

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 920199-WS

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). :



VOLUME 1

Pages 1 through 158

PROCEEDINGS: SPECIAL AGENDA CONFERENCE

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

DATE: Monday, December 15, 1997

TIME: Commenced at 1:00 p.m.
 Concluded at 7:00 p.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting
 Official Commission Reporter

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17 **MICHAEL B. TWOMEY**

18 **JOHN R. MARKS**

19 **KENNETH HOFFMAN**

20 **JOSEPH HANRATTY**

21

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P R O C E E D I N G S

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

CHAIRMAN JOHNSON: Ladies and gentlemen.

Good afternoon, ladies and gentlemen, glad to see you all here and here to participate in this process. We have one technical problem that we have to address immediately. We're in violation of our fire codes. We have too many individuals in this particular room.

What we will have to do in order to accommodate everyone in it, and to assure that you can hear and be involved in the process, is -- we have Staff members out in the front foyer -- those of you who do not have seats available, I apologize for that, but the room is only so big. We have other rooms where you can go into and hear the hearing. If that room overflows, we have already made accommodations in our smaller hearing rooms throughout the Commission to accommodate you. And that is the best we can do given our facilities here today.

But those of you who are standing, if you could, go outside to the foyer. We won't start until everyone is accommodated to the extent that we can accommodate everyone. But you will need to go outside of the room and allow Staff to escort you to the other rooms that we've tried to make available for you.

1 UNIDENTIFIED SPEAKER: Will people be
2 allowed to speak if --

3 CHAIRMAN JOHNSON: Excuse me?

4 UNIDENTIFIED SPEAKER: Will they be allowed
5 to say something or have their voices --

6 CHAIRMAN JOHNSON: What we will do, sir,
7 when we get to that particular time, if you could let
8 the Staff members know, those who are here to speak,
9 those who are representing others, they will get those
10 concerned and those members names to me, and we will
11 then accommodate that. What we'll do is make sure you
12 have an opportunity to hear the other individuals that
13 have spoken and to hear the Commissioners actually
14 deliberating. But at the appropriate time we'll have
15 you come forward.

16 And with that we're going to allow those
17 individuals the opportunity to situate themselves in
18 the other rooms before we begin the proceeding.

19 (Brief recess taken.)

20

- - - - -

21 CHAIRMAN JOHNSON: And I'm not certain if
22 all of our customers have been accommodated, so we're
23 going to give that a few more minutes. Staff is
24 checking to see if all of the systems are working so
25 if they are situated in one of the other rooms they

1 can hear what is occurring in this particular room.

2 Another thing we'll have to do is that I
3 know that several customers have approached
4 Commissioners and Staff members about their ability to
5 speak at this proceeding today.

6 Generally, we do not allow customers to
7 speak at this particular forum, but that they speak
8 through their representatives, and the individuals who
9 are actually parties in this case. But I did have a
10 request to find out and make a determination as to who
11 was here that actually wanted to make comments on the
12 record, and I'm just asking that question. Again, the
13 Commission, will have to go through deliberation and
14 vote to determine what's the appropriate procedural
15 way to handle these requests, if at all. But who is
16 here to actually speak and provide information to the
17 Commissioners. (Several people stand.)

18 I think I have the count here about ten or
19 11, and they are making the same count in the other
20 rooms. They are being seated. I appreciate your
21 patience. It's a difficult process to try to
22 accommodate so many of you, but we want to make sure
23 we can do that; have a place for you to sit and listen
24 and be involved in this process.

25 (Brief recess.)

1 (Back on the record at 1:20 p.m.)

2 - - - - -

3 **CHAIRMAN JOHNSON:** Ladies and gentlemen, I
4 think we're about ready to proceed. Again I really
5 appreciate your patience and working with us here
6 today. We have the opportunity to poll the other
7 rooms to determine those individuals that would also
8 like to participate, and there were a couple of
9 individuals that said they wanted to speak, so we
10 wanted to make sure that we had situated ourselves;
11 that if the time came, if that was appropriate, that
12 we would indeed have a opportunity. They are totally
13 linked in here. They are participating, though they
14 are in a different room, and I think, then, we are set
15 to go ahead and begin our proceeding today.

16 With that, counsel, could you read the
17 notice?

18 **MS. JABER:** Commissioners, this is an agenda
19 conference scheduled pursuant to notice of a special
20 agenda conference.

21 **THE AUDIENCE:** Can't hear you.

22 **CHAIRMAN JOHNSON:** Okay. And I'll try to
23 inform everyone if you could speak directly into the
24 microphones. We have a lot of individuals here, and
25 they cannot hear us unless we speak directly into the

1 microphones. To the extent that you are having
2 problems hearing, if you could just raise your hands,
3 and then I'll make sure -- because these people, their
4 backs are to you, so I'll make sure people speak loud
5 and clearly.

