

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 960451-WS
: Application for rate :
: increase in Duval, :
: Nassau and St. Johns :
: Counties by United :
: Water Florida Inc. :

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER DIANE K. KIESLING
Prehearing Officer

DATE: Friday, January 17, 1997

TIME: Commenced at 1:00 p.m.
Concluded at 4:35 p.m.

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

REPORTED BY: H. RUTHE POTAMI, CSR, RPR
Official Commission Reporter

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 00727 JAN 22 1997

FPSC-RECORDS/REPORTING

1 APPEARANCES:

2 JAMES L. ADE, and SCOTT G. SCHILDBERG,
3 Martin, Ade, Birchfield & Minkler, P. A., Post Office
4 Box 59, Jacksonville, Florida 32202, appearing on
5 behalf of United Water Florida Inc.

6 HAROLD McLEAN, Associate Public Counsel,
7 Office of Public Counsel, 111 West Madison Street,
8 Room 812, Tallahassee, Florida 32399-1400, appearing
9 on behalf of the Citizens of the State of Florida.

10 ROSANNE CAPELESS and BOBBIE L. REYES,
11 Florida Public Service Commission, Division of Legal
12 Services, 2540 Shumard Oak Boulevard, Tallahassee,
13 Florida 32399-0870, appearing on behalf of the
14 Commission Staff.

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PROCEEDINGS

(Hearing convened at 1:00 p.m.)

COMMISSIONER KIESLING: Are we ready to proceed?

MS. CAPELESS: Staff is ready.

COMMISSIONER KIESLING: I'm waiting for my assistant to bring my file down, but I can get started at least with the reading of the notice and taking of appearances. Would you please read the notice?

MS. CAPELESS: Do you want to begin with the Utility, Commissioner Kiesling?

COMMISSIONER KIESLING: No. I want you to read the notice.

MS. CAPELESS: Oh, I'm sorry. Pursuant to notice, this time and place has been set for a prehearing in Docket No. 960451-WS, Application for Rate Increase in Duval, Nassau and St. Johns Counties by United Water of Florida, Inc.

COMMISSIONER KIESLING: Now I'll take appearances. I don't care whether we do it in order of who goes first or in order of seating.

MR. ADE: I'm James L. Ade of the firm of Martin, Ade, Birchfield & Mickler representing United Water Florida, and with me is Mr. Scott G. Schildberg of our firm.

1 MR. McLEAN: I'm Harold A. McLean, Office of
2 the Florida Public Counsel, 111 West Madison Street,
3 Tallahassee, Florida appearing on behalf of the
4 Citizens of the State of Florida.

5 MS. CAPELESS: Rosanne Capeless and Bobbie
6 Reyes appearing on behalf of the Staff.

7 COMMISSIONER KIESLING: Thank you. Are
8 there any preliminary matters that we need to take up
9 first?

10 MS. CAPELESS: Staff has a few preliminary
11 matters, Commissioner. We have distributed copies of
12 some orders and case law that we would like the
13 Commission to officially recognize at the start of the
14 hearing. We've also distributed a list of those
15 orders and decisions.

16 I'd like to, if I could, make a couple of
17 changes to that list, and that is at Number 19 on our
18 list we have an Order Number 10531 listed there that
19 we have not included in the packet that we distributed
20 today, and that is an order that we'd like to strike
21 from the list. We don't need that one to be
22 officially recognized.

23 Also Items Numbers 28 and 29, which are the
24 Internal Revenue Code sections, we did not provide
25 copies of those in the packet, but we have them

1 available upon request.

2 COMMISSIONER KIESLING: Okay. As you
3 indicated, this will be taken up at the beginning of
4 the hearing, but certainly now all the parties are on
5 their required notice, and if they have a problem with
6 it, they have time to do whatever they need to do.

7 MS. CAPELESS: Thank you.

8 COMMISSIONER KIESLING: Any other matters?

9 MS. CAPELESS: Yes. Staff would like to
10 move to strike the rebuttal testimony of Mary
11 Egan-Long that has been filed in this docket as well
12 as the exhibit identified as MEL-1 attached to that
13 testimony.

14 The purpose of this testimony, as
15 Ms. Egan-Long states on Page, 1 Lines, 19 through 23,
16 is to update the Company's test year adjustments that
17 she previously sponsored in her direct testimony,
18 primarily for the level of water and wastewater sales,
19 namely power, chemicals, outside sewage treatment and
20 sludge removal. And this information doesn't rebut
21 anything.

22 The exhibit attached to this testimony
23 modifies certain G schedules of the MFRs which contain
24 computations of the test year level of these expenses
25 to increase these expenses. And, obviously, the

1 parties are precluded at this point from conducting
2 any discovery on this information at this late stage,
3 and we believe this testimony and the exhibits should
4 be stricken.

5 COMMISSIONER KIESLING: All right. Mr. Ade,
6 what do you have to say on that? And, again,
7 recognizing that there has been a long-standing policy
8 and orders that would support that policy that you
9 can't change the MFR information and add new expenses;
10 otherwise I'll either dismiss it and you can start
11 over, or -- you can't do this.

12 MR. ADE: Commissioner, I think the
13 testimony was fairly described by Ms. Capeless. I
14 think that is what it does. We are using a 1997 test
15 year here, and so it's a projected test year; and this
16 is simply updated material that is going to be more
17 accurate for 1997 than what was filed when the case
18 was filed.

19 I would think it would be helpful to
20 everybody in the case. And it probably doesn't rebut
21 anything specifically. If it would be more orderly to
22 do it that way, I would be happy to move that the
23 testimony be accepted as supplemental direct
24 testimony. It is simply update information, as
25 Ms. Capeless said.

1 COMMISSIONER KIESLING: Well, I understand
2 that, but it does supplement or add new financial
3 information that goes beyond the initial filing, which
4 everyone has done discovery on and has prepared to
5 deal with in this case. And in that instance, even if
6 you call it supplemental direct, you can't supplement
7 that information without either withdrawing your rate
8 case and starting over or having me dismiss it. I
9 mean, that's what I'm trying to understand.

10 The prejudice to the other parties is that
11 they can't do any discovery on this. They have
12 prepared their cases based on the financial
13 information that you originally filed. This is
14 entirely new.

15 MR. ADE: I understand what you're saying,
16 Commissioner. We thought it would be helpful for
17 everybody to have, and therefore we filed it.

18 COMMISSIONER KIESLING: Okay. I'll do it
19 this way. I will either strike it, or I'll let you
20 withdraw it and, I mean, that's up to you. If you
21 don't feel that you're comfortable withdrawing it,
22 then I'll grant the motion to strike, but I can also
23 give you the opportunity to withdraw.

24 MR. ADE: May I just take a quick thumb
25 through here?

1 COMMISSIONER KIESLING: Sure.

2 MR. McLEAN: Commissioner, the Citizens also
3 support that motion.

4 COMMISSIONER KIESLING: Okay. Sorry I
5 didn't ask you.

6 MR. McLEAN: No problem.

7 MR. ADE: (Pause) Commissioner, I guess we
8 would like to continue to offer this as either
9 rebuttal or supplemental direct.

10 COMMISSIONER KIESLING: Okay. I'll grant
11 the motion, Staff's motion, to strike this testimony
12 as being beyond the scope of rebuttal and introducing
13 new facts and new information to the prejudice of the
14 parties.

15 MS. CAPELESS: Thank you, Commissioner.

16 COMMISSIONER KIESLING: And that includes
17 the testimony and the exhibits.

18 MS. CAPELESS: Thank you.

19 COMMISSIONER KIESLING: Anything else?

20 MR. McLEAN: Commissioner, this might be the
21 best time to mention it. I have a similar motion to
22 offer. I will be offering the motion that is not
23 prepared at this time with respect to some rebuttal
24 which addressed the issue of projected capital
25 additions.

1 The motion is not ready at this time. I
2 can't make it. I need to address specifically what it
3 is, but I would like the parties to know that we are
4 contemplating such a motion, and I'll have it prepared
5 before the hearing; but whether we'll have a chance to
6 address it remains to be seen, and I think we'll have
7 to address it at the hearing.

8 **COMMISSIONER KIESLING:** So you would prefer
9 to have the entire Commission, essentially, or the
10 Chairman do it as opposed to me?

11 **MR. McLEAN:** No, ma'am; I'm perfectly
12 comfortable with your doing it. I'm just not sure
13 that I'll have it ready in time. It deals with some
14 projected capital additions which the rebuttal
15 testimony contains, which we believe to be in addition
16 to the original filing. But I want to identify it
17 with specificity so the parties know what the argument
18 is about.

19 If I can prepare the motion and get it to
20 your office in time, perhaps you can rule on it before
21 the hearing; but we're getting pretty close to the
22 hearing, too, but I'm perfectly comfortable with your
23 ruling on it. No problem.

24 **COMMISSIONER KIESLING:** Oh, no. I didn't
25 mean that in any defensive have way. I think maybe

1 sometimes I am a little more stringent than perhaps
2 the whole Commission is when they're already at the
3 hearing and they've already read the testimony.

4 MR. McLEAN: Yes, ma'am. I'll get it as
5 soon as I possibly can, and I -- as I don't want to
6 waste anybody's time; but I'll get it to you as soon
7 as possible.

8 COMMISSIONER KIESLING: Okay.

9 MR. McLEAN: Thank you, ma'am.

10 COMMISSIONER KIESLING: Anything else
11 preliminary from Staff?

12 MS. CAPELESS: We have nothing further.

13 COMMISSIONER KIESLING: Anything else
14 preliminary from you, Mr. McLean?

15 MR. McLEAN: No, ma'am. Thank you.

16 COMMISSIONER KIESLING: Anything preliminary
17 from you, Mr. Ade?

18 MR. ADE: Yes. I may have two or three
19 items. And if this isn't the time you want to take
20 these up, just say so and we'll do it -- because maybe
21 they fall somewhere in the prehearing order.

22 COMMISSIONER KIESLING: I do have some
23 pending motions that I will deal with, usually deal
24 with at the end of the prehearing.

25 MR. ADE: At the end? All right.

1 COMMISSIONER KIESLING: Because, for
2 example, the supplemental direct one I can't deal with
3 until we go through the issues and figure out what the
4 issues are going to be, since it's supplemental based
5 on an issue. And the motion for reconsideration, I
6 can't take up. The whole Commission will take that up
7 at the beginning of the hearing. Our rules are quite
8 specific.

9 MR. ADE: I guess only other one that
10 probably isn't in the prehearing order is the length
11 of the brief.

12 COMMISSIONER KIESLING: That's not in there,
13 and --

14 MR. ADE: Is this an appropriate time?

15 COMMISSIONER KIESLING: Take it up at the
16 end.

17 MR. ADE: At the end?

18 COMMISSIONER KIESLING: Yes.

19 MR. ADE: All right.

20 COMMISSIONER KIESLING: Okay. If there is
21 nothing else preliminary, let's start going through
22 the draft prehearing.

23 In terms of the case background, are there
24 any changes, corrections, additions?

25 MS. CAPELESS: Staff has one, Commissioner,

1 and that is on Page 2 of the draft prehearing order
2 around in the middle of the third paragraph on that
3 page beginning with the sentence that says "The
4 Utility indicates in its filing that," we would like
5 to change that sentence to read --

6 COMMISSIONER KIESLING: I can't find that
7 sentence. Page 2 --

8 MS. CAPELESS: It's in the third paragraph,
9 towards the bottom of the third paragraph.

10 COMMISSIONER KIESLING: Oh, okay. It's not
11 the --

12 MS. CAPELESS: I'm sorry. It's the last
13 sentence. It's a long sentence.

14 COMMISSIONER KIESLING: Okay; I'm with you.

15 MS. CAPELESS: We would like the language of
16 that sentence to read: "The Utility indicates in its
17 filing that the primary reasons for the requested rate
18 increases are the capital investments that are being
19 required to meet more stringent environmental
20 regulations, for rehabilitation of its distribution
21 and collection systems, for major enhancements to its
22 water and wastewater treatment processes, and for
23 information technology initiatives."

24 COMMISSIONER KIESLING: And that's purely, I
25 guess, a grammatical change as opposed to a

1 substantive.

2 MS. CAPELESS: Yes, ma'am, it's purely
3 grammatical.

4 COMMISSIONER KIESLING: Okay. Anyone else
5 have a problem with that? (No response.) Hearing and
6 seeing none, unless you have any questions on
7 Sections 2, and 3, I'll just go straight to the
8 witnesses.

9 We'll start with United. Are your
10 witnesses -- first of all, are they in the order in
11 which you're going to call them, except for the
12 witness who is going to be available on Tuesday
13 morning after Cleveland and Guastella?

14 MR. ADE: Commissioner, that is a little
15 misleading as it is there. Mr. Guastella has another
16 commitment in another state during that same week and
17 asked us if we could pick a day for him, which we --
18 the parties agreed we could use Tuesday, subject to
19 your approval, of course.

20 But the logic of that is that
21 Mr. Sambamurthi, Mr. Cleveland ought to go before
22 Mr. Guastella. So our thought was that we would start
23 with Mr. Sambamurthi on Tuesday morning followed by
24 Mr. Cleveland and then Mr. Guastella, and he would be
25 able to be out of here on Tuesday. And maybe that

1 asterisk ought to be on all three of them.

2 COMMISSIONER KIESLING: All right. And let
3 me just ask you this: If on Monday we finish your
4 first and second witness and are ready for another
5 witness, who do you plan to put on?

6 MR. ADE: We'll just skip those three and go
7 to the next witness, if that's all right with you.

8 COMMISSIONER KIESLING: Sure; that's fine.
9 So we'll put an asterisk on all of them and say all of
10 them in that order will go first on Tuesday.

11 MR. ADE: Yes, ma'am.

12 COMMISSIONER KIESLING: And are the issues
13 that are identified --

14 MR. ADE: Yes, ma'am.

15 COMMISSIONER KIESLING: -- the issues? And
16 once we get back to the issues, if we withdraw any or
17 stipulate any, we won't renumber them, so that these
18 numbers will stay good and we don't have to go back
19 and make any adjustments.

20 Other than those, your witnesses are in the
21 correct order all the way down?

22 MR. ADE: Yes, ma'am.

23 COMMISSIONER KIESLING: OPC, any problem
24 with yours?

25 MR. McLEAN: No, ma'am, they're fine.

1 COMMISSIONER KIESLING: And in terms of the
2 issues they're covering, any changes or additions?

3 MR. McLEAN: Ma'am.

4 COMMISSIONER KIESLING: Staff, any changes?

5 MS. CAPELESS: Yes, ma'am. Staff has a
6 couple of requests, and one is that we would like to
7 make Witnesses Bolam, Hamilton and Rodriguez available
8 to testify on Wednesday. Those are the DEP and HRS
9 witnesses. And for Witnesses Grayson and Buckley we
10 would like to make them available first thing
11 Wednesday morning, if the parties will agree.

12 COMMISSIONER KIESLING: Before or after
13 Bolam, Hamilton and Rodriguez?

14 MS. CAPELESS: We would prefer to have the
15 auditors go first, first thing Wednesday morning, and
16 if that means having to change the order, if nobody
17 objects; but we would prefer to do that.

18 Also, while we're on this subject, we don't
19 know, but wonder whether the parties would be willing
20 to stipulate in the testimony of the DEP and HRS
21 witnesses, or whether they will want to cross examine
22 those witnesses.

23 COMMISSIONER KIESLING: They have not
24 prefiled -- have they prefiled testimony?

25 MS. CAPELESS: Yes, ma'am, they have.

1 COMMISSIONER KIESLING: With their report
2 attached, I assume, or something?

3 MS. CAPELESS: Yes, with exhibits, correct.

4 COMMISSIONER KIESLING: Mr. McLean, are you
5 planning to cross examine all three of these?

6 MR. McLEAN: Commissioner, we would like to
7 know what the Utility plans to do. I don't have any
8 questions for them unless Mr. Ade does.

9 MR. ADE: Ms. Capeless had asked me this
10 before, so we had thought about it, Commissioner. I
11 am a little hesitant to say today for these folks not
12 to come, because we don't know what the customers are
13 going to say about the quality of service, and that's
14 what these witnesses are talking about. So we may be
15 in a better position to make this determination after
16 our Monday evening customer hearing.

