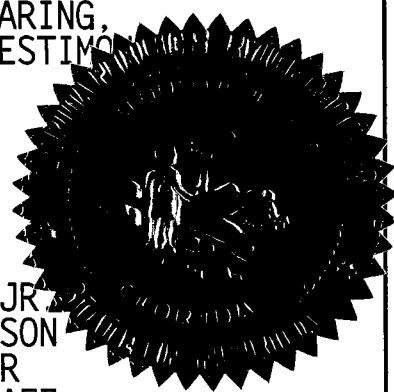


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. UNDOCKETED

In the Matter of
CLASS C ALTERNATIVE
RATESETTING

ELECTRIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY



PROCEEDINGS: WORKSHOP

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

DATE: Wednesday, August 8, 2001

TIME: Commenced at 9:30 a.m.
Concluded at 11:15 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 0551 AUG 24 01

FPSC-COMMISSION CLERK

1 IN ATTENDANCE:

2 SAMANTHA M. CIBULA, FPSC Division of Legal Services.

3 MARSHALL WILLIS, TROY RENDELL and RYAN FITCH, FPSC

4 Division of Economic Regulation .

5 RALPH VONFOSSEN, FPSC Division of Policy & Analysis
6 and Intergovernmental Liaison.

7 STEVE BURGESS, Office of Public Counsel.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2 CHAIRMAN JACOBS: Good morning. We will go on the
3 record at today's workshop.

4 Counsel, read the notice.

5 MS. CIBULA: Pursuant to notice issued June 12th,
6 2001, this time and place has been set for a workshop to assess
7 the Commission's present alternative ratesetting practices and
8 policies to determine if current conditions warrant a
9 modification to those practices and policies.

10 CHAIRMAN JACOBS: Take appearances.

11 MR. BURGESS: I am Steve Burgess here on behalf of
12 the Public Counsel representing the Citizens of the State of
13 Florida.

14 MR. WILLIS: For the record I will identify myself.
15 I am Marshall Willis, I am with the Florida Public Service
16 Commission. With me here today is Mr. Troy Rendell and Mr.
17 Ralph Vonfossen and some of the rest of the water and
18 wastewater staff. Well, actually it's now the economic
19 regulation staff who will be participating today.

20 CHAIRMAN JACOBS: Very well. Why don't you proceed
21 then, Mr. Willis?

22 MR. WILLIS: I would like to indicate there are some
23 companies who are here indicating they just wanted to listen to
24 find out what is going on. I would invite them to participate
25 at any point that they wish to just by coming up and entering

1 into the discussion.

2 Let me first start off to explain why we are here
3 today or to give a good indication. We are here -- really
4 staff is here to discuss the Commission's current practice in
5 setting or in actually implementing the statute which allows
6 the Commission to do alternative setting, that is other than
7 rate base regulation.

8 Since the Commission implemented its policy there
9 haven't been that many actual cases. Mr. Rendell is going to
10 go over those cases shortly and go through the history since
11 1989 when the statute was implemented, and kind of set the
12 stage for today. Later on Mr. Vonfossen is going to go over
13 what other states are doing, just to give the Commission some
14 background there. That is also in the handouts that we
15 prepared for today which we handed out yesterday.

16 The Commission's policy as far as alternative
17 ratesetting has basically been to use an operating ratio
18 methodology. The Commission promulgated a rule, which we will
19 go over, too, it is Rule 25-30.456, which mainly is the
20 procedural rule. There are two aspects of that rule, though,
21 that go to the method to be used. One basically says that it
22 limits the companies who can apply for an operating ratio to
23 those that actually can apply for a staff-assisted rate case.
24 And that limitation, of course, is based on your operating
25 revenues which have to be \$150,000 or less, or \$300,000 if you

1 own a water and wastewater system in total.

2 The second limitation which is in the rule, basically
3 says that a company who applies for an operating ratio is
4 limited in their increase by 50 percent of your test year
5 operating revenues. Those are basically the two limitations
6 that are in rule. The remaining part of it is mainly
7 procedural and how the company files and how we process the
8 application itself.

9 With that I'm going to turn it over to Mr. Rendell
10 and he is going to go through that history with you.

11 MR. RENDELL: I'm going to briefly go over the
12 history which is contained in the handouts. As Mr. Willis had
13 indicated, in 1989 the Florida Legislature enacted Section
14 367.0814, Subparen 7 of the Florida Statutes, which allowed the
15 Commission to establish rules for setting non-rate base
16 standards and in setting rates and charges.

17 In 1993, the Commission approved Rule 25-30.456,
18 Florida Administrative Code. And as Mr. Willis also indicated,
19 it is more of a procedural rule of how a utility can apply for
20 an alternative ratesetting rate case.

21 In February of 1996, the Commission ruled on its
22 first non-rate base regulation rate case, and this was Indian
23 River. In that case the Commission declined to grant an
24 alternate ratesetting based on several reasons. The reasons
25 were the utility was developer owned, that the utility had a

1 high non-used and useful, meaning that as growth came on the
2 actual rate base would go up and the utility would end up with
3 a rate base in the future. Also that the utility owner was in
4 negotiations with Volusia County to sell the utility.

5 The Commission found that this utility was a
6 borderline candidate and there could be strong arguments, but
7 it erred on the side of caution and declined an alternative
8 ratemaking.

9 In March of 1996, the Commission for the first time
10 granted an operating ratio for Lake Osborne. In that order for
11 the first time the Commission established thresholds or
12 criteria that should be met when looking at analyzing whether
13 an alternative ratesetting should be made. Those included
14 whether the utility's O&M equaled or exceeded the rate base,
15 whether the utility is expected to become a Class B in the
16 foreseeable future. The reason for that one is currently under
17 the statutes and rules this is only eligible for Class Cs and
18 not Class Bs.

19 One of the other conditions to look at is the quality
20 of service and the condition of the plant. Whether the utility
21 is developer owned, and whether the utility operates treatment
22 facilities or simply a distribution and collection system.
23 There are unique circumstances under each one of these
24 thresholds which could be explored at a later time.

25 Also in that order the Commission approved an

1 operating margin of 10 percent of O&M. Basically it wasn't a
2 magical number, the 10 percent, it was set in that order unless
3 another extenuating circumstances were brought forth which the
4 utility should have higher than the 10 percent. Also in that
5 order the Commission excluded purchased water from the O&M,
6 also erring on the side of caution to be more conservative in
7 its approach.

8 In 1997, the Commission approved its second operating
9 ratio using the same thresholds and that was for Indian Springs
10 Utility. In that order, like I said before, they followed the
11 same thresholds. In 1997, a memo was sent from a regulatory
12 analyst which was in the Division of Water and Wastewater at
13 that time to the Commissioners. This was as a result of the
14 order which approved the operating ratio for Lake Osborne
15 basically reporting on the standards for that utility.

16 Two years after the operating ratio was put into
17 effect, the staff found that the utility was actually operating
18 at less than the approved ratio that was approved by the
19 Commission. However, the staff indicated that the customers
20 had benefitted based on the following reasons: The utility was
21 able to maintain an acceptable level of service; the utility
22 was purchased by a professional operator. Staff believed that
23 this was done because of -- the operating ratio method made the
24 utility more economically viable and more attractive to a
25 larger utility to buy it.

1 CHAIRMAN JACOBS: I would be interested in what
2 happened to their service territory. Because one of the
3 concerns I see that was listed here is that there would be a
4 disincentive for the company to invest in expansion. Do you
5 have any information, or data, or statistics on that?

6 MR. RENDELL: Sure, and I will get into that a little
7 further. Subsequent to that, this company was purchased by
8 Crystal River Utilities, and Mr. Fitch has done an analysis to
9 see exactly where they are at this date. And when I finish I
10 will let him go into where they are at to date.

11 CHAIRMAN JACOBS: Very well. Thank you.

12 MR. RENDELL: In 1999, Indian Springs, which was the
13 second one where an operating ratio was approved, was sold to
14 Citrus County. I'm sorry, let me back up. It became
15 nonjurisdictional as a result of Citrus County rescinding the
16 resolution. So Citrus County took back jurisdiction, it was
17 not sold. And then in the year 2000 Brendenwood was approved
18 as an operating ratio.

19 I would like to point out that all of these operating
20 ratios were on staff's motion. The utility had not filed under
21 the rule for an operating ratio. Staff brought forth these and
22 believed that these were excellent candidates for that
23 alternative ratemaking methodology, and the Commission approved
24 it on staff's behalf of bringing it forward.

25 Since that time we have had several staff-assisted

1 rate cases that came in that appeared to be eligible, but once
2 you look at pro forma where they are going to have to put in a
3 substantial amount of investment, it actually got them above
4 the rate base.

5 The notice for this workshop went out. And in the
6 notice contained there were 20 questions we sent out, that
7 staff sent out to all the utilities to respond to. I would
8 like to point out that we have not received one response from
9 any of the utilities. However, there are several here that are
10 here to participate.

11 And with that I will let Mr. Fitch briefly go over
12 where Lake Osborne, which is now Crystal River, stands.

13 MR. FITCH: According to their 2000 annual report,
14 since the operating ratio was implemented they have increased
15 their rate base by about \$10,000, which is roughly half of
16 their rate base at the time. The operating ratio was put into
17 effect. They are operating at a pretty significant loss. And
18 I did an analysis under if we used a rate base method or an
19 operating ratio. And under both methods they are operating at
20 a pretty significant loss. But their expenses have increased
21 by quite a bit since the last rate case, which would explain
22 that.

23 MR. RENDELL: And now I would like to turn it over to
24 Mr. --

25 COMMISSIONER DEASON: Let me ask a question, Mr.

1 Rendell. This example that was just given where there was an
2 operating ratio put into effect and apparently the company is
3 underearning primarily because of an increase in expenses. Has
4 staff considered having some type of -- and would this be
5 within our jurisdiction to do -- some type of a review to allow
6 basically an indexing on an operating ratio method to try to
7 keep expenses -- when expenses go up to try to keep that
8 operating ratio at some level to perhaps prevent a rate case
9 from having to be filed?

