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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
TALLAHASSEE, FLORIDA

IN RE: Application for rate increase in Brevard  
Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake,  
Marion, Martin, Nassau, Orange, Osceola, Pasco,  
Putnam, Seminole, Volusia, and Washington Counties  
by Southern States Utilities, Inc.; Collier County  
by Marco Shores Utilities (Deltona); Hernando County  
by Spring Hill Utilities (Deltona); and Volusia  
County by Deltona Lakes Utilities (Deltona).

DOCKET NO. 920199-WS

COPY

BEFORE: CHAIRMAN SUSAN F. CLARK  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER JULIA L. JOHNSON  
COMMISSIONER DIANE K. KIESLING  
COMMISSIONER JOE GARCIA

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 37

DATE: Tuesday, June 11, 1996

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Notary Public in and for the  
State of Florida at Large

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DOCUMENT NUMBER-DATE  
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FPSC-RECORDS/REPORTING

## 1 PARTICIPATING:

2 JOE McGLOTHLIN, representing Marion Oaks Civic  
Association and the City of Keystone Heights.

3 DAVID HOLMES, representing Burnt Store Marina.

4 KENNETH A. HOFFMAN, BRIAN ARMSTRONG and FOREST  
5 LUDSEN, representing Southern States Utilities.

6 MICHAEL B. TWOMEY, representing Citrus County.

7 MS. FOX, representing Sugar Mill Woods.

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STAFF RECOMMENDATIONS

11

12 Participation: Reconsideration of decision on remand -  
Participation dependent upon vote on Issues Nos. 1 and 4.

13 Issue 1: Recommendation that the request for oral argument  
on the petition to intervene, filed by the City of Keystone  
Heights, the Marion Oaks Homeowners Association, and the  
14 Burnt Store Marina, be denied.

15 Issue 2: Recommendation that the petition to intervene  
filed by the City of Keystone Heights, the Marion Oaks  
Homeowners Association, and the Burnt Store Marina, be  
16 denied.

17 Issue 3: Recommendation that the motion to file memorandum  
out of time, filed by the City of Keystone Heights, the  
Marion Oaks Homeowners Association, and the Burnt Store  
18 Marina, be denied if the Commission approves Issue No. 2.

19 Issue 4: Recommendation that SSU's request for oral  
argument should be permitted at the agenda conference, but  
argument should be limited to five minutes for each party.

20 Issue 5: Recommendation that the record in Docket No.  
920199-WS should not be reopened. Further, neither a refund  
21 nor a surcharge should be ordered.

22 Issue 6: Recommendation that, in addition to the decisions  
made outlined in staff's memorandum dated May 30, 1996, the  
Commission should reaffirm and incorporate the other  
23 decisions made in Order No. PSC-95-1292-FOF-WS and at the  
February 20, 1996 Agenda Conference, in the order  
24 memorializing the Commission's decision.

25 Issue 7: Recommendation that, if the Commission orders that  
refunds and/or surcharges are appropriate, SSU should submit  
within 14 days of the date of the Agenda Conference, the

1 information as detailed below for the purposes of  
 2 verification. The refunds and/or surcharges should cover  
 3 the period between the initial effective date of the uniform  
 4 rate up to and including the date the interim rates in  
 5 Docket No. 950495-WS were implemented. Consistent with the  
 6 GTE decision, customers not receiving service during this  
 7 time period should not receive a refund nor be surcharged.  
 8 Any refunds should be made with interest pursuant to Rule  
 9 25-30.360, F.A.C., and any surcharges should be assessed  
 10 with the appropriate amount of interest. Refunds should be  
 11 made as a credit to the customers' bills. SSU should be  
 12 required to file refund reports pursuant to Rule  
 25-30.360(7), F.A.C. SSU should apply any unclaimed refunds  
 as contributions in aid of construction (CIAC) for the  
 respective plants, pursuant to Rule 25-30. 360(8), F.A.C.  
Issue 8: Recommendation that this docket be closed.  
 However, if the Commission determines that refunds and/or  
 surcharges are appropriate in Issue 5, the docket should be  
 administratively closed upon staff's verification that the  
 utility has completed the required refunds and/or collected  
 the appropriate surcharges. Further, the utility's bond can  
 be released upon staff's verification that the refund has  
 been completed.

13 CERTIFICATE OF REPORTER ~

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CHAIRMAN CLARK: Item Number 37.

MS. JABER: Commissioners, Item Number 37 is staff's recommendation addressing the Commission's reconsideration on its own motion of its remand --

CHAIRMAN CLARK: Just a minute. Mr. Hansen, I know people are coming in, and we can't hear while they are coming in, so we're going to wait until everybody gets in, but if you would let them know that we are waiting on them.

Go ahead, Ms. Jaber.

MS. JABER: Commissioners, Item Number 37 is staff's recommendation addressing the Commission's reconsideration on its own motion of its decision on remand of Order Number 930423 in light of the recent GTE decision.

Just to give you a very brief outline of events for purposes of this recommendation, on October 19th, 1995, Order Number 95-1292 was issued addressing the remand by ordering SSU to implement a modified stand-alone rate structure and by requiring a refund. At the February 20th, 1996 agenda reconsideration of that order was denied. Before we could issue the order on reconsideration, the Supreme Court of Florida issued the GTE Florida, Inc. versus Clark decision. In this

1 recommendation, staff has identified eight issues and  
2 we recommend that we go issue-by-issue.

3 CHAIRMAN CLARK: Ms. Jaber, just so I'm clear, now  
4 we need to take up -- do we need to take up Issue 1 and  
5 then 4, or do you want to just go in the order?

6 MS. JABER: Issue 1, 2, and 3 are related. I  
7 really do think we can go in the order.

8 CHAIRMAN CLARK: All right. Commissioners, Item  
9 Number 1 -- Issue Number 1. Discussion? Is there a  
10 motion?

11 COMMISSIONER DEASON: I move we deny staff.

12 CHAIRMAN CLARK: Is there a second?

13 COMMISSIONER JOHNSON: This is on allowing them  
14 oral argument?

15 CHAIRMAN CLARK: No. This is --

16 COMMISSIONER JOHNSON: Allowing key --

17 CHAIRMAN CLARK: Yes, this is the petition for  
18 oral argument on the petition to intervene.

19 COMMISSIONER JOHNSON: Okay. So, it's not on the  
20 petition itself?

21 COMMISSIONER DEASON: No. My motion is to deny  
22 staff, which would allow oral argument.

23 COMMISSIONER JOHNSON: Oral argument on the  
24 petition, but not -- and then we will hear that and  
25 then Issue 2 would be whether or not we grant it?

1 COMMISSIONER DEASON: Yes.

2 CHAIRMAN CLARK: Correct.

3 COMMISSIONER JOHNSON: I can second that.

4 CHAIRMAN CLARK: There is a motion and a second on  
5 the recommendation that the oral argument be denied.  
6 So the effect of the motion is that oral argument on  
7 the petition to intervene be granted. All those in  
8 favor say aye.

9 COMMISSIONER GARCIA: Aye.

10 COMMISSIONER DEASON: Aye.

11 COMMISSIONER JOHNSON: Aye.

12 CHAIRMAN CLARK: Opposed, nay.

13 COMMISSIONER KIESLING: Nay.

14 CHAIRMAN CLARK: Nay.

15 The petition to have oral argument is granted. I  
16 would indicate -- Commissioners, is there a preference  
17 as to time? I would think five minutes ought to do it.

18 COMMISSIONER DEASON: I think five minutes would  
19 be a maximum and it should be shorter than that.

20 MR. MCGLOTHLIN: It's my motion and that will be  
21 ample, Commissioners.

22 CHAIRMAN CLARK: Go ahead, Mr. McGlothlin.

23 MR. MCGLOTHLIN: Commissioners, my name is Joe  
24 McGlothlin. I represent the Marion Oaks Civic  
25 Association and the City of Keystone Heights, both of

1 whom are represented by me here today.

2           Commissioners, obviously the Commission has the  
3 discretion to waive its five-day rule governing the  
4 time of interventions. The Commission did so recently,  
5 and it did so to allow these same parties the ability  
6 to intervene as full parties in SSU's pending rate  
7 case. It did so in recognition of the efforts that the  
8 Office of Public Counsel had made to ensure that all  
9 different customer perspectives were adequately  
10 represented in that case. You have the discretion.  
11 I'm going to give you three reasons why you should use  
12 that discretion and grant our petition to intervene in  
13 this proceeding.

14           First of all, the same consideration that led you  
15 to grant our petition to intervene in the rate case is  
16 present here. We have filed a petition to intervene in  
17 furtherance of the same initiative of Public Counsel to  
18 ensure that all customer perspectives are represented.  
19 Following the issuance of the GTE decision, the Office  
20 of Public Counsel recognized that it could not  
21 zealously represent the customer views on the issues  
22 raised by your decision to reconsider your refund order  
23 on your own motion. For that reason, you should allow  
24 the parties full party status so that their rights can  
25 be protected.

1           Secondly, the second reason you should use your  
2           discretions is because the GTE decision and your  
3           decision to reconsider the refund order on your own  
4           motion essentially is a new deal. As a matter of fact,  
5           in response to a letter I wrote on procedural points,  
6           SSU referred to the Commission's de novo review of  
7           certain decisions in this case. And in a very real  
8           sense, you're starting over and it's appropriate to use  
9           your discretion to allow affected parties the  
10          opportunity to intervene.

11          Thirdly, in your decision you recognized that the  
12          impact of the GTE decision on the outcome of this case  
13          raises very important, very significant issues. I  
14          think the fact that you invited parties to submit  
15          briefs on the question indicates that the Commission  
16          wants to be fully informed and apprised of all  
17          arguments and all points of view. It's appropriate  
18          then that you allow intervention to accomplish that  
19          end.

20          And in that vein, I'd like to point out that while  
21          in its recommendation the staff recommends that you  
22          rigidly apply the intervention rule, it also indicates  
23          that on remand the usual procedure is to deny parties  
24          participation in the agenda conference. Staff  
25          recognizes that these issues are significant and for

1           that reason recommends that you depart from the usual  
2           procedure and allow parties the opportunity to address  
3           you for five minutes each. Were that procedure absent,  
4           our intervention gets you where you want to go.  
5           Consider from whom you would hear if our petition to  
6           intervene is not granted. You would hear from those  
7           customers who are interested in getting a refund; you  
8           would be hearing from the utility, who, if there is a  
9           refund, is very interested in imposing a surcharge, but  
10          you would not hear directly from the class of customers  
11          who are exposed to the possibility of a surcharge. So,  
12          to achieve your objective of becoming fully informed  
13          and to protect the interests of customers who would not  
14          otherwise be represented given this new deal, we ask  
15          that you grant party status. Thank you.

16                 CHAIRMAN CLARK: Thank you, Mr. McGlothlin. It  
17                 was your motion, is that correct, on behalf of  
18                 Keystone, Marion Oaks?

19                 MR. MCGLOTHLIN: I'm speaking on behalf of Marion  
20                 Oaks and the City of Keystone Heights. There was a  
21                 joint motion also for the Burnt Store customers who are  
22                 represented today, also. This is David Holmes who is  
23                 the attorney for Burnt Store.

24                 CHAIRMAN CLARK: Excuse me?

25                 MR. MCGLOTHLIN: This is David Holmes, who is here

1 on behalf of Burnt Store.

2 MR. HOLMES: We are joint movants in the petition  
3 to intervene, and I have some brief comments in  
4 addition to those that were just made by Mr.  
5 McGlothlin, if I could briefly address the Commission.

6 CHAIRMAN CLARK: Go ahead.

7 MR. HOLMES: In addition to all of the factors  
8 that were just mentioned, I think there is at least one  
9 other good reason why the petition to intervene should  
10 be granted. This is ultimately an issue of  
11 representation. Public Counsel has made the  
12 determination that it cannot represent groups of  
13 customers with competing interests. SSU in its  
14 response to our petition has rightfully also addressed  
15 that issue and taken the stance that representation  
16 exists because of the prior opposition of OPC.  
17 However, at this point where now the refund surcharge  
18 issue is front row center, it is crucial that those  
19 customers who are potentially impacted by the proposed  
20 surcharge have representation as we go forward on  
21 remand. And for that reason, we would urge the  
22 Commission to allow the intervention. Thank you.

23 CHAIRMAN CLARK: Okay. Now, as I recall the  
24 companies and the individuals that already have party  
25 status were in opposition to this. Ms. Fox, is that

1 correct? Have you filed anything in opposition? Did  
2 you file anything?