17 COMMISSIONER KIESLING: If I understand
18 correctly, we're going to be receiving customer
19 testimony on Monday morning, Monday evening, and
20 Tuesday evening?

21 MS. CAPELESS: That's correct.

22 MR. ADE: That's correct. And I'm saying
23 Monday. I think we'll certainly have a flavor of it
24 by Monday evening. I'm hoping to be able to answer
25 the question early enough to do them some good.

1 That's what I'm really saying.

2 COMMISSIONER KIESLING: Well, they're from
3 that area, so if we know something on Tuesday morning,
4 you can let them know that they don't need to come.
5 Is that adequate warning for them?

6 MS. CAPELESS: If that's the best they can
7 do, certainly we'll deal with that. In that case, we
8 would like to request, then, that Witnesses Grayson
9 and Buckley be taken out of order, if necessary, in
10 order for them to testify first thing Wednesday
11 morning, and then to have witnesses Bolam, Hamilton
12 and Rodriguez also testify on Wednesday, if necessary.

13 COMMISSIONER KIESLING: Do you want to
14 reverse the order of the witnesses on the list, then?

15 MS. CAPELESS: We can do that.

16 COMMISSIONER KIESLING: And that way the DEP
17 witnesses will be after the other two Staff witnesses,
18 and that may give a little extra time to know whether
19 or not they actually have to show up.

20 MS. CAPELESS: Yes, ma'am. We'll do that.
21 Thank you.

22 COMMISSIONER KIESLING: Sure. And by the
23 asterisk, it will be clear that the Staff witnesses
24 are going to testify beginning Wednesday.

25 Okay. Then we move to the supplemental.

1 And I have to be honest; I don't know what
2 supplemental is. So is this the supplemental that
3 we're referring to as to Issue, I think, 64, the
4 facilities and lands question?

5 MR. ADE: Yes.

6 COMMISSIONER KIESLING: Okay. Well, then
7 I'll hold off on figuring out what to do with him
8 until we figure out what we're going to do with that
9 issue.

10 MR. ADE: All right.

11 COMMISSIONER KIESLING: And then rebuttal.
12 And, again, I take it we cannot do any of these
13 witnesses for direct and rebuttal at the same time? I
14 guess no one has thought about whether they could do
15 that; any of them.

16 MS. CAPELESS: That's not something that
17 we've discussed, I don't believe.

18 COMMISSIONER KIESLING: They're all Utility
19 witnesses.

20 MR. McLEAN: If it's any help, Commissioner,
21 we certainly don't object to doing it that way, but
22 then they're not our witness.

23 MS. CAPELESS: Staff doesn't mind doing it
24 that way either.

25 COMMISSIONER KIESLING: Would it be easier

1 for the parties if we do direct and rebuttal at the
2 same time while they're on the stand, or do you want
3 to keep them separated?

4 MR. ADE: Let me think just a second,
5 because we hadn't thought about this.

6 MR. McLEAN: It doesn't matter to us,
7 Commissioner, not at all.

8 COMMISSIONER KIESLING: I mean, it doesn't
9 matter to me. I was just trying to do it for the
10 convenience of the witnesses, so we don't have to keep
11 shift'ng gears.

12 MR. McLEAN: Well, on the one hand, you get
13 more time to prepare if they go on later, but on the
14 other hand, if they don't go on later, they don't get
15 the bad clean-up.

16 COMMISSIONER KIESLING: And I've heard your
17 cross examination, Mr. McLean, and I think having one
18 shot at them is adequate. (Laughter)

19 MR. McLEAN: Okay. Thank you, ma'am.

20 MR. ADE: Commissioner, I believe that it
21 will work for us to do the direct and rebuttal at the
22 same time. If a subject were to come up with one of
23 the other witnesses, the other parties' witnesses, we
24 would like to reserve the right to recall the witness
25 to respond to that.

1 COMMISSIONER KIESLING: Yes. I don't have a
2 problem with that. I mean, if something comes up,
3 then, yes, you have a right to do that, although I
4 would probably feel as badly about something coming up
5 that nobody knows about from one side as the other.
6 So hopefully that isn't going to happen. Okay. So
7 then we will do direct and rebuttal at the same time?

8 MS. CAPELESS: That's fine with Staff. And
9 while we're on the subject of the rebuttal witnesses,
10 we would like to go ahead and have Mary Egan-Long's
11 name deleted as a witness for the rebuttal.

12 COMMISSIONER KIESLING: I already crossed
13 her off on my list.

14 MS. CAPELESS: Thank you.

15 COMMISSIONER KIESLING: You're welcome. I
16 just thought of the one thing that I didn't ask but I
17 probably need to deal with. Does anyone want to make
18 an opening statement to the Commission? If you do,
19 everybody gets to; and ordinarily we don't, but I want
20 to give everyone their shot at it.

21 MR. ADE: On behalf of the Company, we would
22 be glad to waive it.

23 MR. McLEAN: Yes, ma'am, we would, too, but
24 I think it's customary to give a little spiel to the
25 customers. I don't think we'd care to skip that.

1 COMMISSIONER KIESLING: And as long as you
2 characterize that as a spiel as opposed to an opening
3 statement, I'm comfortable with that. (Laughter)

4 MR. McLEAN: But not to the Commission in a
5 kind of a civil sense.

6 COMMISSIONER KIESLING: Right. Okay. Then
7 we're through with the witness list. Any changes to
8 the Utility's basic position?

9 MR. ADE: No changes.

10 COMMISSIONER KIESLING: To OPC or to Staff?

11 MS. CAPELESS: No changes.

12 MR. McLEAN: No changes, Commissioner.

13 COMMISSIONER KIESLING: Then we'll start in
14 on Issue 1. I'll just go through them. If anyone has
15 a question or an addition or a change, stop me while
16 we're on it and I won't go through and poll you on
17 each one.

18 Issue 1? (No response.) Hearing none,
19 Issue 2? (No response.) Issue 3?

20 MS. CAPELESS: Commissioner, Staff proposes
21 to withdraw Issue 3. This is an issue that Staff
22 raised, and we're willing to withdraw it.

23 COMMISSIONER KIESLING: And it's one that
24 OPC has not been in --

25 MR. McLEAN: Correct; no objection.

1 COMMISSIONER KIESLING: Okay. Issue 3 is
2 withdrawn. Issue 4?

3 MS. CAPELESS: Same thing on Issue 4,
4 Commissioner. This is another one of Staff's position
5 which we are willing to withdraw. Staff's issues,
6 rather, that we're willing to withdraw.

7 MR. McLEAN: No objection.

8 COMMISSIONER KIESLING: 5?

9 MR. McLEAN: Commissioner, I passed out at
10 the start -- actually before the start -- a two-page
11 document. It says up at the left hand corner "OPC,
12 1/17/97".

13 That document is intended to, among other
14 things, amend our position on Issue 5; and I should
15 mention that it deals with the same substance that our
16 motion to strike some rebuttal testimony deals with.
17 What we're trying to do here is revise our position
18 such that if the rebuttal testimony is received by the
19 Commission, we have responded to that testimony.

20 COMMISSIONER KIESLING: All right. And as
21 to the second portion that's on here -- well, there's
22 two paragraphs. The first paragraph will stay no
23 matter what happens to your motion to strike --

24 MR. McLEAN: That's correct; yes ma'am.

25 COMMISSIONER KIESLING: The second paragraph

1 may stay or may go depending on your motion to strike
2 and the ruling on it.

3 MR. McLEAN: Yes, ma'am.

4 COMMISSIONER KIESLING: Okay. Then we'll go
5 ahead and include both, and if by chance you actually
6 get your motion to strike filed before the hearing or
7 before the issuance of this order, I may take it up,
8 even may take it up by telephone, if no one has an
9 objection to that.

10 MR. McLEAN: Yes, ma'am.

11 COMMISSIONER KIESLING: And if it is
12 granted, we'll delete this then, but if it's not,
13 we'll leave it in.

14 MR. McLEAN: Thank you, Commissioner. It is
15 intended, I might add, to appear in lieu of our
16 position which is on the draft prehearing order.

17 COMMISSIONER KIESLING: The witness is still
18 the same though, DeRonne?

19 MR. McLEAN: Yes, ma'am.

20 COMMISSIONER KIESLING: And, Staff, no
21 change for you?

22 MS. CAPELESS: We have no change to Issue 5.

23 COMMISSIONER KIESLING: Okay. I'm writing
24 in witness names after both your additional
25 paragraphs.

1 MR. McLEAN: Yes, ma'am. Thank you.

2 COMMISSIONER KIESLING: You're welcome.

3 Okay. Issue 6? (No response.) ??

4 MR. ADE: Commissioner, it looks like to me
5 we have a stipulation on at least the first part of 6
6 for 1995 and 1996.

7 COMMISSIONER KIESLING: Okay. Do we have a
8 stip and, if so, who can tell me what it is?

9 MS. CAPELESS: I'm sorry. Are we back on
10 Issue 6, did you say?

11 COMMISSIONER KIESLING: 7.

12 MR. ADE: No. I'm sorry. 6 is what I was
13 talking about.

14 COMMISSIONER KIESLING: Oh, I'm sorry. I
15 called 6. Nobody said anything, so I called 7. Thank
16 you for getting me in the right place.

17 MS. CAPELESS: You're welcome.

18 COMMISSIONER KIESLING: So on 6 you have a
19 stip for two of the years, but not for the third one?

20 MR. ADE: Just looking at the positions, it
21 appears we do.

22 MS. CAPELESS: Commissioner, Staff can
23 stipulate to the first sentence of the Staff position.
24 We would like the issue to remain there, and then we
25 can move that the appropriate AFUDC rate for '95 and

1 '96 is 11.124.

2 COMMISSIONER KIESLING: And this is one that
3 OPC does not have a position on; is that correct?

4 MR. McLEAN: That is correct, Commissioner,
5 and we will not introduce the evidence if there is a
6 stipulation between the other two parties.

7 COMMISSIONER KIESLING: Then if I understand
8 correctly, in order to not try to bifurcate this issue
9 into partly stipulated and partly still at issue, both
10 the Utility and the Staff positions can continue to
11 have their first sentence which is essentially, then,
12 a stipulation. It doesn't need to be litigated. And
13 the second sentence of the Utility's position would be
14 gone and the third sentence would be still in. Is
15 that right?

16 MR. ADE: That's correct.

17 COMMISSIONER KIESLING: There would be no
18 other changes to Staff's?

19 MS. CAPELESS: Not to our position, but for
20 the issue, we would want to delete the years 1995 and
21 '96 from the issue so that it will only pertain to
22 1997.

23 COMMISSIONER KIESLING: Okay. So that's
24 another way to do it. Back under the stipulations, we
25 can have a stipulation that says the appropriate AFUDC

1 rate for 1995 and 1996 is 11.12%, and then this issue
2 will only refer to '97.

3 MS. CAPELESS: Yes, ma'am. That's what we
4 would propose.

5 MR. ADE: (Nodding head.)

6 COMMISSIONER KIESLING: Fine for me. And
7 the issue would be, "What is the appropriate," then,
8 since there's only one year left.

9 MS. CAPELESS: Thank you.

10 COMMISSIONER KIESLING: Well, then I'm just
11 a little curious, since "What is the appropriate AFUDC
12 rate for 1997," all the parties now say they have no
13 position.

14 MS. CAPELESS: We say "No position pending
15 further development of the record." So we may end up
16 with a position after all the evidence is in.

17 COMMISSIONER KIESLING: Okay.

18 MR. ADE: I think it depends on the
19 evidence.

20 COMMISSIONER KIESLING: Okay. Then on to
21 Issue 7.

22 MS. CAPELESS: I don't believe we have a
23 stipulation on this issue unless the Utility agrees to
24 remove the request for the 9,751 offset to the
25 reduction to the plant in service.

1 COMMISSIONER KIESLING: I mean, that's the
2 difference in the two positions is that 9,000, not the
3 84,764? We're all in agreement on that?

4 MS. CAPELESS: (Nodding head.)

5 COMMISSIONER KIESLING: Okay. I mean, we
6 don't need to make any change to it?

7 MR. ADE: I don't think so.

8 COMMISSIONER KIESLING: 8?

9 MR. McLEAN: Yes, ma'am. Referring again to
10 the handout, we would like to replace our position on
11 the handout -- I'm sorry -- replace the position on
12 the draft with the one on the handout for Issue 8, and
13 the witness remains the same.

14 COMMISSIONER KIESLING: Okay. You had no
15 witness --

16 MR. McLEAN: I'm sorry --

17 COMMISSIONER KIESLING: -- 8 that I'm
18 looking at?

19 MR. McLEAN: You're correct. It's Larkin.

20 COMMISSIONER KIESLING: Okay.

21 MR. McLEAN: Yes, ma'am.

22 MS. CAPELESS: There's a witness indicated
23 on the draft on your proposal. Do you want to include
24 Mr. Larkin?

25 MR. McLEAN: Oh, yes, yes. Referring to the

1 handout, it has Mr. Larkin. He should be listed as
2 the witness supporting that position.

3 MS. CAPELESS: Thank you.

4 COMMISSIONER KIESLING: All right. Then 9?
5 (No response.) 10? (No response.)

6 MS. CAPELESS: Commissioner, Staff
7 proposes -- or recommends a stipulation on Issue 10.
8 Our position has changed to read that there is no
9 excessive inflow and infiltration.

10 COMMISSIONER KIESLING: All right. And,
11 Mr. McLean, you had no position? Is this an issue you
12 don't have any testimony on?

13 MR. McLEAN: That's correct. We won't join
14 in the stipulation, but I will represent we won't
15 introduce evidence on the point.

16 COMMISSIONER KIESLING: Ms. Capeless, for
17 right now I'll let you keep them divided into Category
18 A and B, and we'll talk about those when we get back
19 there. I find that nomenclature to be cumbersome and
20 have a suggestion for, perhaps, what might perhaps be
21 a clearer approach.

22 MS. CAPELESS: Thank you.

23 COMMISSIONER KIESLING: All right. 11?

24 MS. CAPELESS: Commissioner, Staff can
25 recommend a stipulation for Issues 11 through 16 to

1 the used and useful unless analysis and percentages of
2 each service area contained in Mr. Guastella's
3 testimony, except for one thing.

4 What we can propose or recommend a
5 stipulation on is that all of the water facilities are
6 100% used and useful, and also that all of the
7 wastewater facilities are 100% used and useful, except
8 for the Ponce de Leon facility, which we don't
9 stipulate is 100% used and useful. Staff's position
10 there is that it's 44%.

11 COMMISSIONER KIESLING: Just so that I'm
12 clear which issue that plant falls under, then
13 starting with 11 you're proposing a stipulation that
14 the water system is 100% used and useful?

15 MS. CAPELESS: Yes, ma'am.

16 COMMISSIONER KIESLING: And OPC says "No" as
17 their position.

18 MR. McLEAN: We touch very briefly on that
19 in our testimony by Mr. Larkin, but our plan is to
20 test whether those plants are 100% used and useful
21 through cross examination of engineering witnesses
22 which are presented by the Utility.

23 Now, I don't think -- it is a possibility
24 that we won't have much on that, but it is also a
25 possibility that we'll pursue it with some vigor.

1 It's a little too early to say, but I know that I
2 can't join in a stipulation and I know, too, that I
3 can't promise not to adduce evidence on the point.

4 COMMISSIONER KIESLING: So then instead of
5 there being a stipulation, Staff --

6 MS. CAPELESS: We can change our position --

7 COMMISSIONER KIESLING: -- is going to
8 change it to 100% used and useful?

9 MS. CAPELESS: Yes, ma'am.

10 COMMISSIONER KIESLING: And that has no
11 impact on the second part of the Utility's testimony
12 as long as this issue remains an issue. Would that be
13 correct?

14 MR. ADE: I believe that's correct,
15 Commissioner.

16 COMMISSIONER KIESLING: Then on 12, is this
17 the one that relates to Ponce de Leon?

18 MS. CAPELESS: Yes, ma'am. Our position on
19 this issue then would be that it's 100% used and
20 useful, except for Ponce de Leon which should be 44%.