10 So I guess there are two questions. First of all, is
11 that within our jurisdiction to even consider? And if it is,
12 is that something staff has thought about?

13 MR. RENDELL: I don't believe we have thought about
14 it, but I believe it is a very good idea to look at, and that
15 is the whole purpose of the workshop to see, you know, should
16 we be monitoring them more closely to keep them viable. I know
17 viability is a major factor in quality of service, but it is
18 something to consider.

19 COMMISSIONER DEASON: Well, let me ask you this
20 question. How does for a company -- I know we have very
21 elemented experience, but how do we treat those expenses which
22 are applicable to an indexing increase, and how do we treat
23 those when we do an operating ratio, or is it the same type of
24 expenses? Do we distinguish between the two? Can you explain
25 that.

1 MR. RENDELL: It's basically the same ones. When
2 they come in for an index, you would look at the O&M. It would
3 be the current O&M, and those would be indexed. It depends on
4 how far after the rate case they come in. Obviously if they
5 have been purchased by another utility or if expenses have gone
6 up significantly since the last rate case, they can come in and
7 get an index. And basically the way it works right now it is
8 the utility's burden if they see the expenses going up and they
9 are not keeping up with the operating ratio to come back in for
10 a rate case.

11 COMMISSIONER DEASON: So you would think that unless
12 there is some extraordinary circumstances, if a company availed
13 itself of its indexing ability then it may be self-correcting
14 in the sense that the operating ratio that we set probably
15 should continue if they avail themselves of that.

16 MR. RENDELL: If there are no unforeseen extenuating
17 circumstances where expenses goes up dramatically that would be
18 correct.

19 COMMISSIONER DEASON: Like having to comply with some
20 type of environmental requirement or something.

21 MR. RENDELL: Sure. Like hiring another operator, or
22 if there is a major maintenance problem that they have. But if
23 you set the rates and look at the expenses correctly in the
24 staff-assisted rate case, and there is no subsequent ownership
25 change, because obviously that is going to facilitate some

1 changes in O&M. But if you set it right and they could follow
2 the index, then that should keep them viable until, you know,
3 such time as they believe that they need to come back in for
4 the next rate case. But theoretically you are correct.

5 CHAIRMAN DEASON: Thanks.

6 COMMISSIONER JABER: Mr. Rendell, then how
7 important -- I would think that even more important now will be
8 the level of margin. And how is it you go about figuring out
9 what the appropriate margin is? As I recall 10 percent was
10 almost pulled out of the air as not too low and not too high.

11 MR. RENDELL: That is correct. And that is something
12 that, I guess, the staff has struggled with, and Mr. Vonfossen
13 is going to go over what the other states do. And as you can
14 see what the other states do, some of them are higher and some
15 of them are lower than what Florida does. So I think it was
16 kind of that is a conservative number, and it's somewhere in
17 the middle, so we will go with that unless there is some
18 extreme circumstances.

19 But that is one of the issues that we wanted to look
20 at in this workshop, should it be higher or should we leave it
21 status quo at this point in time, realizing that the first
22 operating ratio was done in the '90s and has the economy
23 changed such that maybe we should be looking at something
24 higher.

25 COMMISSIONER JABER: Do you get the impression with

1 the example you gave that if the 10 percent was higher that
2 theoretically that cushion should have taken into account some
3 of the increase in the expenses, would have been able to cover
4 some of the increase?

5 MR. RENDELL: Possibly, yes. I think one of the
6 other issues that we looked at the 10 percent is that if you
7 look at the capital structure and what the return on equity
8 that is established by the Commission each year would be, it
9 would be around 10 percent. We have seen some higher and some
10 lower, but that on average is approximately what the rate of
11 return would be if they had rate base.

12 COMMISSIONER JABER: There was, I don't know, some
13 proceeding months ago where John Williams was saying that -- it
14 was an Internal Affairs where EPA has put out some more
15 stringent rules as it relates to the Clean Water Act, and DEP
16 is going to start implementing those rules for the Florida
17 water utilities. And I think, if memory serves me correctly,
18 and we would have to verify it with Mr. Williams, that there
19 would not be an exemption for the small utilities, that all of
20 the water utilities would have to implement those same rules
21 regardless of the cost.

22 And I say all of that to say it seems to me it's a
23 given that all of these companies will have an increase in
24 expenses really, really soon. Whatever that date is, I don't
25 know. And is that something we should take into account?

1 MR. RENDELL: We recently discovered that in a couple
2 of our staff-assisted rate cases, which one just recently went
3 to agenda and one that we are working on where some of these
4 new requirements are hitting the small ones where before they
5 may have been exempted out. So we try to handle it in a
6 staff-assisted rate case, but if it is several years out in the
7 future, it's kind of hard to go ahead and put something in
8 place to handle that. But it is something we are trying to
9 deal with in staff-assisted rate cases. But absent some
10 mechanism to recognize that, it's something we need to be aware
11 of.

12 COMMISSIONER DEASON: That triggers another question,
13 so I've got two questions now. And I will get to the second
14 one, because Commissioner Jaber kind of went into that area.
15 For those companies which experience significant increases in
16 operating expenses primarily due to regulatory requirements to
17 comply with new environmental mandates, has staff considered
18 implementing -- and, here again, I guess this goes back to our
19 jurisdiction to do this, and legal staff may want to consider
20 this, too -- has staff considered implementing some type of
21 environmental cost-recovery clause pass through where it could
22 be a separate line item on the bill as opposed to having to go
23 through a full revenue requirements rate case to try to
24 incorporate these increases?

25 MR. WILLIS: Well, now that we are part of Tim

1 Devlin's group, we have started talking about the economic
2 recovery clause, environmental economic recovery clause. We
3 haven't gotten to the point where we are looking at doing
4 rulemaking or coming up with a method right now, because truly
5 the only way we are addressing this is through limited
6 proceedings and rate cases. That works fairly well for the
7 larger companies if they come in ahead of time and use a
8 projected test year. Our real problem is with the small
9 companies. And we are going to have to come up with some way
10 to address that and get these companies in here sooner for rate
11 relief so they can address these and don't get in that type of
12 financial condition where they are confronting the costs before
13 their relief comes.

14 One of the problems we also have that we don't
15 address with the larger ones is the interim portion. As you
16 are well aware, the staff assistance rule that we are guided by
17 right now, the staff assistance statute, actually, when it
18 comes to interim only covers O&M expenses. It doesn't give the
19 company any kind of return. So there really isn't a method
20 except through the use of emergency rates, which we have done
21 in the past under those extreme circumstances to get that
22 relief to the companies quick enough if they filed very late in
23 the process. It's something we definitely want to consider in
24 the future.

25 COMMISSIONER DEASON: Okay. And then the other

1 question back to the 10 percent level. First, let me ask you
2 this question. The expenses upon which the operating ratio is
3 calculated is basically 10 percent, you take whatever expenses
4 go into that calculation, and you increase it by 10 percent and
5 that becomes the cushion for this company and their return to
6 the extent is all included in there. The expenses themselves,
7 do we include within that the interest expense on outstanding
8 debt?

9 MR. WILLIS: No, we don't, not at this point. It's
10 only based on the O&M expenses. And that is something that we
11 wanted to talk about later on because it does include those O&M
12 expenses that are eligible for pass-through. We have talked
13 about the index and how that applies to the companies, but the
14 small companies, just like the large ones, whether you are
15 under the alternative ratesetting statute or .081 where you're
16 setting it based on rate base, are eligible for their expenses
17 to be passed through for those certain expenses like chemicals,
18 purchased power, purchased water.

19 Your material costs are going to be purchased water
20 and purchased sewage treatment. And that is something we want
21 to get into a discussion later on as to whether those costs
22 would actually be pulled out before you apply the operating
23 ratio methodology. Because a company can come in rather
24 quickly, within 30 days according to the statute, and get that
25 passed through.

1 COMMISSIONER DEASON: Well, then that brings me to my
2 question, so the 10 percent operating ratio, that basically
3 provides the return on debt as well as return on equity, and as
4 a cushion to absorb unexpected increases in O&M expenses,
5 correct?

6 MR. WILLIS: That's correct, it should.
7 Theoretically it should. The idea behind the operating ratio
8 was not really to provide any kind of return, but to try and
9 keep the company viable. That was the whole idea of coming up
10 with this --

11 COMMISSIONER DEASON: But to the extent that the
12 company -- I know these companies that meet the requirements
13 have a small investment, but to the extent there is investment
14 and there is debt outstanding and there is an equity component,
15 that 10 percent margin provides that return as well as
16 providing some type of a cushion, does it not?

17 MR. WILLIS: It should. Now, some of these companies
18 have debt far in excess of rate base. If they have been out
19 there for awhile, like many of these small ones we see every
20 day, they have been out there getting debt to cover their
21 expenses, the costs before they ever come to this Commission.
22 And we do see a large majority of these companies who have that
23 debt far in excess of rate case. And in some of these cases it
24 is not unheard of that even when you do the operating ratio
25 it's going to cover interest and not all of it.

1 COMMISSIONER DEASON: Well, I guess it's one of the
2 reasons why these things need to be done on a case-by-case
3 basis. And particularly if it's a developer-related utility
4 that could further complicate their outstanding debt and what
5 should be allowed. I guess there really are no clear cut
6 simple answers, it has to be looked at on a case-by-case basis.

7 MR. WILLIS: That's true. And we have developed
8 criteria for applying it to certain utilities. And one of
9 those is whether or not they are developer related, and that is
10 part of the decision process. If they are developer related
11 they may have the funding elsewhere to be able to meet these
12 requirements. But if they are strictly owned by someone who is
13 trying to do this as what we would label a pure utility, they
14 are more apt to be selected for the operating ratio than a
15 developer utility would.