3 MR. FOX: Yes, I did. I filed a response.

4 CHAIRMAN CLARK: All right. Mr. Hoffman, you go  
5 ahead, and then we will hear from Mr. Twomey and then  
6 Ms. Fox.

7 MR. HOFFMAN: Thank you, Madam Chairman. I'm  
8 Kenneth A. Hoffman, representing Southern States  
9 Utilities. With me is Brian Armstrong, Mr. John  
10 Cirello, the President of the company, and Mr. Forest  
11 Ludsen, the Vice President of the company.

12 Very quickly, Madam Chairman, one of the things  
13 Mr. McGlothlin raised was the significance of the  
14 issue. And, of course, the potential significance of  
15 the issue provides no legal basis for intervention and  
16 he certainly could not cite you to any authority which  
17 would support that contention.

18 Secondly, the Public Counsel has previously filed  
19 a memorandum of law with you, and has appeared before  
20 you on the remand stage of this proceeding, opposing a  
21 surcharge if refunds are required. So, the fact is  
22 those positions that are advocated by Mr. McGlothlin  
23 and Mr. Holmes have already been advocated by the  
24 Office of Public Counsel before you.

25 From a historical standpoint, Madam Chairman, I

1 think it's worth mentioning that since the final  
2 hearing in this rate case was concluded, you have had a  
3 number of petitions to intervene all addressing rate  
4 structure issues, all of which have been denied.  
5 Interestingly enough, the most recent one came from  
6 Keystone, who is back again. Keystone has asked to  
7 come in, Keystone has asked to intervene after the  
8 Citrus County decision was made. They filed a petition  
9 to intervene back in January of 1996, and you said no,  
10 you denied it. They didn't ask for reconsideration.  
11 The mere fact that they have recently retained counsel  
12 is meaningless.

13 Now one of the things they have said in their  
14 petition is, "Well, this is kind of like the rate case  
15 in 950495 where you let us intervene." Well, it's not.  
16 In the rate case, a motion was filed by Mr. Shreve's  
17 office asking for separate counsel for different  
18 customer classes. Well, you denied that motion. You  
19 denied that motion because you found there was no  
20 statutory authority to require the company to pay for  
21 the lawyers. Well, he remedied that defect, so you let  
22 them come in and you let them come in before the  
23 hearing was concluded. This, obviously, is a different  
24 situation. The hearing has been over for about three  
25 years. They are coming in very late, just like the

1 other petitioners who have raised rate design related  
2 issues.

3 The only other things I would add, Madam Chairman,  
4 is that their petition relies on portions of Chapter  
5 366 in support of their intervention. And, obviously,  
6 Chapter 366, which is the electric and gas statute, has  
7 nothing to do with this case.

8 The other is they contend in their petition that  
9 the potential conflict between customers when you look  
10 at a no refund situation versus a refund plus surcharge  
11 situation didn't arise until the GTE Florida decision.  
12 That's wrong. The GTE Florida decision was issued on  
13 February 29th of 1996. This potential conflict that  
14 they talk about between a no refund situation versus a  
15 refund plus surcharge situation was actually raised by  
16 Southern States in the motion for reconsideration that  
17 we filed on November 3rd of 1995, where we said to you,  
18 "Commissioners, you cannot impair our revenue  
19 requirement. That is the law of the case. So, while  
20 we think no refunds are appropriate, if you do order  
21 refunds, then we think you need to also order the  
22 revenue recoupment, the surcharge that we propose in  
23 our motion for reconsideration." So this issue was  
24 raised back in November of 1995.

25 We oppose their intervention. Thank you.

1 CHAIRMAN CLARK: Mr. Twomey.

2 MR. TWOMEY: Yes, ma'am. Madam Chairman,  
3 Commissioners, very briefly. I'm here on behalf of  
4 Citrus County.

5 Mr. McGlothlin filed a letter with you several  
6 days ago in which he noted that I agreed that I was  
7 unaware when I filed my opposition to their  
8 intervention that the Public Counsel had extended  
9 funding to this case for Mr. McGlothlin and his clients  
10 in addition to the new rate case. That's correct. It  
11 doesn't, however, affect Citrus County's opposition to  
12 their intervention in this case.

13 As pointed out by Mr. Hoffman, other parties have  
14 for some three years plus now, I think it is, sought  
15 intervention from this Commission in this docket. What  
16 are you going to do now? Are you going to go back and  
17 call Senator Ginny Brown-Waite and allow her to  
18 intervene now, Spring Hill. There are a myriad of  
19 other customers of this utility who have sought  
20 intervention over the last 2-1/2 or three years and  
21 they were denied.

22 It is simply too late, as Mr. Hoffman pointed out.  
23 The granting of the intervention after the start of a  
24 hearing but during the conduct of the hearing is one  
25 thing. Granting intervention fully three years after

1 the conclusion of a hearing is another thing entirely.  
2 It is too late. We would ask that you deny the  
3 petition. Thank you.

4 CHAIRMAN CLARK: Ms. Fox.

5 MS. FOX: I don't have anything further to add.

6 CHAIRMAN CLARK: Okay. Commissioners, do you have  
7 questions? Does staff have anything that they want to  
8 add at this point?

9 MS. JABER: There is nothing we need to add at  
10 this point.

11 CHAIRMAN CLARK: Okay. We are on Issue 2,  
12 Commissioners.

13 COMMISSIONER JOHNSON: Who do you represent, Mr.  
14 McGlothlin?

15 MR. MCGLOTHLIN: I represent the Marion Oaks Civic  
16 Association --

17 CHAIRMAN CLARK: Mr. McGlothlin, you need to make  
18 sure the light is off.

19 MR. MCGLOTHLIN: I represent the Marion Oaks Civic  
20 Association and the City of Keystone Heights.

21 COMMISSIONER JOHNSON: And I guess staff can help  
22 me out because I'm confused, apparently. When we  
23 allowed them to intervene with respect to what in that  
24 last proceeding, Marion --

25 MS. JABER: In the pending rate case, we limited

1 the intervention to the rate structure and service  
2 availability issues. And I think that the Chairman was  
3 very specific in recognizing that they were limited to  
4 those two issues. And based on the circumstances of  
5 the case and that the hearing was not over yet and that  
6 Mr. Shreve had filed a motion for alternate counsel and  
7 had only recently obtained the funding.

8 COMMISSIONER JOHNSON: Okay. And that's going  
9 forward on that particular case. This is a different  
10 matter.

11 MS. JABER: This is completely different.

12 CHAIRMAN CLARK: Commissioners, is there a motion  
13 on Issue 2?

14 COMMISSIONER DEASON: I move we deny staff on  
15 Issue 2.

16 CHAIRMAN CLARK: Is there a second? Hearing no  
17 second, is there a motion to approve staff on Issue 2?

18 COMMISSIONER KIESLING: I move staff on Issue 2.

19 CHAIRMAN CLARK: Is there a second?

20 COMMISSIONER GARCIA: Second.

21 CHAIRMAN CLARK: All those in favor, say aye.

22 COMMISSIONER KIESLING: Aye.

23 CHAIRMAN CLARK: Aye.

24 COMMISSIONER JOHNSON: Aye.

25 COMMISSIONER GARCIA: Aye.

1 CHAIRMAN CLARK: Opposed, nay.

2 COMMISSIONER DEASON: Nay.

3 CHAIRMAN CLARK: Okay. We also need to vote on  
4 Issue 3, is that correct?

5 COMMISSIONER KIESLING: I move staff.

6 CHAIRMAN CLARK: All those in favor -- is there a  
7 second?

8 COMMISSIONER JOHNSON: Second.

9 CHAIRMAN CLARK: All those in favor say aye.

10 COMMISSIONER KIESLING: Aye.

11 COMMISSIONER JOHNSON: Aye.

12 CHAIRMAN CLARK: Aye.

13 COMMISSIONER GARCIA: Aye.

14 CHAIRMAN CLARK: Opposed, nay.

15 COMMISSIONER DEASON: Well, I'm in a quandary.  
16 Obviously, if they don't have intervention status, we  
17 can't consider the memorandums, so I'm in support of  
18 that. But that is recognizing the fact that I thought  
19 they should be given status, so I vote with the  
20 majority on Issue 3.

21 CHAIRMAN CLARK: If they don't have status, we  
22 shouldn't consider their memorandum, but you would  
23 allow them status.

24 COMMISSIONER DEASON: Right. So, I will vote with  
25 the majority on Issue 3 with that understanding.

1 CHAIRMAN CLARK: Okay. We are on Issue Number 4.

2 MS. JABER: In Issue 4, staff recommends that each  
3 party should be permitted five minutes oral argument.  
4 This is a departure from what we have recommended  
5 before and what the Commission has done in the past,  
6 because it is not so clear anymore what the sides are,  
7 so we are recommending five minutes per party.

8 COMMISSIONER DEASON: Move approval of staff.

9 COMMISSIONER JOHNSON: Second.

10 CHAIRMAN CLARK: All those in favor, say aye.

11 COMMISSIONER DEASON: Aye.

12 COMMISSIONER GARCIA: Aye.

13 COMMISSIONER KIESLING: Aye.

14 CHAIRMAN CLARK: Aye.

15 COMMISSIONER JOHNSON: Aye.

16 CHAIRMAN CLARK: Opposed, nay.

17 Now, just so I'm clear, who should go first?

18 MR. ARMSTRONG: Madam Chair, if we could address  
19 that, as well. Since we are the party with the burden  
20 of proof in this case, we would request that if it's  
21 going to be five minutes per side, that we at least be  
22 given two minutes in rebuttal, if necessary. Given the  
23 fact that five minutes of our side will give ten  
24 minutes, at least, to the other side.

25 MS. JABER: And that has been consistent with the

1 way you have done it in the past. You have allowed the  
2 utility to begin.

3 CHAIRMAN CLARK: But I think what he is suggesting  
4 is there are two parties here --

5 MR. ARMSTRONG: Five, five, five, five, two.

6 CHAIRMAN CLARK: -- and each one of those are  
7 going to get five. And they are on one side and they  
8 would -- well, I'm not sure you could categorize them  
9 as being completely opposite each other, but -- so,  
10 they're getting five while another side is getting ten.  
11 I would suggest that I think five is going to be  
12 adequate, but we will give you time for rebuttal.

13 MR. ARMSTRONG: I will only take it if I need it.

14 CHAIRMAN CLARK: I think we have been more than  
15 fair in allowing people to completely address these  
16 issues. So, I would note on the other arguments we  
17 gave them more than five minutes. We do have to be  
18 mindful, however, we still have a full agenda. With  
19 that, Mr. Armstrong, go ahead.

20 MR. ARMSTRONG: Thank you.

21 CHAIRMAN CLARK: And then, Mr. Twomey, should we  
22 hear from you next and then Ms. Fox?

23 MR. TWOMEY: I think it would be better if you go  
24 with Ms. Fox, and I will be last.

25 CHAIRMAN CLARK: All right.

1           MR. ARMSTRONG: Good afternoon, Commissioners. My  
2 name is Brian Armstrong. In addition to Ken Hoffman,  
3 we also have John Cirello, our company's president, and  
4 Forrest Ludsen, a vice president with me today.

5           We would like to begin our presentation by reading  
6 a couple of quotes from the GTE Florida decision.  
7 Quote, "We view utility ratemaking as a matter of  
8 fairness. Equity requires that both ratepayers and  
9 utilities be treated in a similar manner." A second  
10 quote, "It would clearly be inequitable for either  
11 utilities or ratepayers to benefit, thereby receiving a  
12 windfall from an erroneous PSC order." The  
13 Commission's legal obligation to treat both Southern  
14 States and our customers fairly when fashioning a  
15 remand remedy could not be more clearly stated.

16           Southern States agrees with the staff's  
17 recommendation in large part. We note that staff  
18 reiterates the primary recommendation it made to the  
19 Commission back in August of 1995, no refund. The  
20 staff decision pays appropriate deference to the  
21 Florida Supreme Court's GTE Florida decision which  
22 rejects the waiver, stay and risk arguments this  
23 Commission has heard before and to some extent agreed  
24 with in the past. Perhaps of greater significance is  
25 the staff's emphasis on the fact that Southern States

1 revenue requirements as lawfully established by this  
2 Commission in 1993, were left intact by the Court of  
3 Appeals. The single challenge to the Commission's  
4 revenue determination was rejected by the court.  
5 Simply put, the Commission's determination of Southern  
6 States' revenue requirements remains the law of the  
7 case, and nothing can be done now which would deprive  
8 Southern States of the opportunity to obtain that  
9 revenue.

10 If the Commission adopts the staff recommendation,  
11 an appeal is possible. In light of a potential appeal,  
12 Southern States requests that the Commission agree to  
13 incorporate into this proceeding the record from Docket  
14 Number 930945. As the Commission will recall, in that  
15 docket, the Commission determined that Southern States'  
16 land and facilities statewide are functionally related  
17 so as to constitute one system.