21 COMMISSIONER KIESLING: And I take it your
22 position, Mr. McLean, will be the same on all of
23 these?

24 MR. McLEAN: That's correct, Commissioner.

25 COMMISSIONER KIESLING: Okay. 13, Staff is

1 "100% used and useful."
2

3 MS. CAPELESS: Yes, ma'am.

4 COMMISSIONER KIESLING: 14, the same? 15
the same? Yes? (Pause) Rosanne? 100% on 15,
5 Staff's position?

6 MS. CAPELESS: Yes, ma'am.

7 COMMISSIONER KIESLING: And on 16? (Pause)
8 Do we need to take a minute?

9 MS. CAPELESS: Yes. If you don't mind, I
10 think we could use a few minutes. Thank you.

11 (Brief recess.)
12

13 - - - - -

14 MS. CAPELESS: We're ready.

15 COMMISSIONER KIESLING: Do we need to start
back at 11?

16 MS. CAPELESS: Yes, ma'am, we need to be
17 back to 11. We'd like to make our position on Issue
18 11 read that we agree with the Utility.

19 COMMISSIONER KIESLING: Okay. On Issue 12,
20 our position is "Yes, a margin reserve on 18 months on
21 wastewater mains and a margin of three years on the
22 wastewater treatment plants is appropriate."

23 On 13 our position is --

24 COMMISSIONER KIESLING: Wait a minute. Wait
25 a minute. Let me ask you, Ponce de Leon is still

1 included in that, in 12? You don't want to say
2 anything about that now?

3 MS. CAPELESS: No, not in Issue 12.

4 COMMISSIONER KIESLING: Okay.

5 MS. CAPELESS: In Issue 13 our position is
6 that it's 100% used and useful, and on 14 our position
7 is that the appropriate used and useful percentage is
8 100%, excluding Ponce de Leon, which is 44%.

9 Staff's position on Issue 15 is that it's
10 100% used and useful, and also our position on
11 Issue 16 is 100% used and useful.

12 COMMISSIONER KIESLING: Okay. And on to 17.
13 Any changes in 17? (No response.) How about 18? (No
14 response.)

15 Well, I have a question, then. Under the
16 Staff position on 18, it says "no position," but it
17 has Mr. Buckley listed as the witness for that.

18 MS. CAPELESS: Commissioner, we have an
19 updated position. You may have a previous draft copy
20 there.

21 COMMISSIONER KIESLING: Yes, it's the one
22 that I have my notes on. So I had thought you were
23 going to advise me whenever there were changes between
24 the two.

25 MS. CAPELESS: I'm sorry, and I will

1 remember to do that then. Our revised position for
2 Issue 18 is that the Utility's decision to change its
3 depreciation rates without Commission approval was
4 inappropriate. However, whether any adjustments are
5 necessary is dependent upon further development of the
6 record. And we have Witness Buckley.

7 COMMISSIONER KIESLING: Okay. 19?

8 MR. McLEAN: Commissioner, a minor change.
9 Referring again to our handout, the underscored
10 material in the handout should be under Issue 19 and
11 should be added to our position 19, just the
12 underscored material.

13 COMMISSIONER KIESLING: Does that go at the
14 beginning?

15 MR. McLEAN: Yes, ma'am.

16 COMMISSIONER KIESLING: Beginning; okay. No
17 change for anyone else? And who is the witness for
18 Staff on that?

19 MS. CAPELESS: On Issue 19 Staff doesn't
20 have a witness.

21 COMMISSIONER KIESLING: You're right.
22 Sorry. 20?

23 MS. CAPELESS: Staff has updated our
24 position on Issue 20 as well. Our position now reads
25 "If adjustments are made to change rate base from

1 year-end to 13-month average, accumulated depreciation
2 should also be adjusted. Any other adjustments to
3 accumulated depreciation are dependent upon further
4 development of the record and upon resolution of
5 further issues."

6 COMMISSIONER KIESLING: Okay. Anyone else
7 have anything on 20? (No response.) And 21?

8 MS. CAPELESS: Staff proposes or recommends
9 a stipulation -- no, I'm sorry. We propose to
10 withdraw Issue 21. We can withdraw that issue. We
11 can also recommend -- or withdraw Issue 57, which is a
12 fallout of this Issue 21.

13 COMMISSIONER KIESLING: Why don't we jump
14 forward so we're at least on the same subject matter.

15 MS. CAPELESS: Thank you.

16 COMMISSIONER KIESLING: And we'll withdraw
17 57. Any problem with either of those, Mr. McLean?

18 MR. McLEAN: No, ma'am.

19 COMMISSIONER KIESLING: Okay. Then 22. (No
20 response.) 23? (No response.)

21 MS. CAPELESS: Staff changed our position on
22 Issue 23, and our position now reads "The appropriate
23 amount of unamortized tank painting expense to be
24 included in rate base is as shown in the Utility's
25 filing \$685,477 for 1995, \$724,816 for 1997."

1 COMMISSIONER KIESLING: Okay. And I see
2 that while those are close to what the Utility has put
3 forth, they're not the same, so I guess there's no
4 chance for any agreement on that one.

5 MR. McLEAN: Commissioner, I think we can
6 agree with Staff on that one.

7 COMMISSIONER KIESLING: Okay. I was going
8 to ask you next. 24?

9 MS. CAPELESS: Staff has an updated position
10 here, and it is "The appropriate working capital is
11 dependent upon the resolution of other issues."

12 COMMISSIONER KIESLING: All right. And OPC
13 was saying "Agree with Staff". I take it you still
14 do.

15 MR. McLEAN: I think we still do, yes,
16 ma'am.

17 COMMISSIONER KIESLING: Okay. 25?

18 MS. CAPELESS: Commissioner, Staff
19 recommends a stipulation to this issue, and that is if
20 OPC agrees that by Late-filed Exhibit No. 6 that was
21 filed -- that was submitted by Mr. Jost, that that
22 exhibit shows that the unfunded liability is \$426,764,
23 which is as stated in Staff's position. So we
24 possibly have a stipulation to Staff's position.

25 MR. McLEAN: Yes, ma'am. That's fine.

1 COMMISSIONER KIESLING: All right. And
2 that's acceptable to you, too?

3 MR. ADE: That might not be acceptable. We
4 need to consider that, and we're not going to be able
5 to answer it today, so we're not going to be able to
6 stipulate today.

7 MR. McLEAN: Commissioner, having seen the
8 Staff position, we can agree with Staff and shorten
9 the order a little bit.

10 MR. ADE: Still on 25? Is that what we're
11 talking about?

12 COMMISSIONER KIESLING: Yes, that's where I
13 was.

14 MR. McLEAN: Yes.

15 MS. CAPELESS: And Staff's position on 25
16 reads: "Yes, rate base should be reduced by \$426,764
17 to reflect the amount of unfunded liability for 1997."

18 COMMISSIONER KIESLING: Which was a number
19 that their witness came up with in their late-filed
20 exhibit.

21 MS. CAPELESS: Yes, ma'am.

22 MR. ADE: Commissioner, that's not quite so
23 clear. It depends on how you interpret that
24 late-filed exhibit.

25 COMMISSIONER KIESLING: All right.

1 Issue 26? (No response.) 27? (No response.)
2 28; nothing to 28? (No response.) I just was
3 noticing that for one of the few times I remember,
4 OPC's agreeing with the Utility on 8.72.

5 MR. McLEAN: That doesn't sound good at all.

6 COMMISSIONER KIESLING: I thought you might
7 want to tell me if I was missing something.

8 MR. ADE: Well, we would stipulate that.

9 COMMISSIONER KIESLING: I don't know that
10 Staff will.

11 MR. McLEAN: I want to think about it a
12 little bit.

13 COMMISSIONER KIESLING: We'll leave 28 as
14 is, unless you all come up with something else. All
15 right. 29? (No response.) 30? (No response.) 31?
16 (No response.) 32?

17 I guess I just have a question on both OPC
18 and Staff on this one. The beginning of the question
19 is "What's the appropriate method for doing this," and
20 then "What is the resulting projected number." Do we
21 not have a position on the appropriate method? I
22 mean, isn't that sort of a canned thing?

23 MS. CAPELESS: That is correct for Staff,
24 Commissioner. We're still analyzing some late-filed
25 exhibits that were recently submitted by the Company,

1 and we don't have a position as yet.

2 COMMISSIONER KIESLING: Not even on the
3 method we should use to forecast it?

4 MS. CAPELESS: That's correct.

5 COMMISSIONER KIESLING: And OPC, then, I
6 take you also have no position? Is that because you
7 don't care about this issue, you are not involved in
8 this issue?

9 MR. McLEAN: That's correct, Commissioner.

10 COMMISSIONER KIESLING: Okay. 33? (No
11 response.) 34? (No response.)

12 Let me just ask the Utility, the issue
13 itself says "Should the \$3.00 late charge be approved,
14 and, if so, should test year revenues be increased to
15 reflect it?"

16 Your answer is yes, but you say nothing
17 about whether test year revenues should be increased.
18 Was that a yes to both?

19 MR. ADE: No, ma'am, it was really a yes to
20 the first part of the sentence, "Should a \$3.00 late
21 charge be approved." I think what the testimony shows
22 is that we cannot even get it into effect under our
23 system during the test year. Our position doesn't say
24 that very clearly, but I think that's what's behind
25 that.

1 COMMISSIONER KIESLING: Okay. Then I guess
2 by inference, it means that if you can't even get it
3 in for your test year, then you don't think it should
4 be increased during the test year; revenues should not
5 be increased?

6 MR. ADE: Revenues should not be; that's
7 correct.

8 COMMISSIONER KIESLING: Would you like to
9 add something that makes it clear what your position
10 is on each of those, since there were two questions,
11 both of which have a yes or no?

12 MR. ADE: Yes. Why don't we say yes.

13 COMMISSIONER KIESLING: Comma.

14 MR. ADE: Do you want me to do it now?

15 COMMISSIONER KIESLING: Yes. I'm doing it.
16 "Yes, the \$3.00 late charge should be approved."

17 MR. ADE: Right.

18 COMMISSIONER KIESLING: And then whatever
19 your next sentence is, and then insert a last
20 sentence. It seems to me, then, in the "however"
21 sentence there needs to be that "the charge should be
22 implemented when the billing system is capable of
23 billing the customers for this fee, comma, however,
24 this will not occur in the test year," something like
25 that so you're at least referring to the test year and

1 I don't have to surmise your position; or do you have
2 better language?

3 MR. ADE: I do not have better language.
4 I'm just wondering if what I've told you is really
5 quite correct.

6 COMMISSIONER KIESLING: How about a
7 statement that "Test year revenues should only be
8 increased if the change is implemented during the test
9 year"?

10 MR. ADE: I think that's accurate,
11 Commissioner. I think that's a much clearer position.

12 COMMISSIONER KIESLING: Do I need to repeat
13 that?

14 MS. CAPELESS: Please. That would help me.
15 Thank you.

16 COMMISSIONER KIESLING: What I did was --
17 did you get the first part, "Yes, the \$3.00 late
18 charge should be approved"?

19 MS. CAPELESS: Yes, ma'am.

20 COMMISSIONER KIESLING: Then I inserted a
21 new sentence after the last sentence and before the
22 witness names that says, "The test year revenues
23 should only be increased if the change is implemented
24 during the test year."

25 MS. CAPELESS: Thank you.

1 **COMMISSIONER KIESLING:** All right. 35;
2 anything? (No response.)

3 36? I just want to be clear that like on
4 36, would everyone at least agree that adjustments
5 will be necessary if the calculation of ERCs or
6 consumption changes? I mean, I'm not trying to get a
7 stipulation, I'm trying to understand one party saying
8 "no" with no explanation and one saying "agree with
9 Staff," and then Staff -- I'm just wanting to make
10 sure I understand.

11 **MR. ADE:** Yes, we would agree.

12 **COMMISSIONER KIESLING:** Okay. I mean, I'm
13 not necessarily going to change the language. Your
14 "no" with no explanation, does there need to be any
15 change's in anyone's mind except mine that it's clear?
16 (No response.) If not, then I'll leave it the way it
17 is.

18 **MR. McLEAN:** Is anyone saying that
19 adjustments are necessary?

20 **COMMISSIONER KIESLING:** No, I don't think
21 anyone is. That's what I'm trying to understand. The
22 issue asks about adjustments, and no one seems to
23 think that they -- no one seems to be able to say now
24 that they are necessary, it will depend on something
25 else.

1 MS. CAPELESS: Commissioner, what we're
2 saying is that if there is a change in consumption,
3 then it would be a fallout issue.

4 COMMISSIONER KIESLING: Okay. That makes
5 sense to me. Then how about 37? 38? 39? 40? 41?
6 42? (No response.)

7 MS. CAPELESS: On -- never mind. We have no
8 changes to 42.

9 COMMISSIONER KIESLING: There are none,
10 okay. I just was curious that everyone is saying yes.
11 I mean, "Should the cost savings related to the IT
12 project be reflected in test year level of expenses."
13 The Utility says "Yes". OPC says "Agree with Staff,"
14 and Staff says "Yes." Is it just the dollar amount
15 that's in conflict?

16 MS. CAPELESS: Yes, ma'am. What we're
17 saying is that further reductions are necessary. I
18 don't believe that we're agreeing with the Company on
19 this issue.

20 COMMISSIONER KIESLING: You're agreeing with
21 the Company on it.

22 MS. CAPELESS: I don't believe that we are.

23 COMMISSIONER KIESLING: Oh, okay.

24 MR. ADE: Right. I think the Company is
25 saying we've already made them; we've already made the

1 adjustments.

2 COMMISSIONER KIESLING: Well, if anyone has
3 anything they want to do to clarify that they're not
4 all saying yes --

5 MR. ADE: Well, we could take off our "yes,"
6 if that helps any.

7 COMMISSIONER KIESLING: That might make it
8 easier.

9 MR. McLEAN: Or Staff could say "further
10 reduced".

11 MS. CAPELESS: Sure, we could add that.

12 COMMISSIONER KIESLING: Okay. Let's do
13 both. That way no one will have a question.

14 43? (No response.) 44?

15 MS. CAPELESS: Commissioner, Staff can
16 recommend a stipulation to Issue 44, but only if the
17 Utility means by its position that it's recognizing
18 that this doesn't just mean legal cost, but changing
19 signs, all costs involved in the merger, of the
20 company's letterheads, business cards, truck painting,
21 et cetera.

22 COMMISSIONER KIESLING: Well, it seemed to
23 me that that's what it says, the Company has not
24 allocated any costs.

25 MS. CAPELESS: This is just for

1 clarification we raised that.

2 MR. ADE: Commissioner, this is a hard
3 question. We believe that there are not any costs in
4 there. Ms. Capeless has just mentioned some specific
5 things. We would like to just verify that, in fact,
6 there are none of those in there. We intended for
7 there to be none. We believe there are none. If
8 there are, they are there by mistake.

9 COMMISSIONER KIESLING: And they should
10 be --

11 MR. ADE: And they should not be there,
12 correct.

13 COMMISSIONER KIESLING: Okay. I mean that
14 seems to me to be grounds for a stipulation because --
15 I mean, a stipulation of fact that there are none
16 inferred or allocated. If we find some, then they
17 will just be adjusted out.

18 MR. ADE: We'll just tell you.

19 COMMISSIONER KIESLING: Acceptable,
20 Mr. McLean?

21 MR. McLEAN: We'll stipulate to it. I mean
22 the principle is fine.

23 MR. ADE: So we're really stipulating that
24 there aren't any, and if we discover some, we will
25 disclose them at the hearing; is that right?

1 COMMISSIONER KIESLING: Yes.

2 MR. McLEAN: That's fine.

3 COMMISSIONER KIESLING: I mean, someone in
4 looking through, if they find one, will make sure that
5 everybody knows about it. 45?

6 MS. CAPELESS: This is an issue that Staff
7 has withdrawn.

8 COMMISSIONER KIESLING: That must be on the
9 new, updated --

10 MS. CAPELESS: Yes, ma'am.

11 COMMISSIONER KIESLING: 46?

12 MS. CAPELESS: Staff has a new position on
13 Issue 46. Our position now is "No, these costs relate
14 to the pending purchase of the Sun Ray facility and
15 should not be recovered as an operating cost to the
16 current customers.

