. It's going to take  
2 them probably about that amount of time do the  
3 calculations anyway. So you have a month of  
4 calculations.

5 You could go ahead and notice the customers that  
6 the methodology was approved, it was approved PAA, and  
7 if it is protested be made an issue. At the end of  
8 the protest period then the surcharges will be billed.  
9 You have got to separate surcharges from rates.

10 COMMISSIONER DEASON: But if there is a protest  
11 there will be no billing of surcharges or there will  
12 be a billing of surcharges?

13 MR. RENDELL: It would have to be made an issue  
14 in the hearing.

15 COMMISSIONER DEASON: And that is Mr. Beck's  
16 point, I believe.

17 COMMISSIONER JACOBS: And if that occurs then the  
18 billing of the surcharges will be suspended?

19 MR. RENDELL: Yes, that's correct. They would  
20 not go into effect, and we recommend that it be made  
21 an issue in the hearing which is already set.

22 MR. ARMSTRONG: Commissioners, if we may on  
23 behalf of the company, I think what we have to  
24 understand, as well, is two things; one, if the rates  
25 don't go into effect the surcharges will continue to

1 accrue interest, so it seems like that would defeat  
2 the purpose.

3 But a second point would be it doesn't seem like  
4 it's any different than any other rate design  
5 determination of this Commission, and in the other  
6 rate design determinations like for this rate case we  
7 have a right to put the rates into effect. So we can  
8 do two things, decrease the costs so that the interest  
9 will stop accruing and, second, we can begin to  
10 recover the dollars that we have been deprived of for  
11 27 or 28 months now already.

12 And there is a third factor really in that  
13 attrition, customer attrition will continue, so that  
14 pool will continue to go up. So there are a number of  
15 factors that mitigate against any kind of -- any kind  
16 of delay in implementing the surcharges.

17 MR. RENDELL: Commissioners, I want to be clear,  
18 the rates would go into effect. They would be not  
19 proposed agency action, they would be final action.

20 COMMISSIONER JACOBS: That was my question. So  
21 the rates are not PAA?

22 MR. RENDELL: No, the rates should be final  
23 agency action. The surcharge would be suspended if  
24 there is a protest, and I would not recommend putting  
25 those in place because the methodology could change



1 after the hearing and you would be back to refunds and  
2 surcharges, so I wouldn't -- the liability will stop  
3 once the rates are into effect and then you go to  
4 hearing on the methodology.

5 MR. ARMSTRONG: But our point was that the  
6 interest will continue to accrue, attrition will  
7 continue to accrue, so that that pot of dollars  
8 associated with attrition, customer attrition will  
9 continue to accrue. You are just exacerbating the  
10 situation.

11 MR. RENDELL: And I don't deny that, but I also  
12 don't want to be put in the situation of a  
13 refund/surcharge situation if a different methodology  
14 is approved at hearing.

15 COMMISSIONER JACOBS: In this case exacerbating  
16 is a relative term.

17 MR. ARMSTRONG: Commissioner, that is correct.  
18 But I think the Commission has handled the  
19 refund/surcharge question by saying no  
20 refund/surcharge recently.

21 COMMISSIONER JACOBS: Understood.

22 MR. ARMSTRONG: Thank you.

23 CHAIRMAN JOHNSON: Any other questions,  
24 Commissioners? Is there a motion?

25 COMMISSIONER CLARK: Mr. Armstrong, what did you

1 just say?

2 MR. ARMSTRONG: The last comment?

3 COMMISSIONER CLARK: Yes.

4 MR. ARMSTRONG: I said that you have addressed  
5 that refund/surcharge question when it is a rate  
6 design, a rate structure issue. I think you address  
7 that by saying no refunds and no surcharges in our  
8 recent docket.

9 COMMISSIONER CLARK: Okay. And that is on  
10 appeal, right?

11 MR. ARMSTRONG: Yes, it is on appeal.

12 COMMISSIONER DEASON: The surcharges calculated  
13 by staff, these surcharges are applicable to all  
14 systems, is that correct?

15 MR. RENDELL: That's correct.

16 COMMISSIONER DEASON: And it doesn't matter  
17 whether they are at a capped rate or not?

18 MR. RENDELL: That's correct.

19 COMMISSIONER CLARK: I'm sorry, I didn't  
20 understand it that way. The surcharges will apply to  
21 the capped?

22 MR. RENDELL: Under staff's recommended  
23 methodology it would apply to everyone, all systems.

24 COMMISSIONER CLARK: And the rate changes, if you  
25 had a -- for the rate change you wouldn't exceed the

1 cap?

2 MR. RENDELL: No. The rate change would stick to  
3 the cap band rate structure.

4 COMMISSIONER JACOBS: And you are going to do the  
5 surcharges --

6 MR. HILL: Commissioner, if I may, we don't cap  
7 rates, and maybe that is some of the confusion. It's  
8 a cap of a bill at 10,000 gallons, and so the rates  
9 are going to change for everybody, but their bill at  
10 10,000 gallons is not going to change prospectively.  
11 We view the surcharge differently than a bill capped  
12 at 10,000, and that may be some of the problem, as  
13 again there is not a rate, there is not a cap, there  
14 is not -- your rate is going to stay at this amount,  
15 it's consumption at 10,000 gallons. So the rates do  
16 change, but the caps don't change on a prospective  
17 basis. The surcharges apply to everyone.

18 COMMISSIONER CLARK: I have a question as to --  
19 it's going to be a uniform surcharge.

20 COMMISSIONER JACOBS: No.

21 MR. RENDELL: It will be one surcharge  
22 across-the-board to all customers depending on how  
23 long they were on the system, so it is prorated.

24 COMMISSIONER CLARK: Okay.

25 COMMISSIONER JACOBS: Wait a minute. When you

1 say uniform, you're saying the same amount?

2 COMMISSIONER DEASON: The same amount per month.

3 MR. RENDELL: Yes, the same monthly amount.

4 COMMISSIONER JACOBS: I thought it varied by the  
5 meter size?

6 MR. RENDELL: It does vary by meter size, but  
7 it's one charge per month by meter size.

8 COMMISSIONER JACOBS: That same amount per month.

9 MR. RENDELL: Yes.

10 COMMISSIONER DEASON: Now, you are recommending  
11 that the surcharge be collected from customers who  
12 were on the system at the time and that they also pay  
13 the surcharge for those customers who have departed  
14 the system, correct?

15 MR. RENDELL: Correct. It's an add-on to their  
16 liability.

17 COMMISSIONER DEASON: Okay. Now, how did you  
18 calculate -- what is the final rate with the add-on?

19 MR. RENDELL: The rate -- that's something we  
20 don't have. That's something the company will have to  
21 calculate, and they cannot calculate it until the  
22 rates go into effect.

23 COMMISSIONER DEASON: So the 12 cents per month  
24 and the -- what is it, \$1.53 per month, that is the  
25 base amount, we don't know what the add-on is to

1 surcharges -- what the surcharge on the surcharge is  
2 going to be?

3 MR. RENDELL: Yes, exactly. That is the base  
4 amount for each customer if they were on the system  
5 for all 27 months. So that is the per month amount.  
6 Now, then they would have to go back and calculate  
7 that amount for the customers who left the system and  
8 then add that onto the surcharge plus interest.

9 COMMISSIONER DEASON: Assuming we accept staff's  
10 recommendation on that point.

11 MR. RENDELL: That's correct. We are basing that  
12 on that premise.

13 COMMISSIONER DEASON: And if we did not accept  
14 that recommendation and just went with the base 12  
15 cents for water and the base \$1.53 for wastewater,  
16 that would be billed to all customers -- when I say  
17 all customers, all customers that received service  
18 during that period of time -- and if it just so  
19 happens that a customer departed the system then it  
20 would be up to the company to forward that bill and  
21 try to make that collection.

22 MR. RENDELL: That is an option, and then they  
23 could come back at a later date and time and say we  
24 collected X dollars, we still have X dollars left,  
25 what should we do with it. And that certainly is an

1 option.

2 COMMISSIONER DEASON: Okay.

3 COMMISSIONER CLARK: Mr. Rendell, do you have any  
4 estimate of what the surcharge would be?

5 MR. RENDELL: I have an idea that it couldn't be  
6 no more than \$100, and I spoke with Mr. Isaacs, and  
7 also Mr. Cresse, just trying to get an idea of what it  
8 might be, and we came to agreement that probably it  
9 shouldn't be over \$60 on a combined basis. I don't  
10 want to hold anyone to that figure, but in our own  
11 mind that, yes, there are customers that left, but  
12 there are also customers that came on during that  
13 time, also.

14 You can't have attrition without customer growth,  
15 so you have customer growth and the customer growth  
16 would dilute the amount that is lost because of  
17 attrition. So we're not saying, you know, there is  
18 not a certain amount at the end of '95 when people  
19 just left, there is also a lot of growth that  
20 happened. And so they are picking up the people, so  
21 there is a netting effect going on.

22 COMMISSIONER JACOBS: Can we get some clarity on  
23 those numbers when you come back with your  
24 calculations?

25 MR. RENDELL: When they can, they would have to

1 let us know what --

2 COMMISSIONER JACOBS: The seven days after when  
3 you come back, can you give us some clarity on these  
4 numbers?

5 MR. TWOMEY: Madam Chairman, before they go, can  
6 I ask a question?

7 CHAIRMAN JOHNSON: Sure.

8 MR. TWOMEY: Just so I'm clear on the numbers,  
9 and in the event that you are not, you can be, too.  
10 But I want to be clear. On Page 32 -- I'm asking this  
11 in a sense to the staff. On Page 32, the total  
12 surcharge for BFC of the \$1.53 is for 5/8ths by 3/4  
13 inch meter, right?

14 MR. RENDELL: Except on wastewater residential  
15 meters. It doesn't matter what size meter, you pay  
16 one charge.

17 MR. TWOMEY: Okay. So it would be \$1.53  
18 irrespective of the meter size?

19 MR. RENDELL: For residential. For commercial  
20 you would pay based on meter size.

21 CHAIRMAN JOHNSON: Start over, Troy. I didn't  
22 hear. I heard the one --

23 MR. RENDELL: On rate base -- I'm sorry, I mean  
24 in designing rates on the water side, customers pay a  
25 base-facility charge based on a meter size of 5/8ths

1 by 3/4, that is one ERC. A one-inch meter, I believe,  
2 is around 2-1/2 ERCs, so they pay at a higher  
3 base-facility charge. On the wastewater side for  
4 residential customers only it doesn't matter what  
5 meter size you are, you pay one rate, and one base  
6 charge. And that's how rates are designed. But on  
7 the water side, if you had a one-inch meter, you would  
8 be 2-1/2 times the 12 cents, is that right? If that  
9 is the AWW. I believe it is 2-1/2.

10 MR. TWOMEY: Okay. And, lastly, the jump in the  
11 -- for example, the jump in the stand-alone  
12 calculations, if I can use -- they are not truly  
13 stand-alone, but the cap band calculations for  
14 wastewater that would show Sugarmill Woods --

15 COMMISSIONER CLARK: What page are you on?

16 MR. TWOMEY: I'm sorry.

17 COMMISSIONER CLARK: What page are you on?

18 MR. TWOMEY: I'm sorry, Page 32. That show, for  
19 example, that Sugarmill Woods at 43 cents, the jump to  
20 the \$1.53 is because the dollar, the past revenue  
21 dollars associated with reuse and so forth are the  
22 cause of that increase, isn't that right, in the  
23 averaging of it?

24 COMMISSION STAFF: I can't attribute it to any  
25 one adjustment, it's because it is spread



1 across-the-board as opposed to the ones below the cap,  
2 but I can't single out one adjustment.