16 COMMISSIONER JABER: But in the ratemaking scheme we
17 have today there really isn't an incentive for those
18 developer-related utilities to find funding elsewhere. I mean,
19 we don't really encourage that, and we certainly don't give
20 them an incentive to do that. So I see that as being a
21 double-edged sword.

22 MR. WILLIS: Well, that's true. On the one hand,
23 they don't have the incentive. On the other hand, I think part
24 of the criteria for kind of selecting those utilities out of
25 the process or looking at them separately as to whether they

1 should be applied is that their only incentive is to sell
2 homes. They have to keep the quality of the service up. They
3 have to put money into the facilities if they want to be able
4 to sell homes. Now, if they get to the point where it's pretty
5 well built-out, then that incentive goes away. You're right
6 there.

7 MR. RENDELL: And I don't think that would exclude
8 them. That would be one of the thresholds, because we would
9 also -- as we saw in the one utility we want to maybe encourage
10 a utility, a real utility that invests to buy it and stay there
11 for the long haul so that once the development is built-out and
12 the developer is ready to leave, we have rates in place that
13 are going to keep it viable so that a utility will come in
14 there and buy it and keep that service provided to the
15 customers. So I don't think that necessarily would be one that
16 would make them ineligible. It's something we would look at,
17 one of the thresholds we would look at.

18 If we are ready to proceed, I will let Mr. Vonfossen
19 go over what the other state activities are.

20 MS. CIBULA: I would just like to add one thing in
21 regard to Commissioner Deason's question about our jurisdiction
22 in regard to a pass-through for the environmental recovery
23 costs. Legal staff believes that that would be something that
24 we would need to do by statute, not just a rule. So if that is
25 something that you want us to pursue, we could do that.

1 COMMISSIONER JABER: Marshall, does the Florida
2 Waterworks Association still exist, are they around?

3 MR. WILLIS: They are still around, but they really
4 only consist of the large Class A companies. The last time I
5 talked to any of the members, it's really Florida Water
6 Service, United Water wasn't really participating very much,
7 and Utilities, Inc., those were the three major players. And
8 Aloha maybe in it, also. But as far as the small companies,
9 they have tried to get them to join and they just aren't
10 interested.

11 COMMISSIONER JABER: One of the observations I have
12 made about the -- I have had about the small companies and the
13 industry in general, and I say this really to express a
14 frustration to the industry, because the differences among the
15 industries since I have become a Commissioner have just been
16 apparent to me. That in the telephone and electric industry
17 there are these associations that have been proactive in
18 changing, adapting, adopting, whatever, industry regulations,
19 and you don't find that in the water industry.

20 And for those small, very small companies, it's
21 almost a vicious cycle because they don't have the extra funds
22 to come to the PSC and file the things that they have to file
23 in a timely fashion and get the relief that they need to get,
24 and there is no one doing that on their behalf. That is a
25 frustration, not anything that we can do anything about,

1 perhaps.

2 COMMISSIONER DEASON: In answer to the question about
3 trying to seek a legislative or statutory remedy to perhaps
4 looking at environmental recovery, I guess my suggestion would
5 be that, first of all, we need to look from a policy and a
6 procedural manner, do we think there is a problem that needs to
7 be corrected before we go and try to seek some type of
8 legislative remedy.

9 And we probably -- and if it passes that test, that
10 we think that this is a tool that we need and that ultimately
11 it is in the customers' benefit for the Commission to utilize
12 this tool by perhaps eliminating the need for expensive rate
13 cases to pass through costs that we know are reasonable,
14 prudent, and are being required, then we probably need to go to
15 the legislature. But I wouldn't want to go over there
16 half-cocked without full explanation and justification as to
17 why we think there needs to be some type of a statutory change.

18 CHAIRMAN JACOBS: How do these costs differ from the
19 authority that we presently have? We do have some authority --
20 well, there is authority now to automatically pass-through
21 testing expenses, is that correct?

22 MR. WILLIS: It is very limited, though. The
23 authority we have right now only addresses expenses. If you
24 have to put in plant to deal with trihalomethane, if you have
25 to go to ammonia injection, or some other method, you have to

1 deal with other environmental problems, they may require plant
2 additions. They may require costly plant additions if you have
3 to get rid of hydrogen sulfide. If that becomes a criteria in
4 the future, which it may, because of copper pipe erosion.
5 These costs that have to go into rate base aren't covered by
6 any kind of recovery clause at this point that we have
7 authority for.

8 MR. RENDELL: And we did get a clear indication from
9 the legislature approximately, I think it was four or five
10 years ago, that all environmental costs will be recovered, all
11 prudent costs, and that there will not be any used and useful.
12 So there wasn't a clear indication from the legislature that
13 all environmental costs would be recovered.

14 COMMISSIONER DEASON: Well, given that direction from
15 the legislature, Legal staff is still uncomfortable with the
16 ability of the Commission to go to a rulemaking and explore the
17 possibility of having some type of environmental recovery
18 clause type of process if utilities wish to avail themselves of
19 that?

20 MS. CIBULA: Staff still thinks that that would have
21 to be done by statute.

22 COMMISSIONER JABER: Let me ask you a question,
23 though. In the electric industry -- and, Commissioner Deason,
24 help me out here, I may be recalling incorrectly -- in the
25 electric industry not every clause is set forth by statute.

1 COMMISSIONER DEASON: But the environmental
2 cost-recovery clause is. Fuel is not. I don't think it's in
3 the statute. And there is some reference to fuel clause within
4 the statute. I think there is reference that we do not have to
5 have rules in place to implement that or something to that
6 effect. But, yes, before we ever implemented environmental
7 cost recovery for electric utilities it was done after there
8 was exact language within the statute allowing the
9 Commission -- in fact, maybe even more than allowing, maybe
10 directing the Commission to implement it.

11 COMMISSIONER JABER: And the only such reference in
12 water like that is as it relates to reuse, is that right?

13 MR. WILLIS: Yes. I would throw this out for
14 consideration, too, that one of the major investments the
15 company is going to have to make isn't really environmental in
16 the future, it's going to be the replacement of infrastructure,
17 and we are already seeing that happen. And in those cases it
18 is costly. It is very costly. Lindrick, one of our past
19 cases, was one of those very cases where infrastructure was
20 having to be replaced.

21 All of our systems, a lot of our old systems are
22 getting age now where that is going to have to happen. And it
23 is very costly. It is going to far outweigh some of the
24 environmental compliance costs in the future. And that is one
25 cost that wouldn't be covered by any kind of environmental

1 cost-recovery clause, I'm pretty sure.

2 COMMISSIONER PALECKI: Mr. Rendell, did you say that
3 the legislature had expressed in its opinion that all
4 environmental costs would be a straight pass-through?

5 MR. RENDELL: It was addressed in the used and useful
6 portion of the statutes where -- it's where the five-year
7 margin was also looked at, but a subportion of that was all
8 prudent environmental costs shall be recovered through rates.
9 And basically that means that we would not apply used and
10 useful percentage to that, and that was the indication through
11 that statute.

12 MR. WILLIS: The statute on 367.081 four or five
13 years ago was changed where it now requires that anything
14 mandated by a state agency, whether it be the Public Service
15 Commission, the Department of Environmental Protection, or any
16 other agency is now put in rate base at 100 percent.

17 COMMISSIONER PALECKI: So the language of the statute
18 is shall be recovered through rates, and that is the reason you
19 believe that it would take a statutory change to allow the
20 recovery through a clause, because that would not be through
21 rates, is that --

22 MS. CIBULA: Correct. We are looking at a
23 pass-through.

24 COMMISSIONER PALECKI: Thank you.

25 MR. WILLIS: Ralph.

1 MR. VONFOSSEN: In preparing for the workshop we
2 tried to take a look at what other states were doing in the way
3 of operating ratios. And within your packet there is a handout
4 that has a chart detailing what the other states are doing.
5 Basically what we determined from this is that in talking with
6 the various states, only a few of the states actually have
7 statutes and rules describing their process. Most of them are
8 operating under the premise that their existing structure does
9 not prohibit the use of an operating ratio, and so they are
10 using that when they believe it is appropriate.

11 Most of the states are also using an operating ratio
12 mainly to deal with the problems of small utilities, that being
13 the lack of rate base or also the lack of books and records to
14 properly come up with a rate base. In looking at the level of
15 the operating ratio, there is no real science or methodology.
16 There is a wide range. Most of the states that I have talked
17 to indicate that they do it on a case-by-case basis and they
18 try to look at the individual needs of the utility. And their
19 overall goal and focus is to try to keep them in regulatory
20 compliance and let them meet their financial and operational
21 obligations. And that's pretty much it.

22 CHAIRMAN JACOBS: Have you discovered any particular
23 science to the setting of the ratio in any other states?

24 MR. VONFOSSEN: Yes. It's all over the board, and in
25 some cases they have indicated they actually back into the

1 operating ratio after coming up with the revenue requirement,
2 the rates, and then kind of backing into it for purposes of
3 putting it within the order.

4 COMMISSIONER PALECKI: Because these states with
5 ratios of 25 percent, 20 percent, doesn't that seem extremely
6 high?

7 MR. VONFOSSEN: Well, for example, the gentleman I
8 spoke with in Alabama had indicated that he had used -- he had
9 taken a look at the operating ratios within the state for some
10 of the electric and telecom companies and had used that. And
11 he had also indicated at that level that he had no complaint
12 from any of the water companies.