17 COMMISSIONER KIESLING: And that's not
18 reflected anywhere. It's not in your second draft, is
19 it?

20 MS. CAPELESS: That's correct, Commissioner.
21 That's a brand new issue. Sorry; brand new position.

22 COMMISSIONER KIESLING: So "No, these
23 costs -- could you say your position again, one more
24 time for me?

25 MS. CAPELESS: Yes, ma'am. "No, these costs

1 relate to the pending purchase of the Sun Ray
2 facility, and should not be recovered as an operating
3 cost to the current customers."

4 COMMISSIONER KIESLING: Okay. And do you
5 have a witness with that or --

6 MS. CAPELESS: No, ma'am, we don't have a
7 witness.

8 COMMISSIONER KIESLING: Did everybody get
9 that one? Okay. 47? (No response.) 48?

10 MS. CAPELESS: We also have a new position,
11 a brand new position, for Issue 48.

12 Before we get there if we could back up to
13 Issue 47 just for a moment. We've noticed that the
14 Company doesn't show a witness for its position on
15 Issue 47, and I wonder if we should have a witness
16 indicated there.

17 MR. ADE: Well, I'm sure we should. Let's
18 look at the front and see if we picked up somebody up
19 there.

20 MS. CAPELESS: And also for Issue 46 there's
21 no witness indicated there either.

22 COMMISSIONER KIESLING: It looks like you
23 don't have a witness listed. You don't have a witness
24 up here listed for it either.

25 MR. ADE: I noticed.

1 MS. CAPELESS: We would have brought that to
2 your attention earlier. We just now noticed
3 ourselves.

4 MR. ADE: Well, I did.

5 COMMISSIONER KIESLING: And I will also
6 point out, even under your rebuttal witnesses you
7 don't have those two issues listed.

8 MR. ADE: Commissioner, we can find those,
9 and if you want to move along and come back and fill
10 them in.

11 COMMISSIONER KIESLING: All right. Other
12 than that, you said that the Company had a new
13 position on 48?

14 MS. CAPELESS: On 48 Staff has a new
15 position, Commissioner, and that is "No, these costs
16 should have been expensed when incurred."

17 COMMISSIONER KIESLING: That's it?

18 MS. CAPELESS: Yes, ma'am.

19 COMMISSIONER KIESLING: And any witness for
20 that?

21 MS. CAPELESS: No, ma'am.

22 COMMISSIONER KIESLING: 49? (No response.)
23 50? This is another one of those where everyone says
24 yes, so I don't know if it's a stipulation or we need
25 to change the positions somewhat.

1 MS. CAPELESS: Well, Staff can recommend a
2 stipulation to Staff's position.

3 MR. ADE: We can stipulate to that,
4 Commissioner.

5 MS. CAPELESS: Thank you.

6 COMMISSIONER KIESLING: And since you agreed
7 with Staff, Mr. McLean, I take it you have no problem
8 with that.

9 MR. McLEAN: I think I'm duty bound, yes,
10 ma'am.

11 COMMISSIONER KIESLING: And 51? (No
12 response.) 52? (No response.) 53? I would just
13 bring to the Utility's attention that your position,
14 the second sentence, isn't a complete sentence and I
15 think that what you probably meant to say is that it's
16 dependent upon the expenses to be incurred. Am I
17 right?

18 MR. ADE: Yes, ma'am. Thank you.

19 COMMISSIONER KIESLING: 54? (No response.)
20 55?

21 MS. CAPELESS: Staff has a new position on
22 Issue 55.

23 COMMISSIONER KIESLING: What is it?

24 MS. CAPELESS: Our position is that we agree
25 with OPC. We may be able to recommend a stipulation

1 on this issue if the Utility agrees to OPC's position
2 that there was an error in the MFRs.

3 COMMISSIONER KIESLING: Yes. I mean your
4 position has been that you're investigating whether an
5 error occurred. It seems like --

6 MR. ADE: And if it did, we'll stipulate it.
7 We talked about that this morning. We simply do not
8 know the answer to this this morning.

9 COMMISSIONER KIESLING: You haven't looked.

10 MR. ADE: The person who needs to look isn't
11 there, unfortunately.

12 COMMISSIONER KIESLING: Well, I don't know
13 how to have a conditional stipulation.

14 MR. ADE: I don't know anything to do
15 Commissioner, except if it's been made at the opening
16 of the hearing, we'll say we'll agree to that.

17 MS. CAPELESS: Can we suggest that if the
18 Company is able to check into this issue, we can add
19 it as a -- change it to a proposed stipulation before
20 the prehearing order issues?

21 MR. ADE: Sure.

22 COMMISSIONER KIESLING: All right. It seems
23 like it's just a simple matter of going and looking at
24 that line.

25 MR. ADE: It is. It's just a matter of

1 getting the person and the documents together.

2 COMMISSIONER KIESLING: All right.

3 MR. ADE: But since you all were so
4 cooperative on that one, if I can go backwards, we'll
5 stipulate to 51, to the Staff's position.

6 COMMISSIONER KIESLING: To the Staff's
7 position. Does that make it a stip, Mr. McLean?

8 MR. McLEAN: Yes, ma'am.

9 COMMISSIONER KIESLING: And that is a stip
10 to Staff's position that test year O&M should be
11 reduced by 503 and 895, or do you still want all the
12 verbiage in there?

13 MR. McLEAN: You're asking me?

14 COMMISSIONER KIESLING: I'm talking to you,
15 yes.

16 MR. McLEAN: No, ma'am, we don't need that
17 verbiage in there.

18 COMMISSIONER KIESLING: Okay. So you'll
19 stipulate to Staff's position, also?

20 MR. McLEAN: Yes, ma'am. I didn't know you
21 were talking to me. Yes, we'll go with the
22 stipulation to the Staff position, yes.

23 COMMISSIONER KIESLING: Okay. Well, then on
24 55 we'll leave it as a possible stip, but if you could
25 just let us know --

1 MR. McLEAN: We will.

2 COMMISSIONER KIESLING: I don't anticipate
3 this being signed until probably Wednesday because of
4 the long weekend, or it could even be Thursday.

5 MR. ADE: All right.

6 COMMISSIONER KIESLING: So just get with us
7 as soon as possible.

8 MR. ADE: We'll do that.

9 MS. CAPELESS: And for clarification
10 purposes with respect to the proposed stipulation for
11 Issue 51, we would like to add the phrase "lobbying
12 expenses," so that the proposed stipulation will read
13 that "Test year O&M expenses should be reduced by
14 \$503.00 and \$895.00 for lobbying expenses for water
15 and wastewater, respectively."

16 COMMISSIONER KIESLING: Which one are we on
17 now? 51?

18 MS. CAPELESS: 51.

19 COMMISSIONER KIESLING: All right. We're
20 back on 51. Sorry. So you're making a change in your
21 position, but --

22 MS. CAPELESS: It's just a clarification,
23 Commissioner.

24 COMMISSIONER KIESLING: Could you say it
25 again?

1 **MS. CAPELESS:** Yes, ma'am. "Test year O&M
2 expenses should be reduced by \$503.00 and \$895.00 for
3 lobbying expenses for water and wastewater,
4 respectively."

5 **COMMISSIONER KIESLING:** Then I think 56 is
6 where I am.

7 **MR. McLEAN:** Yes, ma'am. And the Citizens
8 have a small change to offer. It's on our handout.
9 We would like the underscored material to be added to
10 our position is all. Just a matter of clarification,
11 I think.

12 **COMMISSIONER KIESLING:** All right. Does
13 that change anyone else's -- where we are on it? (No
14 response.)

15 Then 57 we've already withdrawn.

16 **MS. CAPELESS:** Yes, ma'am.

17 **COMMISSIONER KIESLING:** 58? (No response.)
18 59? (No response.) Let me tell you, 59, I mean, it
19 just looked a little odd that -- I'm not quite sure I
20 understand the Utility's position, because you say
21 "See Issue 31," and everyone else says "No position."
22 Is there a clearer way to do this?

23 **MS. CAPELESS:** Perhaps we could pick up the
24 language from the Company's position on Issue 31 and
25 put it here as well.

1 COMMISSIONER KIESLING: Pretty long
2 position. I guess what I'm thinking is that if the
3 same information is in 31, why do we have this issue?
4 Is it redundant?

5 MS. CAPELESS: Could we have a few moments,
6 please, Commissioner?

7 COMMISSIONER KIESLING: Sure.

8 (Pause)

9 MS. CAPELESS: Staff is ready to go back on
10 the record when everybody else is.

11 COMMISSIONER KIESLING: All right. Staff.

12 MS. CAPELESS: Staff has a new position on
13 Issue 59 which reads: "The capital structure of the
14 Utility's grandparent should be used to calculate the
15 parent debt adjustment."

16 COMMISSIONER KIESLING: Okay. And what is
17 the Utility's position, then, on the -- the issue says
18 "what is the amount," but, I mean, is it something you
19 can just give an amount without going back to that
20 whole big chart?

21 MR. ADE: Commissioner, I think this is
22 asking for a parent debt adjustment.

23 COMMISSIONER KIESLING: Yes.

24 MS. CAPELESS: We believe it would be a
25 dollar amount, not a percentage.

1 COMMISSIONER KIESLING: But Staff doesn't
2 have a dollar amount?

3 MS. CAPELESS: No, ma'am.

4 MR. ADE: Commissioner, I think the
5 Company's position on this issue is that the capital
6 structure ought to be as is set forth in Issue 31, and
7 maybe the response is that there should not be a
8 parent debt adjustment.

9 COMMISSIONER KIESLING: Okay. Or zero.

10 MR. ADE: Zero.

11 MS. CAPELESS: Commissioner, for Staff's
12 position we would like to add a sentence, and we would
13 like the new sentence to begin the position, and that
14 would read: "The dollar amount is dependent upon the
15 resolution of other issues."

16 MR. ADE: Who is your witness on that?

17 COMMISSIONER KIESLING: I'm sorry?

18 MR. ADE: I just asked Ms. Capeless who the
19 witness was. I was going to put the name in.

20 MS. CAPELESS: Could you ask me that again?
21 I didn't hear you.

22 MR. ADE: Who is the witness?

23 MS. CAPELESS: The Staff witness? We don't
24 have a Staff witness.

25 MR. ADE: Commissioner, I think Mr. Hill is

1 telling me that I have not accurately stated the
2 Company position. Give us just a second here.

3 COMMISSIONER KIESLING: Sure. (Pause)

4 And in all of this, I see OPC has no dog in
5 this hunt.

6 MR. McLEAN: We're going to put one in.
7 We'll agree with Staff, now that we know what Staff's
8 is. We might even furnish them a friendly witness.

9 COMMISSIONER KIESLING: Okay.

10 MS. CAPELESS: Commissioner, Staff has yet a
11 third sentence to add to our new position, and we also
12 have a reordering of those sentences. So could I read
13 you the whole new position that Staff has?

14 COMMISSIONER KIESLING: Which sentence comes
15 first?

16 MS. CAPELESS: The first sentence is that
17 "The dollar amount is dependent upon the resolution of
18 other issues." The second sentence is new, and that
19 reads: "The parent debt adjustment should be
20 calculated in accordance with Rule 25-14.005."

21 COMMISSIONER KIESLING: You'll have to give
22 me that again.

23 MS. CAPELESS: 25-14.005, Florida
24 Administrative Code. The third sentence is that "The
25 capital structure of the Utility's grandparent should

1 be used to calculate the parent debt adjustment."

2 COMMISSIONER KIESLING: Now, while they're
3 consulting, you can't consult anymore or you'll come
4 up with a fourth sentence. (Laughter)

5 MS. CAPELESS: Thank you.

6 COMMISSIONER KIESLING: You're welcome.
7 You're still in agreement with that Staff position,
8 Mr. McLean?

9 MR. McLEAN: We are, yes, ma'am.

10 MR. ADE: May I try a position? "UWF's
11 capital structure as set forth in Issue 31 is the
12 capital structure of UWF's parent Company," period.
13 "No further adjustment should be made."

14 COMMISSIONER KIESLING: And I take it you've
15 heard the new added sentence that Staff did about rule
16 25-14.005?

17 MR. ADE: I did.

18 COMMISSIONER KIESLING: All right. Then
19 that's 59. 60? (No response.) 61? (No response.)
20 62?

21 MS. CAPELESS: Staff proposes -- or
22 recommends a stipulation on Issue 62. Excuse me. We
23 propose to withdraw this issue entirely.

24 COMMISSIONER KIESLING: Any problem with
25 that, Mr. McLean?

1 MR. McLEAN: No, ma'am, that's fine.

2 COMMISSIONER KIESLING: 63, fallout issue?
3 (No response.) 64?

4 MS. CAPELESS: On 64, Commissioner, we have
5 a few changes. One is that we believe it should have
6 its own heading, and so that this issue -- the heading
7 should change here from "Rates and Rate Structure" to
8 "Jurisdiction," and then the Rates and Rate Structure
9 heading we suggest should come directly before
10 Issue 65, and Staff has a new position for this issue.

11 COMMISSIONER KIESLING: Could I ask a
12 question before we get to the new issue -- I mean, the
13 new position? And my question is, it seems to me that
14 there is a legal question that's missing, and that is
15 legally should the Court's opinions -- and you know
16 the cite that just came out -- have any impact on this
17 case, because that, I think, is a legal issue that we
18 have to pass before we get to Issue 64. Or "does it"
19 as opposed to "should it"? Does it have any impact?

20 MS. CAPELESS: Yes, ma'am. I think it would
21 be a good idea to add that as a legal issue at the
22 end, sure.

23 COMMISSIONER KIESLING: Okay. We'll add an
24 Issue 80. So I want to make sure we all agree on the
25 wording, too: "Does the 1st District Court of

1 Appeal's opinion in -- whatever the SSU was, and you
2 can fill in the cite -- have any impact -- is that a
3 good word -- on this proceeding.

4 And then, Utility, do you have a position on
5 that? I realize it's something new, but I know that
6 you also were told that we were going to be talking
7 about this.

8 I mean, I can give you until Wednesday
9 morning or something to get a position in. I'm not
10 trying to pressure somebody to respond off the cuff.

11 MR. ADE: I'm struggling with the word
12 "impact". I would say certainly it has an impact we
13 need to look at it, but I'm unable to come up with a
14 better word right at this instant. "Does it affect
15 the jurisdiction of the Commission in this
16 proceeding," or something, maybe.

17 COMMISSIONER KIESLING: Well, see, I think
18 that's too specific.

19 MR. ADE: Oh, do you?

20 COMMISSIONER KIESLING: Yes, because in my
21 mind, part of some of the legal issues that arise
22 around this are like the savings clause, whether the
23 imposition of new standards to a pending case would be
24 sort of like a retroactive application, things of that
25 nature. And, I mean, the fact that the opinion is not

1 final I think is also another interesting factor and
2 whether the opinion does overrule Beard, because I
3 think the question is, has anything changed in terms
4 of what has already been an established jurisdiction
5 in St. Johns County over this Utility.

6 MR. ADE: That really is the question.

7 COMMISSIONER KIESLING: And has anything
8 changed. And if you're acquiescing that something
9 has, then --

10 MR. ADE: I think our position would be
11 two-pronged here, Commissioner. First, I think our
12 position will be that those two cases did not change
13 the law as it applied to this Utility. I think our
14 second position --

15 COMMISSIONER KIESLING: Is that "and/or this
16 rate case," because the rate case was obviously filed
17 before any of this ever came about?

18 MR. ADE: Yes, ma'am, and I think we ought
19 to limit what we say to this case too, probably. So
20 it doesn't change the jurisdiction for this rate case.

21 I think the second part of the position will
22 be -- this is a little wordy, but I'm going to say it,
23 then we'll worry about it -- the District Court did
24 address some issues that had not been addressed before
25 and talked about some factual issues that helped them

1 make the determination that they made; and I think
2 that the facts of United Water Florida fit in even
3 with the refined definition that the 1st District made
4 in those two cases.

5 COMMISSIONER KIESLING: Okay; wait. I'm not
6 deleting Issue 64. I'm just trying to put a legal
7 issue in, and it seemed like what you were saying in
8 the second part was saying, yeah, even if it does have
9 an impact, then we still fit it.