3 MR. TWOMEY: Okay. Thank you, Madam Chairman.

4 CHAIRMAN JOHNSON: Uh-huh. Any other questions,  
5 Commissioners?

6 MR. CRESSE: Commissioner Clark, the figures that  
7 we used in assuming that there is a 7 percent turnover  
8 rate, no bill would be in excess because they are  
9 charging only those customers who have stayed on for  
10 the period would go up more than 20 percent, in my  
11 opinion. So if you had a \$52 bill surcharge, and you  
12 do this over, no bill would be in excess of \$62  
13 according to my calculations.

14 COMMISSIONER CLARK: Well, and I want to be clear  
15 because Mr. Armstrong indicated that for water  
16 customers what is it going to -- it's going to be \$3?

17 MR. ARMSTRONG: Yes, Commissioner. In the staff  
18 recommendation, and they do identify the fact that  
19 they have not -- they are not including in that \$3.24,  
20 they are not including the add-on from customers who  
21 have left the system. But assuming that all the  
22 customers were still there, the rate, the total  
23 surcharge would be \$3.24. That is the entire 27-month  
24 period.

25 COMMISSIONER CLARK: Okay. And, Mr. Cresse, you

1 are saying you wouldn't expect that rate to go up by  
2 more than 20 percent?

3 MR. CRESSE: That is correct.

4 MR. ARMSTRONG: Commissioner, just so the record  
5 is clear, it would also increase by the interest  
6 accrual. Commissioner Jacobs, in response to your  
7 question, that is why the Commission has to decide to  
8 regarding the new rates that go on prospectively, the  
9 surcharges and the surcharge mechanism. Because if  
10 you don't make those decisions, we never will be able  
11 to calculate how much the surcharge liability per  
12 customer is.

13 You have to have that finite step of implementing  
14 new rates before you can even begin to make the  
15 calculations of how much per customer the surcharge  
16 is. That's why Mr. Cresse is giving you in his expert  
17 opinion the most you are going to see is a 20 percent  
18 fluctuation.

19 COMMISSIONER JACOBS: I understand.

20 COMMISSIONER DEASON: Mr. Armstrong, help me on  
21 that. If we are doing the surcharge based upon an ERC  
22 basis for all customers, why is it necessary to have  
23 the final rates implemented and that be an ingredient  
24 or factor which determines what the surcharge is going  
25 to be? And I'm sure I'm overlooking something really

1 simple, I just want you to explain it to me.

2 MR. ARMSTRONG: Well, it's the accrual of the  
3 surcharge amount and the accrual of the interest on  
4 that surcharge amount that continues until we  
5 implement new rates. Once we --

6 COMMISSIONER DEASON: So it's the interest factor  
7 that has to -- you have to go ahead and have an ending  
8 point to the interest, basically, you have to  
9 determine when that is going to be to where -- okay, I  
10 understand.

11 MR. RENDELL: It's not only the interest; until  
12 the rates go into effect, customers are still going to  
13 be affected. If someone hooked up today, they are  
14 going to face a surcharge until the rates go into  
15 effect. You have to have the finality of rates going  
16 into effect to figure out which customers are going to  
17 be affected because --

18 COMMISSIONER DEASON: Now, if a customer hooks up  
19 today, they are only responsible for the period of  
20 time between now, today, and when the new rates go  
21 into effect?

22 MR. RENDELL: That is correct, it's prorated.  
23 But you have to have finality, you know, the rates  
24 have to go into effect so you can say, okay, this is  
25 the group of customers.

1 COMMISSIONER DEASON: I understand. Thank you.

2 COMMISSIONER CLARK: I have -- I take it that  
3 Schedule 1, that is Page 18 and 19, is the number --  
4 those are the systems that are wastewater.

5 MR. RENDELL: Wastewater Schedule 1, Pages 18 and  
6 19, those are wastewater systems.

7 COMMISSIONER CLARK: Right. And what is their  
8 surcharge going to be?

9 MR. RENDELL: Under staff's recommended  
10 methodology you would have to look at Wastewater  
11 Schedule Number 5, which is on Page 32. And if you go  
12 down to the bottom, it is \$1.53 per ERC per month,  
13 depending on how long you are on the system. That is  
14 the base surcharge. Then as Commissioner Deason  
15 pointed out, you would have to calculate the surcharge  
16 on the surcharge for customers that left.

17 COMMISSIONER CLARK: All right. And, Mr. Cresse,  
18 the largest surcharge you would estimate anyone would  
19 be paying would be \$62?

20 MR. CRESSE: For residential customers?

21 COMMISSIONER CLARK: Yes, for the residential  
22 customers.

23 MR. CRESSE: Yes, ma'am.

24 COMMISSIONER CLARK: And that would be water --  
25 those who take water and wastewater?

1 MR. CRESSE: That would be water and wastewater.  
2 If they were taking water and wastewater combined.

3 MR. RENDELL: As pointed out on the top of Page  
4 10, staff calculated what the liability for a customer  
5 would be on water and wastewater, assuming no one  
6 left, which that is a big assumption, but for water  
7 customers it is \$3.24 if they are with the system for  
8 the entire 27-month period, \$41.31 if they were on the  
9 wastewater system for the entire 27-months. So  
10 combine that. What, 44.50.

11 COMMISSIONER CLARK: Let me ask the company,  
12 would it be possible to say that when a surcharge --  
13 when we finally figure out how much the surcharge is,  
14 is it possible for you, for instance, to say for those  
15 customers whose surcharge will be more than \$30 that  
16 they can spread it out over three months?

17 MR. ARMSTRONG: Yes, Commissioner.

18 COMMISSIONER CLARK: And then if it is under,  
19 that you could just have them -- I mean, it doesn't  
20 seem practical to me for somebody who has a \$3 charge  
21 to spread it out over three months, but I'm just  
22 wondering what are the mechanics of it. Is it more  
23 difficult for you to make those sort of distinctions  
24 or is it just easier to say --

25 MR. ARMSTRONG: Commissioner, they can do it.

1 Our billing people can do that.

2 COMMISSIONER CLARK: Okay.

3 MR. ARMSTRONG: And so you are perfectly clear,  
4 though, and I want to make sure that you understand  
5 it, the numbers we have been talking about is 5/8ths  
6 inch meters, so larger meters will have different  
7 surcharge amounts.

8 COMMISSIONER CLARK: Right. But you would be  
9 willing to give them the same three months?

10 MR. ARMSTRONG: Sure. Definitely.

11 COMMISSIONER DEASON: Let me ask Commissioner  
12 Clark a question. Is it your intent then to try to  
13 put a threshold amount before there would be the  
14 option --

15 COMMISSIONER CLARK: Right.

16 COMMISSIONER DEASON: -- of spreading it over a  
17 period of months?

18 COMMISSIONER CLARK: Right, of spreading it out  
19 over a period of months, yes. And I was thinking -- I  
20 think three months ought to be adequate, and that  
21 would be based on a representation that it is likely  
22 to be -- the highest amount would be -- total would be  
23 \$62 for residential.

24 COMMISSIONER GARCIA: Why don't we do the cut off  
25 point, say, at \$25 so that it's an equal amount at the

1 highest point for residential. In other words, if you  
2 are going to postpone it, then you will pay -- do you  
3 understand what I'm saying? You are arguing the point  
4 that it is affordable or that it's logical, maybe a  
5 little bit more reasonable to use 25 or 20 as the cut  
6 off point? Mr. Cresse, said 62, so I guess 25 would  
7 be more reasonable, in other words (inaudible,  
8 microphone not on.)

9 COMMISSIONER CLARK: Pay the whole thing.

10 COMMISSIONER GARCIA: (Inaudible, microphone not  
11 on.)

12 COMMISSIONER CLARK: Well, I don't have any  
13 preference as to what that would be.

14 CHAIRMAN JOHNSON: Why a cut off at all? I mean,  
15 it strikes me that they were saying that they could do  
16 it.

17 COMMISSIONER CLARK: It didn't seem to me at \$3  
18 it would be worth the administration of trying to get  
19 that done.

20 COMMISSIONER DEASON: But if that would be the  
21 customer's choice and if he wanted to pay interest on  
22 it for three months, even though it was --

23 COMMISSIONER CLARK: Yes, I don't have any  
24 objection to that.

25 CHAIRMAN JOHNSON: I'm sorry. Mr. Twomey.

1 MR. TWOMEY: I just wanted to make a quick  
2 comment or observation, and that is if you dictated  
3 three months or six months or something like that, you  
4 would probably protect everybody that needs it, and if  
5 the company just did it for everybody they would  
6 recover all of their principal, all of their interest.  
7 The attrition rate for this company is relatively low,  
8 and the impact of anybody's surcharge in terms of  
9 whether it gets them mad at the utility, or mad at you  
10 for the result, or mad at me, whoever, it would be  
11 more transparent as they say and it would be tinier  
12 chunks, they would feel less pain, they would still  
13 get the same amount of money eventually.

14 COMMISSIONER CLARK: Yes. So it should just be a  
15 three-month option for everyone who has the surcharge  
16 is what you are saying or whatever --

17 MR. TWOMEY: Three or six, whatever you decided.  
18 I would suggest, it's just a suggestion, make it  
19 mandatory. The company would get fewer complaints,  
20 you will get fewer complaints, and they will get the  
21 same amount of money.

22 COMMISSIONER CLARK: I see. That you would just  
23 automatically spread it and don't give them the option  
24 of paying it early.

25 MR. TWOMEY: That's what I'm saying. Who cares,



1 I mean, whether you pay 80 cents three times or 1.53,  
2 whatever it comes out to.

3 COMMISSION STAFF: Commissioners, I think it  
4 makes sense to give the customer the option, because  
5 if you spread it over three months, they are going to  
6 pay additional interest. And if they have the option  
7 to pay it the first month and not accrue additional  
8 interest, they may choose to do that.

9 COMMISSIONER DEASON: The surcharge may leave a  
10 bad taste in their mouth and they may want to spit it  
11 out as fast as they can.

12 COMMISSIONER CLARK: And I think the other issue  
13 is, quite frankly, are we going to require the company  
14 to make an effort to collect from those people who  
15 have left the system, and I think that is the issue  
16 that -- well, but I don't know, Commissioner Deason,  
17 from your questions maybe you don't like the way the  
18 surcharge is being proposed, either.

19 COMMISSIONER DEASON: Well, no, my questions  
20 really were more for clarification than anything else.  
21 You are talking about as opposed to a stand-alone  
22 approach?

23 COMMISSIONER CLARK: Yes.

24 COMMISSIONER DEASON: Now, I am in agreement with  
25 staff that I think we are in a different situation, we

1 don't have to abide by a strict rate structure, we are  
2 doing this PAA anyway. I think that surcharges  
3 hopefully are going to be a rare event, and that this  
4 is a unique situation and the staff's proposal to do  
5 it on an ERC basis I think is easy to understand, and  
6 I think there is a certain amount of simplicity and  
7 fairness involved. And I understand that that  
8 decision may be questioned, but most of our decisions  
9 in these cases have been questioned.

10 So, I mean, maybe the court can give us some more  
11 guidance. But from what I understand at this point  
12 it's fair, it's simple, I think it's the correct way  
13 to go. But having said that, and so we can go ahead  
14 and move this thing along a little bit, I will be glad  
15 to state that I do not agree with staff that the GTE  
16 decision and then our interpretation of that decision  
17 on the remand requires us to assess the surcharge on  
18 the surcharge so to speak. In other words, that we  
19 require customers to pay for the surcharge of their  
20 neighbors who may have departed the system.

21 I think that under the situation of GTE at that  
22 time, that's what we decided to do. But that doesn't  
23 mean that we are somehow restricted from looking at a  
24 different case with different facts and making another  
25 decision which complies with the general proposition

1 of GTE, which requires the company to be made whole  
2 and that there is a certain amount of equity and  
3 fairness for both the company and the customers.