13 MR. WILLIS: Commissioners, at this point does the
14 Office of Public Counsel, Mr. Burgess, or anyone want to --

15 CHAIRMAN JACOBS: Yes, Mr. Burgess.

16 MR. BURGESS: Yes. Thank you, Mr. Willis. Thank
17 you, Mr. Chairman. I wanted to make a couple of comments and
18 begin by saying this is something we want to follow and see
19 what the Commission's ideas are. At this point there are a few
20 things that I wanted to address. I would like for you to
21 understand that my thoughts here are somewhat preliminary in
22 nature, but I would start with trying to answer the first
23 question that was posed by the staff, and that is what is the
24 purpose of what we are about in looking at alternative
25 regulation. And I look at the order that is one of the early

1 cases, or the first case to apply this alternative regulation,
2 it says the goal of ratemaking is to provide the funds needed
3 to meet that objective, that is the objective of making sure
4 there is enough funds for the utility to run its particular
5 business. And, of course, that is a very important objective.

6 But one of the things that I don't want missed here,
7 and I'm not suggesting that it is being missed, but I think it
8 does need to be emphasized, is starting with the whole process
9 of what regulation is about. Regulation is about replacing
10 what would otherwise be a competitive model for restricting
11 prices to a reasonable level and replacing it with a regulatory
12 model for restricting prices at a reasonable level.

13 In other words, in a competitive model the customers
14 are protected by that competition and can be assured that they
15 will not be charged excessive rates. And the promise of
16 regulation is that if we remove that particular protection that
17 you have in a competitive model and replace it with a
18 monopolistic model, we will similarly protect you with
19 regulation. So that is one of the things that I think should
20 be emphasized is a primary goal of regulation is to protect the
21 customers from paying rates that are too high, as well as
22 assuring that the rates are adequate to provide the service
23 necessary that the customers are looking for. Now --

24 COMMISSIONER JABER: Mr. Burgess, but you would also
25 agree that making sure that these small companies stay viable

1 is consumer protection?

2 MR. BURGESS: Absolutely. And I did want to go into
3 a comment that I recognize what we are talking about here are
4 companies that are small and, therefore, the level of
5 sophistication is perhaps not what it would be at larger
6 companies that have ways of having representation that is a
7 higher level of sophistication.

8 So I know what we are dealing with here. And I know
9 a lot of the problems like Marshall mentioned, companies whose
10 actual debt exceeds their rate base, that we get into problems
11 there that we are not going to see with the larger companies.
12 And so some of the comments I have may be not applicable to
13 some of these individual situations. But, nevertheless, I do
14 think that is something that in this whole process that we make
15 sure that our responsibility is as much to assure against
16 excessive rates as it is to assure adequate rates.

17 With that in mind, I wanted to express just a few
18 areas where we have some concerns. Again, not to where I'm
19 saying that these concerns should be overriding, but where we
20 have concerns in looking at an operating ratio as a means of
21 setting rates. First is whether it creates incentives that we
22 don't want to see. And I'm not saying this will necessarily
23 happen, and in the example that we have discussed it doesn't
24 appear that it has happened. But, again, we have not seen this
25 used on a broad basis yet.

1 And the concern that I have is an incentive to a
2 company or to companies to increase operating and maintenance
3 expenses and to decrease their plant investment. And it seems
4 like the operating ratio method creates that incentive. Again,
5 not saying that necessarily that is going to happen, but we do
6 have to be very careful of incentives. And if your profit, as
7 Commissioner Deason was discussing, if your profit basically is
8 contained in that operating margin, then it seems to me you
9 have an incentive to reduce your actual investment and increase
10 your O&M expenses from which your profit is derived.

11 The second area that I would like to raise is the
12 issue of whether 10 percent is the proper level. And one of
13 the things I heard discussed is, well, maybe it does need to be
14 increased. I would raise the possibility that maybe it does
15 need to be decreased, particularly in some circumstances. And
16 I would start with, again, the notion that it is in the
17 operating margin that the company is deriving its process. And
18 if we start at the breakeven point, the equilibrium, that is
19 where rate base exactly equals O&M expenses. And it looks like
20 what we are saying is we are giving a 10 percent operating
21 margin so that is basically equating to a 10 percent return on
22 rate base.

23 And what I would suggest, then, is that if we back
24 that down to the circumstances where companies would actually
25 be qualified for this particular treatment, we are looking at

1 situations where the rate base may be significantly lower than
2 operating maintenance expenses, thereby increasing the amount
3 of return. In other words, to the extent that it is
4 proportionately lowered below operating and maintenance
5 expenses, the return on the actual investment by the company is
6 increased proportionately.

7 CHAIRMAN JACOBS: Mr. Burgess.

8 MR. BURGESS: Yes.

9 CHAIRMAN JACOBS: Is this a long-term circumstance,
10 i.e., should we be concerned if a company stays in the
11 circumstance where it's O&M expenses exceed rate base for some
12 period of time? Should we want to try to limit that period of
13 time in this policy if we were to adopt or modify this policy?

14 MR. BURGESS: I hadn't considered that. My first
15 reaction -- that is a good caution. That is perhaps something
16 that might prevent some of the incentives that I'm talking
17 about. On the other hand, having not looked at a number of
18 these companies, I don't know if that is something you want to
19 do. In other words, it may well be that many, many companies
20 at this size run better, run more efficient operations, provide
21 better service at a better cost to customers when their rate
22 base is below their O&M expenses.

23 And if that is the case, and I couldn't argue either
24 to support that or to refute that, but if that is the case then
25 I don't think we would want to create an incentive to move

1 towards something that may be financially less efficient for
2 both the company and the customers.

3 The other point that I would point out is that,
4 again, starting from this, this principle that at equilibrium,
5 at break-even point what it seems like we are saying the
6 equation is that we are allowing 10 percent as an overall rate
7 of return on rate base as a general proposition when we
8 allow -- when we use a 90 percent or 10 percent operating
9 ratio, I would say that I don't understand, necessarily, why
10 that should increase proportionately when the rate base goes
11 below the O&M expense.

12 In other words, what I'm getting at is to determine
13 whether the rate base is below the O&M expense we have to
14 calculate and measure both O&M expense and rate base. And if
15 we calculate rate base and we are saying that at break-even
16 point 10 percent is a reasonable return, well, then perhaps you
17 could make a shortcut method of saying 10 percent on right base
18 and calculate what rate base is. I'm not suggesting that, but
19 I'm saying I'm not sure why it is particularly helpful to give
20 this much of a proportionate increase as the rate base goes
21 down. And, again, that is with an eye to concern for
22 incentives for companies to actually reduce the amount that
23 they have invested in the plant that is necessary.

24 I do understand the notion that the greater the ratio
25 of O&M expense to the amount of investment, the greater the

1 amount of risk. I understand that. But that is something that
2 seems to me could be dealt with in calculating the overall cost
3 of capital rather than just allowing it to be a direct result
4 of what the O&M expense is as a ratio to the rate base.

5 And those are the concerns that we have. I guess the
6 final concern we have in the way that I'm reading the rule and,
7 I mean, this is what -- well, is the choice being given to the
8 company, that is just troublesome to me as a consumer
9 representative that I have no choice in choosing a method but
10 the other side does. And they can choose whatever, of course,
11 benefits them to the greatest amount. And it seems to me that
12 it is something that appears to be an arbitrary distinction to
13 make.

14 But anyway I do want to go back and say that this is
15 not to say these concerns that we raise are concerns that we
16 have generally philosophically. We are interested in seeing
17 what the data can bear out when more of the -- if you intend to
18 look at more specific -- company-specific information or
19 aggregate company-specific information, but these are the
20 concerns that we have at the outset as you examine this
21 question.

22 COMMISSIONER JABER: Mr. Burgess, let me put you on
23 the spot, not intentionally, but ask you kind of a big picture
24 policy question that is not on the sheet obviously. It seems
25 to me these small companies that we are talking about are the

1 true developer-owned utilities that were started years ago when
2 Florida was growing and these developers had to have their own
3 utilities just to provide the service to the people that bought
4 their homes. And it has been my experience and probably yours
5 because you are hearing from the customers, too, that these are
6 the companies that have the old infrastructure, that have not
7 had an incentive or the funds to make the necessary
8 improvements, so you start seeing the problems in these
9 companies.

10 And you and I have gone back and forth in different
11 proceedings about what direction the Commission should give for
12 the benefit of the consumer. What policy do we need to set in
13 motion so that either the infrastructure is addressed, the
14 aging infrastructure is addressed and the improvements are
15 made, or you give the incentive that these small companies
16 perhaps get out of the business for the benefit of the consumer
17 and have the true utility businesses operate them.

18 And you and I have disagreed on both. So I'm always
19 torn when we are talking about water ratemaking. And my
20 question to you is what should be the direction when it comes
21 to these small companies and how does that fit into the
22 operating ratio methodology?

23 MR. BURGESS: I don't know that that does fit into
24 the operating ratio methodology. I think that is more -- as I
25 understand what you are asking is more on the issue of

1 purchases and that sort of thing by larger companies. Which,
2 again, to us a lot of times is the actual prudence of it is
3 almost a case-by-case operation. That the general notion that
4 the larger company provides more efficient circumstances for
5 O&M expenses and spreading of costs and all of that has not
6 always been borne out. And so that has been to our
7 disappointment sometimes.

8 But as to particularly with regard to the operating
9 ratio, I don't know that that has much to do with it other than
10 the concern that I have on the incentive; that is, would this
11 create an incentive that would drive it in the other direction
12 by incenting a company to reduce the amount of actual
13 investment or prevent the company from desiring to upgrade its
14 facilities by investing in more plant because that would simply
15 reduce the amount of profit that it would get on the actual
16 amount of investment. So that is the concern I have with
17 regard to this specific -- to this specific program that we are
18 looking at as it applies to the question you have asked.

19 COMMISSIONER JABER: Then you would not have that
20 same concern of our sending a reverse incentive if we could
21 identify the expenses that were truly mandatory, whether it was
22 environmental or something that the company did to replace
23 aging infrastructure, you wouldn't have a similar concern if we
24 could find a ratemaking mechanism that would allow for that
25 kind of a pass-through?