10 MR. ADE: That's correct.

11 COMMISSIONER KIESLING: Well, I think that's
12 a fact dependent --

13 MR. ADE: I believe it is.

14 COMMISSIONER KIESLING: -- position as
15 opposed to a legal issue. The legal issue to me is
16 just, does it. And "impact" may not be the right
17 word, but it was the best one I could come up with.

18 MS. CAPELESS: Commissioner, perhaps the
19 word "impact" should be substituted with the word
20 "effect" for the legal issue. So it would read: "Do
21 the 1st DCA's opinions in those new cases have any
22 effect on this proceeding?" Would that be preferable?

23 COMMISSIONER KIESLING: Is that an "E" or an
24 "A", affect like --

25 MS. CAPELESS: "Effect," I think it would

1 be, "E".

2 COMMISSIONER KIESLING: "Effect on this rate
3 case proceeding." Okay. I can live with that one,
4 too.

5 MR. ADE: And I think the Company's position
6 would be "no" on that issue.

7 COMMISSIONER KIESLING: Okay. Just a nice
8 simple no, and it will be brief, because it's a legal
9 issue. Okay. OPC?

10 MR. McLEAN: No position, Commissioner.

11 COMMISSIONER KIESLING: And Staff?

12 MS. CAPELESS: Staff's position would be "No
13 position pending further analysis."

14 COMMISSIONER KIESLING: All right. Then
15 that takes us back to Issue 64 that is under a new
16 heading called "Jurisdiction".

17 MR. ADE: I had not noticed this until right
18 this second, but the statute that is referred to in
19 Issue 64 is the definition of system. And do we want
20 that, or do we want the statute, the 367.171(7), which
21 is the jurisdictional statute, or do we want both?

22 COMMISSIONER KIESLING: Well, that's what
23 I'm trying to figure out now.

24 MR. ADE: Okay. Sorry to interrupt your
25 thought.

1 COMMISSIONER KIESLING: That's fine. I'm
2 not concerned about some way having this issue in, I'm
3 just concerned about the wording of the issue. And if
4 we're calling it a jurisdictional issue, then do we
5 need to reword Issue 64 so it's a jurisdictional issue
6 as opposed to a fact issue on what facts underlie it?

7 While I know you don't have a position on
8 this one, Mr. McLean, you're nodding your head.

9 MR. McLEAN: Well, I was thinking that it
10 just about has to be a jurisdictional issue, because
11 nobody here wants to change, as I can make out. None
12 of the parties seem to want to change to the existing
13 regimen of the rate design. So the only reason we
14 would change it is that if you must change it as a
15 matter of law.

16 So -- and I was thinking -- just sitting
17 here thinking, you know, why are my people going to
18 pay for this fight, because they don't want to change;
19 and apparently not even the Utility wants to change.

20 So unless you have to change it as a matter
21 of law, this shouldn't be changed. So maybe this
22 should be a purely jurisdictional issue. I don't know
23 if that helps or hurts or -- it's just my thought.

24 COMMISSIONER KIESLING: Well, it helps me,
25 but I don't think it helps Staff.

1 MR. McLEAN: The problem is, Commissioner,
2 to be absolutely frank about it, this will add -- it
3 will have an effect on this case, because we're going
4 to spend some money arguing about it, and I think the
5 people I represent don't want to spend that money.

6 COMMISSIONER KIESLING: I agree and --

7 MR. McLEAN: And I do recognize that some of
8 it is absolutely necessary.

9 MS. CAPELESS: Our position is as far as
10 this issue goes, the issue goes to whether or not the
11 Commission continues to have the authority to set the
12 rates in St. Johns County. It's a jurisdictional
13 issue, it's not a rate issue.

14 COMMISSIONER KIESLING: Right. I agree, but
15 nowhere in Issue 64 does it say "Does the Commission
16 continue to have jurisdiction to regulate this Utility
17 in St. Johns County.

18 MS. CAPELESS: We can change the wording of
19 the issue to say just that.

20 COMMISSIONER KIESLING: Okay. I think that
21 would be clearer, because that's where I was having my
22 hangup as we're getting to these factual questions
23 without ever having the preliminary issues that we
24 have to get past first. And there's no reason to find
25 out about the facilities and land unless someone is

1 taking a position that jurisdiction is lost.

2 Okay. So let's work together on the
3 wording, because, I mean, I know that I've already
4 had -- and I'll make it clear to the parties -- I've
5 already had extensive discussions with Staff about
6 this because I was uncomfortable with this issue. So
7 I want to come up with an issue or issues that are
8 stated in a way that all the parties find palatable.

9 **MS. CAPELESS:** And, Commissioner, Staff will
10 have an updated position to the issue by Tuesday
11 before the order issues. We'll make every effort to
12 do that.

13 **COMMISSIONER KIESLING:** Or we can break it
14 into a two-part issue and have it be a 64(a) and
15 64(b), 64(a) being "Does the Commission continue to
16 have jurisdiction over United Water Florida's
17 facilities and land in St. Johns County?" And if
18 everyone's position is yes, then we'll find out. But
19 can we do a 64(a) right now and see what everyone's
20 position is on that?

21 **MS. CAPELESS:** Yes, ma'am, and Staff's
22 position would be yes on that.

23 **COMMISSIONER KIESLING:** Okay. Let me see.
24 64(a), "Does the Commission continue to have
25 jurisdiction --

1 MS. CAPELESS: Commissioner, I
2 misunderstood. We still don't have a position as to
3 64(a). It would still be one that we would need to
4 work on and try to have for you by Tuesday.

5 COMMISSIONER KIESLING: Oh, okay. But let's
6 get the issue. "Does the Commission continue to have
7 jurisdiction over UWF's facilities -- or system and
8 services? I mean, I'm not trying to -- do we have
9 jurisdiction over the Utility, or over its services
10 and systems?

11 MS. CAPELESS: According to the statute,
12 it's over the facilities and land, isn't it?

13 MR. ADE: Subsection 7 says: "The Commission
14 shall have -- I'm not starting at the beginning. "The
15 Commission shall have exclusive jurisdiction over all
16 Utility systems whose service transverses county
17 boundaries."

18 COMMISSIONER KIESLING: So "over UWF's
19 systems."

20 MR. ADE: One.

21 COMMISSIONER KIESLING: System?

22 MR. ADE: Yes, ma'am. It's very important.
23 It has to be a system. No, it really has to be a
24 system.

25 COMMISSIONER KIESLING: Well, and Beard has

1 already said it is.

2 MR. ADE: Yes.

3 COMMISSIONER KIESLING: "System in St. Johns
4 County."

5 Okay. Does everyone find this to be an
6 adequate wording of 64(a)? "Does the Commission
7 continue to have jurisdiction over United water
8 Florida's system in St. Johns County"?

9 MS. CAPELESS: Yes, ma'am, and that should
10 be a legal issue? Do we want to move that over to the
11 section that addresses legal questions?

12 COMMISSIONER KIESLING: Well, we could do
13 that, and then it wouldn't be a 64(a), it would be an
14 81.

15 MS. CAPELESS: Correct.

16 COMMISSIONER KIESLING: What do you all
17 think about that?

18 MR. McLEAN: I agree. Sounds like a legal
19 issue.

20 COMMISSIONER KIESLING: It does seem like a
21 legal issue to me, too.

22 MR. ADE: I've given a little thought to how
23 we might brief this, and I wonder if it isn't a mixed
24 question of law and fact in real life.

25 COMMISSIONER KIESLING: Well, that was why I

1 was going to leave it under 64 and have a 64(a) and a
2 64(b); first the 64(a), and then 64(b) would be "Are
3 the facilities and land functionally related," et
4 cetera.

5 MS. CAPELESS: That would be fine with
6 Staff, if you prefer it.

7 COMMISSIONER KIESLING: Which I see it as a
8 mixed question.

9 MR. ADE: I think it's a mixed question.

10 COMMISSIONER KIESLING: That's okay?

11 MS. CAPELESS: That's fine with Staff.

12 COMMISSIONER KIESLING: Okay. Well, let me
13 do the first part, then. I take it that United
14 Water's position on whether the Commission continues
15 to have jurisdiction is "yes"?

16 MR. ADE: Yes, ma'am.

17 COMMISSIONER KIESLING: And OPC?

18 MR. McLEAN: No position, Commissioner.

19 COMMISSIONER KIESLING: And Staff is also
20 "No position pending further analysis"?

21 MS. CAPELESS: Yes, ma'am.

22 COMMISSIONER KIESLING: And then 64 would
23 become 64(b), right?

24 MR. ADE: Yes, ma'am. And what statute do
25 we want in there?

1 COMMISSIONER KIESLING: Yes. Because it
2 seems to me -- I tend to agree with Mr. Ade that the
3 statute reference in what is going to be 64(b) should
4 be to the jurisdictional statute and not to the
5 definitions.

6 MS. CAPELESS: Commissioner, can we have
7 just a few minutes off the record?

8 COMMISSIONER KIESLING: Sure. And, again,
9 I'm sorry for bringing this up. I know I hadn't even
10 told you all about my thinking during lunch after I
11 had my last conversation, so I didn't have a way to
12 prewarn you.

13 MS. CAPELESS: That's fine, thank you.

14 MR. ADE: While we're taking a little break,
15 let me raise another point on this. Should we pull
16 this issue out, the (a) and (b), and make it -- call
17 it an issue of law and fact? And we can ponder that
18 while we're pondering.

19 COMMISSIONER KIESLING: Yes, let's ponder
20 that. My other thought was to move it after the legal
21 issue so that 80 and 81 lead right into it, or 80
22 leads right into it, even though the numbering will
23 look pretty weird; but that's the least of the my
24 worries.

25 In fact, we've been at this for almost two

1 hours. While Staff is considering, why don't we go
2 ahead and take a ten-minute break and we'll come back
3 and finish up. Ten minutes, then. Come back at 3:00.

4 (Brief recess.)

5 - - - - -

6 COMMISSIONER KIESLING: Are we ready to
7 reconvene?

8 MS. CAPELESS: Staff is ready to reconvene.
9 Commissioner Kiesling, Staff would like to propose
10 wording for Issues 64(a) and 64(b) as follows: 64(a)
11 would read: "Do United Water Florida's facilities and
12 land in Duval, Nassau and St. Johns Counties
13 constitute a single system as defined in Section
14 367.021(11), Florida Statutes?"

15 COMMISSIONER KIESLING: So how is that a
16 jurisdictional question, then?

17 MS. CAPELESS: Well, because St. Johns
18 County is included in the analysis, and then maybe if
19 I read "b", it will help to clarify what we're trying
20 to do.

21 COMMISSIONER KIESLING: Okay.

22 MS. CAPELESS: "b" would read: "Does the
23 Commission continue to have jurisdiction over United
24 Water Florida in St. Johns County pursuant to Section
25 367.171(7), Florida Statutes?"

1 **COMMISSIONER KIESLING:** And you think that
2 one of those should be after the other?

3 Hold on. My phone is ringing. I have to go
4 take a phone call. I'll be right back. (Pause)

5 Okay. Are we ready to begin? Where are we?

6 **MS. CAPELESS:** We are at Issue 64.

7 **COMMISSIONER KIESLING:** I know that.

8 **MS. CAPELESS:** And we were at the point
9 where Staff was proposing some new language to the
10 issue.

11 **COMMISSIONER KIESLING:** And I was asking
12 whether the jurisdiction question should be after the
13 facilities and lands or before it, and it seemed to me
14 that we don't have to get to the facility and lands if
15 the Commission answers yes to the jurisdiction
16 question. So shouldn't they be in that order?

17 **MS. CAPELESS:** That would be fine. We could
18 do that.

19 **COMMISSIONER KIESLING:** I mean, I just
20 didn't know why we had switched them. So 64(a), then,
21 is: "Does the Commission continue to have
22 jurisdiction over United Water Florida's system in --
23 and are we naming all the counties, or just St. Johns?

24 **MS. CAPELESS:** Just St. Johns, I think,
25 would be fine.

1 COMMISSIONER KIESLING: And then what's
2 64(b)?

3 MS. CAPELESS: "Do United Water Florida's
4 facilities and land in Duval, Nassau and St. Johns
5 County constitute a single system as defined in
6 367.021(11)?"

7 COMMISSIONER KIESLING: Okay. "Do United
8 Water Florida's facilities and land in Nassau, Duval
9 and St. Johns -- that may not have been the order you
10 had them in.

11 MS. CAPELESS: Those are the correct
12 counties, right.

13 COMMISSIONER KIESLING: "St. Johns
14 Counties."

15 MS. CAPELESS: "Constitute a single system
16 as defined in Section 367.021(11), Florida Statutes."

17 COMMISSIONER KIESLING: Okay. And so I'm
18 sure I understand, 64(b), that is essentially applying
19 in this case the standard, or the additional criteria,
20 that were enunciated by the 1st DCA in the SSU orders
21 that are not final?

22 MS. CAPELESS: I think the answer to that
23 question will be dependent upon how the new legal
24 issue is resolved, new Issue 81.

25 COMMISSIONER KIESLING: Okay. And is there

1 any way that Staff or the parties can see that we can
2 resolve the legal issue either at the beginning of or
3 before the hearing so that if the legal issue is
4 resolved, that we don't have to take evidence on all
5 the other stuff?

6 If the legal issue is resolved that it has
7 no impact on this current rate proceeding, then we
8 don't need to take evidence, right? So is there a way
9 to do that before we get there, or are we just going
10 to have to add to the burden of the record?

11 MS. CAPELESS: Staff will make every effort
12 to have our legal position before the beginning of the
13 hearing, and even before the prehearing order issues,
14 if we possibly can.

15 COMMISSIONER KIESLING: And let me just say,
16 maybe the best thing to do since -- I mean, is to
17 maybe let the parties file a memorandum, say, by
18 Wednesday morning if they want any input on the legal
19 question. Would that be of any help? Is that of any
20 help to you? Or do you want to go ahead and litigate
21 the whole thing during the proceeding, including the
22 fact stuff?

23 MR. ADE: Commissioner, I'm afraid we can't
24 resolve the legal issue without the fact issue, and
25 here's why I say that. 367.171(7) says: "The

1 Commission shall have exclusive --

2 COMMISSIONER KIESLING: Wait, wait. I'm
3 still talking about the issue back here of do these
4 cases have any effect on this rate proceeding. That's
5 purely a legal issue, that if we resolve that it does
6 not, then we don't ever get to 64(a) or (b). I'm
7 not --

8 MR. ADE: I understand. I did not
9 understand, but now I understand. You're saying now
10 they're not final, these are --

11 COMMISSIONER KIESLING: Well, I'm not saying
12 anything. Staff is going to look at it.

13 MR. ADE: I mean, the issues, the questions.

14 COMMISSIONER KIESLING: Right. And try to
15 figure out more clearly their position on the legal
16 issue, because right now they have no position pending
17 further analysis. And if you want to, you know, also
18 file some kind of memorandum. If in the end we all
19 are in agreement -- if in the long run it turns out
20 that Staff is in agreement with me that it doesn't
21 have any impact, then we may have no Issue 64 at all
22 before the hearing, or we may take all of that
23 information to the whole Commission at the beginning
24 of the hearing, let the Commission decide the legal
25 issue up front, and that would help us know what

1 evidence and what cross everybody needs to do.

2 MR. ADE: I would certainly hate for us to
3 have to appeal this case twice --

4 COMMISSIONER KIESLING: Me, too.

5 MR. ADE: -- if it's appealed; even once,
6 you know, which it may not be. But it seems like the
7 best way for us to avoid that would be to deal with
8 the legal issue and say we don't think it applies, or
9 we do, and if it does, here's the end result.

10 COMMISSIONER KIESLING: So you don't want
11 the Commission to rule on the legal issue before the
12 hearing, you want to go ahead and try all the facts
13 even if the legal issue is resolved ultimately that
14 you didn't need all those facts and all that cross?

15 MR. ADE: Commissioner, I'm too well-bred to
16 ever turn down a ruling in my favor. (Laughter)

17 COMMISSIONER KIESLING: I mean, I'm not
18 trying to keep anybody from saying whatever they need
19 to say at the hearing, but I'm trying to get -- I want
20 the hearing to be as streamlined as possible so that
21 we don't have to have a bunch of evidence in the
22 record if it doesn't relate to an issue and if we can
23 resolve that at the beginning of the hearing. Is that
24 a possibility?