4 So given that, in this case I think that it would  
5 be appropriate to at this point just have the  
6 surcharge done on the base amount and not have it  
7 include surcharges for those customers which have  
8 departed the system and that that is being assessed on  
9 the customers which remain on the system, and that the  
10 company be required to try to collect that. And  
11 perhaps they will be more successful than Chairman  
12 Johnson and I think they will be, and I hope they will  
13 be more successful.

14 And we will get that information and we will make  
15 a determination and then at that point the company  
16 will have to come forward with what was not collected  
17 and explain their efforts and how they went about it,  
18 and then we'll have to make a decision on that. And I  
19 think -- I'm not trying to prejudge anything, but a  
20 possible recourse would be a regulatory asset, and I  
21 don't think a regulatory asset would be in violation  
22 of the GTE decision.

23 Those are things that could be determined in the  
24 future, but we have got to determine now how we are  
25 going to go forward, and I think staff's general

1 proposition methodology of calculating the surcharge I  
2 think is appropriate, but I would not include an  
3 amount to add onto the surcharge base amount that  
4 amount needed to recover the surcharge amount from  
5 departed customers.

6 CHAIRMAN JOHNSON: Did you say over what period  
7 of time?

8 COMMISSIONER DEASON: Oh. I think it should be  
9 spread over a period of time, and that the option be  
10 given to customers. When we were initially discussing  
11 this, I personally was thinking more in terms of six  
12 months, but I do understand that complicates the  
13 potential for even more customers to leave the system  
14 and that sort of thing, so I'm not opposed to three  
15 months, but I was thinking originally in terms of  
16 around six months. And I guess if I had to state a  
17 preference I would choose six months, but that it  
18 doesn't necessarily have to be six months. I would be  
19 willing to listen to what other Commissioners -- if  
20 there is any thoughts on three or six or whatever.

21 COMMISSIONER JACOBS: Let me make sure I  
22 understand.

23 CHAIRMAN JOHNSON: Is that a motion?

24 COMMISSIONER DEASON: Yes, I guess that is  
25 probably a motion on Issue 1.

1           COMMISSIONER JACOBS: Are you then amending  
2 staff's recommendation to delete that part which  
3 recommends recovery of the deficiencies caused by  
4 attrition?

5           COMMISSIONER DEASON: Yes. The deficiency  
6 associated with attrition I would not include in the  
7 surcharge amount. I would calculate a surcharge that  
8 would apply to all customers, those that have departed  
9 the systems and those that remain on the system, and  
10 then the company would have the opportunity and  
11 obligation to pursue that with those customers that  
12 have departed the system.

13          COMMISSION STAFF: Commissioner, if I might add,  
14 we don't think there is any legal prohibition against  
15 doing that. I think you have got the discretion to do  
16 that. It is different from what you did in GTE, and  
17 it might be a good idea just to explain why it is that  
18 you are making a different decision here. The  
19 attrition is lower in this case, the attrition rate is  
20 lower and the surcharge is higher, and for those  
21 reasons you think that is a better way to go. Just to  
22 give some explanation.

23          COMMISSIONER DEASON: Well, I want to go even a  
24 step further, and I may be out of line, and the other  
25 Commissioners can tell me if I am, but we're talking

1 about two basically different companies. You're  
2 talking about a telephone customer who is part of a  
3 system who benefits from all the other customers that  
4 are on that system. We are talking about a water and  
5 wastewater company, which granted they have common  
6 management and there are a certain amount -- there is  
7 affiliation to an extent, but you are not talking  
8 about customers that are all connected to the same  
9 system.

10 Now, whether that makes any difference or not,  
11 I'm not sure. But in my own mind it does. And, you  
12 know, we may not need to make that distinction. The  
13 fact that there is a difference in attrition and a  
14 difference in --

15 COMMISSIONER GARCIA: Please don't.

16 COMMISSIONER DEASON: That's fine.

17 COMMISSIONER GARCIA: That connection concept is  
18 something that just worries me tremendously.

19 COMMISSIONER DEASON: That's fine. I'm not  
20 saying it needs to be done, I'm just sharing with you  
21 in my own mind that it is sometimes extremely  
22 difficult to take general principles and apply it  
23 across the board to all industries.

24 COMMISSIONER GARCIA: Exactly. And I think that  
25 that definition is this is completely -- this is a

1 completely different case. It's a completely  
2 different company, these are completely different  
3 revenue requirements, these are completely -- they are  
4 so different. I mean, to equate a water regulation  
5 with regulation of phone service, I mean, the Romans  
6 were regulating water. You know, the first treatises  
7 on law are about regulating the water. Let's not  
8 push. Let's not push it. I think they are two  
9 different things, and I think we can distinguish them.

10 COMMISSIONER DEASON: But staff is indicating  
11 that we need to --

12 COMMISSIONER GARCIA: Absolutely, and I think the  
13 rationale is that they are different. The rationale  
14 is that water companies are different. That the way  
15 you build up a water system is completely different,  
16 the effect that consumers have on a water system is  
17 completely different, the way you structure rates is  
18 completely different.

19 COMMISSIONER DEASON: Well, I think staff has  
20 more in terms of the fact that there are different  
21 attrition rates between the facts of this situation  
22 and what was in the GTE case.

23 COMMISSIONER CLARK: I think that's what you have  
24 to hang your hat on, the fact that you set rates  
25 differently. And some of the things you mentioned,

1 you make the translation into why that should result  
2 in a different decision. And I think that's what  
3 staff is asking for. It seems to me that perhaps the  
4 fact that the term is not as great is one reason for  
5 doing it, I think another reason might be the impact  
6 it would have. But it sure seems to me -- 20 percent  
7 is less than what happened in GTE, but I've never been  
8 very good at those kind of percentages.

9 MR. CRESSE: Commissioner Clark --

10 COMMISSIONER CLARK: But if what Charlie said is  
11 right --

12 MR. CRESSE: -- \$9.66 was your surcharge in GTE.  
13 40,000 of these customers, their surcharge will be  
14 \$3.24, and I'm curious about how much effort we can  
15 put in in a cost-effective way to collect \$3.24, 3.36  
16 if we keep messing around another month, for that kind  
17 of money. I don't think you can spend a lot of money  
18 trying to collect \$3.36. And I don't think you want  
19 us to try to spend a lot of money trying to collect  
20 \$3.36.

21 COMMISSIONER CLARK: Mr. Beck, what did you say  
22 the impact was on GTE?

23 MR. BECK: I believe it was without the --  
24 without the additur, it was in the neighborhood of \$5,  
25 and it went up to -- or \$5 and change, and went to



1 \$9.60 or something like that.

2 COMMISSIONER CLARK: Close to double, huh?

3 MR. BECK: Yes. And in percentage terms it was  
4 greater. In absolute dollar terms for a water and  
5 wastewater company, it's greater here than that. So  
6 it depends on how you want to look at it.

7 COMMISSIONER CLARK: I'm sorry, I thought it was  
8 less.

9 MR. BECK: In absolute dollars. If you go from  
10 44 something to 60, the actual dollars are bigger.

11 COMMISSIONER CLARK: All right, I agree with  
12 that. But in terms of percentages, it's less.

13 MR. BECK: Yes.

14 COMMISSIONER CLARK: You know, I would wish to  
15 make clear I can -- it strikes me that that there is  
16 reason not to do it, and to at least send a letter  
17 that says here is how much you owe, please pay it.  
18 But I'm not sure that you should do anything beyond  
19 that, and if that's all you are going to do, I don't  
20 think your success rate is going to be substantial  
21 enough to justify it. And then I think you would have  
22 to turn it into a regulatory asset.

23 COMMISSIONER DEASON: Well, I certainly agree  
24 with Mr. Cresse's comments that obviously there is a  
25 cost-effectiveness associated with this, and those are

1 the things that were troubling me at the very  
2 beginning. But I think that if we make the decision  
3 at this -- one of the things we try to do is not  
4 micromanage companies. Some would say we try to make  
5 their lives difficult, but I don't think we are. But  
6 we don't micromanage them. I think it's -- but  
7 neither should we protect them to the point that we  
8 absolutely guarantee that they are going to get  
9 recovery, and I think it's unfair to require customers  
10 to pay their neighbors' bills, in effect.

11 But there is the overriding equity concern that  
12 the company be made whole. That is also in the GTE  
13 case. I think that if we allow the company the  
14 opportunity to recover it from those customers who  
15 have departed from the system, they are free to  
16 choose. You know, if that is just to write a letter,  
17 or whatever, and then they come back to us and say  
18 this is the letter that we wrote, and this is the  
19 amount that responded and this is what we have  
20 collected, and we have collected 5 percent, or 50  
21 percent, or whatever, and then we'll have to make the  
22 decision as to what is appropriate after that point.  
23 And we have had discussion of regulatory asset, and I  
24 think that may be a legitimate way to address it, and  
25 I think that we are not precluded from the GTE, in

1 fact, GTE may even require some type of a regulatory  
2 asset.

3 I'm also persuaded by the argument here that we  
4 heard -- I believe it was Mr. Twomey, that indicated  
5 the reciprocal of how we do it for refund situations,  
6 and that when there is a refund those that are  
7 uncollected we don't then refund more to those  
8 customers that are currently on the system for those  
9 customers that could not be located. And that is the  
10 precise -- you know, we don't do that, and what staff  
11 is recommending for all good reasons, but nevertheless  
12 what staff is recommending is not the reciprocal of  
13 that. You know --

14 COMMISSIONER GARCIA: I would go further. It  
15 goes precisely against the very decision that brought  
16 us here. We're taking someone's money that wasn't  
17 paid for in the -- that wasn't owed in the first place  
18 because someone else left the system. It just doesn't  
19 make sense to me. But, again, these are all things  
20 that we discussed a long, long time ago.

21 COMMISSIONER JACOBS: So long as they can always  
22 come back and get that money, I mean, we are not  
23 violating GTE it sounds like.

24 MR. RENDELL: They could come back in the next  
25 rate case and it could be a litigated issue in the

1 next rate case. Therefore, you would have --

2 COMMISSIONER JACOBS: It would be even worse  
3 because you have more attrition. I understand the  
4 arguments they are making, you would have worse  
5 attrition and the whole nine yards. But as long as  
6 they can always get their money, we're not violating  
7 GTE it doesn't sound like.

8 COMMISSIONER CLARK: I think they would argue  
9 that we are violating it.

10 COMMISSIONER JACOBS: Well, I think what he said  
11 was we are going to incur higher costs, more interest,  
12 we will have worse attrition, the whole calamity of  
13 problems.

14 COMMISSION STAFF: I don't think you are  
15 violating GTE by doing that at all as long as you are  
16 giving the company an opportunity to recover those  
17 amounts that are due to them. If does conflict with  
18 what the Commission determined on remand in  
19 implementing the GTE decision in the sense that you  
20 didn't require the company to go out and look for  
21 those former customers in that case.

22 COMMISSIONER DEASON: This is a different  
23 situation.

24 COMMISSION STAFF: Correct.

25 COMMISSIONER DEASON: I think it is factually

1 different, and as long as we explain that it's  
2 different, why it's different, you know, and I'm not  
3 so proud to say that perhaps that if we were doing GTE  
4 all over again we would do it differently. I don't  
5 know.

6 And it has been pointed out that perhaps Chairman  
7 Johnson and Commissioner Jacobs would have a different  
8 opinion, and if they were on the GTE case they would  
9 have voted -- you know, I have problems with just  
10 because a panel made a decision in one case does that  
11 bind two other Commissioners that want to do it  
12 differently and perhaps can tell us why we were wrong  
13 then. You know, this process is dynamic and you don't  
14 become burdened or chained to previous decisions if  
15 there is a reasonable rational basis to make a  
16 different decision in a different practical situation.