1 MR. BURGESS: One of the things that I always balk at
2 is ratemaking mechanisms that short circuit in any way the full
3 scrutiny of the more conventional ratemaking techniques. I
4 have just got to look with suspicion on that because of what I
5 have seen. Now, I recognize that the factor that comes along
6 with the full scrutiny is the expense associated with it. But
7 I almost always react with some reluctance to agree to
8 automatic pass-throughs and that type of thing. Not so much
9 expenses, but major investments without being able to examine
10 whether those investments are, in fact, the most efficient use
11 of money that is going to be supplied by the customers.

12 As a general notion, if I were absolutely assured in
13 every case that I would be in agreement with the investment as
14 being the most efficient and effective use, then as a general
15 proposition, no, I don't have that much of a problem with it
16 being passed on, because there is no additor (phonetic) to it,
17 basically it's the costs that are passed on. But I am always
18 concerned that that allows for the customers to have to bear a
19 cost that the customers have not had an opportunity to
20 participate in whether that is the most efficient use of their
21 money.

22 COMMISSIONER JABER: Thank you, Mr. Burgess.

23 MR. BURGESS: Thank you, Mr. Chairman. That was all
24 we had. Those were the concerns we had.

25 CHAIRMAN JACOBS: Very well.

1 MR. WILLIS: Commissioners, if I could just add to
2 that. Mr. Burgess brings up some goods concerns, but I would
3 also point out that there really are two things you have to
4 look at for these small companies, and that is that not one of
5 these companies has applied for alternative ratesetting, so it
6 must not be that good of a deal if you really look at it that
7 way.

8 Staff has looked at these companies and said, we have
9 got to do something to make you more viable for these companies
10 because there are needs here, and we have basically recommended
11 the operating ratio methodology as an alternative.

12 CHAIRMAN JACOBS: You bring up a good point. Do we
13 have any idea of how many companies out there fall within the
14 criteria that you have outlined that would be eligible for
15 this?

16 MR. WILLIS: Well, we have some idea. I don't know
17 the exact number, but I can tell you that when we look at the
18 earnings postures of the Class C companies, one of the things
19 we always look at is, gee, this company may be earning a 12 or
20 13 percent rate of return, but the rate base is only \$1,000.
21 If we looked at an operating ratio, this company would probably
22 be deserving of a rate increase instead of a decrease.

23 And we have to do a balancing act of whether we need
24 to bring that company to the Commission to implement
25 overearning proceedings against the company. And whether it

1 will be worthwhile because of the cost of doing that, or
2 whether it would put the company in an untenable position of
3 being a nonviable company to reduce their rates. So we do run
4 across a lot of those companies when we look at overearnings.
5 And I say I don't know the number because we only have crossed
6 that when we see one that is earning more than rate base. We
7 don't really look at it as far as whether or not they would be
8 eligible for the alternative ratesetting method if they are
9 underearning.

10 The other thing I would like to point out, too, is
11 the companies who are really in need of the alternative
12 ratesetting, the operating method that we have presently, are
13 the companies who don't have rate base. They are the ones who
14 are going to need to go to the banking, to the loan
15 institutions to get loans.

16 And from our experience out there, if you don't have
17 any profit and you have no means of earning a profit because
18 you have no investment, a loan institution is going to look at
19 you as a small company and say, "There is nothing there for me
20 to get my money back." And you are going to have a really,
21 really hard time of getting a loan. And if you do it's going
22 to be at an extremely high cost. You might as well put it on a
23 credit card.

24 CHAIRMAN JACOBS: Let me ask you the question that I
25 asked Mr. Burgess. Is that scenario one that we want to

1 support for the long-term?

2 MR. WILLIS: Well, no, I don't believe you do. I
3 don't think you should support it for the long-term. And I say
4 that because there ought to be a point where we would expect a
5 utility to have made enough investment to come off of the
6 operating ratio. And that's one of the things that I was going
7 to want to bring up for discussion here today, is when does the
8 company come off of operating ratio. Should it be automatic?
9 Should there be a time limit?

10 We didn't really look at the criteria of should there
11 be a time limit, but we have discussed that maybe it should be
12 an automatic action that when a company's investment exceeds
13 the operating ratio, then they would all just automatically in
14 our view switch to rate base regulation, and that's how we
15 would view the company from there out. That is not in the
16 rule. There is nothing in the rule or a policy that sets out
17 when a company jumps from alternative ratesetting to regulation
18 pursuant to .081, and that is something that we do want to
19 discuss today.

20 CHAIRMAN JACOBS: Is there or are there industry
21 measures or -- yes, performance measures, sort of a template
22 for how a company should progress through that process of --
23 sometimes I know that the banks look at ratios, but I am
24 thinking are there industry type ratios that you would expect a
25 company to be able to come into compliance with if they are

1 operating effectively and efficiently?

2 MR. WILLIS: There aren't any that I know of and that
3 is because these are so small. When you look at the comparison
4 of costs, there has been some discussion over costs, the
5 incentive to put this out there and have these utilities
6 increase their expenses just to increase their operating ratio.
7 When we look at these costs for alternative ratemaking, when we
8 set those expenses we look at it the same way we do for a
9 staff-assisted rate case. We do comparisons between companies.
10 We do comparisons between like companies. We keep sort of a
11 running idea of what salaries should be for a company of a
12 certain size, and we have our benchmarks that we apply against
13 every company when we look at those. So we just don't go about
14 these things blindly.

15 We do have some disagreements in these staff-assisted
16 rate cases over the level of expenses we do allow. And as you
17 all are aware, when we look at a company and we are doing the
18 whole work, there are many expenses that a company doesn't even
19 have on their books, but we know they should have to run that
20 company correctly, and we recommend giving them those costs.
21 Some costs we look at and say they are a lot higher than you
22 can support for a company this size and we recommend reducing
23 those. So that is something that we have always been cognizant
24 of that we have to keep in mind the size of the companies, and
25 how efficiently they should be operating and what those costs

1 should be.

2 CHAIRMAN JACOBS: Thank you.

3 MR. WILLIS: Getting back to discussing -- if there
4 aren't any more questions here, I would --

5 CHAIRMAN JACOBS: Any questions, Commissioners? Now,
6 you have some questions listed here, did you have any order or
7 priority of discussing these questions, or, Commissioners, did
8 you want to hear these questions discussed on the outline?

9 COMMISSIONER DEASON: Well, it was my understanding
10 those questions were posed to interested parties and we didn't
11 get any response. Staff was looking for input. I guess that
12 leads me to, I guess, a fundamental question that I have, is
13 that is there a problem that we are trying to fix in the sense
14 that what we have done before is not working correctly, is not
15 enough, too much, we are going about it the wrong way, or are
16 we just saying -- are we just trying to get input to see if
17 there is something that we can build upon and do something
18 better?

19 I'm just trying to understand are there problems with
20 what -- I know there has been very limited experience and that
21 perhaps our companies out there perhaps need to be better
22 educated as to what tools are out there they can avail
23 themselves of. But are there any problems we are trying to fix
24 or are we just trying to ask questions to see if there is some
25 way we can do things better?

1 MR. WILLIS: We are really here today just as a
2 review process. We are trying to decide and get feedback from
3 the Commission as to whether what we're doing is appropriate to
4 continue doing or if there is, like you said in the latter,
5 that is there a way that we can fix this where it works better.
6 Should we fine tune the process.

7 We didn't come into this Commission workshop with the
8 idea that we would go to rulemaking by any means. We are
9 really here in a discussion environment trying to get feedback
10 in the proper forum from all five Commissioners as to your
11 thoughts on the process. As far as that goes, when you talked
12 about the questions that we had on this thing, that really was
13 to facilitate responses from the companies. We really didn't
14 envision we were going to go down every one of these questions
15 and have a discussion back and forth.

16 My idea of what we were going to do today, if there
17 was no input from the utility industry, was really to discuss
18 concerns that maybe Public Counsel had or staff. And I really
19 did have three things that I really wanted to discuss with the
20 Commission.

21 One of those was the 10 percent margin we are using
22 at this point. Now, we have indicated in every order that 10
23 percent was what we were going to use. There is no real method
24 for coming up with that because there is no economic indicator
25 out there that we can really apply that directly correlates to

1 what we are trying to do here.

2 The second thing I wanted to talk to the Commission
3 about and get feedback was whether or not we should be
4 eliminating certain pass-through expenses. Should they all be
5 eliminated in the process of applying the margin or should only
6 the material pass-through items be eliminated, which would be
7 the purchased water and purchased sewage treatment, and they
8 are the most material.

9 COMMISSIONER DEASON: We currently are eliminating,
10 we do not allow purchased water and purchased treatment.

11 MR. WILLIS: As part of the O&M or part of our
12 margin? I think we --

13 MR. RENDELL: We have eliminated it in one of the
14 cases. I'm not sure if it was really an issue in the other
15 two, but we did take the conservative approach. And I have
16 been in discussions with the North Carolina Commission because
17 they are currently looking at a case where it is brought up as
18 an issue, and they just really haven't identified it as an
19 issue until this current case. Because they have found where
20 they have done it both ways. And so they have contacted me to
21 see what wave done in the past, and so I have supplied that
22 order to North Carolina. So it was one of the things once they
23 identified it as an issue to me, I brought it up as an issue in
24 this workshop to see, well, should we always eliminate it in
25 every case or should we look at it case-by-case. And so that

1 is one of the reasons we brought it up.

2 COMMISSIONER DEASON: Let me ask, Marshall, do you
3 want to talk about these as we go or do you want --

4 MR. WILLIS: Well, I was going to go back to the very
5 first one. I was going to lay out the ones that I thought we
6 really wanted to discuss here, and these are my own ideas of
7 what we should be discussing here, so if staff has others, I
8 would like for them to feel free to jump in.

9 The third one I would like to talk about is -- we
10 have already discussed it a little bit is when does the company
11 come off of the alternative ratesetting, at what point does
12 that happen. Should it be automatic or should there be a
13 proceeding to do that? Those are the three main ones we needed
14 to talk about. I think there may be some other ones we may
15 want to discuss and that would be when a company is actually
16 purchased what should happen to that company as far as
17 operating ratio.