25 I mean, I'm not trying to railroad Staff

1 either, although I know that I have a difference of
2 opinion from Staff on this.

3 MS. CAPELESS: Commissioner, can we research
4 the issue and get back with you on Wednesday as to
5 what the best method would be, and we'll make a
6 recommendation by then?

7 COMMISSIONER KIESLING: Sure. Okay.

8 MR. ADE: We'll do that.

9 COMMISSIONER KIESLING: Does that give you
10 enough time? I realize that this is Friday and
11 there's a long weekend, but if you get something in in
12 terms of a memo on whether you think -- on what your
13 research shows on the legal issue, Staff can, too; and
14 then once we see that, I may just refer it to the
15 whole Commission but at the beginning of the hearing.

16 MS. CAPELESS: Thank you.

17 MR. ADE: And we're really talking about
18 Issue 80, right?

19 COMMISSIONER KIESLING: Yes. And, see, that
20 was going to be my next -- I had one other question
21 about the order, that maybe it would be just for the
22 order to flow better that we should, instead of having
23 jurisdiction right before rate structure and after
24 revenue requirements -- Rosanne, are you with me?

25 MS. CAPELESS: I'm sorry. Could you repeat

1 that?

2 COMMISSIONER KIESLING: I was also thinking
3 that instead of having jurisdiction fall between
4 revenue requirement and rates and rate structure, that
5 maybe we ought to pull 64 out and put it back here at
6 the end after the legal issue and call it
7 "Jurisdiction".

8 MS. CAPELESS: Yes, ma'am, that would be
9 fine.

10 COMMISSIONER KIESLING: And even though we
11 usually do jurisdiction at the front of it, this is a
12 real unusual situation. And then one other thought
13 just came to me. We could indicate that Issue 64 is
14 withdrawn and just renumber this as 81(a) and (b) so
15 that the numbering stays the same. What do you think
16 about that?

17 MS. CAPELESS: I think that would be
18 preferable.

19 COMMISSIONER KIESLING: Everybody is okay
20 with that?

21 MR. McLEAN: Yes, ma'am.

22 COMMISSIONER KIESLING: Mr. Ade?

23 MR. ADE: Yes, ma'am, good idea.

24 COMMISSIONER KIESLING: Okay. Then 64 is
25 going to be withdrawn and a whole new section is going

1 to go in here; 81(a) and 81(b).

2 Okay. Then the last thing to do is on the
3 question 81(b) of "Do the facilities and land in those
4 counties constitute a single system" is to get
5 people's positions. Utility, I take it yours is yes?

6 MR. ADE: Yes.

7 COMMISSIONER KIESLING: You have no
8 position?

9 MR. McLEAN: No position, and we won't be
10 taking a position, Commissioner.

11 COMMISSIONER KIESLING: Yes. And Staff is
12 "No position pending analysis"?

13 MS. CAPELESS: Yes, ma'am.

14 COMMISSIONER KIESLING: Well, good. I feel
15 much better.

16 MS. CAPELESS: Me, too.

17 COMMISSIONER KIESLING: Okay. Now we're on
18 to 65.

19 MR. ADE: Are we going to have an 81(b)?

20 COMMISSIONER KIESLING: Yes, we do. That
21 was 81(b) 81(a) is "Does the Commission continue to
22 have jurisdiction?" 81(b) is "Do the facilities and
23 land constitute a single system?"

24 MR. ADE: Commissioner, this may not make
25 any substantive difference, but it seems to me to be

1 maybe a little softer. I'm just going to say it and
2 we can work the words. "Do the SSU cases affect the
3 Commission's jurisdiction over the facilities in
4 St. Johns County?" Because the 1st District has
5 already held that you have jurisdiction.

6 COMMISSIONER KIESLING: That's why I had
7 "Does the Commission continue to have jurisdiction,"
8 because I wanted the implication to be in there that
9 we have it.

10 MR. ADE: Right.

11 COMMISSIONER KIESLING: I'm not sure that
12 what you just said totally encompasses the whole
13 picture.

14 MR. ADE: Okay.

15 COMMISSIONER KIESLING: I think we'll leave
16 it the way it is and try to work with that rather than
17 wordsmithing anymore.

18 Then a new section; Rates and Rate
19 Structure. Issue 65, any change?

20 MS. CAPELESS: Staff has none.

21 COMMISSIONER KIESLING: 66?

22 MS. CAPELESS: Staff can recommend a
23 stipulation on Issue 66 if the Utility is willing to
24 identify what is Mr. Gradilone's late-filed Deposition
25 Exhibit No. 5 as an exhibit, which is a study titled

1 "An Approach to Rate Design," authored by
2 Mr. Sambamurthi and Heil.

3 MR. ADE: That stipulation will be fine.

4 MS. CAPELESS: Thank you. Then we would
5 propose that the stipulation, the language to the
6 stipulation should read "United Water Florida's
7 methodology of calculating the residential and general
8 service base facility charges should be continued as
9 defined in that study, 'An Approach to Rate Design'."

10 MR. ADE: That's fine.

11 COMMISSIONER KIESLING: And this is another
12 one you don't take a position on?

13 MR. McLEAN: Yes, ma'am. We won't join in
14 the stipulation, but we have no objection to it.

15 COMMISSIONER KIESLING: Then how about 67?

16 MS. CAPELESS: We have no changes.

17 COMMISSIONER KIESLING: 68?

18 MS. CAPELESS: No changes.

19 COMMISSIONER KIESLING: 69?

20 MS. CAPELESS: No changes.

21 COMMISSIONER KIESLING: You don't need to
22 say it to every one. I just kind of listen for a
23 second.

24 MS. CAPELESS: Okay. Thank you.

25 COMMISSIONER KIESLING: 70? (No response.)

1 I have a question on 70. It seems to me that this is
2 just a nonissue. No one is indicating that there is a
3 reuse plan or any plans for a reuse plan that we need
4 to deal with in this case, and so I'm trying to
5 understand. The issue is, "Is the reuse rate
6 appropriate and, if so, what is the appropriate reuse
7 rate." And everyone's answer is, a reuse rate is not
8 appropriate because they don't have a reuse program.

9 MS. CAPELESS: We could recommend that to be
10 a stipulation provided it also says that United Water
11 Florida should file an application with the Commission
12 for a reuse rate prior to providing that service.

13 COMMISSIONER KIESLING: Is that in doubt?

14 MR. ADE: What was your question?

15 COMMISSIONER KIESLING: That the Utility
16 would file an application with the Commission for a
17 reuse rate prior to providing reuse services.

18 MR. ADE: And what was your question?

19 COMMISSIONER KIESLING: Is that in doubt?
20 Are you in doubt that you would have to file an
21 application with the Commission before you implemented
22 a reuse rate?

23 MR. ADE: No, ma'am.

24 MR. McLEAN: Rate, but not service.

25 COMMISSIONER KIESLING: What about service?

1 Are you in doubt about that?

2 MR. ADE: Let me tell you what our problem
3 is here, what we've all been trying to work around.
4 We have a contract to provide reuse service, if a
5 number of things happen, to a golf course. The
6 contract says we won't charge for the service. The
7 contract also says we won't ask the Commission to
8 allow us to charge for a service. The contract also
9 says if the Commission institutes a service -- I mean,
10 a charge for that service and incorporates it in our
11 tariff, the customer will pay it, so --

12 COMMISSIONER KIESLING: Will or won't?

13 MR. ADE: Will pay it. So we simply cannot
14 get in the position of allowing that customer to ever
15 think that we have come to the Commission and by some
16 slight of hand asked them to impose some rate. But
17 there's no doubt we can't charge a rate without a
18 tariff provision.

19 COMMISSIONER KIESLING: And you don't think
20 zero isn't a rate?

21 MR. ADE: Zero could be a rate if you
22 imposed a zero rate.

23 COMMISSIONER KIESLING: Well, that's my
24 point. I think that's Staff's point. I don't know.

25 MS. CAPELESS: Yes, ma'am.

1 **COMMISSIONER KIESLING:** But I see a lot of
2 heads nodding up and down. I guess it's Staff's
3 position that you cannot institute reuse services even
4 at a rate zero without filing an application with the
5 Commission.

6 **MR. ADE:** I don't think there's any doubt
7 about that, but we have a contract to do that.

8 **COMMISSIONER KIESLING:** And before you start
9 providing that service, you're going to come back in
10 on a limited proceeding and say, we have an
11 application for reuse rate and it's going to be zero
12 for this customer?

13 **MR. ADE:** I guess that's what we'll have to
14 do.

15 **COMMISSIONER KIESLING:** Okay. With that
16 acquiescence, do we have a stipulation?

17 **MS. CAPELESS:** Yes, ma'am, we can recommend
18 a stipulation in that case.

19 **MR. McLEAN:** Let me be the odd man out just
20 for a moment. Here's the scenario: They line up a
21 reuse customer, and the reuse customer is willing to
22 take the service. The Utility says to them, we can't
23 give you service until we have a rate from the
24 Commission. They begin that process, and in the
25 meantime the potential customer goes to the Water

1 Management District, gets a withdrawal permit, and we
2 lose the customer -- or they lose the customer.

3 And I'm a little concerned about that. I'm
4 concerned about this process standing in the way of
5 their acquiring a reuse customer.

6 COMMISSIONER KIESLING: Isn't it just a
7 question of timing? At the point that you know you're
8 getting -- you know, this customer is getting close to
9 being ready to accept the service, you can't file a
10 limited proceeding then, so that when you turn the
11 service on you've got a rate, even if it's zero?

12 MR. McLEAN: I would hope so. I would like
13 to see it so that the moment that a reuse customer
14 shows up, that that customer can be served, and then
15 we come over here -- or they come over here and get
16 the pot right on the rate, but I hate to see this
17 process stand --

18 COMMISSIONER KIESLING: Yes. I do not want
19 this process or any other process to stand in the way
20 of reuse, because it has been a stated policy of this
21 state to encourage use, and that's what I think we
22 should be doing.

23 MS. CAPELESS: Commissioner, we might add
24 that the Company could file for the reuse rate as a
25 new class of service under -- as a tariff filing, new

1 class of service under 367.091(5), which allows for
2 the Utility to begin the service as long as they file
3 the application within 10 days of beginning the
4 service provision.

5 COMMISSIONER KIESLING: That solves your
6 problem, doesn't it, Mr. McLean?

7 MR. McLEAN: Yes, ma'am.

8 MS. CAPELESS: I'm sorry. Let me correct
9 it. It's subparen 4. I said 367.091(5). It's
10 subparen 4.

11 MR. ADE: I really wonder if this whole
12 issue ought to be withdrawn. It's a nonissue in this
13 case, it seems to me, and I really hesitate to enter
14 into any kind of a stipulation that somebody else can
15 later take and put their interpretation on and say,
16 you breached our agreement. There's no reason for us
17 to enter into such a stipulation in this case.

18 COMMISSIONER KIESLING: I'm not asking you
19 to. I thought we were talking about that the issue
20 would be moot as long as it was -- the Company
21 recognized that before they could start having a reuse
22 rate, that they had to file an application, and that
23 could be through the form of a new class of service,
24 and have a zero rate. That doesn't matter.

25 MR. ADE: And if the Commission enters an

1 order like that, we don't have any problem with that.
2 We just don't want to stipulate something that someone
3 may later say is a violation of our agreement with
4 them.

5 COMMISSIONER KIESLING: There is no
6 agreement. There is no stipulation if the issue is
7 moot. Am I right?

8 MS. CAPELESS: Yes, I believe so.

9 COMMISSIONER KIESLING: And let me just say
10 this: It seems to me that the language Staff wants to
11 put on here isn't responsive to the issue.

12 MS. CAPELESS: We just basically wanted to
13 let the Utility know that it's its burden to come in
14 and file for that rate, if not prior to providing the
15 service, then at least as a new class of service
16 within 10 days of having begun providing it.

17 MR. ADE: We understand.

18 COMMISSIONER KIESLING: You understand that?

19 MR. ADE: Yes, ma'am.

20 COMMISSIONER KIESLING: Can't we withdraw
21 the issue?

22 MS. CAPELESS: Then we can withdraw the
23 issue, yes, ma'am.

24 COMMISSIONER KIESLING: Okay. 71?

25 MR. McLEAN: 71, Commissioner, is the last

1 item on our handout. We want a paragraph added at the
2 end of our position, please, ma'am. And the witness
3 should remain the same. We can move Larkin to the end
4 of the paragraph.

5 COMMISSIONER KIESLING: I just have one
6 question. The word "prudence" is capitalized.

7 MR. McLEAN: It should not be.

8 COMMISSIONER KIESLING: Okay. I didn't know
9 if I was missing a sentence.

10 MR. McLEAN: No, ma'am.

11 COMMISSIONER KIESLING: Okay. That's added,
12 but there's no change in anyone else's positions. So
13 72; any change? (No response.) 73? (No response.)
14 74? (No response.) 75? (No response.)

15 MS. CAPELESS: In 75, Commissioner, it looks
16 like we may be able to reach a stipulation or have
17 Staff recommend one, but only if the Utility would be
18 willing to change its position to coming in in two
19 years to file the service availability rather than
20 waiting until the next rate case. That's the
21 difference there between those two positions.

22 MR. ADE: Can we have just a moment?

23 COMMISSIONER KIESLING: Sure. (Pause)

24 MR. ADE: Would the Staff negotiate for
25 three years? (Laughter) (Pause)

1 MS. CAPELESS: We'll go to three years.

2 COMMISSIONER KIESLING: Okay. So it will be
3 a stipulation. What will the stipulation say?

4 MS. CAPELESS: The stipulation will read:
5 "United Water Florida will file a service availability
6 case within three years after the rate case order is
7 issued."

8 COMMISSIONER KIESLING: The issue is should
9 their service availability charges be uniform. So I
10 guess the stipulation was, while they should not be
11 uniform -- or they should not be made uniform at this
12 time, they should file a rate of service availability.

13 MS. CAPELESS: Yes, ma'am, that's better.

14 COMMISSIONER KIESLING: Okay. And would you
15 finish out your sentence again for me? "File a
16 service availability study"? Or was it --

17 MS. CAPELESS: The second part of the
18 stipulation?

19 COMMISSIONER KIESLING: Yes.

20 MS. CAPELESS: "The Utility will file a
21 service availability case -- application is better.
22 "File a service availability application within three
23 years after the current rate case order is issued."

24 COMMISSIONER KIESLING: Okay. You don't
25 have a position on that one?

1 MR. McLEAN: No, ma'am, but I assume that
2 the order would tell them to file that case within
3 three years; is that right?

4 COMMISSIONER KIESLING: Yes. I thought the
5 stipulation was going to say essentially that the
6 service availability charges should not be made
7 uniform at this time, but that United Water Florida
8 shall file or will file a service availability
9 application within three years after the current rate
10 case order is issued.

11 MR. McLEAN: No position, then.

12 COMMISSIONER KIESLING: That's a
13 stipulation. So that's their agreement to do it;
14 okay? 76?

15 MS. CAPELESS: In Issue 76 Staff proposes an
16 addition to the language in the issue so that at the
17 end of the sentence we would add "and if so, in what
18 amount." And then if we do that, we would add to our
19 position as well.

20 COMMISSIONER KIESLING: Okay.

21 MS. CAPELESS: A sentence at the end of our
22 position to read: "The charges would be dependent
23 upon the resolution of other issues."

24 COMMISSIONER KIESLING: Okay. And does the
25 Utility have an amount in mind right now, or do you

1 need to give us your response to the "if so, in what
2 amount" part?

3 MR. ADE: We need to give it to you,
4 Commissioner.

5 COMMISSIONER KIESLING: Okay. Again, can
6 you get it over here like on Wednesday, Wednesday
7 morning or whatever?

8 Okay. 77, any changes? (No response.) 78?
9 (No response.) 79? (No response.)

10 And we've agreed on the language for 80 and
11 we've agreed a new section called Jurisdiction with an
12 81(a) and 81(b) issues.