17 MR. RENDELL: And stepping back, when we were  
18 faced with this issue once before when we were looking  
19 at surcharges and refunds in the 199, in the staff  
20 recommendation we toiled over it and we had an  
21 explanation that, yes, the company could go after  
22 these people. They would have to -- you know, they  
23 would have to bill them, but the only recourse would  
24 be small claims court or civil action. So we have to  
25 weigh the cost of pursuing it through the court system

1 with the amount of dollars that they may or may not  
2 recover. I think that was a deciding factor here.

3 COMMISSIONER DEASON: Well, I think in the GTE  
4 case that was a factor, but I think that we were  
5 basically probably substituting our own judgment for  
6 that of the management of the company, already making  
7 the decision that it wouldn't be worthwhile to pursue  
8 it, and so we were just going to bypass that and go  
9 ahead and have it collected from the remaining  
10 customers up front. And there is a certain amount --  
11 certainly that is efficient, and it's simple and it's  
12 effective, but is it the fair thing to do, and I'm not  
13 so sure that it is.

14 COMMISSIONER CLARK: Let me ask a question. How  
15 many customers -- in GTE there was an estimate that  
16 there were 800,000 customers that had left. What is  
17 the estimate here if it is 7 percent? How many  
18 customers do we think that they would have to contact  
19 to get that money?

20 MR. CRESSE: 7,700 is 7 percent of the 110,000  
21 customers.

22 COMMISSIONER CLARK: Okay. And do you have an  
23 idea of what amount of those customers it would just  
24 be the \$3.24?

25 MR. ARMSTRONG: Commissioner, you had 7,000 per

1 year, so you are talking about 14,000 customers.

2 COMMISSIONER CLARK: 14,000. That is a lot  
3 different than 800,000. I will concede that. How  
4 many of those do you think is the 3.24?

5 MR. CRESSE: 40,000.

6 COMMISSIONER CLARK: No, how many of the 14,000  
7 or the 15,000, I guess.

8 MR. CRESSE: 14 percent of 40,000 is 5,600.

9 COMMISSIONER CLARK: I think we are talking past  
10 each other.

11 MR. ARMSTRONG: I know what he is saying. It's  
12 about 70 percent of the customers that are included in  
13 this case that are water only customers, so it's about  
14 70 percent of that 14,000.

15 COMMISSIONER CLARK: So it would be 70 percent of  
16 15,000 are the ones that only owe 3.24.

17 MR. ARMSTRONG: That's roughly 11,000 customers.

18 COMMISSIONER CLARK: And the rest owe something  
19 more. You know, I think we ought to give -- if we are  
20 going to ask them to do that, we ought to give them  
21 some direction, and I think you would be hard pressed  
22 to say it is cost-effective to do more than send them  
23 a letter. And even then you have to search where they  
24 live, and I think you are going to eat up more than  
25 \$3.24 doing that.

1           COMMISSIONER DEASON: Well, do we have any  
2 information on that? It would be strictly guesswork.  
3 I mean, your suspicion may be correct. We know it's  
4 going to cost at least 32 cents. I guess is that the  
5 postage. That doesn't calculate any of the --

6           COMMISSIONER GARCIA: (Inaudible, microphone not  
7 on.)

8           MR. ARMSTRONG: Interest accrues and everything  
9 else. And if I may just address the question of the  
10 refunds and whether they are synonymous. You know, in  
11 a refund situation, the customer -- the money is being  
12 collected subject to refund. The customer gets back  
13 every dollar that they paid. In this situation, had  
14 the rates been set right from day one, the company  
15 would have had every dollar of the money we are  
16 talking about. Those customers were on the system,  
17 they would have been paying the right amount if the  
18 right rates were set to begin with.

19           So, I mean, I don't think we have so much of a  
20 synonymous situation as was described before as what  
21 I'm saying here. Synonymous means the company should  
22 get back every dollar, because we would have had it if  
23 the rates were set right. I think we do have to look  
24 at the practicality and the costs, and certainly would  
25 want that direction. If the Commission said go the



1 way you are talking about, we would certainly want  
2 that direction so that we are not held accountable.  
3 And we certainly all can see that because we have  
4 vigorous advocates on both sides of this thing. So we  
5 would want some direction. But we don't think that as  
6 a practical matter it's something the Commission  
7 should be entertaining at this point.

8 MR. RENDELL: But keep in mind also that \$3 that  
9 has been quoted is for the whole entire 27-month  
10 period. That if a customer has been on that 27-month  
11 period and goes off tomorrow. There may be customers  
12 that are on one month, that is 12 cents. So you are  
13 going to spend a 32 cent stamp to collect 12 cents.  
14 You know, \$3 is the extreme.

15 CHAIRMAN JOHNSON: Mr. Twomey.

16 MR. TWOMEY: Madam Chairman, again, I urge you  
17 not to lapse into this, what is so easy to do, and  
18 what you think is cost-effective. You are -- if you  
19 vote the staff recommendation, to use that total for  
20 the actual surcharge amount, you are going to charge  
21 my client substantially more, I think it's 300 percent  
22 on wastewater of what they would owe on a stand-alone  
23 basis. That is what they owe because they were the  
24 cost causers on that reversal. You are going to  
25 charge them 300 percent of what they actually owe.

1 Now you are talking about --

2 COMMISSIONER CLARK: What is it based on the cap  
3 band?

4 MR. TWOMEY: Well, I'm preparing you. If you  
5 look at page -- if you look at Page 32, Sugarmill  
6 Woods owes on a BFC surcharge per ERC 43 cents. What  
7 your staff is recommending and what it sounds like  
8 many of you are going to go for is the \$1.53. That is  
9 well over three times. My point is they incurred --  
10 as the cost causer they incurred the 43 cents as a  
11 result of the court's reversal and the errors that you  
12 all confessed, okay. They didn't -- they didn't incur  
13 \$1.53, they incurred 43.

14 The \$1.53 that staff wants you to make my clients  
15 pay SSU is simply again the result of averaging, okay,  
16 because that's easy or whatever your reasons are, the  
17 staff's reasons. And what I'm saying is that is bad  
18 enough, now what you are saying is that there is some  
19 percentage of people out there, there is 14,000 people  
20 or something like that, that were undercharged, owe  
21 this company money. They should have a chance to get  
22 it back. You are saying it's only \$3.20. It ain't  
23 worth the effort, okay. But what you are saying is,  
24 what the staff is apparently saying, and what I may  
25 hear some of you saying is it ain't worth the effort

1 for them to try and get it, so slap it on Twomey's  
2 clients. They don't have any choice. That's what you  
3 are saying.

4 COMMISSIONER GARCIA: I think we are not saying  
5 that. I mean, we are exactly saying the opposite. We  
6 are just trying to figure out what we do with it.

7 COMMISSIONER DEASON: Let me ask a question. And  
8 I understand your point, Mr. Twomey. Can we make a  
9 distinction between water only customers and customers  
10 that are combination customers, or wastewater only  
11 customers, if there are any of those?

12 Can we make a distinction in the sense that from  
13 a cost-effectiveness standpoint perhaps the  
14 appropriate think to do would be at this point for the  
15 water only to go ahead and for the customers that --  
16 for customers that have departed the system, go ahead  
17 and calculate the effects of that and set up a  
18 regulatory asset immediately. But don't burden the  
19 existing customers, the remaining customers to pay  
20 their neighbor's bill.

21 Now, I understand that in an indirect way that is  
22 doing it, but we still have to meet the standard of  
23 the GTE case and make the company whole, and how else  
24 are you going to do it, I don't know. I think you  
25 have to -- then but for the wastewater customers, go

1 ahead and have the requirement to bill those  
2 customers.

3 And after they are billed and those that did not  
4 pay, come back with that information and then perhaps  
5 we would have to add that to the regulatory asset.  
6 And I'm not saying that is the appropriate thing to  
7 do, I'm just basically can we make that distinction  
8 and if we can make that distinction, is that something  
9 that can be done in a cost-effective manner?

10 COMMISSIONER GARCIA: You know what occurs to me,  
11 because it makes a lot of sense, but some of what Mr.  
12 Twomey makes sense, also. But let's not take it as  
13 far as Mr. Twomey takes it. Why don't we just let the  
14 company decide what is -- I mean, they have an onus to  
15 try their best at whatever it is. If there is  
16 somebody who -- hell, when I owe Blockbuster \$5, they  
17 will chase me to the end of the Earth to get the \$5.  
18 I mean, I'll get letters on the other side of the  
19 planet.

20 Now, I don't know what they do, I don't know what  
21 are the costs involved in doing that, maybe it's some  
22 kind of pattern they're trying to set. But maybe we  
23 should just let the company go out and try to get  
24 this. Now, we are not telling the company go out and  
25 get George Cruz for 24 cents, or 42 cents, or a \$1.53.

1           Maybe that one is just not worth it. But I think they  
2           should make a reasonable effort to try to get it and  
3           then come back to us and say this is what we got, this  
4           is what it costs us to get what we got.

5                     On the more expensive ones we hired, you know,  
6           these sharks and they came up with a little bit more,  
7           but that's it. And then we would book it. As opposed  
8           -- the only problem I have with what you're saying,  
9           and I don't think it's that much of a problem, but I  
10          think it addresses -- listen, they are the ones in the  
11          business. They are the ones that have to collect  
12          bills, they are the ones who have to -- we are not in  
13          that business.

14                    COMMISSIONER DEASON: Well, I agree with you,  
15          because I said earlier let's don't micromanage the  
16          company and let them make the decision.

17                    COMMISSIONER GARCIA: That's what I'm saying.  
18          I'm agreeing with you, but --

19                    COMMISSIONER DEASON: And then I heard Mr.  
20          Armstrong say, well, we need some guidance. I mean,  
21          this is a difficult case, and perhaps we should give  
22          some guidance to some extent. I'm not sure.

23                    COMMISSIONER GARCIA: I think that this debate  
24          has given you some guidance, Mr. Armstrong. I think  
25          there are standards for this, and we are not going to

1           come up with this, but I'm sure that when you go to a  
2           collection agency and you show up with a \$3 bill, they  
3           don't take it. You know, they just say, listen, this  
4           is not worth paper, money, time, effort, and they  
5           don't take it. I don't know, but I'm sure that there  
6           is some kind of industry standard in that industry.  
7           One which no matter how much direction we could give  
8           you, no one up here, at least from what I know of our  
9           histories, has any clue of what that is. But I'm sure  
10          that there are verifiable standards in bill  
11          collecting. There must be.

12                         And that being the case, you are going to come  
13          back to us with some amount that you have been able to  
14          collect, some amount that you haven't. And I think  
15          that for us to try to figure out where that number is  
16          as a guidance to you only sort of institutionalizes  
17          perhaps bad management on that case.

18                         MR. ARMSTRONG: I don't even question that it  
19          would be bad management. But, Commissioners, we all  
20          know -- I think what we are trying to look for is  
21          finality, and we have the precedent here in GTE, and I  
22          think we all know that we can be put in the horns of a  
23          dilemma that we have either done too little or done  
24          too much, and what happens then, it's just prolonged  
25          further out.

1           COMMISSIONER GARCIA:  Maybe the point is, maybe  
2           the point is and maybe that's how we have to make the  
3           motion that you have to use your best efforts to get  
4           this money.  And I don't think -- I don't, you know, I  
5           think your best efforts doesn't mean chasing down a  
6           guy who owes you 24 cents or \$1.50, for that matter.  
7           I do think that someone who owes you \$40-odd, someone  
8           is going to be collecting something from that.  And  
9           that puts us all in a better place when it's all said  
10          and done.