18 The Commission staff has recognized that there is  
19 nothing in the Court of Appeals' decision which would  
20 prohibit the Commission from reopening the record.  
21 And, in fact, the Commission has broad discretion in  
22 its handling of such matters.

23 We all know that this Commission's rate structure  
24 was reversed not only basis argued by the parties or  
25 their counsel, but because the appeals court on its own

1           initiative created a new standard for determining when  
2           a uniform rate structure is appropriate. That standard  
3           requires a functional relationship. The functional  
4           relationship finding is all that was missing from the  
5           Commission's final order in this case. Since the  
6           Commission already made this finding in June of 1995,  
7           by incorporating the record from that case in this  
8           record, the Commission will provide further  
9           substantiation of the fairness of a no refund decision.  
10          Therefore, we request that the record be reopened  
11          solely to incorporate the record from Docket Number  
12          930945 as further support for the staff's  
13          recommendation.

14                 Staff also discussed the possibility of refunds  
15          with surcharges. By way of clarification, not  
16          criticism, Southern States notes that staff  
17          mischaracterizes the surcharge as a back-billing  
18          situation. The surcharge charge is not a back-billing  
19          for past expenses. Past expenses were incurred and  
20          Southern States already recovered those expenses from  
21          customers. The surcharge, if ordered by the  
22          Commission, would be a method of collecting from  
23          customers a current refund expense prospectively based  
24          on their future consumption. It would not constitute a  
25          back-billing situation, and under the GTE Florida

1 decision, would not constitute retroactive ratemaking.

2 Also, Southern States requests that the Commission  
3 accept into the record the information contained in the  
4 sworn affidavit of Forrest Ludsen, which is attached in  
5 the appendix to our brief. This information would  
6 provide record support for the refund and surcharge  
7 methodology which is largely consistent with that  
8 contained in the staff recommendation. The only  
9 material difference between the method set forth in the  
10 affidavit and the staff's mechanism is the length of  
11 the refund and surcharge recovery period. Staff  
12 suggests a period of approximately 24 months or 28  
13 months. Mr. Ludsen proposed 48 months. Southern  
14 States continues to support the longer 48-month period  
15 to reduce the rate impact on customers if the  
16 Commission orders a refund and surcharge.

17 Finally, Southern States requests that if the  
18 refund and surcharge is to be required, the period for  
19 calculating these amounts be cut off at June 19th,  
20 1995, the date that the Commission originally voted  
21 that Southern States' facilities statewide were  
22 functionally related.

23 There is no reason to increase the rate impact of  
24 the refund and surcharge by ignoring that Commission  
25 finding. The stay imposed by the counties' appeal of

1           that order stays the effectiveness of the order such  
2           that the Commission cannot assert jurisdiction in those  
3           counties that are affected, but it does not require the  
4           Commission to ignore the underlying findings.

5           To conclude, Southern States urges adoption of  
6           staff's recommendation. And we thank you for your time  
7           and attention.

8           COMMISSIONER DEASON: Let me ask a question at  
9           this point. Mr. Armstrong, you indicated, and I think  
10          my notes are correct, that the court's decision that  
11          there was no finding of functional relatedness was the  
12          only thing, quote, unquote, "only thing missing," and  
13          that if the Commission had made that finding, well,  
14          then everything would have been fine and the uniform  
15          rates would have been upheld.

16          MR. ARMSTRONG: Right.

17          COMMISSIONER DEASON: Well, as I recall the  
18          court's decision, and I may be incorrect, is they  
19          didn't reach any of those other issues because they  
20          said, "Because of this deficiency concerning a lack of  
21          finding of functional relatedness, we don't have to  
22          address the other issues that have been raised  
23          concerning the appropriate rate structure." Now, which  
24          is it?

25          MR. ARMSTRONG: That's a matter of judicial or

1           appellate review. The courts will not address  
2           additional issues if they find a reason, particularly a  
3           reason of their own, to do a reversal. It's very, very  
4           infrequent that they will find a reason of their own to  
5           do this. It's an extraordinary circumstance that has  
6           occurred here. And it is a circumstance that gives  
7           further support for the reopening of the record, since  
8           nobody had any advance notice that this standard would  
9           be applied in this situation.

10           COMMISSIONER DEASON: Well, I think you're missing  
11           the point of my question. Because you go on in your  
12           argument to say that if there is to be a refund, that  
13           it should be limited to the point to where the  
14           Commission made a decision of functional relatedness.  
15           And I guess my question in trying to tie the two points  
16           together is that the court really didn't say that  
17           everything else is fine if there had been a finding of  
18           functional relatedness. I think the court said that  
19           there was not a finding of functional relatedness,  
20           therefore, the uniform rate structure is not  
21           appropriate and we don't even have to address the other  
22           issues that have been raised on appeal by other parties  
23           concerning the appropriateness of the rate structure.

24           MR. ARMSTRONG: I think, you know, as a lawyer we  
25           all can read into orders in a number of ways. I don't

1           have the specific language before me. But Southern  
2           States' reading of that case, and I believe it's an  
3           accurate reading, would be that the court stated that  
4           Southern States cannot implement the uniform rates  
5           until there is a finding that all the service areas  
6           that are going to be part of that uniform rate are  
7           functionally related. That's our sole reading of that  
8           decision.

9           CHAIRMAN CLARK: Let me state his question a  
10          little bit differently and maybe get to the point.  
11          Even if we found it was -- if we go back and we assume  
12          that we find it's functionally related, will the court  
13          then have the opportunity to address the other issues,  
14          the other basis on which the petitioners alleged it was  
15          unlawful, one of those being lack of notice? And I  
16          think that is a concern the Commissioner has, is even  
17          if we go back and do this are we going to solve this  
18          case once and for all, given the fact that they said,  
19          "We don't have to reach those other decisions because  
20          this is dispositive." If we cure that defect, are they  
21          going to come back and say, "Well, that may be right  
22          but, you know, you didn't do notice and things like  
23          that."

24          MR. ARMSTRONG: Of course, I can't be a  
25          prognosticator of what the court would do. Is it a

1 possibility that the court could look at those other  
2 issues? I would have to suggest that it is a  
3 possibility. Given what they did in the first instance  
4 here, I would say that anything is a possibility at  
5 this point in time. You know, I can't surmise as to  
6 what might happen.

7 CHAIRMAN CLARK: I think if we turn the question  
8 to Mr. Twomey, and if we did that, certainly, they  
9 would raise those issues again on appeal.

10 MR. ARMSTRONG: Well, there was a discussion about  
11 competent substantial evidence -- not a discussion, a  
12 reference. But, again, as lawyers are aware, that  
13 that's a tool. Judges don't like to be reversed,  
14 either. And that's a tool that judges use not to be  
15 reversed before a higher court. Whether that has any  
16 significance or would play in the court's mind, you  
17 know, we don't know that.

18 CHAIRMAN CLARK: Ms. Fox.

19 COMMISSIONER JOHNSON: Can I ask him another  
20 question?

21 CHAIRMAN CLARK: I'm sorry, go ahead.

22 COMMISSIONER JOHNSON: Or are we going to do it at  
23 the end?

24 CHAIRMAN CLARK: We will have an opportunity for  
25 questions at the end, but if you feel you need to ask

1           it now because you might forget it or it's consistent  
2           with what we are discussing, by all means, go ahead.

3           COMMISSIONER JOHNSON: I don't know how consistent  
4           it is, but it was something that Mr. Armstrong raised  
5           in his argument. And he stated that the GTE case was  
6           controlling with respect to the waiver, stay and risk  
7           arguments made, I guess, by the Commission. Could you  
8           elaborate on how the GTE case is applicable to the risk  
9           argument raised by the Commission? And more  
10          specifically in its language that I know you all cited  
11          in your order. The first order that we issued where we  
12          stated -- and that was Order 93-1788-FOF-WS, where we  
13          stated that, "We are concerned that the utility may not  
14          be afforded its statutory authority to earn a fair rate  
15          of return, whether it implements the final rates and  
16          loses the appeal or does not implement final rates and  
17          prevails on appeal. Since the utility has implemented  
18          the final rates and has asked to have the stay lifted,  
19          we find that the utility has made the choice to bear  
20          the risk of loss that may be associated with  
21          implementing the final rates pending the resolution of  
22          the appeal." And there is more discussion in the  
23          paragraphs before that and after that. I'm wondering  
24          if that is the provision that you are suggesting is  
25          somehow controlled by GTE.

1           MR. ARMSTRONG: It is directly. What I was  
2 referring to is the fact that subsequent to the final  
3 order -- in the discussions, the reconsideration made  
4 by Southern States of the order, the refund order back  
5 on October 19th, the Commission did adopt to some  
6 extent the arguments from other counsel. And you cited  
7 one argument that the Commission appears to have  
8 adopted. What I'm saying, GTE Florida, the situation  
9 there was that the utility came in for a rate increase.  
10 The Commission denied that rate increase, gave a rate  
11 decrease. GTE Florida did not agree with the rate  
12 decrease and argued a number of issues, several of  
13 which were revenue requirement issues. The court  
14 reversed the Commission's denial of that revenue  
15 requirement. The parties then came before the  
16 Commission. I believe the Commission staff at that  
17 time didn't support this argument that GTE Florida  
18 should have come in and asked for a stay, asked to  
19 recover those dollars that it was suggesting were  
20 improperly denied. They didn't do that. We are not  
21 going to give them to them now. The court rejected  
22 that argument.

23           In our case, we asked for the dollars and we got  
24 the dollars. The Commission granted us, after full  
25 hearing, revenue requirements. We got the dollars.

1           They are lawfully set. The law of the case says those  
2           revenue requirements have to be -- the opportunity to  
3           get those revenue requirements have to be provided to  
4           Southern States. Now to suggest that because we went  
5           in and the happenstance that one of the people who  
6           appealed was a county that got an automatic stay, and  
7           we went in and said, "We need those revenues. And we  
8           need them not subject to refund. We need those  
9           revenues. If we don't get this stay removed, we are  
10          going to lose revenue." To suggest that that action  
11          now places us in a worse situation than GTE Florida,  
12          just is inconceivable to the company. GTE Florida was  
13          denied the revenue, didn't ask for a stay and the court  
14          said, "That's irrelevant." We were granted the  
15          revenue. And if we didn't get the vacation of that  
16          automatic stay, we wouldn't have gotten it. Revenue  
17          you said we should get. It's inconceivable that our  
18          situation isn't more compelling to say that that action  
19          by us should not be determined -- held against us.

20                 COMMISSIONER JOHNSON: I understand the facts as  
21                 you just articulated them. But in that particular  
22                 proceeding, you did come in and you said you needed the  
23                 revenue and, certainly, you met the necessary  
24                 requirements for us to actually lift the stay. But  
25                 with respect to lifting the stay, I thought that -- and

1 I'd like for you to respond to this -- that this  
2 Commission in the transcripts and as reflected in this  
3 order stated that to the extent that the stay is  
4 lifted, and that if we are in a situation -- if we are  
5 faced with a situation that we're in today where there  
6 may be the need, if you're overturned and there is the  
7 need to for the refund, then you assume the risk that  
8 if you get that refund, then, you know, you're going to  
9 lose -- if you're overturned and you have to refund,  
10 you're going to lose those revenues. And that that is  
11 what this order codifies. Now, how is that related to  
12 GTE or where do you disagree with what I'm saying?

13 MR. ARMSTRONG: With all due respect, I disagree  
14 100 percent or 180 degrees from the representation you  
15 made of the record. The record speaks for itself,  
16 obviously. And Southern States indicated in that  
17 record that we did not believe that there would be a  
18 refund in any instance where a rate structure is  
19 reversed. Now, at the time that the discussion was  
20 going -- and our recollection of the record is that the  
21 Commission decided that is not an issue before you and  
22 you are not going to decide that issue.

23 COMMISSIONER GARCIA: What risk were you assuming?

24 MR. ARMSTRONG: We don't assume any risk. No  
25 risk. The only risk that's there is that the revenue

1            requirement issues might be raised. At that time we  
2            knew Public Counsel had filed a notice of appeal. With  
3            that notice we don't know what the issues are that are  
4            going to be appealed. There could have been revenue  
5            requirement issues appealed, so we could be required to  
6            post a bond to secure that vacation of the stay,  
7            because ultimately you might have a revenue requirement  
8            issue that is reversed. In that instance -- and our  
9            thinking is if that happens, you have a revenue  
10           requirement reversed and in addition you have a rate  
11           structure reversed. Then possibly the Commission might  
12           want to take the revenue requirement reversal and say,  
13           "Well, those dollars, you know, you aren't entitled to.  
14           We're going to give them back to these other fellows  
15           under rate structure." Possibly that could happen.  
16           But we can't fathom and guess and be asked to speculate  
17           as to those things happening. But our reading of the  
18           record is totally inconsistent with that that you've  
19           just represented. And, actually, our reading is  
20           consistent with what the staff's reading is in their  
21           recommendation today and their reading back on August  
22           31st.