13 Then exhibits; any changes, additions,
14 corrections to the exhibits listed for your witnesses?

15 MR. ADE: One exhibit I would like for us to
16 talk about a little bit is the rate case expense
17 exhibit. We have filed a late-filed exhibit to
18 somebody's request that Public Counsel and the Staff
19 both have that carried us basically through the end of
20 the year. And we would like to just work out a
21 procedure to get that into evidence or maybe file a
22 late-filed exhibit to bring that up to date at some
23 point in time, or however you prefer to handle that.

24 COMMISSIONER KIESLING: What I don't want is
25 for us to end up where we were with Southern States

1 where a bunch of it gets knocked out because they
2 didn't file it timely. So how does Staff expect this
3 to be handled so everyone is clear?

4 MS. CAPELESS: Does the Utility want to
5 update the exhibit that you've already filed, or the
6 potential exhibit that you've already filed on rate
7 case expense?

8 MR. ADE: The answer to that really depends
9 on what you all -- you know, we've given you actual
10 through December 31 and a projection from that point
11 forward. When the hearing is over, or even when we
12 file the briefs, we'll be glad to give you an update
13 of actual on that, if you would like it; and if you
14 don't, we'll just put in what we've got now and use
15 the projected.

16 COMMISSIONER KIESLING: And let me ask,
17 would it be accurate to believe that if we approve the
18 projected and the actual comes in lower, that we'd be
19 happy to cut the amount down?

20 MS. CAPELESS: What we would like the
21 Utility to file, have filed before the hearing,
22 preferably at least a couple of days before the
23 hearing, is an exhibit showing everything that they've
24 incurred to date plus an estimate to complete the
25 case.

1 COMMISSIONER KIESLING: So that would be up
2 through like just a couple days before the hearing.
3 You want actual --

4 MS. CAPELESS: Or they could estimate to
5 complete up through the hearing, including the
6 hearing. They could estimate the costs that will be
7 involved in presenting their case at hearing and the
8 estimate to complete.

9 COMMISSIONER KIESLING: And if their
10 estimates are reasonable and we award that, and it
11 turns out that their actuals were lower, we don't
12 care? I care.

13 MR. McLEAN: We care.

14 COMMISSIONER KIESLING: I mean, that's where
15 my problem comes in with trying to understand how we
16 do projected expenses for something like this.

17 MR. McLEAN: Commissioner, it seems like we
18 used to accept -- or you used to ask for a late-filed
19 exhibit which had actuals in it sometime after the
20 hearing, but perhaps before the briefs were due, or
21 contemporaneous with the brief, with an opportunity to
22 the affected parties to respond to it in writing.

23 COMMISSIONER KIESLING: And my long-term
24 institutional memory here is much shorter than yours,
25 perhaps, Mr. McLean, because I don't know what

1 procedure we use. All I know is that it got messed up
2 in Southern States, and it was unfortunate.

3 MS. CAPELESS: Can we propose to go off the
4 record just a minute or two and explain to the Company
5 what our general procedures have been, and then
6 continue on?

7 COMMISSIONER KIESLING: We can go off the
8 record, but I'd like to hear what our procedures are,
9 because I don't understand them. (Laughter)

10 I mean, we don't necessarily have to take it
11 down, but I don't know why we don't want to take it
12 down either.

13 MS. CAPELESS: I think Staff needs to clue
14 me in, Commissioner.

15 COMMISSIONER KIESLING: Oh, okay. Well,
16 then how about after Staff clues you in, then you can
17 clue us all in.

18 MS. CAPELESS: Thank you.

19 COMMISSIONER KIESLING: We'll go off the
20 record until then.

21 (Discussion off the record.)

22 COMMISSIONER KIESLING: All right. Are you
23 ready to go back on?

24 MR. ADE: Yes, ma'am.

25 MS. CAPELESS: What Staff needs is one

1 exhibit sometime before the hearing showing actual
2 rate case expense incurred from day one up until the
3 date that the exhibit is filed, and then an estimate
4 to complete the case showing expenses that they
5 estimate will be incurred through completion of the
6 case.

7 And that is not something that the
8 Commission has ever trued up before. We've never
9 trued up the estimate to complete to actual after the
10 fact.

11 But the Utility has given us some documents,
12 but what we want is, we want it in the form of one
13 exhibit starting from day one through the estimate to
14 complete, and what we're going to need is all the
15 support behind that, including time sheets for all the
16 employees, invoices for the temporary employees,
17 support for all the expenses incurred or estimated to
18 be incurred in that one exhibit.

19 COMMISSIONER KIESLING: And we don't have
20 that already up to some point?

21 MS. CAPELESS: We have it in bits and
22 pieces. We need it to be compiled into one exhibit.

23 COMMISSIONER KIESLING: Okay. Do you see
24 that as any problem?

25 MR. ADE: The only little problem I see is

1 that for outside people, getting this information up
2 to the last minute isn't real easy; and I'm just not
3 sure that we're going to gain much by trying to bring
4 that up -- I would say probably the latest it could be
5 done in the four working days that are left, plus
6 writing a brief, plus getting ready -- you know, it's
7 just -- we might bring it up to January 15th, but that
8 would just be the absolute closest we could get, I
9 think, in actual. I just know how much time it takes
10 us just to prepare our part of it.

11 COMMISSIONER KIESLING: That's what
12 associates are for.

13 MR. ADE: But they work on other things,
14 too. But, you know, it does take some time, and then
15 they talk about filing it before the hearing. So
16 you're talking about filing it a week from today.

17 COMMISSIONER KIESLING: No -- yes. We're
18 talking about filing it next Friday.

19 MR. ADE: That's a week from today.

20 MS. CAPELESS: Correct; as soon as possible.
21 That's what we wanted, the Utility to file it
22 initially in what we've got in bits and piece of; but
23 what we really were looking for and continue to look
24 for is one exhibit showing all that. And what your
25 cutoff date is for actual, you know, is up to you as

1 long as when you continue on with your estimate to
2 complete that you provide all the supporting
3 documentation.

4 MR. ADE: Can we use December 31 as a cutoff
5 date? Not a problem?

6 COMMISSIONER KIESLING: All right.

7 MS. CAPELESS: That's fine.

8 MR. ADE: So what we're really talking about
9 is putting together into one package what you already
10 have?

11 MS. CAPELESS: Essentially.

12 MR. ADE: Essentially?

13 MS. CAPELESS: For an exhibit to be put into
14 the record.

15 MR. ADE: Right.

16 MS. CAPELESS: By the Company.

17 MR. ADE: That's fine. We'll give you
18 anything you want that we can get together in time...

19 COMMISSIONER KIESLING: Which witness do you
20 anticipate sponsoring that exhibit?

21 MR. ADE: Well, right now I think we have
22 Matt Jost. I'm look for his exhibit number.

23 COMMISSIONER KIESLING: I don't see one
24 under his name, so you must have something in here
25 already on --

1 MR. ADE: On Page 46.

2 MS. CAPELESS: That would be in the rebuttal
3 portion?

4 COMMISSIONER KIESLING: We're taking
5 rebuttal and direct together.

6 MR. ADE: Well, is this rebuttal exhibits
7 here?

8 COMMISSIONER KIESLING: Yes.

9 MR. ADE: Oh, it sure is. Well, maybe that
10 isn't where it belongs. Maybe he belongs up front.
11 Anyway we would call it -- he has filed his rebuttal
12 testimony with Exhibits MJ-1, 2, and 3, and I was just
13 suggesting we make this MJ-4 and call it Rate Case
14 Expense Exhibit. Now, maybe it doesn't belong on
15 Page 46.

16 COMMISSIONER KIESLING: Well, we're taking
17 rebuttal and direct together, so I was going to
18 suggest to Staff that they re-order the exhibits so
19 that they're all together for each witness, since
20 we're going to take direct and rebuttal at the same
21 time, and just add one in then for MJ-4 as being
22 composite of actual and projected rate case expense.

23 MS. CAPELESS: We can do that. Staff needs
24 to have that exhibit by Wednesday the 22nd instead of
25 Friday, if at all possible.

1 **COMMISSIONER KIESLING:** Can we go for
2 Thursday, strike a bargain?

3 **MS. CAPELESS:** We've got to write cross
4 questions on the late case expense exhibit. That's
5 the concern.

6 **MR. ADE:** We'll trying to get it to them
7 Wednesday.

8 **COMMISSIONER KIESLING:** I didn't know how
9 long it would take you to compile, since all this is
10 a --

11 **MR. ADE:** I think we've got it.

12 **COMMISSIONER KIESLING:** -- this is only a
13 compilation activity, not a creating new information
14 activity.

15 **MS. CAPELESS:** And then I would only add
16 that we would like to reflect that Mr. Gradilone's
17 Late-filed Exhibit No. 5 to his deposition be included
18 as an exhibit.

19 **COMMISSIONER KIESLING:** Okay. Can I go back
20 to -- was there anything more you had to add on the
21 rate case expense exhibit?

22 **MR. ADE:** No, ma'am.

23 **MR. McLEAN:** But, Commissioner -- I'm sorry.
24 Go ahead. I didn't mean to interrupt. Well, I'm sure
25 if I remember to do so, that I will move at the end of

1 the hearing an actual for true-up purposes. I don't
2 think it's correct for them not to true it up, but
3 I'll move for a late-filed exhibit at that time and
4 take my chances on it.

5 COMMISSIONER KIESLING: Good. You can take
6 that up with the Chairman. I don't have to deal with
7 it. (Laughter)

8 MR. McLEAN: I just didn't want to sit here
9 acquiescent.

10 COMMISSIONER KIESLING: Okay. You were not
11 stipulating to the contents of this exhibit --

12 MR. McLEAN: Right.

13 COMMISSIONER KIESLING: All I'm doing is
14 trying to get the numbering.

15 MR. McLEAN: Yes, ma'am.

16 COMMISSIONER KIESLING: Okay. Now, you were
17 on another exhibit. Which page and what witness?

18 MS. CAPELESS: Yes, ma'am. We would add to
19 Mr. Gradilone's exhibits, which --

20 COMMISSIONER KIESLING: Rebuttal or -- did
21 he have any? Oh, he had a whole bunch of rebuttal
22 ones, so which one?

23 MS. CAPELESS: It doesn't really matter.
24 Rebuttal is fine.

25 COMMISSIONER KIESLING: Okay. So that would

1 be a new FG:R16?

2 MR. SCHILDBERG: Actually it would be FG-4
3 those are schedules listed right above that.

4 COMMISSIONER KIESLING: Oh, okay.

5 MR. ADE: And what is the description of
6 that?

7 MS. CAPELESS: The description would be "An
8 Approach to Rate Design.

9 COMMISSIONER KIESLING: And it is late-filed
10 depo exhibit: what?

11 MS. CAPELESS: Number 5; correct.

12 COMMISSIONER KIESLING: It's the one that
13 you referred to back in one of your positions that
14 said this is the methodology?

15 MS. CAPELESS: Yes, ma'am.

16 COMMISSIONER KIESLING: Okay. All right.
17 Any other changes from anyone's point of view to the
18 exhibit numbering or contents?

19 MS. CAPELESS: Staff will -- what we will
20 delete on Page 44, the reference to Ms. Egan-Long's
21 rebuttal exhibit.

22 COMMISSIONER KIESLING: I don't have that.
23 Where does that appear? (Pause) Oh, it's on the next
24 page. It's 45 on my copy.

25 MS. CAPELESS: Okay.

1 COMMISSIONER KIESLING: Okay. So that's not
2 going to be listed any longer. Any others; any other
3 changes or additions?

4 MR. McLEAN: I don't know that it's clear,
5 Commissioner, but Ms. DeRonne will testify to exhibits
6 which are in Mr. Larkin's package. The way that's set
7 up there it might not cause one to expect that. But
8 Ms. DeRonne's testimony makes references to exhibits
9 which are in Mr. Larkin's package, and that may be
10 cumbersome at the time of the hearing, but the reason
11 we did that was so we can only have one package of
12 exhibits to present.

13 COMMISSIONER KIESLING: How about if
14 Mr. Larkin goes first? Does that solve the problem?

15 MR. McLEAN: It probably would.

16 COMMISSIONER KIESLING: Is there a
17 logistical reason to have them go in this order?

18 MR. McLEAN: To tell you the truth,
19 Commissioner, I'd prefer to check with them before I
20 represent one way or another. I know they're coming
21 in together, but whether -- I don't know that there's
22 any advantage to putting them on in either order; but
23 I think we can -- I think I can present the package in
24 such a way that it's not cumbersome, but I just want
25 everybody to know that Ms. DeRonne may talk about some

1 of Mr. Larkin's exhibits.

2 COMMISSIONER KIESLING: Okay. And we'll
3 just leave all the witnesses in the order they're in
4 unless you happen to talk to them before we finish
5 this, and everyone is happy to switch them so you can
6 avoid that --

7 MR. McLEAN: Yes, ma'am.

8 COMMISSIONER KIESLING: -- cumbersome
9 procedural problem.

10 MR. McLEAN: Yes, ma'am.

11 MR. ADE: Commissioner, I have several other
12 exhibit things here. The Staff has attached the --
13 there are two audit reports in this case, and they've
14 attached both of them to testimony, and we would like
15 to introduce the responses to those two audits, the
16 rate case audit and the rate base audit; and McGuire
17 is probably the best person to do that with.

18 COMMISSIONER KIESLING: Or do you want to
19 introduce those responses when the Staff witness
20 testifies about the audit report and do it on cross?

21 MR. ADE: That would be fine.

22 COMMISSIONER KIESLING: Is that acceptable
23 to you all?

24 MS. CAPELESS: That's what we would prefer,
25 Commissioner, since they didn't attach it to their

1 rebuttal testimony, which would have been the most
2 preferable way.

3 MR. ADE: And then we've got some responses
4 to some Staff interrogatories. I don't know whether
5 the Staff is intending to introduce them or not.
6 Interrogatory 6 --

7 MS. CAPELESS: Before we move on to a
8 different issue, I just want to clarify that the
9 Utility isn't proposing that Staff sponsor the
10 Utility's responses to the audit reports. That's not
11 what you're proposing, is it?

12 MR. ADE: I don't know if you intend to
13 introduce these when you cross examine these witnesses
14 or whether you want us to introduce them.

15 COMMISSIONER KIESLING: Wait a minute.
16 We're getting cross and direct confused. When Staff
17 directs its own witnesses, you will be on cross; and
18 are you saying you need those responses to cross
19 Mr. Buckley?

20 MR. ADE: Yes. And that's a good way to
21 introduce those responses.

22 COMMISSIONER KIESLING: And does Staff have
23 any problem with them using those exhibits -- I mean,
24 those audit reports, responses as cross examination of
25 Mr. Buckley?

1 MS. CAPELESS: Yes, ma'am. We have a
2 problem with the Utility's desire to have those
3 responses sponsored by the Staff witnesses. Those
4 were responses prepared -- the reply was prepared by
5 the Utility and should be sponsored by a Utility
6 witness.

7 COMMISSIONER KIESLING: Well, I agree, but
8 because we're taking direct and rebuttal at first,
9 their witness will have already been on the stand
10 before your Staff witness.

11 MS. CAPELESS: They haven't prefiled the
12 rebuttal testimony.

13 MR. ADE: We haven't listed --

14 MS. CAPELESS: Excuse me. You didn't
15 prefile with your rebuttal testimony as exhibits the
16 replies or the Company's response to the audit
17 reports.

18 MR. ADE: That's correct.

19 MS. CAPELESS: The Staff witnesses can't
20 sponsor those. They weren't prepared by the Staff.

21 COMMISSIONER KIESLING: We're not
22 disagreeing on that. We're trying to deal with the
23 logistics, and that is that if their witness who will
24 be testifying on rebuttal before your witness gets up
25 there, if they offer those exhibits --

1 MS. CAPELESS: That's fine. So long as
2 they're offered with the Company's witness, that's
3 fine.

4 COMMISSIONER KIESLING: And they don't need
5 to be listed on here because they are not prefiled
6 exhibits, so you are going to be taking your chances
7 on whether or not you're going to be able to get those
8 introduced. They will be subject to objection at the
9 time your witness sponsors them, so it's not a
10 stipulated exhibit. Are you with me?