11          MR. ARMSTRONG:  Commissioner, I guess the final  
12          word from the company's perspective is just pulling  
13          out two sentences which we believe are seminal in that  
14          GTE remand order in which three of the current  
15          Commissioners sat, the first sentence is, "We believe  
16          that OPC's view --" which is basically what we are  
17          talking about now, which is saying company, go try and  
18          collect -- "will virtually guarantee that GTEFL will  
19          not fully recover the previously disallowed expenses."  
20          Skipping a little further.  "We believe that any  
21          surcharge procedure that does not provide a reasonable  
22          assurance that GTEFL will recover its previously  
23          disallowed expenses violates the court's mandate."

24          Now, we have heard a lot of discussion about  
25          regulatory asset, I think what we need to all

1 understand, though, is a regulatory asset doesn't give  
2 a recovery to the company. Absent the revenue  
3 increase associated with the return on that asset, we  
4 are not recovering the dollars.

5 COMMISSIONER DEASON: I'm sorry. Mr. Armstrong,  
6 you made a comment earlier, and I was going to let it  
7 go, but you indicated that if the correct rates had  
8 been established you would have 100 percent recovered  
9 these funds and you have, according to GTE, the right,  
10 the legal right to get that without question. Well, I  
11 don't agree with that, and let me tell you why.

12 Anytime this Commission establishes rates it is  
13 on a going-forward basis, or it should be. In my  
14 humble opinion there shouldn't be surcharges period,  
15 but someone with much more knowledge and authority  
16 than I have said differently. But when we set rates  
17 on a going-forward basis there are many things that go  
18 into that calculation. We determine billing  
19 determinants, how many customers we think you are  
20 going to have, how many gallons they are going to  
21 consume. We make estimates about what the cost of  
22 your chemicals are going to be and all of these  
23 things.

24 There is no guarantee that any of that is going  
25 to happen. You don't have the right to come back here



1 later and say, Commission, when you set my rates you  
2 said that I was going to have X number of customers.  
3 Well, some customers didn't move in, or the customers  
4 didn't use the number of gallons you said they were  
5 going to use, so I've got to now recover those to make  
6 myself whole. We just give you the opportunity.

7 Now, we do our very best to try to set the rates  
8 and do our very best to give you the most reasonable  
9 opportunity, and hopefully our determinations and the  
10 evidence you give us and the parties is such that we  
11 come up with some pretty reasonable rates. But it  
12 doesn't guarantee that you are going to collect the  
13 revenues we say those rates should give you. So there  
14 is no guarantee in any of this.

15 MR. ARMSTRONG: Commissioner, this is distilled  
16 to its finest point. Had the Commission allowed  
17 recovery of the costs which now the court has said you  
18 erroneously disallowed, had the Commission allowed  
19 those costs, our rates would have been incrementally  
20 higher in some fashion. Our rates at that higher  
21 amount based upon consumption that did actually occur  
22 we would have had additional revenue in our pocket.

23 That's the way I would like to distill it. Just  
24 to say that if the rates were set higher where they  
25 should have been we would have had the additional

1 dollars.

2 I agree with you, you cannot pinpoint X dollar  
3 versus X dollar. I agree with you. It could have  
4 been that we would have more money because consumption  
5 might have been higher than what was allocated or used  
6 to set the rates. I agree with you. But all I want  
7 to do is distill it down to that point, that we should  
8 have had a higher rate, we would have had more money  
9 over time.

10 COMMISSIONER CLARK: Commissioners, I think the  
11 distinction here is that what the mandate has been  
12 with respect to the surcharge, at least as I hear it  
13 being argued, is that the court said that they have to  
14 have the opportunity -- they have to fully recover it  
15 or it violates the mandate. And if you know, as I  
16 think you can project with a fair amount of certainty  
17 that sending these bills is not going to get all the  
18 money, you have that you are not going to fulfill the  
19 court's mandate by the decision today. And that is  
20 what troubles me. That's where I think we might get  
21 into trouble.

22 COMMISSIONER DEASON: But then the question comes  
23 up then do we have an obligation then to establish a  
24 regulatory asset to allow that recovery. And I  
25 understand there is argument that, well, a regulatory

1           asset really doesn't guarantee recovery, either. But  
2           there is no guarantees in the rate setting business.  
3           It's reasonable assurances.

4           CHAIRMAN JOHNSON: Mr. Beck, then, based on -- we  
5           had a little dialogue earlier, and Mr. Twomey  
6           responded, but if faced with the situation where you  
7           were trying to collect 12 cents, 50 cents from a  
8           company, and it is your opinion that we should pursue  
9           that as opposed to saying it's 12 cents, set up the  
10          regulatory asset. And in answering that, to the  
11          extent that there are costs incurred, what would your  
12          position be on the recovery of those additional costs  
13          if we later get to the regulatory asset?

14          MR. BECK: I think -- let me answer the last  
15          first. The cost of just ordinarily sending out a bill  
16          is an ordinary cost of the company that is covered by  
17          existing rates. That would be true with a refund and  
18          it should be true with a surcharge. So just purely  
19          the rendering of a bill, that is something the company  
20          does and is compensated for as it exists right now.

21          COMMISSIONER DEASON: Aren't there incremental  
22          costs in doing a surcharge situation, because you are  
23          billing customers who are no longer even customers?

24          MR. BECK: Well, but in the refund situation you  
25          have a rule, remember the GTE court said that we think

1 the Commission can do the surcharge with the same care  
2 as a refund. And the refund order says that for  
3 customers entitled to a refund but no longer on the  
4 system, the company shall mail a refund check to the  
5 last known billing address, except that no refund for  
6 less than one dollar will be made to these customers.  
7 There is one standard. If you wanted to exactly  
8 follow your refund standard, you can follow it there.  
9 If you wanted in this case to make it 3.21, regulatory  
10 asset up front, I think that is reasonable, you could  
11 do that. If you made a determination that that would  
12 -- I think when you are up in the \$40 figure it's a  
13 whole another situation.

14 COMMISSIONER DEASON: But, with the 3.21, the  
15 water only side, you would not -- you think it may be  
16 reasonable to go ahead and set that up immediately as  
17 a regulatory asset and be done with it?

18 MR. BECK: I think either that is reasonable, or  
19 you could follow your refund provisions on the dollar.  
20 I think there are a number of reasonable alternatives  
21 you could follow. Certainly -- I mean, obviously, and  
22 I think Mr. Twomey said this earlier, you don't want  
23 to spend \$50 chasing 45. If you wanted to just render  
24 a bill for those over a dollar, that would be fair.  
25 If you want to set up a regulatory asset for the \$3, I

1 can see that. I think the \$40 charge is just  
2 completely different, they ought to go after that.

3 COMMISSIONER CLARK: Remember, though, by setting  
4 up the regulatory asset it will have the effect of  
5 putting a charge on customers who were not on the  
6 system during the time of -- that the improper rates  
7 were in effect. I mean, there is no clean answer to  
8 this.

9 CHAIRMAN JOHNSON: That one in my mind is a  
10 little more -- you can explain that one because they  
11 were -- they are --- they should be given the  
12 opportunity to recover those funds, and to the extent  
13 that they can't recover something that the court said  
14 that they were allowed to recover from customers that  
15 have left the system, it appears to me from my reading  
16 of the court cases that we almost have to create  
17 another mechanism to allow them the opportunity to  
18 recover.

19 COMMISSIONER CLARK: It's clear that we can't  
20 surcharge people that were on there.

21 CHAIRMAN JOHNSON: Right.

22 COMMISSIONER CLARK: The question is then do you  
23 increase the surcharge to people who were or do you  
24 create a regulatory asset so that everybody who was on  
25 the system when their regulatory asset is recovered

1 pays for it.

2 COMMISSIONER DEASON: The way I look at it, it's  
3 almost like it is a general cost of doing business,  
4 the regulatory asset is, and it's a legitimate cost to  
5 spread over all customers. And that it's not a  
6 situation where you would indirectly be surcharging  
7 new customers. I guess it's just -- there are costs  
8 that are incurred by utility companies that are just  
9 general costs of doing business and this is one of  
10 those. I think that regulatory assets should be  
11 avoided except in extreme circumstances, and I think  
12 this is an extreme circumstance.

13 MR. RENDELL: And I would agree with that. I  
14 just wanted to point out the other viewpoint. And one  
15 other item is they would have to come in for a rate  
16 increase and it could be made an issue and it could be  
17 litigated and build a record. So, you know, to  
18 increase the rates for that regulatory asset it would  
19 take another action on down the road.

20 COMMISSIONER CLARK: I don't understand. If we  
21 decided today to maybe take Mr. Beck's advice and say  
22 that for those customers who have left the system  
23 where the amount to be billed would be less than a  
24 certain amount that we would immediately create the  
25 regulatory asset.

1           COMMISSIONER DEASON: What Mr. Rendell said is  
2 that would not have an immediate impact on rates.

3           COMMISSIONER CLARK: I understand that, but you  
4 wouldn't relitigate whether or not you should have a  
5 regulatory asset.

6           MR. RENDELL: That is correct. You could create  
7 one, but how to pass it on to future bills, they would  
8 have to come in and increase the rates for that.  
9 Rates don't automatically go up because of a  
10 regulatory asset.

11          MR. BECK: And, Commissioner Clark, if you wanted  
12 to be true to the GTE decision where they made that  
13 analogy to your refund provisions, you would set a  
14 dollar, just exactly like you do for refund. Any  
15 amount less than a dollar, put to a regulatory asset.  
16 If it's greater than a dollar, send a bill. I think  
17 that would be following exactly what the court had in  
18 mind in their analogy.

19          COMMISSIONER CLARK: I think you have to  
20 recognize that it's far different just to cut a check  
21 for something over a dollar and send it to somebody  
22 and that is the last you have to worry about it. When  
23 you are sending them a bill, you know, it's coming  
24 back in, you are accounting for it, and those sorts of  
25 things, so I think perhaps the threshold should be

1 higher.

2 COMMISSIONER DEASON: Commissioner Clark, would  
3 you suggest then that at least for the water only  
4 customers that you would not set up a regulatory  
5 asset, that you would bill that to the remaining water  
6 customers?

7 (Simultaneous conversation.)

8 COMMISSIONER CLARK: -- to avoid a regulatory  
9 asset. How much would we -- what would be the size of  
10 the regulatory asset? There would be about 11,000  
11 customers that the maximum they would owe is 3.24, so  
12 how much would your regulatory asset be? I understood  
13 that the 11,000 would be the water -- about 40 --  
14 about how much -- what percentage of your customers  
15 are water only?

16 MR. ARMSTRONG: I'm sorry, Commissioner. About  
17 70 percent of those customers that were in this case.

18 COMMISSIONER CLARK: And so --

19 MR. ARMSTRONG: About 70 percent of those  
20 customers in this case.

21 COMMISSIONER CLARK: And if we estimate there has  
22 been a change of roughly 15,000 people are no longer  
23 on the system, then 11,000 of them would be water  
24 only, and the maximum they would owe is 3.24. How  
25 much of a regulatory asset is that?



1 MR. HOFFMAN: Commissioner, I think it's about  
2 35,000.

3 COMMISSIONER CLARK: Okay.

4 COMMISSION STAFF: Commissioners, I thought Mr.  
5 Cresse said 17 percent was water only, not 70 percent.

6 MR. ARMSTRONG: No, he was looking at different  
7 numbers.

8 COMMISSIONER CLARK: I guess that's the issue,  
9 does it make sense to create that kind of regulatory  
10 asset or at least for the water only should we go  
11 ahead and put a surcharge on a surcharge, as you say.