23                    COMMISSIONER JOHNSON: Sure. But unfortunate for  
24           me or maybe for you, our reading of the record perhaps  
25           is different. I would agree with you with respect to

1 the fact that we did say that we didn't have to rule on  
2 that issue that day, but that we did put the company on  
3 notice that that was an issue. If that appeal came  
4 back to us that we were -- you all were assuming the  
5 risk. But we didn't have to rule on it at that point  
6 in time, and that is the legal point that I would like  
7 for you to address. And I have the record here since  
8 the record does speak for itself. And to the extent  
9 that we stated to you in that record, although  
10 certainly Mr. Hoffman's statements are clear with  
11 respect to he didn't want to assume that risk and the  
12 company did not want to assume that risk. But the  
13 Commissioners in their response to you all was that let  
14 the order be clear that we will have -- we may have  
15 another opportunity to view this issue. And at that  
16 point in time we want these customers to be protected.  
17 And to the extent that they are protected, that would,  
18 in fact, affect your revenue, and that you were  
19 assuming that risk. That's the issue that I would like  
20 for you to respond to.

21 MR. ARMSTRONG: And I will respond to that. It  
22 was our position throughout the case in all of our  
23 pleadings that we do not -- it would be unlawful for  
24 the Commission to force us to refund dollars based on a  
25 rate structure reversal without some commensurate

1 surcharge or some other mechanism to give us back those  
2 dollars. That has been our position consistently.

3 There was one misread in a staff recommendation  
4 which I think might have shown up in the order that  
5 said, "We are confident, not that we won't have to give  
6 the money back if there is a rate structure reversal,  
7 but we are confident we are going to win on appeal."  
8 That's not what we said, and that's not what our  
9 pleading said. Our pleading said, "We are confident  
10 that even if we lose on appeal it would be unlawful for  
11 this Commission to require us to refund those dollars."  
12 So, in other words, what the Commission indicated in  
13 its order was, "We are putting you on notice that we  
14 might do something unlawful in the future. And by  
15 putting you on notice we might do something unlawful,  
16 its okay to do something unlawful in the future."  
17 That's our read. That's what happened.

18 COMMISSIONER JOHNSON: So you're actually agreeing  
19 that that's what we said, we were putting you on notice  
20 that there could be a situation where you would have to  
21 refund customers and that you would assume the risk?

22 MR. ARMSTRONG: No, not that we assume the risk.  
23 There is no risk involved as far as we are concerned.  
24 Remember, we don't believe there is a risk because we  
25 believe it would be unlawful. GTE Florida is not new

1 law as far as the regulated utilities are concerned.  
2 We have seen this type of argument before and we know  
3 that to be the law.

4 COMMISSIONER JOHNSON: To the extent that you  
5 thought what we were suggesting was unlawful, why  
6 didn't you appeal the order? I mean, is that something  
7 that you would need to do or can you just not do that?  
8 And I don't know the legal answer. Is that something  
9 that you suggested?

10 MR. ARMSTRONG: It's a quandary, Commissioner, but  
11 recall that you granted our motion. It was a motion --  
12 I don't even know whether the Court of Appeals would  
13 entertain a motion that says -- and we don't think it  
14 would. As a matter of fact, we made that  
15 determination. The court, an appellate court isn't  
16 going to sit there and say, "Southern States, you're  
17 appealing to me the fact that the Commission said that  
18 maybe in the future they might do something to you if  
19 we ultimately reversed an issue in that case?" That's  
20 not an appealable order. That's not something the  
21 court would take two seconds to throw you out on your  
22 ear and say, "This isn't a judiciable issue."

23 COMMISSIONER JOHNSON: So you're saying that with  
24 respect to those provisions, even if we said what I  
25 think we said, that you couldn't have appealed it

1           anyway?

2           MR. ARMSTRONG: There is no doubt in my mind that  
3           a court would not here an appeal that says, "You are  
4           appealing to us the fact that they put in this order  
5           something that says maybe if we do something in the  
6           future, maybe we are going to do this to you in the  
7           future." That's not an appealable order. As a matter  
8           of law that is not an appealable order.

9           COMMISSIONER JOHNSON: And if in this order that  
10          we just stated that you were assuming the risk, that  
11          that risk was on you, something that you said would be  
12          illegal to do, would they not entertain that?

13          MR. ARMSTRONG: No. No. We could not show an  
14          impact to the company from that order. You know, you  
15          have to have the case of controversy before the court.  
16          We would not have had that. There is no doubt that as  
17          a matter of law the court would have thrown us out on  
18          the ear because we did not have a case of controversy.

19          COMMISSIONER JOHNSON: Thank you.

20          MR. ARMSTRONG: Thank you.

21          CHAIRMAN CLARK: Questions, further questions?

22          Ms. Fox.

23          MS. FOX: (Microphone not on).

24          COMMISSIONER JOHNSON: Make sure you turn your  
25          mike on.

1 MS. FOX: Okay. Is that better?

2 All right. On your question, Commissioner  
3 Johnson, we did ask the First District Court to review  
4 the order lifting the stay. And this is under rule --  
5 I believe it's 9.330 of the Rules of Appellate  
6 Procedure, an order lifting or modifying a stay is  
7 reviewable by motion, by simple motion to the court.  
8 It's not even a separate appeal. And we did seek  
9 review of that order in the First District. And that  
10 was denied. And I assure you it was at least in large  
11 part based upon the representations of SSU and the  
12 Commission that the customers would be protected. So,  
13 you know, we haven't gone to the trouble of dredging  
14 all of those things up, but certainly they would be  
15 worth looking at before you accept the argument that  
16 Mr. Armstrong is giving you today.

17 And I would also point out to you that there is  
18 another way to look at this which is that you lifted  
19 the stay on the condition that they were, in fact,  
20 taking the risk of making the customers whole. Now,  
21 Mr. Armstrong said that it wouldn't make any sense that  
22 just because one party was the county and had an  
23 automatic stay that that should be treated differently  
24 than how a stay might be granted in other conditions.  
25 I would like to point out to you that the automatic

1 stay is under a Supreme Court rule, and those are the  
2 procedures that are binding on this Commission and on  
3 the Appellate Court. It's not really for you to  
4 question that.

5 Now, if there hadn't been an automatic stay, then  
6 the customers could have applied for a stay by other  
7 means. They could have had to post a bond, for  
8 example. There are a number of different ways that  
9 things could have happened differently and the parties  
10 could have been protected by different mechanisms put  
11 in place. But the law gave the customers that appealed  
12 an automatic stay and SSU sought to lift that stay.  
13 The Commission had some legitimate concern about  
14 protecting the customers pending the appeal and you  
15 made a provision in your order that covered that. That  
16 provision was reviewed by the First District. It was  
17 upheld. That's law of the case, too, just like  
18 everything else that was decided there is law of the  
19 case. So, with that said, I'm going to go back and  
20 just cover my -- kind of summarize the basic points  
21 that we are making here.

22 The first one is that, just for the record, as we  
23 stated in our brief in response to your order, we don't  
24 think that the reconsideration is appropriate at this  
25 point. There was nothing overlooked or misapprehended.

1           The facts haven't changed. The law, as Mr. Armstrong  
2           just conceded, has not changed. So, there is not, in  
3           fact, a basis for reconsideration. So, for the record  
4           -- I won't belabor that any further, but for the  
5           record, we do argue that you shouldn't be doing this.

6           On the merits of the reconsideration issue, we  
7           would argue, first of all, that you cannot and should  
8           not reopen the record. What you have here essentially  
9           is a situation where a party or parties failed to  
10          present competent substantial evidence to support the  
11          relief that they are requesting. And when that happens  
12          and the case gets reversed on appeal, those parties  
13          don't get another chance to do what they neglected to  
14          do the first time. They can't just go back and put  
15          some more material in the record to bolster it.

16          Either SSU or the staff had the burden of proof of  
17          supporting the combination for ratemaking purposes  
18          during the first go around in this case, and they  
19          failed to carry that burden. But even if you had the  
20          discretion to reopen the record, you couldn't reopen it  
21          to insert new issues. That would circumvent the law of  
22          the case. And I'm going to read you a very brief quote  
23          from a case. It's Don Sun Tan Corporation versus  
24          Tanning Research Laboratories. It's 505 So.2d, Page  
25          35, which says, "In order to prevent later events in

1 the lower tribunal from circumventing or mootng the  
2 binding aspects of an appellate adjudication, the  
3 general rule is that once an appeal has been taken, the  
4 decision on appeal becomes the law of the case. And on  
5 remand, amendments to the pleadings cannot be made to  
6 present new and different issues of fact or law unless  
7 the Appellate Court in its opinion has authorized such  
8 amendments."

9 Now, your staff tells you that functional  
10 relatedness was not an issue during the prior hearing.  
11 And your staff and SSU have repeatedly gone to the  
12 District Court of Appeal with that argument and failed  
13 to get anywhere with either allowing them to relinquish  
14 jurisdiction or to reopen that issue for further  
15 debate. So it simply wouldn't be right for you to hold  
16 otherwise. It wasn't an issue in the first case and  
17 everyone knows that it wasn't. The problem, however,  
18 of course, was that the court held that you didn't have  
19 statutory authority to do what you did. Now, you have  
20 already decided once that you would exercise your  
21 discretion not to reopen the record. The facts have  
22 not changed since you made that decision. The law has  
23 not changed. Reopening the record would, therefore,  
24 just really be a flip-flop at this point and by  
25 definition an arbitrary and capricious act.

1           And just following up on Commissioner Clark's  
2 questions, the instruction not to reopen the record is  
3 implicit in the court's remand in the fact that they  
4 didn't address those other questions. If they were  
5 remanding it for a new trial essentially, they would  
6 have had to address those issues. So by looking at the  
7 questions not disposed of, it's easy to see the  
8 intentions that they had on remand.

9           Moving on to the question of refunds. We would  
10 say, as we have all along, that the parties who lost  
11 money under the terms of an erroneous order are  
12 entitled to get it back. That's due process. That's  
13 black letter law. That's your refund policy as set  
14 forth in your rules and in all of your decisions.  
15 That's what you told us when we were in here arguing  
16 over whether or not the stay ought to be lifted. GTE  
17 doesn't change that, as Mr. Armstrong has admitted.  
18 GTE confirms that, if anything. Because GTE lost money  
19 under an erroneous order, GTE was entitled to get it  
20 back. This is not a matter of discretion. It's not a  
21 matter of some amorphous sort of fairness.

22           COMMISSIONER KIESLING: May I inquire if  
23 Mr. Twomey is ceding you some time?

24           MS. FOX: Okay. Am I over time?

25           COMMISSIONER KIESLING: Oh, yes. I mean, if you

1 want to cede her some of your time --

2 MR. TWOMEY: We don't have any arrangements for  
3 that, so that's you all giving her extra time, I  
4 believe, Madam Chairman.

5 MS. FOX: Well, I just have one more brief point,  
6 if I could make it.

7 The staff says that if you give refunds it would  
8 interfere with the aggregate revenue requirement, and  
9 this is I would submit to you sort of a Catch-22 type  
10 of argument. And it's a fallacy that you have to  
11 understand here, because there is no aggregate revenue  
12 requirement. These systems are not combined for  
13 ratemaking purposes. That's what the First District  
14 Court held. You have to find functional relatedness  
15 before you can combine them. So what you have to do is  
16 go back and look at each system, and if SSU  
17 overcollected the revenue requirements of that system,  
18 those customers have to get their money back. If they  
19 undercollected, then you could award rates that meet  
20 that revenue requirement for that system based on the  
21 record you have. But if SSU never asked --

22 CHAIRMAN CLARK: Are you saying we could surcharge  
23 those customers?

24 MS. FOX: I think that -- I'm not representing  
25 those customers, but I think --

1           CHAIRMAN CLARK: I see, you have no opinion.

2           MS. FOX: -- as a matter of law you could award a  
3 revenue requirement that is based on what SSU asked for  
4 those systems. But they never asked for compensatory  
5 rates for a lot of those systems to begin with.