18 Should they stay -- should that one system stay on
19 the operating ratio. Because at this point rates are not reset
20 when a transfer happens, and I'm not proposing that they do.
21 I'm really looking at future ratesetting. And that has some
22 ramifications, I suppose, as far as our ability with the
23 current law. Because if one of these systems is purchased by a
24 large company, like a Florida Water, they will be a Class A and
25 by law they would be prohibited from doing the operating ratio.

1 And that kind of brings up are we doing the operating
2 ratio for the right companies, and this is my last one here,
3 number five, or should we be looking in the future for
4 statutory changes to look for larger companies.

5 And I bring that up, too, because as you are well
6 aware in the staff-assisted case area we are trying to raise
7 the limit to agree with our NARUC system of accounts, which is
8 200,000 in revenue or 400,000 in total. We couldn't get a
9 sponsor for it this year, so it didn't go to the legislature.
10 That would also apply here, too. But there are companies out
11 there who may find themselves, who may be a small B who have just
12 gone over the threshold because of growth going into the C
13 category. Right now, statutorily I think we are prohibited
14 from going above the threshold, and that would have to have
15 some future statutory changes to do that.

16 COMMISSIONER DEASON: Do you think statutorily we are
17 limited to the same criteria applied to staff assistance when
18 we look at alternative ratesetting?

19 MR. WILLIS: Yes. The alternative ratesetting is the
20 staff-assisted statute, which 367.081(4), which gives us the
21 ability to do staff assistance. And if you go back to the very
22 last paragraph of that statute, that is where the alternative
23 ratesetting authority comes from.

24 COMMISSIONER JABER: You know, I have always read
25 that, Marshall, to be very broad authority. It's one of the

1 very rare statutes that says the Commission by rule can
2 establish standards and procedures whereby rates and charges of
3 small utilities may be set using criteria other than those
4 found in 367.081. I don't know, I have always read that to be
5 very broad authority.

6 MR. RENDELL: I think historically -- I agree, it is
7 a very broad statement. I think historically since there is
8 contained in 367.081(4), which was the staff-assisted, that we
9 viewed it that it was limited to Class C. I think that was the
10 main reason because it was contained in that statute as opposed
11 to 367.081.

12 COMMISSIONER JABER: No, I would agree with you that
13 it is limited to Class Cs because of where the statute is
14 found. But as it relates to Class Cs, it seems to give us
15 broad authority in the mechanisms we might find in our
16 discretion to be appropriate to implement.

17 MR. WILLIS: That's correct, I think it does.

18 COMMISSIONER JABER: But it might take some research
19 to determine what the legislative history of that statute is,
20 Ms. Cibula. I don't know. Just a plain reading of the
21 statutes indicates to me that that is broad authority as it
22 relates to the regulation of Class C utilities.

23 MR. WILLIS: As you are aware, when we first started
24 the process of alternative ratesetting, we looked at different
25 methods. And you are totally correct, it's pretty broad. We

1 could have come up with any method that we could think of as an
2 alternative to rate base regulation, I believe, because of the
3 way the statute is written, but we just happened to pick the
4 operating ratio method as the more appropriate method in this
5 case.

6 But going back, if you want to we can start on the
7 first concern, which is the 10 percent margin. I know that has
8 been a point of discussion when we brought these cases to the
9 agenda conference over which the appropriate percentage should
10 be applied to these. And I know if we -- like the case we have
11 analyzed here, the only one that we still actually regulate we
12 have gone back and looked at this company and found that they
13 aren't even earning the operating margin.

14 In this particular case, this is probably a case
15 where the utility should have come back to the Commission. And
16 it may be a case where they are trying to live within the rates
17 they had set. And I haven't seen from a limited experience,
18 and that is one of our problems, we have very limited
19 experience, we have had four cases, that looking at 10 percent
20 should be changed unless some circumstance dictates it.

21 And my own opinion is we should just continue going
22 forward with these on a case-by-case and using 10 percent as
23 basically the benchmark, and if there are circumstances in the
24 case that would dictate doing something different at this
25 point, then we would basically bring that reason to you.

1 COMMISSIONER DEASON: Well, let me say I agree with
2 that. To me the -- first of all, you made the observation that
3 we had at least one company that when we went back and reviewed
4 that they were not earning the operating margin which we had
5 established. But, you know, it's not our job to ensure that
6 companies earn. We just give them a reasonable opportunity,
7 and it is incumbent upon them to take the necessary steps.

8 If they are -- if they can control costs themselves,
9 so be it, we encourage it. If we find them in a situation
10 where their own cost containment is not sufficient, well, then
11 they have to come to the Commission and point out and justify
12 why there needs to be some additional increase. But, you know,
13 I know small companies are small, but you can only do so much.
14 We can't hold their hands all the time. And so just because we
15 have had one company, but we have implemented it and they have
16 fallen below the operating margin, I wouldn't automatically
17 say, well, the 10 percent is not large enough. I would not
18 make that connection.

19 Also, if you look at the situations where it applies,
20 Mr. Burgess made the observation about, well, when O&M costs
21 equal rate base and you apply 10 percent margin, it is
22 equivalent to a 10 percent return on rate base, and
23 mathematically that is correct. Ten percent is generally in
24 the ballpark of what one would consider a reasonable rate of
25 return. There are always extenuating circumstances. Not to

1 say that 12 percent is unreasonable. But when you start
2 getting to 20 and 25 percent you start getting out of that
3 realm of trying to make it resemble what otherwise would be a
4 reasonable rate of return.

5 I did notice that one company in North Carolina that
6 they tie theirs to a treasury bond plus 3 percent factor, which
7 here again kind of ties it to what one would consider a
8 reasonable cost-of-money type approach. Those companies,
9 though, that get away from when O&M is approximately equal to
10 rate base and they have extremely high O&M and small rate base,
11 the 10 percent factor when applied to that high O&M tends to
12 give them that cushion or that margin that we are looking at.

13 So, as Mr. Burgess observed, when you apply that then
14 and you compare that to rate base you get an extremely high
15 rate of return. But then, again, that may be equal to the risk
16 of a company having an extremely low rate base and obtaining
17 the risk of operating a company with high operating expenses.
18 But I agree with Mr. Willis, all of this needs to be reviewed
19 on a case-by-case basis.

20 But as far as using the 10 percent as a general
21 threshold, a starting point, a default factor, or whatever you
22 want to call it, I am perfectly comfortable with it. For one
23 thing, we really haven't had a lot of experience to find out
24 whether it needs to be fine-tuned one way or the other.

25 Let me also say that when we first started going down

1 this path, I expressed some reservations and even wrote some
2 dissenting opinions as to the way we were going. In retrospect
3 let me say that some of those fears have not been borne out.
4 First of all, I think staff has been very deliberate in the
5 applications of these, has taken the conservative approach. We
6 have not been inundated with these types of approaches. I also
7 had a fear that we would be inundated with these types of
8 requests, and that it would result in perverse incentives for
9 companies not making necessary capital investments and relying
10 upon this approach. That has not been the case.

11 So I think continuing the approach that we have
12 applied in a cautious way, applying the criteria as we have
13 described it, realizing that there are situations that may need
14 to be addressed on a case-by-case basis, that is the approach
15 that we need to take. So my initial reaction is that 10
16 percent apparently is -- I don't have any reason to change it,
17 it seems to be fairly reasonable.

18 I am also comforted by the fact that if it were a
19 totally unreasonable number, I think that we would be getting
20 some responses from utility companies indicating that. And the
21 fact that we have not gotten any, apparently it doesn't seem to
22 be a big problem in the industry. So those are my thoughts and
23 observations.

24 MR. WILLIS: The second one that I wanted to talk
25 about was the pass-throughs, whether they should be eliminated.

1 My thoughts were that when you apply the operating ratio that
2 probably the material costs definitely should be eliminated,
3 which would be the purchased water and purchased sewage
4 treatment. They can be very material. And because there is no
5 real lag -- there is a 30-day lag if the company applies ahead
6 of time, which they can, there may not be a lag at all. But if
7 they applied the moment they got the increase, there is only a
8 30-day lag there. So those costs are recoverable quite quickly
9 through a pass-through mechanism.

10 And we did it in the one case, other states are
11 looking at whether or not those should be eliminated. We did
12 bring the one case to you and had the purchased water
13 eliminated from the operating ratio margin. That may be
14 something that if that is the way the Commission wishes to go
15 that we might want to actually put that in the rule. Or we may
16 want to go ahead and look case-by-case and continue forward on
17 that. Your thought may be that all pass-through costs should
18 be eliminated from applying the margin.

19 COMMISSIONER DEASON: Well, let me indicate that I
20 agree with what you just stated. I think that it is the
21 cautious conservative approach, we have got a separate
22 mechanism which addresses this. The whole idea of an operating
23 ratio or alternative ratesetting approach is to try to provide
24 some type of return for these type companies and provide a
25 cushion in there.

1 You don't need a cushion when you have got an
2 alternative procedure which takes that risk away from the
3 company, while a company that may have -- while they may not
4 have the investment, may not do the treatment themselves or may
5 purchase their water, but when you have a mechanism to recoup
6 increases in these components, I don't see why you also need
7 then to have this cushion over here by including them in the
8 overall expenses to which the ratio is applied. So I just
9 don't think that it is needed.

10 That is not to say, though, that I guess a company in
11 some extreme or extraordinary circumstances couldn't justify
12 it, but nothing comes to mind as to where that is something
13 that we need to automatically make an exception for. I think
14 the normal procedure should be as the way we have applied it in
15 the past, and to exclude items which can be passed through on a
16 timely basis. You mentioned 30 days, which I think is
17 certainly timely recovery. Normally when folks talk about
18 regulatory lag they are talking about six, eight, ten, 12
19 months. Thirty days in terms of regulatory lag is really a
20 speedy recovery process.