12 MR. TWOMEY: Chairman, this is dragging on, I  
13 apologize, but think about it for a second. The court  
14 clearly said you can't -- in GTE said you can't put a  
15 surcharge on new customers that weren't in service at  
16 the time that the undercharges were approved. Think  
17 about it. What is fair about charging my clients and  
18 the other existing customers for something they didn't  
19 incur than --

20 COMMISSIONER CLARK: Mr. Twomey --

21 MR. TWOMEY: -- let me finish, please -- than  
22 charging somebody that is new. It doesn't make any  
23 more sense. And I suggested to you earlier you don't  
24 have to read the GTE decision that way, but if your  
25 choice is down to making a regulatory asset and making

1           everybody pay for it recognizing that it's not defined  
2           as a surcharge, or putting a surcharge on a surcharge  
3           on my clients and the others, I would recommend you do  
4           the regulatory asset. Because if you put a surcharge  
5           on a surcharge on my clients, I'm going to do  
6           everything I possibly can to encourage them to appeal  
7           it all the way to the Supreme Court, if necessary,  
8           because I think it's wrong. I think it was wrong in  
9           GTE, I think it's wrong here.

10           COMMISSIONER DEASON: Well, there is some appeal  
11           to having that appeal. Maybe the court can give us  
12           some guidance as to how they envisioned us  
13           implementing their decision.

14           MR. TWOMEY: Yes, sir, but I'm just suggesting if  
15           the two choices are there, regulatory asset or a  
16           surcharge on a surcharge, my clients would like to see  
17           the regulatory asset.

18           COMMISSIONER GARCIA: It almost sounds like we  
19           are doing the inverse here that the court asked us to  
20           do. I mean, to surcharge someone the surcharge of  
21           someone else because they didn't pay is tantamount to  
22           not giving the company what the company deserves. I  
23           mean, it's the same thing. One is a big guy and the  
24           other one is a little guy, but --

25           COMMISSIONER CLARK: Joe, that's what we did in

1 GTE.

2 COMMISSIONER GARCIA: I understand, but --

3 COMMISSIONER DEASON: We are being inequitable in  
4 the name of being equitable.

5 COMMISSIONER GARCIA: Yes. But remember, I don't  
6 want to go back to it, but, you know -- forget it.  
7 The truth is it doesn't make sense to do it.

8 COMMISSIONER DEASON: It's an extremely difficult  
9 situation.

10 COMMISSIONER GARCIA: It has been for a long,  
11 long, long time.

12 COMMISSIONER DEASON: I'm ready for Commissioner  
13 Jacobs to make a motion.

14 COMMISSIONER JACOBS: Touche.

15 COMMISSIONER DEASON: Well, somebody needs to  
16 make a motion.

17 COMMISSIONER JACOBS: Earlier you indicated that  
18 had I had the opportunity to vote on GTE it might have  
19 been a different -- I quite frankly would agree. I  
20 think the company should at least try, you know, but  
21 anyway, to find those people and expend a reasonable  
22 effort to do that. And having failed to do that, I  
23 think as long as we give them ample opportunity and  
24 reasonable opportunity to recover what they didn't  
25 get, I think we have honored the spirit of what the

1 court said in GTE.

2 In this instance, I think there are some  
3 differences. I really do think that requiring an  
4 extensive effort to go after \$3 is -- let me say this,  
5 it borders on what I would consider to be  
6 unreasonable. So my first question, and you brought  
7 it up, you know, why not just do the \$3 and let's try  
8 to figure out who would have to pay the 40 or 60 or  
9 whatever and do that. And I'm told that that --

10 COMMISSIONER GARCIA: Commissioner --

11 COMMISSIONER JACOBS: -- would pose additional  
12 concerns. I do believe that it's not an unreasonable  
13 thing to ask the company to try and identify  
14 additional recoveries without just arbitrarily --  
15 well, not arbitrarily, but automatically placing that  
16 burden on the consumers.

17 If in the whole realm of things we come down to  
18 whose ox to give the gourd in this type of  
19 environment, this kind of a question, I think the  
20 company has to be looked to first because they don't  
21 -- ultimately if we follow the spirit of the decision  
22 in GTE, they ultimately won't lose. They will incur  
23 inconvenience, they will have difficulty, but they  
24 won't lose. Customers, if you go the other way, off  
25 the bat lose. I mean, point blank that's it. And if

1 I'm going to err, I want to err on the side of  
2 allowing the company to go do this.

3 COMMISSIONER CLARK: Let me make a suggestion. I  
4 don't think I'm -- it doesn't appear that I would get  
5 support for a motion that says surcharge those  
6 customers who are still on the system and you deal  
7 with the entire amount that way. I think that the  
8 most we should require the company to do with respect  
9 to pursuing customers who are not on the system is to  
10 mail a bill to their last known address. That is all  
11 they are required to do on the refund, as I understand  
12 it.

13 I would say that if it is an amount under \$5 that  
14 they don't have to pursue that. That over \$5, they  
15 send it, and then they come back to us and tell us  
16 what the amount is and we put it in a regulatory  
17 asset.

18 COMMISSIONER GARCIA: Susan, while I don't  
19 disagree with you, I don't know if that is the right  
20 figure. I mean, how do you know \$5 is the right  
21 figure? I know from a common sense approach, but what  
22 I'm saying is --

23 COMMISSIONER CLARK: I think that is a good  
24 basis.

25 COMMISSIONER GARCIA: You're right. And if

1 common sense would have us right, we wouldn't be  
2 sitting here. I mean, common sense hasn't brought us  
3 to this position where we stand right now. But  
4 someone else had to decide here. What I'm saying is  
5 the guidance we have to -- the guidance we have to  
6 give the company is try to get it. That makes perfect  
7 sense to me.

8 COMMISSIONER CLARK: Here are the distinctions I  
9 would make in that. In the GTE case, it was the  
10 amount of the dollar, the dollar figure was under \$10.  
11 The number of customers that you would have to pursue  
12 was 800,000. It would appear that if we say if it is  
13 anything over \$5, and I used \$5 primarily as a round  
14 figure, and I would suggest that if it is less than  
15 that, you are spending more money to try and get it,  
16 and if it is the over \$5 amount that you are probably  
17 talking about maybe at the most 4,000 customers you  
18 have to get in touch with. And I would say the only  
19 thing you do is send a letter that says this amount is  
20 owed.

21 COMMISSIONER GARCIA: And forgive me, maybe I've  
22 just missed it, why are you giving this much guidance?  
23 I mean --

24 COMMISSIONER CLARK: I'm trying to -- the reason  
25 being is I think --

1           COMMISSIONER GARCIA: Maybe it's because I've  
2 missed something.

3           COMMISSIONER CLARK: The reason being is I think  
4 we have to be mindful of the GTE case, and I think we  
5 have to demonstrate that we have been reasonable in  
6 providing them the ability to fully recover what they  
7 did not recover had we set rates appropriately. And  
8 if we don't, then we will be violating the mandate to  
9 allow them to surcharge.

10          COMMISSIONER GARCIA: That is precisely my point.  
11 I guess you go a little bit further trying to make  
12 sure we comply with that, but I would suggest that we  
13 order the company to go get this money. They have an  
14 opportunity to get all the money. They know who these  
15 people are, they do a mailing and they are going to  
16 make practical business decisions. Maybe \$5 is right,  
17 \$3 is right, 7.50, 2.50, I don't know where that  
18 number is.

19          But wherever this number is, they decide and they  
20 come back to Commission in two months and say,  
21 Commissioners, here is what we got. Or in six months,  
22 because I think we should put a six-month time frame.  
23 They come back and say, Commissioners, we got all the  
24 wastewater guys except for three or four, we got this  
25 many of the water people, this is what is left. And

1 then we book it.

2 CHAIRMAN JOHNSON: But, Joe, you think that --  
3 with respect to that guidance, do you think if it was  
4 a 50 cent bill they should still pay the money for a  
5 stamp to send to ask?

6 COMMISSIONER GARCIA: No. I expect Mr.  
7 Armstrong's clients or Mr. Armstrong, because  
8 obviously he works for the company, to say we didn't  
9 send a bill. This is absurd. This doesn't make sense  
10 for practical billing purposes and he doesn't send it,  
11 period. I mean, that makes sense to me. And he could  
12 come in here and defend it.

13 I'm sure there is a very good chance Mr. Twomey  
14 will come in and argue the opposite, but on a sensible  
15 business decision Mr. Armstrong, the way he does all  
16 the time, the way he does to our staff every time they  
17 have a rate case. They come in and explain that, you  
18 know, Mr. Hoffman is worth so many dollars an hour and  
19 we accept that subject to some check. And the same  
20 way we have to accept that they are going to try their  
21 best efforts to get this money.

22 And when they go out and try to get this money,  
23 they come back and they say this is what we were able  
24 to get. Because on the other one, if we just book it  
25 automatically, I can see myself saying, well, why



1 don't we book Mr. Twomey's clients money. You know,  
2 book it, it's only \$3. It's not worth going out and  
3 getting.

4 But then his point comes through, we have our  
5 thumb over their head. Let's let them use their best  
6 business acumen decision, their experts or whoever is  
7 out there, try to get the money. Whatever they don't  
8 get they are going to come back anyway to get it.  
9 They are going to come before this Commission and  
10 we'll have to book it.

11 CHAIRMAN JOHNSON: So you're saying let them draw  
12 the line.

13 COMMISSIONER GARCIA: Let them draw the line. It  
14 will make sense sometimes, it won't make sense -- when  
15 it doesn't make sense we will obviously have a  
16 discussion, but as opposed to us drawing or figuring  
17 out an arbitrary number, Commissioners, it's not that  
18 I'm an expert at this, but I certainly know that -- I  
19 know I'm certainly not an expert at this, but there  
20 are charts. I mean, there is an entire industry based  
21 on getting other people's money and let them go to  
22 that industry if they don't feel that they can do it.

23 COMMISSIONER CLARK: But, Joe, I think you ought  
24 to think about that. Is that the way you want them to  
25 pursue this?

1           COMMISSIONER GARCIA: No. That is not the way,  
2 but that is the way we are going to end up,  
3 Commissioner Clark. The truth is when they can't get  
4 the \$40, we are not going to book it. We want them to  
5 get the \$43. We want them to get the \$47. And Mr.  
6 Twomey is right there, too. The truth is these  
7 companies aren't designed to get that kind of money  
8 that way. You know, that isn't how they work.

9           They don't have a collections office which  
10 barrages you with phone calls and sends you 32 bills  
11 to get that money. That isn't how utilities work.  
12 It's just not the way they work. You have to pay.  
13 They give you a chance, and then they cut you off.  
14 And that is how they collect their bills. And you pay  
15 because you have to. We are asking them to go out  
16 there and get this money which they are going to  
17 sooner or later end up in some private collector's  
18 hands. I don't know if I like that, but I don't like  
19 anything about this case.

20           COMMISSIONER CLARK: Are we going to allow them  
21 to deduct the finder's fee on that?

22           COMMISSIONER GARCIA: We are going to have to. I  
23 mean, unless you have a better solution --

24           COMMISSIONER CLARK: I just gave you what I  
25 thought was a better solution.

1           COMMISSIONER GARCIA: Commissioner, and I'm  
2           telling you that I'm going to -- I don't think you are  
3           being wrong about it. I mean, your first attempt was  
4           -- it's a noble attempt. I think we end up at the  
5           same place. Because what are you going to do with  
6           everything over \$40? Are you saying to me now that  
7           you are not going to let them go to private sources to  
8           collect that? To collection agencies to come up with  
9           that money if they can't get it?

10           CHAIRMAN JOHNSON: It's a difficult question,  
11           because one of the things -- I guess right now I'm  
12           inclined to agree with Commissioner Clark, because  
13           it's a difficult proposition to put forth, or for the  
14           company to kind of figure out, well, I wonder what the  
15           Commission is going to say was a reasonable amount.  
16           Because just like Susan said five, I was sitting here  
17           writing notes and I had ten, under ten. You know,  
18           trying to do a cost-effectiveness test in my head as  
19           to what I thought made sense. I thought under ten,  
20           regulatory asset, over ten, try to collect it.