6           CHAIRMAN CLARK: Okay.

7           MR. FOX: Thank you.

8           CHAIRMAN CLARK: Mr. Twomey.

9           MR. TWOMEY: Yes, ma'am. Thank you. First of  
10 all, I want to thank you all for giving a time certain  
11 for the customers who journeyed here long distance to  
12 watch this decision and your deliberations. Thank you  
13 on their behalf.

14           Now, why are we here? Let's try and narrow the  
15 issues real quickly. Three years have passed. During  
16 that time, you have approved uniform rates, had an  
17 appeal. Your order was reversed on uniform rates.  
18 You've considered remand. You had an order on remand,  
19 reconsideration was taken. You considered issues  
20 there, it was denied. What did you decide? You  
21 decided you had to reverse uniform rates, which you  
22 did. You implemented stand-alone or modified  
23 stand-alone rates. You decided that you weren't going  
24 to reopen the record. There was a lot of discussion  
25 about that for months past, maybe a year now. You

1           decided that refunds would be made to the Sugar Mill  
2           Woods folks and others who were overcharged pursuant to  
3           the uniform rates.  Lastly, you decided when this issue  
4           was debated that the refunds would not be paid by the  
5           other customers, that they would be paid by the  
6           utility.  Now, you reconsidered all of that and you  
7           decided that you weren't going to change any of it.  
8           That was it, your rate issue, your order.

9           The GTE case came out.  We came back here.  We  
10          briefed and we're asking ourselves -- you're asking  
11          yourselves, I assume, I hope, what affect, if any, and  
12          I repeat, if any, does the GTE case have on the present  
13          case?  Because GTE does not necessarily have to have  
14          any effect on what you have done so far.  So, what  
15          effect does GTE have?

16          As cited to you by the utility, the court said,  
17          "Equity requires that both ratepayers and utilities be  
18          treated in a similar manner."  They also said on the  
19          same page, "We view utility ratemaking as a matter of  
20          fairness."  Now, someplace in the process your staff,  
21          in recommending that the refunds be cast aside, which I  
22          recognize is consistent for your staff because they  
23          have urged that to you repeatedly throughout this  
24          process, someplace in the process the staff missed the  
25          point.

1           I think that in GTE, the court said, "You have to,  
2           in fairness, give GTE, the utility, some money that  
3           you, in your erroneous order, didn't award them  
4           previously." It wasn't in rates, as the court pointed  
5           out in this opinion, it was costs. Costs from an  
6           affiliate corporation that they were purchasing items  
7           from. So, they said in fairness, you have to take care  
8           of GTE. And in GTE there were only two parties that  
9           you could look to. The Commission wasn't going to pay  
10          for the erroneous decision, financially, that is.  
11          There were only customers, okay. And the court said,  
12          in opposition to the Public Counsel, and I guess you  
13          all, said, "Hey, the customers shouldn't have to pay,  
14          the company didn't get a stay." And the court said,  
15          "No, the stay is not at issue in that case, it's not  
16          mandatory," and so forth. There wasn't a stay. The  
17          court said they didn't have to get one.

18          Now, the court also said, "Hey, the customers out  
19          there were represented by Public Counsel," okay. "And,  
20          therefore, we are going to have a surcharge on the  
21          customers who benefited by the erroneous order, but  
22          only those customers who were receiving service during  
23          the disputed time period," that is during the time  
24          period from the date of the order. So the court said,  
25          "You have to give the money back. Don't worry about

1 the stay right now, they were represented."

2 The critical distinction here, Commissioners, is  
3 that, as Commissioner Johnson pointed out and Ms. Fox  
4 mentioned, there was a stay in effect. There was only  
5 a marginal difference in the amount of revenue they  
6 would have gotten through the generous interim rates  
7 that were in effect. Be that as it may, there was a  
8 stay. They aggressively sought to have it lifted and  
9 it was, in fact, lifted. They knew they were at risk.  
10 The Commission knew they were at risk. The record  
11 shows that of this case, that they were at risk. You  
12 have found that since on remand.

13 Now, the only question of GTE is who should have  
14 to pay the refund, SSU or the other customers? Someone  
15 has to pay. Someone has to pay Mr. Hansen and these  
16 people. It should be the utility and this is why. No  
17 customer, the other customers who benefited by the  
18 uniform rate subsidies were not represented at any  
19 point in this hearing vis-a-vis the rate structure  
20 issues. Public Counsel declared early on a conflict on  
21 that matter. There was no representation, contrary to  
22 and in distinction to the GTE case.

23 Secondly, and because of that, they had no  
24 awareness whatsoever as opposed to what the court found  
25 in GTE that they were being subject to these amounts,

1           okay. The amounts in some cases here are massive  
2           compared to what is going to be surcharged in GTE. The  
3           time period is longer, the amounts are larger. So,  
4           where do the equities lie? If utility regulation and  
5           utility ratemaking is supposed to be equitable and it's  
6           supposed to be grounded in fairness, and if you assume  
7           that somebody has to make the refunds to my clients and  
8           the others who were harmed economically by your  
9           erroneous order, who has to make it? The utility has  
10          made all the decisions. They had the lawyers. They  
11          had the awareness. They had the knowledge. They took  
12          out the appeal bond and the security bond. They have  
13          it now, and they are not faced in the pending rate case  
14          with increased rates yet as the customers who would be  
15          forced to pay the surcharges would be.

16                 So, I say to you, Commissioners, I respectfully  
17          request that you find that there is no necessity to  
18          change anything by the GTE decision. Enter your order  
19          on reconsideration; require the refunds be made; don't  
20          reopen the record; make the utility make the refunds.  
21          You've already voted and reconsidered the time period.  
22          Make them give the money back pursuant to your rule as  
23          you decided before.

24                 And one last thing on the issue of they have to  
25          get the refund requirement, they can't lose any

1 revenues. You gave them the rates that would have  
2 given them the necessary revenue requirement. That's  
3 all you have to do. They can gamble with it if they  
4 want to. The executives can go to Reno, or the  
5 executives can decide they want to buy a used car  
6 outfits, or they can decide that they want to take a  
7 chance on forcing some of their customers to pay  
8 excessive rates through uniform rates and put  
9 themselves in a position to make refunds. That's what  
10 they did. Thank you very much.

11 CHAIRMAN CLARK: Thank you, Mr. Twomey.  
12 Mr. Armstrong.

13 MR. ARMSTRONG: A two-minute rebuttal will do  
14 fine.

15 CHAIRMAN CLARK: Go ahead.

16 MR. ARMSTRONG: Thank you. First, you heard  
17 argument from Ms. Fox that the bond was posted and why,  
18 according to Ms. Fox, to make her individual customers  
19 whole at Sugar Mill Woods. The transcript of the  
20 proceeding which we've been referring to regarding the  
21 motion to vacate stay has the following quote from then  
22 Chairman Deason, whose was the only Commissioner who  
23 voted against the vacation of that stay, and I would  
24 like to read that to you or a portion of it to you. "I  
25 don't see where -- even though there is going to be a

1           bond posted, it's not going to be for the purposes of  
2           making individual specific customers whole. It's going  
3           to be for the purpose of making customers as a total  
4           ratepaying body whole." That is consistent with  
5           Southern States' view of why that bond was posted.  
6           There could have been and actually were revenue  
7           requirement issues that were appealed.

8           COMMISSIONER JOHNSON: Mr. Armstrong, how do you  
9           explain a couple of pages later Commissioner Clark's  
10          statement with respect to the bond, which provides  
11          that, "All we need to do at this point in time is make  
12          sure that the bond is sufficient to cover the increase,  
13          and because it is still at issue and covered, that is  
14          the amount of any refund that would be due, if it is  
15          decided that a refund is due to those people who paid  
16          more under statewide rates than they would have paid  
17          under stand-alone rates." She's talking rate  
18          structure.

19          MR. ARMSTRONG: And there she said, "because it is  
20          still at issue."

21          COMMISSIONER JOHNSON: That's right. I'm not  
22          disputing that, that we did not decide the question.

23          MR. ARMSTRONG: We are not suggesting that you  
24          decided that there would no refunds. We're certainly  
25          not suggesting that. We are suggesting that as a

1 matter of law, you could not make us refund even if  
2 there was a rate structure reversal. And we have said  
3 that all along, not without some commensurate recovery  
4 from Southern States. And that is what we have always  
5 argued. And the fact was that that was left at issue.  
6 So, again, we couldn't go appeal that order because it  
7 was at issue.

8 COMMISSIONER JOHNSON: So, the first opportunity  
9 that you will have to appeal that will be if we,  
10 indeed, pursuant to what we said we could do back then,  
11 do it in this instance.

12 MR. ARMSTRONG: That's right.

13 COMMISSIONER JOHNSON: And it wouldn't be that you  
14 have changed positions or that we've changed positions,  
15 it would just be a matter of the whole time you thought  
16 what we wanted to do was illegal, and it would be up to  
17 the courts to decide whether we thought we were doing  
18 it in order to protect the customers. And that  
19 language is stated again and again in the order, and  
20 that the way we could protect the customers would,  
21 indeed, be through -- when we get to this point, making  
22 a decision and that we could require refunds to these  
23 customers, you would suggest that the issue, if we were  
24 to decide that today, is now ripe for the District  
25 Court to decide.

1           MR. ARMSTRONG: That is the first opportunity we  
2 would have through prior orders that had "ifs" and  
3 "mays" abounding in it, and I think that's support for  
4 what we have indicated.

5           COMMISSIONER JOHNSON: And you said another thing  
6 that with respect to the other order, the reason why  
7 you wouldn't have appealed that is because it wasn't  
8 ripe at that point in time.

9           MR. ARMSTRONG: I think I characterized it as we  
10 would be thrown out on our ears, and that's what we  
11 firmly believe.

12           A second point I would like to address is the  
13 question of the impact of the stay that did apply when  
14 -- the automatic stay when the county appealed.  
15 Suggestions that Southern States could have been whole,  
16 would have been whole, nobody can sit here now and  
17 suggest that only a portion of that order was stayed.  
18 That the revenue requirements and all of that, that was  
19 going to go forward, no problem. That order was stayed  
20 in toto by the filing of that appeal on the automatic  
21 stay. And there is nobody that can sit here today on  
22 this side of the table and say, "No, it wasn't the  
23 whole order. It was just that rate structure issue."  
24 That's not the case. As I said, OPC had filed a brief  
25 -- I mean, a notice of appeal. Even at that point in

1 time we don't know whether there could have been  
2 additional issues on revenue requirements by this  
3 party, you know, the parties who filed their notice of  
4 appeal before that might have been raised.

5 The last point, issues of customer representation.  
6 As Mr. Hoffman suggested earlier, the last time we were  
7 here before the Commission on these very issues, there  
8 was a representative of the Office of Public Counsel  
9 who appeared on behalf of the customers opposing a  
10 surcharge. I don't think we can have a situation where  
11 there is a picking and choosing of when we are going to  
12 come appear for customers. Again, OPC's role is  
13 counsel for all customers.

14 Now, in that role if there is a conflict and he  
15 cannot represent customers on an issue, and if it's  
16 their position they can't do that for rate structure,  
17 they then -- and I'm sure they do this -- they advise  
18 their customer -- I mean their client, their clients  
19 which are our customers, they advise them, "I can't  
20 advocate on this position, you'd better get your own  
21 lawyers." We see Sugar Mill Woods, they have been in  
22 here advocating their positions on rate structure  
23 consistently. And that is appropriate if they want to  
24 contest the rate structure. But it's not Southern  
25 States' burden, and it shouldn't impact your decision

1 at all in this case, any argument you have heard about  
2 representation of customers.

3 COMMISSIONER JOHNSON: Let me ask you another  
4 question on the rate structure issue. Are you, then,  
5 suggesting that the law or perhaps the Commission  
6 policy with respect to rate structure is that the  
7 customers, if there is a rate structure issue, they are  
8 always assuming the risk and that the company is not?  
9 Is that the policy argument or is that the law? And to  
10 the extent it's the law, if you could provide me with  
11 more information on that, or to the extent you believe  
12 it's a Commission policy, if you could elaborate on  
13 that. Because it appears to me that what you're saying  
14 here is on a rate structure issue, the customers are at  
15 risk. And I have -- are always at risk and the company  
16 is never at risk. And we may just fundamentally  
17 disagree with that, and the court may have to decide  
18 that for us. But could you explain that?

19 MR. ARMSTRONG: And I'd like to confine it to this  
20 case, you know, because I think that -- that's the most  
21 important thing because we have talked about and  
22 bantered the word "risk" around so often. But I think,  
23 certainly, given the facts in this case, the company  
24 was not at risk regarding the rate structure  
25 determination. I'm certain if I tried to make any

1 overall and absolute statement that there would be  
2 something that could be found to negate that to some  
3 extent, so I don't want to make an absolute.