21 COMMISSIONER JABER: I would think the only problem,
22 to the degree it is a problem with that, is if the company does
23 file a pass-through and they file a rate case and ask for an
24 alternative ratemaking, could you actually have two increases?
25 I don't know, is that a situation that could exist?

1 MR. WILLIS: Could you have two increases at one
2 time?

3 COMMISSIONER JABER: Or in a very short amount of
4 time.

5 MR. WILLIS: Yes, you could.

6 COMMISSIONER JABER: To me that would be the only
7 practical reason to go ahead and do it in one proceeding so
8 that the customers don't see two increases. But I don't know,
9 how often would that happen?

10 MR. WILLIS: It hasn't happened so far.

11 COMMISSIONER DEASON: Well, to the extent that we do
12 not allow it to be included as part of the operating ratio, you
13 are not going to have that. The only thing is -- you won't
14 have a double increase for the same expenses. Now, if they
15 utilize this procedure and then they have a pass-through you
16 could have a smaller increase followed by another smaller
17 increase. But if we are aware of that, perhaps we could try to
18 consolidate the two or implement them in a manner so that the
19 customers don't see the stair-step approach. They can get an
20 implementation date if it is within our ability to coordinate
21 the two.

22 MR. RENDELL: Well, usually if they are in for a rate
23 case, a full examination of expenses, that would include the
24 increased costs. The pass-through of the increased amount
25 would come after the rate case. Because in the rate case

1 itself you are allowing the expense at that time. And we
2 usually annualize for any increases. And then any subsequent
3 increases would be in a pass-through. So we are already
4 allowing for the expense in the rates, it's just there is no
5 cushion above the actual expense.

6 COMMISSIONER DEASON: And you would not need to do
7 that unless the -- apparently most companies purchase these
8 from other utilities, and only to the extent the other utility
9 has a rate increase. And usually, hopefully, those don't
10 happen too often.

11 MR. RENDELL: Except if they are buying it from a
12 city or a county. There are counties that have automatic
13 increases built into the ordinance where they are going to
14 increase it so much every quarter or every year. We have seen
15 that in the Pasco County area. So if they are buying it from a
16 county exclusively and those expenses can be pretty
17 significant.

18 COMMISSIONER JABER: What was that about the county
19 has what, periodic increases every when?

20 MR. RENDELL: I believe in the Pasco County, and I
21 don't know the exact, I think there was automatic increases. I
22 think they are annually, maybe semi-annually, I don't know
23 exactly, but we have just discovered that. And so those
24 increases, they would have to come in and get a pass-through
25 subsequent to that.

1 COMMISSIONER JABER: So for those counties that have
2 jurisdiction over their companies, some of them don't have a
3 rate case process?

4 MR. RENDELL: Well, when the county is the provider,
5 when the county has a water treatment plant.

6 COMMISSIONER DEASON: Their bulk rate changes on a
7 periodic basis.

8 MR. RENDELL: Yes, for their bulk rate, and they are
9 supplying the service to a regulated entity, their rate
10 increases are automatic, not from a nonjurisdictional.

11 COMMISSIONER DEASON: How do we treat that here? Is
12 a company limited to one pass-through per year, or is it
13 anytime there is an increase they can apply for a pass-through?

14 MR. WILLIS: The statute says you are limited to two
15 types of index or pass-through increases a year. And we try
16 and let companies know that they should tie a pass-through with
17 an index. And if they do that, they can actually get two
18 pass-throughs a year, if they time it just right. And most
19 companies will try and do that. When they file for their
20 index, they will file for a pass-through.

21 Sometimes that causes a little more lag then, because
22 they are trying to hold off for that timing where they can get
23 their index because they can only do that once a year within
24 that time frame. So there may be a lag because of that. But
25 it's always wise, if you are a utility, to try and tie those

1 two together which will count as one increase. And then you
2 will leave yourself available for another purchased, or another
3 pass-through increase within that 12-month period.

4 The last one I wanted to talk about was when a
5 utility should actually switch back. I don't know if we ought
6 to have this in the order each time. I don't know that it
7 requires rulemaking, but my thoughts are that when a utility
8 reaches the point where their rate base exceeds their O&M
9 expenses, it would basically be automatic. Staff would start
10 reviewing then based on a rate base approach without any
11 Commission direction at that point.

12 COMMISSIONER JABER: Did this get addressed in the
13 Indian River? Indian River was the first one, right? It seems
14 to me that because that was the first case we said something
15 about a monitoring process to determine the date when the
16 procedure would be discontinued.

17 MR. WILLIS: Troy is going to look at the order here
18 and see.

19 MR. RENDELL: I know there is a monitoring provision
20 in the first one, which was Lake Osborne, to report back to the
21 Commission, but I'm not aware of any -- I will look it up, but
22 I'm not aware of any provision of when it would automatically
23 switch.

24 COMMISSIONER JABER: I would not have any problem, to
25 the degree we consider this in the future on a case-by-case

1 basis, to actually addressing when the methodology should be
2 discontinued for that particular company. Because then they
3 know, we know, all the customers know. I don't think there is
4 any prohibition against addressing it in an order.

5 COMMISSIONER DEASON: Well, staff just needs guidance
6 as to how they are going to monitor these companies? Because
7 once rates are set, they are set, and there would have to be a
8 subsequent filing at some future time if they wanted to adjust
9 rates again. And we could then make a decision as to whether
10 we would continue with some type of an operating margin or
11 ratio as opposed to rate base ratesetting.

12 MR. WILLIS: You're correct, Commissioners. For
13 monitoring purposes only. Because if a company came back to us
14 we would make that determination at that point with the
15 Commission. We would bring you a recommendation as to whether
16 they should continue on with the operating ratio methodology or
17 rate base regulation under .081. My point was strictly for
18 monitoring. If a company is --

19 COMMISSIONER DEASON: These companies in their annual
20 report they file rate base information?

21 MR. WILLIS: Yes, they do.

22 COMMISSIONER DEASON: So staff could just monitor
23 that and if they see a situation where a company's rate base is
24 increased and it looks like they would -- if they were to come
25 in for a rate case would no longer be eligible for operating

1 ratio, you could make that calculation to see what they are
2 earning on a rate base basis. And if they are not overearning,
3 there is really no need to address it. And then if they begin
4 to overearn on a rate base methodology, then you have your
5 standard procedure to review the company's earnings and, if
6 necessary, file for an investigation of their rate levels.

7 COMMISSIONER JABER: But the reverse would also have
8 to be true, that if you have implemented the operating ratio
9 methodology under the whole notion that these are different
10 companies and the statute allows us to assist these companies
11 in ensuring they are doing the right thing by their customers,
12 it seems to me that if it is blatant that they are underearning
13 under an operating ratio methodology, that we should have that
14 discussion with them, too.

15 MR. WILLIS: And we do. One thing I would let you
16 know that we do look at companies who are operating at really
17 low rate of return or no rate of return. And we many times
18 will call these companies up and talk to them about the
19 staff-assisted process and encourage them, basically, to say,
20 you know, we can't do this for you, you have to apply. And if
21 you just want to live with these low rates and no return and
22 risk it, then that is up to your decision. But if you need the
23 help, the help is there.

24 And we do that because -- we wouldn't do that for any
25 other company except a Class C, because those are the companies

1 who have proven in the past to need the help. Just like our
2 Class C workshop that got expanded to a Class B, we try and do
3 that every two to three years. And that is really to get out
4 there and try to educate these utilities of the things that are
5 available for them to avail themselves of to keep themselves at
6 a healthy financial condition.

7 CHAIRMAN JACOBS: And this is probably an extreme,
8 but my concern is if we are willing to allow a company to be on
9 operational ratio -- operating ratio for some extended period
10 of time, are those ratepayers able to come in with an argument
11 that we have kind of bolstered the rates to protect the
12 company, is that a reasonable argument?

13 MR. WILLIS: Well, I don't know that that would be a
14 reasonable argument because statutorily we have the right to do
15 other than rate base regulation. And I think I could easily
16 explain to a customer that was a customer of a company who
17 needed the operating ratio methodology to be on that method is
18 that their utility company was in risk of rendering them poor
19 quality of service and that is the real reason for having this
20 alternative method.

21 These small companies many times find themselves
22 nonviable because they are the ones with the higher rates, they
23 are the ones with the higher rates to the customers. If you
24 look out there, traditionally they are because there are no
25 economies of scale. They get hit with a cost, there is a

1 dramatic increase to the customers' rates, if they come in for
2 a rate case.

3 CHAIRMAN JACOBS: In my mind it would occur to me
4 that at minimum we would want the company to be able to
5 demonstrate those circumstances. And here is my thought. I
6 wouldn't want to be faced in a situation where I have to make
7 that explanation and I don't have adequate backup to support
8 it. I would want to understand how is it that that company
9 arrived at that position, why is it a reasonable position for
10 them to continue to be in such that if we do have customers
11 coming before us that say, hey, wait a minute.

12 And here is the argument that I can see raised. Mr.
13 Burgess wouldn't necessarily raise it, but here is the argument
14 I would see. If we see a company that has historically
15 operated with low rates, not chosen to address that, and we
16 come and give them this operating ratio, and they simply just
17 take that and go forward and never do anything to really
18 address the baseline circumstances, then arguably all we have
19 done is bolstered that company.

20 We have not charged them with productivity measures,
21 we have not charged them with any kind of program that would
22 say, okay, yes, we accept the fact that you are a small
23 company, you have some inherent disadvantages in that regard,
24 but where is the track record of how you have chosen to deal
25 with that in a proactive manner. That is my concern in this

1 regard. Is that a legitimate concern, and if so, how would we
2 go about addressing it?