21           But the company is going to have to try to guess,  
22           and that it's a tough guessing game. And it strikes  
23           me that if we are going to go down this road, and I  
24           think we are all saying that at some point there may  
25           be uncollectibles and those uncollectibles should be

1 treated as a regulatory asset, perhaps, it strikes me  
2 that we should provide them with a little more  
3 guidance as to what that means.

4 COMMISSIONER DEASON: But would our guidance be  
5 any more than a guess? You know, unless we are going  
6 to prejudge the issue with no evidence as to what  
7 constitutes a cost-effectiveness way to collect this  
8 money, I'm not sitting here today and trying to, you  
9 know, say what that is. We routinely rely upon the  
10 management expertise. Now, perhaps this is something  
11 they don't do on a daily basis, and it's probably not,  
12 but if they put together a reasonable plan that says  
13 this is the way we evaluated it, we looked at what  
14 it's going to cost us, and we determined that any  
15 billing under this amount was not cost-effective to  
16 pursue in this manner, they come forward and they  
17 demonstrate that.

18 It's just like any other issue in a rate case.  
19 They demonstrate why they did what they did and why  
20 that was a prudent thing to do. And when you get  
21 right down to it while we go through a rate case and  
22 there is a lot of issues and some disallowances and  
23 things, the vast majority of what management does this  
24 Commission approves, because so many decisions they  
25 make they are expert in and they make those decisions.

1 I tend to agree with the new Chairman.

2 CHAIRMAN JOHNSON: Well, do you think that they  
3 should commit something to us before or --

4 COMMISSIONER GARCIA: I mean, maybe they want to  
5 for safety's sake, because obviously they have come  
6 through this case, they may have their doubts about  
7 the decision making process that we employ here, but I  
8 have some doubts in that, too. So they may want to  
9 submit a plan to this Commission. I think they  
10 generally don't, but I just think that there are  
11 probably -- see, my worry isn't the four or \$5. My  
12 worry is the bigger one, because I think they end up  
13 in the same place.

14 If I'm sitting now living in Ohio, and I get this  
15 bill from Florida Water, I mean, after I pick up  
16 myself from the floor from laughing for an hour, you  
17 know, what do I do? I mean, what do I do? Do I  
18 actually pay this? I contend to you that Southern  
19 States does not have the capacity, and as much as Mr.  
20 Twomey may allege it, the evil necessary to collect  
21 those \$40 in Ohio. They are going to have to go to  
22 someone else to get this money. And I doubt that this  
23 Commission is going to let them book it all. So  
24 someone is going to have to collect some part of it.

25 COMMISSIONER CLARK: You're saying that it's your

1 view that if they don't go to extreme measures to  
2 collect it, then we won't let them book it as a  
3 regulatory asset?

4 COMMISSIONER GARCIA: I'm saying that if they  
5 don't take all the proper business steps to collect  
6 this money that any business should take, we are not  
7 going to let them book it. That's exactly what I'm  
8 saying.

9 MR. ARMSTRONG: Commissioners, may I hazard an  
10 offer from the company, and maybe it wouldn't be  
11 establishing any precedent when you hear the offer,  
12 because if we -- we think it makes a lot of sense  
13 where Commissioner Clark was headed, and that's where  
14 we headed with the paper.

15 On the water side, the regulatory asset doesn't  
16 seem to be that substantial. If we could collect from  
17 current customers all the water revenue -- not current  
18 customers, just those customers that otherwise would  
19 get the surcharge, just to be clear, on the wastewater  
20 side we create the regulatory asset immediately for  
21 those dollars that represent customers who have left  
22 the facility. Then that is simply an offer, it's not  
23 --

24 COMMISSIONER GARCIA: I'm sorry, Mr. Hoffman,  
25 because what I heard was frightening. What was it

1 again, I'm sorry.

2 MR. ARMSTRONG: We have just determined that it's  
3 not exact numbers. This is an offer from the company  
4 to settle this matter. The water revenues we are  
5 talking about look like they are in the neighborhood  
6 of \$30,000. So we would suggest that those revenues  
7 be collected from the current -- from the customers  
8 who otherwise would be subject to a surcharge. On the  
9 wastewater side, the company would agree to create a  
10 regulatory asset for that amount of the surcharge that  
11 relates to customers who are no longer on the system.  
12 It's made as an offer of settlement.

13 COMMISSIONER GARCIA: On the wastewater side you  
14 would create a regulatory --

15 MR. ARMSTRONG: Asset.

16 COMMISSIONER GARCIA: For all of them.

17 MR. ARMSTRONG: Right. It looks like,  
18 Commissioner, again, using the same kind of  
19 hypotheticals we have been looking at, it looks like  
20 that amount is in the neighborhood of 200 to \$250,000.  
21 It looks like that is how much that regulatory asset  
22 is.

23 COMMISSIONER DEASON: But there would be no  
24 attempt at collection, you're saying.

25 MR. ARMSTRONG: We would establish a regulatory

1 asset, Commissioners, and that would sit there and  
2 wait until the next rate case. And that is an offer  
3 of settlement to try to move us along.

4 MR. HOFFMAN: Commissioners, if I may just -- I  
5 think I need to make sure the record is clear on what  
6 Mr. Armstrong just said, and I think in terms of the  
7 wastewater and the regulatory asset, we would be  
8 talking about creating a regulatory asset for the  
9 wastewater customers who have departed the system.

10 COMMISSIONER CLARK: Yes. Based on the amount  
11 you couldn't collect, it would be the regulatory  
12 asset, and you estimate it's 250,000, or is that the  
13 whole amount?

14 MR. ARMSTRONG: Commissioner, I'm looking at just  
15 the way we talked about before. If it is --

16 COMMISSIONER CLARK: Seven percent per year.

17 MR. ARMSTRONG: -- you know, if we have a total  
18 of 15,000 customers, 10,000 of whom are water  
19 customers only, and you times that by \$3.40, you're  
20 talking about \$34,000. Not a substantial amount. If  
21 you look at the remaining 5,000 customers and you  
22 times -- I just multiplied that by 45, and I think we  
23 come up with \$225,000. It looks like what we are  
24 talking about is establishing a regulatory asset of  
25 \$225,000. It would accrue all the attributes of



1 regulatory assets. You know, it would have interest  
2 accrue and whatever, and in the next rate case we deal  
3 with that.

4 COMMISSIONER CLARK: And would I understand the  
5 increase in terms of the surcharge to water customers  
6 would be 20 percent -- at the most it would be 20  
7 percent of \$3.24?

8 MR. HOFFMAN: Yes.

9 COMMISSIONER CLARK: So it would be under \$4, the  
10 most anyone would be charged?

11 MR. TWOMEY: Not for a one-inch meter, it  
12 wouldn't.

13 COMMISSIONER CLARK: Well, I know that. What  
14 would it be for a one-inch meter?

15 MR. TWOMEY: It would 2-1/2 times that.

16 COMMISSIONER CLARK: So it would be \$10. And who  
17 would those customers be that have to pay \$10, who  
18 have one-inch meters?

19 MR. TWOMEY: Most of my clients are one-inch  
20 meters. If I may respond to that offer, I would first  
21 pretend I laid on the floor laughing for an hour in  
22 Ohio. I prefer what the next Chairman has suggested.  
23 What they just offered to do lets them out of any  
24 normal semblance of what a business would do to try to  
25 collect its debts, okay. They don't have to do any

1 work with that offer. They don't have to go out and  
2 try to track down anybody like Blockbuster does for  
3 Commissioner Garcia and me. Those people are vicious,  
4 in my opinion. And I pay them. I pay them whether I  
5 had the movie or not.

6 COMMISSIONER CLARK: Because you can't find it.

7 MR. TWOMEY: Right. But my answer would be no.  
8 Make them -- Commissioner Garcia is right on when he  
9 says make them act like a responsible business. Don't  
10 give them a bunch of guidelines. These people are all  
11 adults. They are capable of running a large  
12 operation. They can do it.

13 And if they decide -- if they decide that sending  
14 a 32 cent letter, envelope and stamp and a 50 cent  
15 letter to recover a 60 cent bill, I promise you right  
16 now I'm not going to oppose that. But is it worth  
17 sending a 32 cent letter for maybe getting back 5 or  
18 \$10? You might be surprised if some mean guy wrote  
19 the letter how many would come back. But what I'm  
20 saying is don't do this -- the first thing he offered  
21 was a surcharge on a surcharge. That is wrong. It's  
22 flat wrong. And then not even making them try to get  
23 the larger amount associated with the wastewater --

24 COMMISSIONER GARCIA: Right. Not even making  
25 them get the larger amounts. One almost questions,

1 well, let's book the whole thing and call it even  
2 right now. Because that is what it alludes to. We  
3 went from the sublime to the ridiculous here in trying  
4 to solve this problem. I'm not saying I am an expert  
5 here, and that's not the point I'm trying to make.  
6 But we have got an amount of money out there. Clearly  
7 -- I'll tell you what, I could probably -- on that  
8 debt alone I could get a huge amount of money.  
9 Somebody would walk in here and say I will buy your  
10 debt, Florida Water, the whole thing. Give me the \$3  
11 and \$1, and I will give you X. And he will give us  
12 \$100,000, or 50, but he is going to get something for  
13 that debt outstanding because it's owed by law one way  
14 or another. Let the company use its professional  
15 judgment and try to collect. We don't want Mr.  
16 Hoffman going out with Joe Cresse and beating up  
17 people to get money. That is not the point.

18 MR. HOFFMAN: That's why we have Mr. Twomey.

19 COMMISSIONER GARCIA: Well, it could be a side  
20 business for Mr. Twomey, but that's --

21 MR. CRESSE: Mr. Chairman to be, did I understand  
22 Mr. Twomey correctly that we needed a mean old man to  
23 write the letter? Was he volunteering?

24 COMMISSIONER GARCIA: I think, Commissioners,  
25 whatever you choose is fine here, and I'm going to

1 vote -- if we have a close -- I'll going to stay with  
2 the majority. I think we should stay unanimous on  
3 this, because I don't think it's central to the bigger  
4 issue. Let's collect the money that's out there.  
5 We've got a system in place, let's not surcharge the  
6 surcharged. I think that is not right. Let's let the  
7 company use its professional judgment on how to  
8 collect these uncollectibles. When in six months they  
9 come back to us, they are going to tell us all sorts  
10 of stories, I'm sure, about how and why and where and  
11 nobody wanted to buy the debt, or somebody bought it  
12 and then we book. Whatever we couldn't collect we  
13 book. There is no other way to do it. Surcharging  
14 the surcharged just doesn't make sense to me.

15 COMMISSIONER CLARK: Joe, I wish you would quit  
16 saying it, because that's what we did and I think it  
17 makes sense. I still think it made sense to do that.

18 COMMISSIONER GARCIA: All right. And that is  
19 what we did, and perhaps maybe we weren't wrong, but I  
20 was wrong.

21 COMMISSIONER CLARK: There are valid reasons for  
22 doing it that way.

23 COMMISSIONER GARCIA: I agree. In that case  
24 there were very valid reasons.

25 COMMISSIONER CLARK: And I have to say that I

1 think that if we try to do something that is  
2 substantially different that we are inviting an appeal  
3 on this issue on the basis of you are not giving them  
4 their money back. And we will have failed to --

5 COMMISSIONER DEASON: When you say give them  
6 their money, what does the court expect? Do they  
7 expect us to go collect it and give it to them in one  
8 big check? I mean, there are certain limits on  
9 anything. One interpretation is you just give them  
10 the opportunity to go and collect the money by  
11 whatever legal means they have.