4 COMMISSIONER JOHNSON: In this case on these facts  
5 I think you've argued -- and I perhaps may be putting  
6 words in your mouth -- that we did not have the  
7 discretion to not allow the stay to be lifted, that  
8 the law was clear and that our rules were clear once  
9 you did the necessary steps that we had to lift that  
10 stay. And if we lifted that stay and there is this  
11 issue out there of rate structure, you're saying under  
12 these circumstances, from day one, the customers were  
13 at risk. Those people that were overpaying were just  
14 overpaying, because you all were going to get your  
15 money, and that there was no way that this Commission  
16 could protect them or those that underpaid because the  
17 bottom line was the utility would get paid. Is that  
18 what you're saying?

19 MR. ARMSTRONG: No. I think GTE Florida and the  
20 law, constitutional law, as it applies says there has  
21 to be fairness to the utility and to the customers.  
22 And I firmly believe that. The only reason that  
23 Ms. Fox indicated they could go file their appeal of  
24 the issue on the vacating of the stay is that they were  
25 an adversely affected party. We were granted the

1 motion that we applied for. And then we had this  
2 conditional whatever language that caused us not to be  
3 able to. But it was their position they were adversely  
4 affected right off the bat. The court --

5 CHAIRMAN CLARK: Is it correct that you can't  
6 appeal an order that is not adverse to you?

7 MR. ARMSTRONG: I've never even thought about  
8 appealing an order that was not adverse. But I do know  
9 that if it has got an if, and, or but in there, that  
10 the court based upon judicial economy, based on the  
11 cases in controversy clause in the constitutions will  
12 and can throw you out on your ear.

13 COMMISSIONER JOHNSON: My question is how can the  
14 customers be protected in this rate structure issue?  
15 Are you suggesting that there is no way to have  
16 protected those particular customers?

17 MR. ARMSTRONG: No, there could be mechanisms that  
18 the Commission could divine. And, you know, one is to  
19 allow the company to charge the higher of either of the  
20 rate structures and hold dollars subject to refund.  
21 Whoever wins the rate structure issue or whoever -- you  
22 know, whatever rate structure is selected the other  
23 people get a refund back.

24 COMMISSIONER GARCIA: We are having the citizens  
25 of this state help finance your company. Why are we --

1           MR. ARMSTRONG: No, that would just be that the  
2 dollars would come back after the rate structure is  
3 determined.

4           COMMISSIONER GARCIA: But are we not giving them  
5 the risk here? Aren't they the ones that had to  
6 assumed the risk over this rate structure as opposed to  
7 the company?

8           MR. ARMSTRONG: No. You know, we keep talking  
9 about risk, and I don't even know why we are talking  
10 about risk. I mean, I think --

11           COMMISSIONER JOHNSON: Well, let me explain it in  
12 how I see it. We had some customers who thought that  
13 our rate structure was illegal or unconstitutional.  
14 They challenged that. But we, because you -- and you  
15 rightfully so came in and you got the stay lifted. Are  
16 they at risk for challenging it? I mean, how can they  
17 ever be protected under the scheme that we have set up  
18 where you automatically get a stay lifted, the rates go  
19 into effect, but the whole time they are saying, "Hey,  
20 wait a minute. Hey, wait a minute, this is wrong and  
21 we are overpaying every day." How do we protect them?

22           MR. ARMSTRONG: First, the Commissioners did not  
23 agree with our position that it was an automatic, that  
24 they had to vacate automatic. But, second, the  
25 customers who then appealed that rate structure --

1           COMMISSIONER JOHNSON: Actually, we did agree with  
2 you that we didn't have the discretion and that we had  
3 to lift the stay. That's also in the order.

4           MR. ARMSTRONG: Okay, Commissioner. I didn't read  
5 it that way.

6           COMMISSIONER JOHNSON: It's on that same page,  
7 that we said that it was not a discretionary provision  
8 and that it mandates that the automatic stay be lifted  
9 when you take the steps that you took.

10          MR. ARMSTRONG: Okay. Well, that was our  
11 position, so I'm glad you agreed with it. That was one  
12 we got.

13          But the second point was if the customers in that  
14 instance come forward and they ask for -- you know,  
15 they are successful on their appeal, then prospectively  
16 the rate structure would be changed. And even at that  
17 point, I don't know that it would be changed to the one  
18 that they have advocated, but it would have to be  
19 changed to one that is supported in the record.

20          So, even in that instance it's not a given that  
21 the customers are going to get what they ask for. Rate  
22 structure is something that is always at issue in every  
23 single rate case that we have, and you all know that.  
24 I'm talking to the people who know that very well.  
25 Customers have to be advised or should be advised that

1 rate structure is an issue in every single case. And  
2 to suggest that the company, as in the current case, we  
3 had to up front let customers know that we have asked  
4 for X, but there might be a Y rate structure out there.  
5 I think it is rather onerous, and I don't think it is  
6 something that is contemplated right now in the way the  
7 law reads.

8 CHAIRMAN CLARK: Mr. Armstrong, we have  
9 interrupted you several times. Have you completed your  
10 rebuttal?

11 MR. ARMSTRONG: Yes, I have. Thank you very much.

12 COMMISSIONER JOHNSON: Yes, he said he was  
13 finished.

14 CHAIRMAN CLARK: I'm sorry. Commissioners,  
15 further questions? Do you have questions of the staff?  
16 I have a question of staff with respect to assumption  
17 of the risk. And if I have understood SSU's argument  
18 is that when they posted the bond, they certainly  
19 assumed the risk that some of their revenue requirement  
20 might be disallowed and they would have to refund. But  
21 they did not assume the risk with respect to rate  
22 structure. And by asking for a lifting of the stay,  
23 even though we said that we thought there might be a  
24 waiver in that request for lifting of the stay and that  
25 the rates go into effect, it's your view that the court

1 would say to us, based on GTE, that there has been no  
2 assumption of the risk or waiver.

3 MS. JABER: And that's correct. What I have been  
4 debating on how to say, Chairman Clark, is a response  
5 to Commissioner Johnson's question. And I'm going to  
6 do my best and I can be corrected if I'm wrong. Here  
7 is where staff was coming from. The God's honest truth  
8 in response to your question is it is staff's view that  
9 rate structure in this case is revenue neutral. When  
10 the court overturned the Commission's decision on rate  
11 structure, it didn't generate the refund. It's the  
12 changes in the revenue requirement that generate a  
13 refund. The answer to your question in this case is  
14 it's not the change in the rate structure that gets the  
15 refund. SSU didn't assume a risk. I also don't agree  
16 with the term "risk." And you also know that there are  
17 -- my interpretation of the reading of the order and  
18 the transcript, it is subject to interpretation. But  
19 even more importantly, it doesn't matter what the  
20 Commission thought at that time, in my opinion, and it  
21 doesn't matter what staff thought at that time, in my  
22 opinion, because the truth is the conditions have  
23 changed. The circumstances have changed. We didn't  
24 know the court was going to come back --

25 CHAIRMAN CLARK: You mean the law has changed. We

1           have gotten further explanation of the law from the  
2           highest court in the state.

3           MS. JABER:   That's correct.   The law has changed,  
4           but staff's interpretation of what generates a refund  
5           is consistent; it is the change in the revenue  
6           requirement, and maybe Mr. Willis can add something  
7           more, but --

8           COMMISSIONER JOHNSON:   So is it staff's position  
9           with the question I was asking Mr. Armstrong is that  
10          the customers assume the risk in a rate structure  
11          issue, and that if they appeal it, like these people  
12          did, that there is no protection?   To the extent they  
13          overpaid, that's just too bad.

14          MS. JABER:   It's very difficult to answer it that  
15          way, and I will tell you why.   I don't look at it as  
16          who assumed the risk; I look at it as customers can be  
17          afforded the opportunity to be made whole on a  
18          going-forward basis.   You fix the mistake as the court  
19          has told us we have made by changing the rate  
20          prospectively.   Yes, that doesn't mean refund.   That's  
21          staff's recommendation.   That's staff's opinion.   It  
22          doesn't mean refund.   So, I'm trying to stay away from  
23          assuming the risk because, you know, if you want me to  
24          answer that question, I would tell you, no, they  
25          haven't assumed anything because the way you correct

1 the problem is you change the rate prospectively.

2 COMMISSIONER JOHNSON: And what do you do about  
3 the overpayment? That's a nonissue?

4 CHAIRMAN CLARK: Well, no. I mean, in this case  
5 what do you do about the refund? That's my concern.  
6 If you go with your recommendation, you're saying that  
7 there is no refund based on people who paid more than  
8 they would have paid under stand-alone, is that right?

9 MS. JABER: That's correct, because to make a  
10 refund, to order a refund would take away from the  
11 utility's revenue requirements.

12 CHAIRMAN CLARK: It seems to me that as I tried to  
13 work through the notion of waiver and the arguments or  
14 assumption of the risk, I agree with you that it's not  
15 really an issue of assumption of the risk what the  
16 court has said, it's a matter of equity. And what they  
17 have said is that we had a concern that we could not  
18 order the surcharge because it's retroactive  
19 ratemaking, and the courts have been fairly consistent  
20 in saying that a surcharge would have been retroactive  
21 ratepaying because it would have imposed an additional  
22 charge for service already rendered.

23 What the court seems to be telling us is that when  
24 you have some changes, you have to make revenue  
25 requirements for how you collect that revenue based on

1 a decision -- a reversal or some altercation -- not  
2 altercation, alteration of the decision. It is not  
3 retroactive ratemaking when you go back and correct  
4 that through a surcharge. And to that extent it seemed  
5 to me that the notion of whether or not SSU assumed the  
6 risk as we categorized it, we were basing it on what we  
7 thought was the law. And what the court has said now  
8 is, "No, that is not the status of the law and you have  
9 to go back and do equity."

10 MS. JABER: I would agree with that.

11 CHAIRMAN CLARK: And it seems to me that we have  
12 -- I don't think we can do what you're suggesting and  
13 no refund without going back and reopening the record  
14 and making the necessary findings. I think our choices  
15 are either that, on a going-forward basis, that we  
16 surcharge customers as indicated further, or we go back  
17 and open up the record and make the necessary findings.

18 COMMISSIONER JOHNSON: Just adding to that, I  
19 don't think that we are in a position to -- not that I  
20 would agree to a surcharge anyway, but if we were to do  
21 that, given the information that we have in this  
22 recommendation, I would feel uncomfortable imposing a  
23 surcharge. We don't even know what it is. We don't  
24 even know how much these customers would be assessed.  
25 We don't even know what kind of an impact we would be

1           having on customers. With respect to making a vote on  
2           surcharging folks today, to me, would just be almost  
3           unthinkable not having the facts before us and the  
4           ability to analyze and determine what exactly we would  
5           need to do.

6           CHAIRMAN CLARK: I think the company has suggested  
7           that we could simply reopen the record and move  
8           information in it in another docket, and then allow the  
9           uniform rates to go forward or deal with it by having  
10          the additional evidence in the record. I don't think  
11          that will get it for two reasons. I think that we need  
12          to make sure that any finding we make of functionally  
13          related covers the same time period as the test year.  
14          And I'm not sure that what we did in the other case  
15          does that. And we also need to make sure we had the  
16          same parties. I don't think we had the same parties in  
17          the two cases.

18          MS. JABER: I don't think we did, either. I'd  
19          have to go back and take a look at that. There are a  
20          couple of problems. It's not just a matter of taking  
21          from the jurisdictional record and putting in the 199  
22          docket. It is making a finding that the facilities and  
23          land were functionally related during the processing of  
24          the 199 docket and taking that forward and allowing  
25          cross examination on that.

1           CHAIRMAN CLARK: Commissioners, you know, I have  
2 been struggling with what is the best way to go in  
3 light of the GTE decision. And I guess I should say  
4 that having read the GTE decision, even though we  
5 talked about assumption of the risk in terms of posting  
6 of the bond and seeking a lifting of the stay, I think  
7 the court would be even more disposed to find that that  
8 doesn't have a bearing on whether or not -- that it  
9 can't be the basis for saying the refunds will come  
10 from the company and not through a surcharge from other  
11 customers, because it would have denied them what the  
12 court found to be a reasonable revenue requirement.  
13 They would not have gotten their revenue requirement.  
14 They would have gotten nothing for -- I guess what I'm  
15 saying in the GTE case, if they had gone for the stay,  
16 they could have kept the rates where they were.

17           MS. JABER: That's correct.

18           CHAIRMAN CLARK: And then we wouldn't have had the  
19 issue of surcharge, because the rates were higher. The  
20 current rates were higher in the GTE case.