11 MR. ADE: And I guess I am asking now if we
12 can make them a stipulated exhibit. It's not
13 something the Staff hasn't had. They were filed
14 within whatever number of days they are, and the
15 testimony refers to the same information.

16 COMMISSIONER KIESLING: I realize it's
17 putting Staff -- if Staff has not decided their
18 position on that yet, then that's an okay response,
19 too.

20 MS. CAPELESS: We don't have an answer
21 today. We can try to let the parties know by
22 Wednesday, if we can do that.

23 COMMISSIONER KIESLING: Okay, Mr. Ade?

24 MR. ADE: (Nodding head.)

25 MS. CAPELESS: Of course that doesn't take

1 care of a possible objection by other parties.

2 COMMISSIONER KIESLING: Well, I understand
3 that, but right now I'm just dealing between you two.

4 MR. McLEAN: If these folks can reach an
5 agreement on that, I don't think we'll -- in fact, I
6 represent that we won't oppose its introduction.

7 COMMISSIONER KIESLING: Okay. Any other
8 additions to the prefiled exhibits?

9 MR. ADE: The Staff has just served on us
10 the other day an interrogatory on merger costs, and
11 we've said we would try to get them that answer by the
12 20th, I guess, whenever that is. Is that Monday?

13 COMMISSIONER KIESLING: That's Monday, and
14 it's a holiday, so I take it you all don't want it on
15 the 20th, do you?

16 MS. CAPELESS: You're right. I think that
17 the order on procedures lists Monday, the 20th as the
18 cutoff date, but I think we could go with Tuesday.

19 MR. ADE: Well, anyway we'll probably have
20 it there Monday. But in any event, what kind of
21 arrangements do you want to make, if any, about
22 introducing that information into evidence? That's
23 something that you all had requested.

24 MS. CAPELESS: We could stipulate that one
25 in.

1 **COMMISSIONER KIESLING:** Do you need to see
2 the contents of it first?

3 **MS. CAPELESS:** Provided that the contents
4 say what we discussed in that issue. Yes, we want to
5 see the contents.

6 **MR. ADE:** That's fine. They wanted it. I
7 just didn't want the thing to come up and everybody
8 caught by surprise when it comes up, because it may
9 need to go in through one of our witnesses.

10 **COMMISSIONER KIESLING:** Okay.

11 **MR. ADE:** I think that's all I have in the
12 way of exhibits.

13 **COMMISSIONER KIESLING:** Okay. Anybody else,
14 then?

15 **MR. McLEAN:** Yes, ma'am. The third exhibit
16 under rebuttal, Thomas F. Cleveland's TCF No. 5, is
17 going to be the likely subject of the motion which I
18 spoke about earlier dealing with rebuttal testimony.

19 **COMMISSIONER KIESLING:** And since I haven't
20 looked at the exhibit yet, you're representing to me,
21 or suggesting, Mr. McLean, that that exhibit contains
22 additional financial information about projected
23 additions and et cetera that was not contained in the
24 original MFRs?

25 **MR. McLEAN:** That's correct, ma'am.

1 Specifically we believe that it is not appropriate to
2 rebuttal testimony, it goes beyond rebuttal testimony.
3 I think that's the way our motion will be cast.

4 COMMISSIONER KIESLING: Okay. Well, then
5 everyone is on notice. All right.

6 Proposed stipulations: I take it you have
7 all the ones written down that we have arrived at so
8 far in this proceeding, in this prehearing, or are
9 going to pull them out.

10 MS. CAPELESS: I'm going to pull them out of
11 the issues, yes, ma'am.

12 COMMISSIONER KIESLING: I have to admit this
13 Category A and Category B stuff I just think is
14 cumbersome, and it would seem to me that perhaps a way
15 around that is on stipulations which all parties
16 including OPC agree to that we just -- those are
17 stipulations, and on the ones that OPC did not have an
18 interest in and so isn't stipulating but also isn't
19 objecting, that we put a parentheses after each one of
20 those that indicates that OPC did not take a position
21 on this issue, or has no position this issue; and that
22 way it doesn't apparently seem that you are, but it
23 doesn't -- we don't have to keep trying to figure out
24 back and forth between what the various categories
25 are.

1 MR. McLEAN: Yes, ma'am. And in addition to
2 that, someone who reads the order can figure out what
3 was going on. So I agree with that.

4 COMMISSIONER KIESLING: I mean, I never can
5 figure it out. The categories are just too much for
6 me.

7 MR. McLEAN: Just to that extent, that's
8 fine with us.

9 COMMISSIONER KIESLING: And of the existing
10 ones, 1, 2, 3, 4 and 5, are there any changes to
11 those?

12 MS. CAPELESS: Staff has the same change to
13 several of them, and that is that where we have the
14 language that something "should be," we would like
15 that changed to "will be". So, for example, under
16 Category A, No. 1 we would like to change "fire
17 protection rates should be calculated" to "fire
18 protection rates will be calculated".

19 Likewise for No. 3, "common equity capital"
20 should change to "will be determined". And under
21 No. 4, "O&M expenses will be increased by 53,876" and
22 "Water O&M expenses will be decreased by".

23 Also under No. 5 on the last line of that,
24 we should change the "should" to "will".

25 COMMISSIONER KIESLING: Okay. And you'll

1 make sure that the language of all the additional ones
2 is consistent no matter what we've said here.

3 MS. CAPELESS: Yes, ma'am.

4 COMMISSIONER KIESLING: Okay. Pending
5 motions: I still think I need to leave the --
6 Mr. Heil's supplemental direct, I guess, pending until
7 we deal with the legal issues and we know whether it's
8 necessary. And to the extent that this Commission
9 does not make a ruling on the legal issues before the
10 beginning of the hearing and the taking of testimony,
11 then obviously this testimony will have to be in there
12 in order to support what is a supplemental issue,
13 essentially.

14 So would it be fair to say that no one
15 objects to the supplemental direct testimony as long
16 as it is necessary once we dispose of the legal
17 issues? Is that fair?

18 MR. McLEAN: Yes, ma'am.

19 MS. CAPELESS: That would be fine with us.

20 MR. ADE: That's fine.

21 COMMISSIONER KIESLING: Then I also have a
22 motion for reconsideration, which I cannot take up;
23 but under pending motions you'll need to put that in
24 there as a motion that needs to be taken up at the
25 beginning of the proceeding or before we get to that

1 information, so that the whole Commission can decide
2 if they want to reconsider my prehearing order.

3 MS. CAPELESS: Yes, ma'am. Thank you.

4 COMMISSIONER KIESLING: That's where it will
5 be brought up at. I mean, I went through the rules
6 yesterday trying to figure out whether I was supposed
7 to rule on this or whether the whole Commission was,
8 and I finally found a section under the confidential
9 information rules, Confidentiality Rules, that says
10 that if a prehearing officer denies a request for
11 confidential treatment or protective order, that the
12 whole Commission has to take that up. So there.

13 Is there anything else?

14 MS. CAPELESS: There's one other thing, and
15 is that we said earlier that the Company would attempt
16 to identify witnesses for Issue Nos. 46 and 47, and I
17 wonder if that's been done.

18 MR. ADE: We'll get you that by Wednesday.

19 COMMISSIONER KIESLING: You'll get that in
20 on Wednesday?

21 MR. ADE: Yeah.

22 MS. CAPELESS: Thank you.

23 MR. ADE: I have one other thing,
24 Commissioner, that I suspect I know your answer to,
25 but let's get it on the table.

1 As you well know, all the parties are
2 limited to a certain number of pages in the brief. If
3 we are going to brief this jurisdictional issue, I
4 would like to request that it be done in a separate
5 document some way somehow, say, not to exceed 25 pages
6 or something, or extend the length of the other brief
7 by that much to be used for that purpose only, or
8 however it works easy for the Commission and the Staff
9 and Public Counsel. But that's kind of an extra,
10 Lucky Strike extra, that nobody had anticipated, and I
11 think we're going to need the space, frankly.

12 COMMISSIONER KIESLING: Does Staff have any
13 problem with that?

14 MS. CAPELESS: The Commission has before
15 extended the length of the brief, and I think maybe
16 that might be the preferable way to do that.

17 COMMISSIONER KIESLING: Well, I mean, here's
18 what I think he was getting at, and this is what I
19 would be most comfortable with is leaving the length
20 of the brief on all the issues except the legal
21 issues, so that if we resolve that, then there is no
22 need to extend it, but that the parties can add up to
23 25 pages to their brief as necessary to brief the
24 legal issues. So that if you're not briefing the
25 legal issues, you don't get 75 pages, Mr. McLean. I

1 saw that smile on your face. I knew what was going on
2 in your head. So we'll tailor some kind of language
3 that settles it that way and put that in under the
4 rulings section.

5 MR. ADE: If you would think about my
6 request, you would realize it was carefully designed
7 to avoid what Mr. McLean was thinking about.
8 (Laughter)

9 And could we take one minute before we
10 disband here?

11 COMMISSIONER KIESLING: Yes. I mean, I
12 don't know if anybody's got a plane to catch.

13 MS. CAPELESS: To clarify the rule, 20 or up
14 to 25 extra pages will be permitted in the legal
15 briefs just for legal issues only?

16 COMMISSIONER KIESLING: Yes.

17 MS. CAPELESS: Thank you.

18 (Brief recess.)

19 - - - - -

20 MR. ADE: Bringing this subject up at this
21 point is probably going to be a little bit like
22 bringing a skunk to a family reunion, but I'm going to
23 try it.

24 I believe that the parties may have
25 different ideas about what this -- how we're going to

1 proceed with this case, and I think it is at least
2 worth presenting to you today -- and you may want to
3 rule on it today. You may not want to. You may want
4 to tell us how it's going to be done. That's fine,
5 too. But under the basic position, the Company has
6 basically said that this rate case is driven by
7 capital improvements that are going to be made in 1996
8 and 1997, and that's where most of the rate increase
9 is coming from.

10 What we had perceived sort of from the
11 beginning and we had asked all along that the rates be
12 phased in, and what we saw in our minds was that we
13 would have this hearing and the Commission would set
14 rates based on the capital improvements, the rate
15 base, up to some date. We had anticipated December
16 31, '96 at this part of the hearing.

17 We would then come back and ask the
18 Commission for maybe a one-day hearing, which would
19 simply be a verification of the capital improvements
20 that are made in 1997 and the rates would be adjusted
21 for those additional capital improvements that were
22 made in 1997 with that phase of the rates only to go
23 into effect in 1998.

24 That seems to me to be the cleanest way to
25 approach these capital improvements. That way

1 everybody knows what's in service, and customers are
2 only paying for what's in service.

3 Another way to do it would be to just have
4 one hearing and use the projections of what's going to
5 be in service through 1997, and set the rates one
6 time, and that would be the end of the case, and not
7 have the second hearing with -- to verify what was
8 there and what was not there and let that be caught up
9 in the next rate case.

10 COMMISSIONER KIESLING: Let me ask you, did
11 you file this rate case with a historic test year and
12 a projected test year?

13 MR. ADE: Yes, ma'am.

14 COMMISSIONER KIESLING: And that projected
15 test year was through '97?

16 MR. ADE: Yes, ma'am.

17 COMMISSIONER KIESLING: Then that's what's
18 at issue in this case and there's not going to be
19 another one. I mean, there's not going to be another
20 hearing. Am I missing something here?

21 MS. CAPELESS: No, ma'am. That's our
22 interpretation.

23 COMMISSIONER KIESLING: You filed it with a
24 projected test year of '97, and we've analyzed it with
25 that projected test year with the data you gave us,

1 and that's the end of that opportunity.

2 MR. ADE: All right. I guess we thought we
3 were probably giving the Commission and the Staff and
4 the Public Counsel all an opportunity to be sure that
5 what we said was going to be in service in '97 was, in
6 fact, there before those rates were set.

7 COMMISSIONER KIESLING: Everyone can
8 challenge the reasonableness of your projections.

9 MR. ADE: That's correct. It will affect a
10 little bit -- well, it will affect a good bit of the
11 presentation. It will probably affect what's the
12 appropriate rate base, whether it's year-end or
13 13-month average. You know, project a number of
14 things.

15 Some of Mr. McLean's objections are really
16 related to our trying to update this information, and
17 if you tell us today we're going to do it the way you
18 say you're going to do it, we'll resolve those things
19 before we get there, hopefully.

20 COMMISSIONER KIESLING: There is a
21 difference between using your filing and analyzing it
22 on a projected test year basis, than -- that's a
23 different case from you filing a case and then
24 supplementing it, adding more stuff.

25 MR. ADE: No. All the capital improvements

1 are in there, in the original case; but we did run a
2 1995 -- December 31, 1995 rate base numbers and 1996
3 and 1997 in the original filing. I mean, the
4 information is there.

5 COMMISSIONER KIESLING: Then that's the
6 information and those are the numbers that will be
7 analyzed in this proceeding, and we will come up with
8 a rate based on a projected test year.

9 I mean, what am I missing here? Is there
10 some detail that I'm confused about? I mean, to me it
11 sounds like we're back at the same issue that we were
12 on with Ms. Egan-Long.

13 MR. ADE: We are. It's part of the same
14 thing.

15 COMMISSIONER KIESLING: And that is you
16 filed it the way you filed it with a projected test
17 year, and you filed all your information, and you
18 don't get to supplement that. You don't get to add
19 more stuff.

20 If it was in the MFRs and the projections
21 that you filed, then fine and dandy. If it wasn't, if
22 things have changed between when you filed this and
23 now, that happened at your peril. You don't get to
24 add new stuff.

25 MR. ADE: I think the changes we're talking

1 about are not changes of things that weren't in the
2 original filing. I think it is an updating of the
3 status of what was in the original filing, because so
4 much of it was future.

5 COMMISSIONER KIESLING: Then I can't tell
6 you how to proceed. I mean, I've given you all the
7 information I can give you, and that is that when you
8 present your witnesses, if you are in any way
9 attempting to introduce new information that was not
10 contained in your original filing, you're not going to
11 get to do it.

12 MR. ADE: And from the capital standpoint,
13 there may be one item, but I think other than that, I
14 don't think there's an item that wasn't in the
15 original filing. What we've attempted to do is to
16 say, here's what the status of these items are.

17 COMMISSIONER KIESLING: Well, we'll have to
18 deal with that when the witnesses come up, or until we
19 resolve whatever Mr. McLean's motion will be; but if
20 it happens while I'm still the person ruling on it, I
21 think you know what my ruling is.

22 MR. ADE: That's why I wanted to raise it.

23 COMMISSIONER KIESLING: And if you want to
24 raise it with the Commission, then you need to figure
25 some way to raise it at the beginning of the hearing.

1 MR. ADE: I think it's a procedural -- I
2 think we need to know how to proceed, and I think you
3 answered that question.

4 COMMISSIONER KIESLING: I think I have, that
5 it has been long-standing and -- you know, a
6 long-standing position of the Commission and supported
7 by numerous orders that what you file is what you get,
8 what you get to work with; and that absent some very
9 extenuating circumstances, you don't get to supplement
10 it in any way. And if you do need to supplement it,
11 it's something very minor that is not a surprise to
12 anyone, and everyone can deal with.

13 MR. ADE: Okay.

14 COMMISSIONER KIESLING: With that, is there
15 anything else?

16 MR. ADE: I can't think of anything.

17 COMMISSIONER KIESLING: If not, then we're
18 adjourned.

19 (Thereupon, the hearing concluded at 4:35
20 p.m.)

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1 STATE OF FLORIDA)

2 :
3 COUNTY OF LEON)

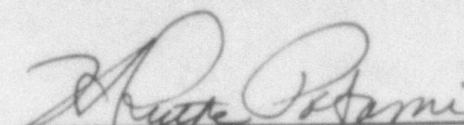
CERTIFICATE OF REPORTER

4 I, H. RUTHE POTAMI, CSR, RPR Official
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Prehearing
7 Conference in Docket No. 960451-WS was heard by the
8 Prehearing Officer at the time and place herein
9 stated; it is further

10 CERTIFIED that I stenographically reported
11 the said proceedings; that the same has been
12 transcribed under my direct supervision; and that this
13 transcript, consisting of 119 pages, constitutes a
14 true transcription of my notes of said proceedings

15 DATED this 22nd day of January, 1997.

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