3 MR. WILLIS: Well, it hasn't been a concern in the
4 past because I don't know that in these cases we have had
5 customers truly object to this method. And I personally have
6 been involved in the last one where we actually went to the
7 customers. As you are aware, in all of these staff-assisted
8 rate cases, whether it be the alternative ratesetting or a SARC
9 process, we actually go to the customers, and sometimes
10 Commissioners are present, too, and we present this whole idea
11 to the customers. They are fully aware up front that there is
12 an operating ratio possibility that is going to be applied to
13 the rates. And they are given ample opportunity to voice their
14 concerns.

15 In the last one that we did there weren't really any
16 concerns over the operating ratio. Their only concerns were
17 over service quality and the water they were getting, that was
18 the concern. And there were concerns over the high rate
19 increase, but there were no real concerns over the ratio that
20 was being applied versus a return on investment. But to
21 address your concern, though, the customers are given the
22 opportunity up front before it ever happens to voice that
23 concern. And if they do voice that concern that would be part
24 of a recommendation. It would be written up in here that the
25 customers aren't very happy about an operating method.

1 CHAIRMAN JACOBS: Thank you.

2 MR. WILLIS: Those are the real concerns I wanted to
3 address with the Commission. If Public Counsel has any
4 comments over anything or -- at this point that is what we
5 wanted to address today. You know, at this point, the last
6 thing we were going to do was the closing comment by me to
7 state where we were going on this whole thing.

8 And at this point I don't envision any rulemaking on
9 this at all. I think from the direction we are getting it is
10 still going to be case-by-case. And I haven't heard anything
11 today here that would really change the way that we are doing
12 things.

13 CHAIRMAN JACOBS: It might be interesting to me, and
14 I pose this to go out and get a better handle of what is out
15 there. It strikes me that we don't have a firm enough handle
16 to do an analysis of what level of operating ratio is
17 appropriate. It might be useful to do some kind of a, I don't
18 know, blind survey of some sort if that is possible. I know
19 generally there are confidentiality issues out there, but --

20 COMMISSIONER DEASON: We have done a survey. You're
21 talking about surveying other states?

22 CHAIRMAN JACOBS: Or actually both. I would be
23 interested in what companies in this state who are in this
24 scenario would arguably need to demonstrate viability, okay.
25 Because if 10 percent is reasonable, then it ought to apply to

1 the broadest category of companies out there to ensure that
2 they can cover their interest. I think that was your primary
3 concern, that they cover interest, and then what else out there
4 we wanted them to cover. In my mind I would like to understand
5 what that range is.

6 MR. WILLIS: We can certainly send out a survey to do
7 that, but that was really part of the questionnaire that we
8 sent out to start with in this whole process for the workshop.
9 One of our questions that we listed here is should the existing
10 operating margin of 10 percent be increased or decreased and
11 why. And we were trying to get that feedback from them, and
12 basically we didn't get anything.

13 MR. RENDELL: One of the problems that we run into is
14 the companies don't know that they are in the situation until
15 they come in for a rate case. That is evidenced by that staff
16 is the one that brought the recommendation forward. So, you
17 know, in an attempt to get some feedback we sent out 20
18 questions and we received zero responses.

19 CHAIRMAN JACOBS: Well, it strikes me that for the
20 same reason as nobody has requested it because they don't
21 perceive -- they just know that they are earning low, they have
22 low revenues, they are not necessarily attuned to the idea of
23 here is a potential remedy that could be considered in that
24 regard.

25 Although it is a concern to me, because I would think

1 that if a company is in that -- it goes back to my original
2 point. If a company is in that condition, I would want them to
3 be exploring avenues by which they could address that
4 circumstance in a proactive manner. But what I hear you saying
5 is that you don't think a survey will be of great use?

6 MR. RENDELL: I don't believe we would get any
7 responses. And what staff tries to do, we do hold workshops.
8 We held one class year for the Class Cs and Bs. We anticipate
9 doing another one next year. The problem is we have the same
10 companies attending year after year, and those aren't the ones
11 we need to get at.

12 I mean, I personally talk to companies probably on a
13 daily basis, and, you know, assist them. We currently have
14 six, I think six staff-assisted rate cases in house right now
15 and anticipate three more. So we have seen an increase in
16 staff-assisted rate cases in the last year, and we anticipate
17 them continuing.

18 But, you know, I try to get the information out
19 there, call them, talk to them, I send letters to them. So we
20 are actively out there trying to keep them, you know, keeping
21 their heads above water.

22 CHAIRMAN JACOBS: Maybe we can take the opportunity
23 at this upcoming conference symposium to explore some joint
24 efforts, because -- not just on this issue, but there are a
25 host of issues, one of which are the level of impact of the new

1 environmental requirements that I am concerned that we don't
2 understand enough about that impact because we don't understand
3 enough about who is out there and what conditions they are in.
4 And at one point I had spoken about us doing some kind of
5 internship program, which I know some other -- one other state
6 or two other states have done where they brought in some
7 interns over the summer and that's what they did. They went
8 out and surveyed, did sort of a financial survey of all the
9 small systems.

10 But I continue to believe that that is a need we have
11 to understand what the real circumstances are of these
12 companies out there. Because I agree with Commissioner Jaber's
13 point, I think Commissioner Deason brought up the same point,
14 that the requirements that are anticipated are absolutely going
15 to have a significant impact on small systems. And I don't
16 want to wait for that to hit before we understand what the
17 scope of that impact is. I would like to understand in advance
18 of it as much as possible.

19 So I continue to believe it is a worthwhile effort
20 for us to undertake to come to understand in a general way what
21 those circumstances are. Who is out there, what conditions are
22 these small systems in, and what likelihood are they to be
23 impacted significantly by these new requirements? And in that
24 regard we could also look at this, to what extent are they
25 earning we can say excessively low returns? However you want

1 to describe that.

2 So I want to explore some kind of a project. And I
3 don't know what we could do, if we can get with EPA, DEP,
4 whoever else we need to get with, because I think there would
5 be some commonality of interest along those lines to go on out
6 and surveying these companies according to what we want to get,
7 the information we need to get from them, not necessarily what
8 they want to provide, per se. We may have to do some delicate
9 diplomatic functions there.

10 But I think it is incumbent upon us because
11 ultimately it is going to hit us when these requirements come
12 in and these companies will either come in for a rate impact or
13 they will be sitting out there potentially being sold or
14 abandoned. So I don't want to be caught in the throws of an
15 ex post facto reaction. So, that will be one thing; and if you
16 would get with me, I would like to make sure we follow through
17 on that.

18 MR. WILLIS: Sure, I will do that.

19 Commissioners, that's all I had.

20 COMMISSIONER DEASON: Mr. Chairman, I move we rise.

21 CHAIRMAN JACOBS: No other comments?

22 COMMISSIONER JABER: I just want to compliment staff,
23 though, this has been on the calendar for quite some time. And
24 not for just putting this workshop together and allowing us to
25 engage in this good dialogue, but also everywhere we go we get

1 compliments on the staff-assisted rate case program that
2 Florida has. And this is just a good opportunity for us to
3 recognize this group and commend them for their good work.

4 CHAIRMAN JACOBS: I agree. I appreciate it.

5 COMMISSIONER PALECKI: It is appreciated.

6 CHAIRMAN JACOBS: It is cited. Now, just to be
7 clear, as I understood it we are coming away from this
8 essentially with directions to continue on a case-by-case basis
9 with the implementation of this policy. We have chosen not,
10 for the moment, to put any time limits or criteria limits on
11 the implementation, although with the level of demand for it
12 that does not -- that doesn't seem to be of great import
13 anyway.

14 And as to pursuing statutory authority for either a
15 recovery clause or the eligibility for alternative ratemaking,
16 will we come to some determination as to whether or not that is
17 to be pursued, because we did not conclude that today? Are we
18 deferring any decision on --

19 COMMISSIONER DEASON: Well, I think that is really a
20 little bit outside of the scope of what was really laid out on
21 the agenda today, but I think it was a legitimate discussion
22 and something that we need to pursue. And I think staff needs
23 to kind of digest what was said here today and then come back
24 with some course of action, and then we can consider it at that
25 time.

1 CHAIRMAN JACOBS: Okay.

2 COMMISSIONER PALECKI: I thought we had reached an
3 agreement that there was not an impending need, anyway, for
4 statutory change to create a clause to allow the automatic
5 pass-through of these.

6 COMMISSIONER DEASON: I agree. I don't think there
7 is. I think this is something -- in fact, I suggested to staff
8 that certainly before we even go down that route we need to be
9 well equipped and assure ourselves that there is a problem that
10 needs to be corrected, we don't have statutory authority, we
11 need that direction and guidance and jurisdiction from the
12 legislature.

13 And all of that is going to need to take some very
14 thorough analysis of what the situation is, and the position we
15 find ourselves in, and how we need to equip ourselves in the
16 future to address what may be a problem in the future. But I
17 don't think that there is anything that we need to do on an
18 immediate basis now, but it is something that staff certainly
19 needs to consider.

20 COMMISSIONER PALECKI: And it appears for now that
21 things are working pretty well looking at these in a
22 conservative manner on a case-by-case basis. And I guess our
23 message is keep doing good. I mean, what we are seeing
24 happening, I think, is the right thing. And as long as we look
25 at these cases on a case-by-case basis and keep doing what we

1 are doing, until we see a problem I don't think we need any
2 kind of statutory change or any legislation here.

3 CHAIRMAN JACOBS: Very well. Thank you. We are
4 adjourned.

5 (The workshop concluded at 11:15 a.m.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF FLORIDA)

2 :

CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

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

7

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

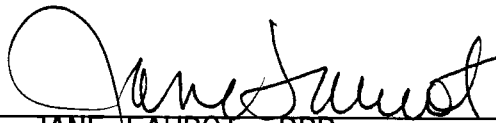
10

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

13

DATED THIS 24TH DAY OF AUGUST, 2001.

14



15

JANE FAUROT, RPR

16

Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

17

18

19

20

21

22

23

24

25