21           MS. JABER: That's correct. The Commission  
22 ordered a rate reduction.

23           CHAIRMAN CLARK: Yes, but we didn't -- we might  
24 have put something subject to refund, but the rates in  
25 effect prior to the rate case were higher.

1 MS. JABER: Exactly.

2 CHAIRMAN CLARK: And if they say that didn't  
3 constitute a waiver, then I think this is the more  
4 compelling reason, because the rates -- by letting the  
5 rates go into effect, they are getting a revenue  
6 requirement. I don't think I've made myself clear.  
7 They would have had to give up money not to apply for a  
8 vacation of the stay. In the GTE case, they would have  
9 kept the money and there would have been no need for a  
10 surcharge, and they would have had to do some refunding  
11 of money. And if the court concluded that not seeking  
12 a stay was not a waiver, I think in this case seeking  
13 the vacation of the stay could not be interpreted as a  
14 waiver or assumption of the risk.

15 And I think that leaves us with two alternatives.  
16 And, you know, quite frankly, Commissioners, I'm still  
17 struggling with what is the best way to go. I'm not  
18 sure we could characterize either of them as the best  
19 way to go. But it seems to me that we cannot do what  
20 staff is recommending now, in my opinion, without  
21 reopening the record. And I think that goes contrary  
22 to what the court said. They said without making a  
23 finding, you can have that rate structure. So, I think  
24 we have to go back and make that finding if we intend  
25 to not make a refund for that period of time.

1           The alternative is -- and in that case we would  
2           have to reopen the record and reach the conclusion that  
3           for that period of time that there was that functional  
4           relatedness. There are several problems with that as I  
5           see. We currently have that issue on appeal. What if  
6           we do that now and the courts say it's not functionally  
7           related?

8           MS. JABER: Right. Or if you can even make the  
9           finding. I mean --

10          CHAIRMAN CLARK: Yes. That makes the assumption  
11          that you can and that's not in the record.

12          MS. JABER: Right.

13          CHAIRMAN CLARK: Also, we would have to have more  
14          proceedings on it. On the other hand, it has the  
15          advantage of allowing -- I think it may have the  
16          advantage of allowing people who -- if we are going to  
17          have another hearing, we may consider letting people  
18          who are going to be affected by it participate. And it  
19          seems to be one of the rationales the court used in the  
20          GTE case for saying there hasn't been a lack of notice  
21          on the part of customers that the surcharge may be  
22          coming as Public Counsel was representing them. I'm  
23          not sure that that would be the same in this case. And  
24          the surcharge is of concern to me because I think it's  
25          going to be a large amount. We would have to struggle

1 with the period of time over which it should be done,  
2 and it does have the element of charging for services  
3 rendered in the past. There is no opportunity for  
4 those customers to adjust their consumption based on  
5 the level of rates.

6 COMMISSIONER KIESLING: Let me add my thoughts,  
7 which run somewhat similar to yours. After reading and  
8 rereading and rereading and rereading the GTE opinion,  
9 I came away with a couple of thoughts. One of them was  
10 this whole fairness thing that, you know, we need to  
11 craft a method that does not end up penalizing the  
12 utility or the customers, no matter which side of the  
13 equation they fall on. It does not mean that, you  
14 know, they shouldn't pay for services received, but I  
15 don't think it should be a penalty. And I kept going  
16 back, since I was not even a Commissioner when 199 was  
17 heard. I didn't come in until the generic  
18 investigation docket on the theory and policy  
19 considerations of uniform rates, but I came away from  
20 that proceeding, which I think is probably still on  
21 appeal, with the opinion that is reflected by my vote  
22 in that case. That I'm not willing to exclude single  
23 tariff pricing as one of the rate designs that is  
24 available in the right circumstances.

25 So, I came down to the only way I could resolve,

1 in my mind, what should happen is the same place that  
2 you came to. And that is we either need to reopen the  
3 record, because there was no evidence in that record on  
4 functional relatedness, mainly because no one thought  
5 that was an issue, since our opinion at the time was  
6 that functional relatedness was a question that was  
7 only called into play when you had jurisdictional  
8 problems. And every one of the 127 systems was a  
9 jurisdictional county. So, since that was not an  
10 argument or an issue that was foreseeable by the  
11 utility, by the staff, by the Commission, by anyone, I  
12 think that we need to go back, reopen the record, and  
13 at least see if we can determine from evidence  
14 presented the question of whether there was a  
15 functional relationship between these 127 systems at  
16 the time that the single tariff pricing went into  
17 effect with that test year. And if we can do that, and  
18 if we make that finding, then we don't need to do  
19 anything else because it will go back to the court, I  
20 assume on appeal, to decide whether that satisfied  
21 their needs or whether there are other issues in that  
22 case that, again, we didn't think about.

23 CHAIRMAN CLARK: Well, let me ask you a question.  
24 I'm just not clear. I'm sure there is nothing in the  
25 record that goes to functional relatedness.

1           COMMISSIONER KIESLING: I'm sure.

2           CHAIRMAN CLARK: But you're suggesting we would  
3 take further evidence on that issue as to whether  
4 during the time period of the test year it was.

5           COMMISSIONER KIESLING: That was the failure of  
6 the order that the court cited. Granted, they did not  
7 look at all of the issues raised because they felt that  
8 it could be disposed of on that. But I do agree with  
9 staff in their recommendation that it was essentially a  
10 general remand that did allow the discretion for us to  
11 reopen the record to try to take more evidence and  
12 satisfy that evidentiary failing.

13          CHAIRMAN CLARK: Would you agree that the  
14 alternative is to surcharge?

15          COMMISSIONER KIESLING: Yes. That's the flip side  
16 for me. The only other alternative to doing that is to  
17 grant a refund and a surcharge. Because that is the  
18 only way that the revenue requirement, which has not  
19 been overturned, can be met and the customers -- what  
20 the customers pay eventually or receive as a refund  
21 eventually would bear some resemblance to the cost of  
22 service or the service that they had used during that  
23 time period. I can't find any other way. I mean, God  
24 knows I have tried and tried and tried. And, you know,  
25 I don't really care that much about the waiver and the

1           stay issue in the sense that even if when that stay --  
2           when we granted the lifting of the stay, even if we had  
3           pointed out that, you know, "Company, you're now  
4           assuming the risk that you might have to make refunds."  
5           I think that because the First District Court of Appeal  
6           raised an issue which none of us thought about, that  
7           being the functionally related, I think that the  
8           penalty that we would be imposing on the company for  
9           having asked for the lifting of the stay, which is a  
10          reasonable action for them to take had they not  
11          foreseen, had they not been clairvoyant and we  
12          certainly weren't clairvoyant. I just think that that  
13          is a penalty which is -- when I weigh the equities of  
14          it and look at fairness, you know, tilts it too far the  
15          other way toward penalizing the company for what was  
16          essentially not that unreasonable or not that  
17          questionable of an action in lifting the stay.

18                 COMMISSIONER DEASON: Well, it was very  
19                 questionable at the time it was discussed at the  
20                 Commission.

21                 COMMISSIONER KIESLING: I've read that transcript.  
22                 But I'm talking about the avenue of requesting that the  
23                 stay be lifted was one that under law was available to  
24                 the company that they availed themselves of.

25                 CHAIRMAN CLARK: That we didn't have discretion to

1 do.

2 COMMISSIONER KIESLING: That we didn't have  
3 discretion to do in large part and which no matter what  
4 we said, we were not in a position to put conditions  
5 on.

6 CHAIRMAN CLARK: I guess what you're saying is  
7 even though we said it constitutes an assumption of the  
8 risk, the law says otherwise.

9 COMMISSIONER KIESLING: That's exactly what I  
10 think. And I don't think --

11 CHAIRMAN CLARK: At least the law as currently  
12 articulated by the court.

13 COMMISSIONER KIESLING: Yes. So, that's the  
14 quandary I'm in. I don't see any other solution except  
15 for those two. And if anyone else has one, I'm really  
16 willing to listen. But I tried sitting down with paper  
17 and pencil and working through every scenario; refund  
18 but no surcharge; you know, no refund; no surcharge; no  
19 opening the record; and every one of them came down  
20 that there would be a great inequity to one of the  
21 sides. So, that's where I came down to.

22 CHAIRMAN CLARK: Other Commissioners can feel free  
23 to jump into this discussion.

24 COMMISSIONER DEASON: I'm ready to vote on the  
25 issues.

1           CHAIRMAN CLARK: Okay. All right. We have had  
2 Issue Number 5. Issue Number 4. Issue Number 5.

3           COMMISSIONER KIESLING: Well, that's the crux of  
4 the whole thing right there, isn't it?

5           CHAIRMAN CLARK: Is there a motion?

6           COMMISSIONER DEASON: I move that we grant staff  
7 to the extent that the record is not reopened and that  
8 we order a refund to customers with no surcharge.

9           COMMISSIONER JOHNSON: What was the first part of  
10 that? What was the first part you said?

11          COMMISSIONER DEASON: We basically affirm what we  
12 did before, before the GTE case.

13          COMMISSIONER JOHNSON: Second.

14          CHAIRMAN CLARK: Further discussion?

15          COMMISSIONER GARCIA: Yes. Can I ask Commissioner  
16 Deason to give me his thinking on it, so that I --

17          COMMISSIONER DEASON: Sure, I will be glad to. I  
18 think there has been a broader reading of the GTE case  
19 discussed here than what I attribute to that case. I  
20 notice that are many differences. First of all, in the  
21 GTE case it was an issue that was on appeal which was a  
22 revenue requirements issue. There was no revenue  
23 requirements issue on appeal in the SSU case.

24          CHAIRMAN CLARK: Yes, there was. The revenue  
25 requirements, some of the revenues requirements were --

1           COMMISSIONER DEASON: They were on appeal, but  
2 there was no remand --

3           CHAIRMAN CLARK: Decision of the court, I agree  
4 with that.

5           COMMISSIONER DEASON: -- from the court changing  
6 any of the revenue requirements for SSU.

7           COMMISSIONER GARCIA: In fact, it wasn't  
8 addressed, right?

9           COMMISSIONER DEASON: Right.

10          CHAIRMAN CLARK: They found no error.

11          COMMISSIONER DEASON: They found no error in the  
12 revenue requirements portion of the SSU case. The  
13 court put great emphasis on the fact that in the GTE  
14 case there were basically two sides, that being the  
15 company and the customers. And the customers were  
16 fully represented by the Public Counsel's office and  
17 basically put on notice in all regards concerning those  
18 possibilities. I think that is either expressly said  
19 in the order or it can be read into the court's  
20 opinion. That is not the case here with this SSU  
21 situation.

22           We basically have three parties in effect, that  
23 being the company, one group of customers, and another  
24 group of customers, depending upon whether they benefit  
25 from uniform rates or not. I think that is another

1           distinction. I think that it is important to realize  
2           that even with the GTE decision that there is no  
3           guarantee of revenue requirement. The only thing we  
4           are obligated to do is to give a company a reasonable  
5           opportunity to set rates so they have a reasonable  
6           opportunity to earn that revenue requirement. And I  
7           respectfully disagree. I think that the discussion  
8           that we had concerning the stay put the company on  
9           notice that what they were requesting, that they were  
10          basically assuming a risk, that they may be faced with  
11          a situation of having to refund money with no  
12          opportunity to have a way to recoup that. I think  
13          there is ample discussion on the record of that  
14          transcript and in the record which does that. And I  
15          think that it is not a viable alternative to simply  
16          say, no refund, no surcharge. Because, in my opinion,  
17          that would violate the DCA's order saying that uniform  
18          rates were unlawful, because the net effect of that  
19          would be we would be saying uniform rates were okay for  
20          two years or whatever time period that they were in  
21          effect until we implemented the interim rates in the  
22          most recent rate case.

23                 I am the first to admit there is no easy answer to  
24                 any of this. You know, in retrospect, I wish that we  
25                 had not granted vacating the stay. But that's all

1 water under the bridge. I would note that if that stay  
2 had remained in effect, the company would have -- the  
3 revenue requirements would have been less than what the  
4 final decision had been, but it would have been only a  
5 few, as I understand it, \$100,000, \$200,000 a year in  
6 revenue requirements. Which I'm not saying is not  
7 insignificant, but it would be a much more palatable  
8 situation to find ourselves in now than we are looking  
9 at refunds of multi-millions of dollars. I just  
10 believe that SSU is fundamentally different from GTE  
11 and that there are some unique situations surrounding  
12 SSU's case which would allow the Commission to order  
13 the refund, which I think we are obligated to do. And  
14 that it is fundamentally unfair at this point to impose  
15 a surcharge on those customers on a prospective basis,  
16 which would be basically for consumption which occurred  
17 in the past.