12 COMMISSIONER CLARK: What the court said in GTE  
13 is they are entitled to that money, give them a  
14 mechanism that gets that money back to them. And my  
15 concern is that we are giving them a mechanism now  
16 that we know will not get the money back.

17 COMMISSIONER GARCIA: And my concern is that we  
18 are giving them -- and Commissioner Deason said  
19 something that maybe we want Mr. Twomey to take this  
20 to the court again, but just on a fundamental fairness  
21 issue I question whether giving them their money means  
22 taking it from someone more than they owe the company.  
23 Much more than they owe the company because his  
24 neighbor is no longer there.

25 COMMISSIONER CLARK: Well, it happened in GTE.

1           COMMISSIONER GARCIA: I understand that's what  
2 happened, but I still believe -- and I don't think you  
3 would disagree with me that that is very different  
4 circumstances.

5           COMMISSIONER DEASON: Ever the optimist that I  
6 am, I am going to ask the question. Do the parties  
7 think there is any way that they can sit down and try  
8 to come to an agreement on the appropriate way? Just  
9 tell me no. If there is absolutely no way, tell me.

10          MR. ARMSTRONG: Absolutely no.

11          MR. HOFFMAN: No. I mean, we have been down that  
12 road on the other issue, and it didn't work out.

13          COMMISSIONER DEASON: It doesn't hurt to ask.  
14 Commissioners, I think we need to make a decision and  
15 get on with it. We have still got numerous items on  
16 this agenda and we have a very full internal affairs.

17          CHAIRMAN JOHNSON: Is there a motion?

18          COMMISSIONER JACOBS: I would -- I guess I will  
19 take the concept Joe expressed and reduce it to a  
20 motion or he can do that and I will second it.

21          COMMISSIONER GARCIA: Well, I mean, let me make  
22 sure I -- that would be Issue 1, right?

23          COMMISSION STAFF: Yes, sir.

24          COMMISSIONER DEASON: Well, the appropriate  
25 action is the company should collect these funds. I

1 think Susan stated that we allow them six months for  
2 those that are wastewater, because it didn't make  
3 sense on the 3.24. So anybody who is wastewater or  
4 wastewater and water combined may have six months to  
5 pay it.

6 I would assume that the company would build into  
7 that six months some kind of a finance charge. Those  
8 who pay it up front, they are clear on their bill.  
9 Then I would commend the company to go out and find  
10 the most reasonable way to get those clients who did  
11 not -- who owe the company money, try to get their  
12 money. Was there anything else that had to be  
13 included in this motion?

14 COMMISSION STAFF: You need to determine the  
15 methodology, and you are approving staff.

16 COMMISSIONER GARCIA: Yes, I am approving staff.  
17 But obviously I'm not approving a surcharge on a  
18 surcharge. What we are approving is basically the  
19 money here. I'm sure the company will come back to us  
20 and say, Commissioners, it's going to cost us so much  
21 percentage to float this for these particular  
22 customers who didn't pay it in one lump sum, and  
23 hopefully the company is going to give them that  
24 choice.

25 Because if it is -- let me ask the company that,

1 because I don't want to confuse this further. Because  
2 if it is easier just to bill them ten bucks a month  
3 and get this done in six months, or to give them a  
4 choice, because I'm like Susan, when I get a bill that  
5 says \$55 or 60 owed in six months, generally,  
6 depending on what time of the month it is, I generally  
7 pay the \$55 and have it done with. If the company  
8 can't give that type of choice, maybe it's best just  
9 to float it for the six months and get it done with.

10 COMMISSIONER CLARK: Are you going to -- while  
11 they are conferring, are you going to require them to  
12 pursue payment when it's under a certain amount?

13 COMMISSIONER GARCIA: I'm going to require the  
14 company to use its business judgment on doing what is  
15 best. I think that if somebody owed me 3 bucks I  
16 might send them a note to sent it back. If they don't  
17 write me back, I don't write them. But that's me.  
18 I'm sure that the company can figure out from experts  
19 what exactly it takes to collect this kind of money.  
20 And if they don't think it's worthwhile, they will  
21 come back and tell us that.

22 COMMISSIONER CLARK: I can tell you, if I'm a  
23 customer off that system, and I get a bill for \$3,  
24 it's unlikely that I am going to write out a check and  
25 put it in a stamped envelope and send it back.



1           COMMISSIONER GARCIA: You are probably right.  
2           And the company can probably use its judgment and say,  
3           Commissioners, we didn't send letters to anybody under  
4           3 bucks. We decided \$7 -- we used the charts that are  
5           used by collection agencies, \$7.22 is the right  
6           number, and --

7           MR. HOFFMAN: Commissioner Garcia, as I  
8           understand it, subject to check, if the surcharge is  
9           for a wastewater customer or a water and wastewater  
10          customer, it would be more administratively efficient  
11          for the company to just bill it over a six-month  
12          period rather than giving the option to each customer  
13          and trying to track what each customer does in  
14          response to the option.

15          COMMISSIONER GARCIA: Okay. Well, then let's do  
16          it that way.

17          MR. ARMSTRONG: Commissioner, and just to be  
18          very, very clear, what that does is mean that when we  
19          calculate the rate we include the finance charge  
20          associated with it and put that all in one kit and  
21          caboodle to your staff.

22          COMMISSIONER GARCIA: What was it that Mr.  
23          Cresse's razor sharp mind brought us to? It's about  
24          \$62 a head, so you would break that up at six months,  
25          somewhere around -- it would be 10-something. Yes,

1 they're right. That was surcharging the surcharged,  
2 so now you are talking \$40-something, which would  
3 probably be spread out over six months, so you are  
4 talking about \$8 or something a head, or something  
5 like that. All right. And, again, if staff needs any  
6 direction on writing this, that the company use it's  
7 business understanding or hire some business  
8 understanding on how to collect the customers that  
9 left.

10 CHAIRMAN JOHNSON: That's the motion?

11 COMMISSIONER GARCIA: That's the motion.

12 COMMISSIONER JACOBS: I second.

13 CHAIRMAN JOHNSON: There is a motion and a  
14 second. Any further discussion?

15 MR. HOFFMAN: Madam Chairman, before you vote,  
16 just a question for clarification. I don't think  
17 Commissioner Garcia addressed in his motion what  
18 happens then in terms of what you are deciding in  
19 terms of the surcharges after the company makes  
20 reasonable efforts that are not collected.

21 COMMISSIONER GARCIA: And I guess the company  
22 will come in to us, will come into this Commission and  
23 say, Commissioners, this is what we got. We have an  
24 outstanding debt of X dollars, we got X dollars, this  
25 is what's left, and if we believe you made a

1 reasonable effort then we book the rest. I don't know  
2 what else --

3 COMMISSIONER JACOBS: I think we could say that  
4 it would be our intent to follow what we understand to  
5 be the proper interpretation of existing law, which  
6 says that you should -- I forget what the exact  
7 language is in the case, but whatever you got, we  
8 ought to make an effort to get it back to you. I  
9 think we can say that now, can't we?

10 COMMISSIONER GARCIA: That's fine. Did you get  
11 that?

12 COMMISSION STAFF: Would you repeat that one more  
13 time.

14 COMMISSIONER JACOBS: Basically, the very  
15 language in GTE that says that whatever they should  
16 have gotten and they didn't get, then when they come  
17 back to us and show that they could not collect it,  
18 then we will be looking to provide a mechanism to  
19 address that amount. I won't say what mechanism, but  
20 I will say that we will be looking to provide a  
21 mechanism for them to recover that amount.

22 COMMISSIONER CLARK: This is not my first choice.

23 COMMISSIONER GARCIA: I know. I'm just looking  
24 for --

25 COMMISSIONER CLARK: I think we should provide

1 more guidance to them. You know, I guess I would be  
2 of the view that below a certain, and I think Julia  
3 suggested \$10, I thought 5, but if we are not going to  
4 get a majority on that, that directing them to use  
5 their best judgment and then being clear that they  
6 would come back to us with what they couldn't get and  
7 we would have the responsibility to look at that to  
8 assure that the mandate of the court is fulfilled. As  
9 I say, it's not my first choice, but I would be  
10 supportive of it.

11 COMMISSIONER GARCIA: Okay. Well, there it is.

12 CHAIRMAN JOHNSON: There is a motion and a  
13 second. Any further discussion? Seeing none, all  
14 those in favor signify by saying aye.

15 COMMISSIONER GARCIA: Aye.

16 COMMISSIONER JACOBS: Aye.

17 COMMISSIONER DEASON: Aye.

18 COMMISSIONER CLARK: Aye.

19 CHAIRMAN JOHNSON: Opposed? Nay. Show it  
20 approved on a four-to-one vote. I would have provided  
21 more guidance, even though I knew I was going to lose  
22 the vote. And the guidance would have been anything  
23 under \$10 that it should go as a regulatory asset and  
24 that they try to collect over 10.

25 MR. RENDELL: Commissioners, Issue No. 2 is the

1 prospective rates, place them into effect. This is a  
2 result of the Category I items that was remanded from  
3 the court, and that would be on a prospective basis.  
4 And staff has recommended they should implement  
5 immediately.

6 COMMISSIONER GARCIA: Is there any discussion on  
7 this?

8 COMMISSIONER CLARK: Is this the one that you are  
9 concerned about the 7 days for the vote?

10 MR. HOFFMAN: Yes, ma'am.

11 MR. RENDELL: No, that's Issue 3.

12 MR. HOFFMAN: Well, there is a statement made on  
13 -- I think it's Page 10. On Page 12, I'm sorry. Turn  
14 to Page 12.

15 MR. RENDELL: Well, that is with respect to their  
16 rates, so that's fine.

17 COMMISSIONER GARCIA: So I will move staff.

18 COMMISSIONER CLARK: Second.

19 CHAIRMAN JOHNSON: Any discussion? Show it  
20 approved without objection. Issue 3.

21 MR. RENDELL: Commissioners, Issue 3 has to do  
22 with implementation of the surcharge and also the  
23 noticing. As discussed at the very beginning of this  
24 item, I think what needs to happen is at least the  
25 methodology needs to be explained in the initial

1 notice included in the rates. And then at least the  
2 customers are put on notice that a methodology has  
3 been approved and it has been approved PAA. And then  
4 subsequent notice can go out with the bill when they  
5 get billed for the surcharge amount.

6 So this has to do with implementation of the  
7 surcharge, what tariffs and what notice should be  
8 required. And I think this gets to the heart of the  
9 concern about the 7 days, and staff would not be  
10 opposed to putting a longer time, maybe 45 days from  
11 the effective date of the order or some other time  
12 frame that gives the utility an opportunity to make  
13 those calculations. And I would be open to  
14 suggestions to a time frame, but I'm not opposed to  
15 extending it.

16 MR. HOFFMAN: Madam Chairman, if I may suggest,  
17 having talked with Mr. Isaacs about it, we could  
18 certainly comply with a mandate of supplying those  
19 calculations and tariffs within 30 days of the  
20 effective date of the new rates. That would be great.

21 COMMISSIONER GARCIA: Move staff.

22 COMMISSIONER CLARK: Second.

23 CHAIRMAN JOHNSON: Any discussion? Show it  
24 approved without objection. Issue 4.

25 COMMISSIONER DEASON: Madam Chairman, I would

1 like to issue a challenge to the new Chairman that  
2 within his term as Chairman that we could have a yes  
3 vote on Issue 4.

4 COMMISSION STAFF: Thank you.

5 COMMISSIONER DEASON: But I would move staff.

6 CHAIRMAN JOHNSON: And in the meantime, show it  
7 approved without objection.

8 MR. HOFFMAN: Thank you.

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## CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF LEON )

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 143 are a true and correct record of the proceedings.

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

DATED THIS 7th day of January, 1999.

Jane Faurot

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