18 COMMISSIONER JOHNSON: And for your edification, I  
19 would agree with all the comments made by Commissioner  
20 Deason. And I guess I would not be in agreement with  
21 the comments made by Commissioner Kiesling in that I'm  
22 not so sure that what we did by putting a condition on  
23 the company was not legally sufficient. And to the  
24 extent that I'm wrong, I'm sure they are going to  
25 appeal it, and we will let the DCA court tell me that

1 I'm wrong. But I want to do what I intended to do and  
2 what I thought was occurring, that we were protecting  
3 those customers, that they would receive their refunds  
4 and that there would be no surcharge imposed.

5 Now, if a higher court disagrees with me, then so  
6 be it, I will have to deal with that. But right now to  
7 the extent that the comments that we made when we  
8 originally made this decision, and even when we heard  
9 the reconsideration before, the discussions that  
10 occurred, that was my intent. And I would like to see  
11 that intent through and allow the District Court of  
12 Appeals or wherever this is appealed to, to then tell  
13 me what I should do with the ratemaking process. But I  
14 believe what we have done here is sufficient, is fair,  
15 protected the customers, and that the utility was,  
16 indeed, on notice.

17 CHAIRMAN CLARK: There has been a motion and a  
18 second. Is there further discussion?

19 COMMISSIONER GARCIA: I will just state, I guess,  
20 before I vote so that we don't have to go back to it.  
21 To be quite honest, before that vote and when we cast  
22 that vote, if there was one thing that made me  
23 comfortable were the limitations that Commissioner  
24 Deason brought up. And they made me more comfortable  
25 at that time about what we were doing in terms of

1 protecting the ratepayers. And I believed that there  
2 was an assumption there of the risk. I still believe  
3 it to this day. And clearly reading the record as I  
4 did, cold it doesn't pick up what I think was out here  
5 when we were discussing this. And I was certain of  
6 what I was voting for then. That said, though, I  
7 believe that we have to deny staff, and I guess  
8 Commissioner Johnson seconded the motion, so --

9 CHAIRMAN CLARK: There has been a motion and a  
10 second. All those in favor, say aye.

11 COMMISSIONER DEASON: Aye.

12 COMMISSIONER GARCIA: Aye.

13 COMMISSIONER JOHNSON: Aye.

14 CHAIRMAN CLARK: Opposed, nay.

15 COMMISSIONER KIESLING: Nay.

16 CHAIRMAN CLARK: Nay.

17 The motion carries.

18 Issue Number 6.

19 MS. JABER: Issue 6, Madam Chairman, is some  
20 housekeeping, I believe. Just give me one minute.

21 CHAIRMAN CLARK: Yes. I think we do have to vote  
22 on that and that is reaffirming what we've already  
23 decided. Is there a motion on Issue 6?

24 COMMISSIONER DEASON: So moved.

25 CHAIRMAN CLARK: Without objection, Issue 6 is

1 approved.

2 Now, Issue 7, I think, is moot.

3 MS. JABER: It is and it isn't. We need to go  
4 back and affirm that refunds need to be made within 90  
5 days. Is that what you would like to do? And whether  
6 or not they need to be made with interest.

7 COMMISSIONER DEASON: It would be my intent to  
8 reaffirm exactly what we did before, and I know that  
9 was not a unanimous decision on the 90 days, even  
10 assuming there was going to be a refund. But it would  
11 be my intent to reaffirm exactly what was done prior to  
12 the GTE case and the reconsideration on our own motion.

13 CHAIRMAN CLARK: Okay. There's a --

14 COMMISSIONER KIESLING: Could I ask something  
15 about Issue 6, which I realize that we kind of skipped  
16 over, but I'm still trying to grasp what all is  
17 included within that.

18 CHAIRMAN CLARK: We didn't skip over it.

19 COMMISSIONER KIESLING: Oh, I know. But we didn't  
20 give it much discussion.

21 CHAIRMAN CLARK: Okay.

22 COMMISSIONER KIESLING: It was called  
23 housekeeping, and I'm not so sure that it is  
24 housekeeping, because it would seem to me that for me  
25 to have been consistent with the vote that I made today

1 after the deliberations that I've put in in the last  
2 couple of weeks on this, that I would not have voted  
3 the same way then. And so to that extent, I dissent  
4 from Issue 6. I'm afraid it's not unanimous.

5 CHAIRMAN CLARK: Let me be clear, Commissioner  
6 Kiesling, and I guess that's probably what needs to be  
7 clear with respect to Issue 7, too. I would not go  
8 forward with what we had concluded in the original  
9 order on remand.

10 MS. JABER: If I could, I apologize, Commissioner  
11 Kiesling, I think you're correct. If we can walk by  
12 section by section, because I don't think you mean to  
13 dissent to the entire issue.

14 COMMISSIONER KIESLING: I agree, but I can't do it  
15 just as a housekeeping one, either.

16 MS. JABER: Okay. The specific issue of refund of  
17 interim was raised by Mr. Twomey, I believe, on behalf  
18 of his client, and the argument was that a further  
19 refund of interim was required. And the Commission,  
20 after finding that interim rates were refunded to the  
21 degree that they needed to be, voted to deny  
22 Mr. Twomey's petition. And that's all that decision is  
23 right there.

24 COMMISSIONER KIESLING: Okay.

25 CHAIRMAN CLARK: But I think what Commissioner

1           Kiesling may be talking about is other decisions in  
2           that rate structure and final rate. To that extent, I  
3           will entertain a motion to reconsider the vote on  
4           Issue 6.

5           COMMISSIONER KIESLING: I would request that you  
6           reconsider the vote on Issue 6. I wasn't even there  
7           when we were voting on it.

8           CHAIRMAN CLARK: Is there a second?

9           COMMISSIONER JOHNSON: Second.

10          CHAIRMAN CLARK: All those in favor of  
11          reconsidering.

12          COMMISSIONER JOHNSON: Aye.

13          COMMISSIONER KIESLING: Aye.

14          COMMISSIONER GARCIA: Aye.

15          CHAIRMAN CLARK: Aye.

16          COMMISSIONER DEASON: Aye.

17          CHAIRMAN CLARK: Opposed, nay.

18          Now we are back on Issue 6. Let's break out the  
19          various points we have, because I, likewise, want to be  
20          consistent with the idea that I don't think that the  
21          GTE case allows us to do what the Commission has  
22          ordered.

23          COMMISSIONER KIESLING: The only issue or the only  
24          item in Issue 6 with which I would not vote the same  
25          way now that I did during that proceeding is the rate

1 structure and final rate section. And so I guess my  
2 dissent can just be recorded as to that portion of it  
3 that I would not --

4 CHAIRMAN CLARK: I think you're correct and,  
5 likewise, show that because I dissented from ordering  
6 the refund as indicated in our original order on  
7 remand, that I would likewise dissent from that. All  
8 right.

9 COMMISSIONER DEASON: I guess I'm a little  
10 confused, and just for clarification, what is it that  
11 -- in light of GTE, what is it that you cannot agree  
12 with that was previously voted upon other than the  
13 question of refund and surcharges, or is that what it  
14 is?

15 CHAIRMAN CLARK: Well, because it is rate  
16 structure and final rates. And I guess I'm looking  
17 over consistent with the decision to implement modified  
18 stand-alone rate structure, the Commission ordered SSU  
19 to calculate rates based on the modified rate  
20 structure.

21 COMMISSIONER KIESLING: And my problem is that at  
22 the time I agreed with the majority on the question of  
23 reopening the record or not reopening the record.

24 CHAIRMAN CLARK: Right.

25 COMMISSIONER KIESLING: But now I believe firmly

1           that we should reopen the record, and then we could  
2           avoid all the rest of it. And my understanding was  
3           that by reaffirming that order, and that is what I'm  
4           trying to make sure I understand, by reaffirming that  
5           order, which we have already taken back for  
6           reconsideration, that it would have the appearance that  
7           I am in agreement with not reopening the record. And  
8           that is what I am not in agreement on.

9           MS. JABER: I think it would. If I understand it  
10          correctly, Commissioner Deason, what happened the first  
11          time was that the Commission as a policy decision chose  
12          not to reopen the record because there was sufficient  
13          evidence in the record to support a different rate  
14          structure.

15          CHAIRMAN CLARK: And consistent with -- I mean,  
16          and consistent with the notion that Commissioner  
17          Kiesling and I dissented on the notion of reopening the  
18          rate structure, then it doesn't necessarily follow we  
19          would agree with the order that is currently under  
20          reconsideration that we would agree on a going-forward  
21          basis that you do modified stand-alone.

22          COMMISSIONER DEASON: So you're not saying there  
23          is not evidence in the record to support modified  
24          stand-alone?

25          COMMISSIONER KIESLING: No, I'm not at all

1 saying that.

2 CHAIRMAN CLARK: Okay. Issue Number 7. Now,  
3 staff, do we need to modify that or do Commissioner  
4 Kiesling and I just have to vote? We do have to modify  
5 it.

6 COMMISSION STAFF: If you will give me a minute.  
7 On the previous where we ordered a refund and no  
8 surcharge, we ordered them to make the refunds within  
9 90 days. And they were ordered, also, to submit the  
10 information within seven days. This has been modified.  
11 Taking into effect a surcharge, we recommend a further  
12 period of time and gave them -- recommended a longer  
13 time to submit the information. So, if you reaffirm  
14 the old order in the old decision and the 90 days, then  
15 this issue is moot, or you can modify this and make the  
16 refunds within the 90 days.

17 CHAIRMAN CLARK: Is there a motion on Issue 7?

18 COMMISSIONER KIESLING: I think it's moot. I  
19 agree with --

20 COMMISSIONER JOHNSON: But we need a modified  
21 motion. Well, either this one is moot and then we have  
22 to frame another issue or --

23 CHAIRMAN CLARK: We could take a motion that the  
24 issue is moot based on the fact that the majority has  
25 voted to reaffirm the decision that sets out the time

1 frames. I mean, conceivably people who voted in the  
2 majority could want to change the time frame. Is there  
3 a motion?

4 COMMISSIONER JOHNSON: So moved, that this is moot  
5 and that we reaffirm the time lines that were in the  
6 previous order.

7 MS. JABER: We will do that.

8 CHAIRMAN CLARK: Okay. I would dissent from this  
9 issue --

10 COMMISSIONER KIESLING: And I do, too.

11 CHAIRMAN CLARK: -- because I don't think we  
12 should go back to the original order on remand.

13 Issue 8. Is there a motion?

14 COMMISSIONER JOHNSON: Does this impact what we  
15 did or can we close the docket?

16 COMMISSION STAFF: We still have to verify the  
17 refund from May to June, the 90 days.

18 CHAIRMAN CLARK: So, Issue Number 8 should be the  
19 docket should be closed, however -- no, that the docket  
20 should not be closed until the staff has verified the  
21 utility has completed the required refunds.

22 COMMISSIONER DEASON: That's what staff has  
23 recommended, so we can just approve staff.

24 CHAIRMAN CLARK: Right.

25 MS. JABER: And we would close the docket

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1           administratively.

2           CHAIRMAN CLARK: I don't think so, because it  
3           says, "The docket should be closed. However, if the  
4           Commission determines that refund and/or surcharges are  
5           appropriate," and the majority said refunds are  
6           appropriate.

7           MS. JABER: Right. We would just take out the  
8           surcharge part.

9           COMMISSIONER DEASON: It says and/or, so it would  
10          be refunds. And you still have to keep the docket open  
11          to administer the refunds.

12          CHAIRMAN CLARK: Right. I mean, this assumed that  
13          there was no further action and there is further  
14          action, is what I'm trying to suggest. So, what is  
15          your recommendation?

16          MS. JABER: We would recommend that the docket  
17          remain open pending verification that the refunds are  
18          made. At that time, we will close the docket  
19          administratively.

20          CHAIRMAN CLARK: Okay.

21          COMMISSIONER JOHNSON: Second, or so moved.

22          COMMISSIONER DEASON: Second.

23          CHAIRMAN CLARK: All those in favor say aye.

24          COMMISSIONER DEASON: Aye.

25          COMMISSIONER JOHNSON: Aye.

1 COMMISSIONER GARCIA: Aye.

2 CHAIRMAN CLARK: Opposed, nay. Nay.

3 COMMISSIONER KIESLING: Nay.

4 CHAIRMAN CLARK: I think that's consistent with  
5 the notion that we need to reopen the record. Thank  
6 you very much.

7 MR. ARMSTRONG: Thank you.

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## CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF LEON )

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages numbered 1 through 86 are a true and correct record of the proceedings.

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

DATED THIS 17<sup>th</sup> day of June, 1996.

  
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