6 **MS. JABER:** Commissioners, this special
7 agenda conference is being held pursuant to notice of
8 today's special agenda conference. This item is
9 Staff's recommendation addressing the appropriate
10 action the Commission should take in light of Southern
11 States versus Florida Public Service Commission, 22
12 Florida Law Weekly D 1492, Florida First DCA.

13 There are a few preliminary matters, but
14 before we get to the preliminary matters, Staff would
15 recommend that you address Issues No. 1 and Issue No.
16 2. One deals with several petitions to intervene.
17 Two is the issue on participation.

18 **COMMISSIONER CLARK:** Madam Chair, I move
19 Issue No. 1.

20 **COMMISSIONER KIESLING:** Second.

21 **MS. JABER:** Commissioners, I have one
22 modification to Issue 1, in that we'd like to add
23 Sugarmill Country Club, Inc., to the recommendation.
24 Their petition to intervene was filed December 4th,
25 1997, after Staff filed its recommendation.

1 **COMMISSIONER CLARK:** Were there any
2 responses?

3 **MS. JABER:** No.

4 **CHAIRMAN JOHNSON:** There's a motion, then.

5 **COMMISSIONER GARCIA:** I'll second. It was
6 already second.

7 **CHAIRMAN JOHNSON:** There's a motion and a
8 second. Any further discussion? Seeing none, all
9 those in favor signify by saying aye.

10 **COMMISSIONER KIESLING:** Aye.

11 **COMMISSIONER CLARK:** Aye.

12 **COMMISSIONER GARCIA:** Aye.

13 **CHAIRMAN JOHNSON:** Aye.

14 **COMMISSIONER DEASON:** Aye.

15 **CHAIRMAN JOHNSON:** Show that, then, approved
16 unanimously.

17 Go ahead.

18 **MS. JABER:** And Issue No. 2 Staff recommends
19 that you allow parties to participate with
20 participation being limited to five minutes per party.

21 **COMMISSIONER KIESLING:** move it.

22 **COMMISSIONER CLARK:** Madam Chair, I wonder
23 if this is the appropriate time to also discuss -- I
24 think --

25 **CHAIRMAN JOHNSON:** You're going to need to

1 speak directly into the microphone. There are members
2 out in the audience who can't hear you.

3 **COMMISSIONER CLARK:** I'm wondering if this
4 is the appropriate time to sort of discuss in general
5 who will participate. You've indicated that there are
6 people, customers --

7 **CHAIRMAN JOHNSON:** Speak even closer.

8 **COMMISSIONER CLARK:** Customers who have said
9 that they want to participate. I do think we should
10 allow the parties to participate. I'll also inclined
11 to let -- I hope the customers have selected
12 representatives and I also think we ought to hear from
13 them.

14 **COMMISSIONER GARCIA:** Madam Chairman,
15 likewise, I agree with Commissioner Clark, and I'd
16 like to hear from the customers if they are already
17 here and they came with an intention to speak. But
18 I'd like to request for -- I guess for the good of the
19 customers, because we're comfortable and we're seated
20 here, but they have come a long way, that maybe
21 instead of -- we try to limit the discussion of the
22 customers to two minutes, so that we can get the
23 information in so that we can move quickly through
24 this, and so they don't have to sit here and listen.
25 Because once you put them all together, at five

1 minutes a pop between one and the other, we'll be here
2 hours upon hours. I think that once one or two speak,
3 others get encouraged. And that's fine. We're
4 willing to sit here -- I think all of the
5 Commissioners are willing to sit here as long as it
6 takes, but if we can limit that to, say, two minutes
7 at the Chair's discretion, if you want to allow them
8 continue, but it will help us proceed a little bit
9 quicker.

10 **CHAIRMAN JOHNSON:** Okay. Is that the --

11 **COMMISSIONER GARCIA:** I make a motion. I
12 think Commissioner Clark made a motion to allow the
13 customers to speak, if I'm not mistaken.

14 **COMMISSIONER CLARK:** I would allow the
15 parties to speak. I also think the five-minute
16 limitation for the parties is a good idea, but I also
17 think it should be within your discretion. I think
18 Commissioner Garcia's suggestion with respect to
19 customers, limiting them to two minutes, I think all
20 of the customers are aware that they need to be
21 courteous to their fellow customers. And, again, I
22 would suggest the two minutes, but leave it to your
23 suggestion and at your discretion and that would be my
24 motion.

25 **COMMISSIONER GARCIA:** I will second it,

1 Madam Chair.

2 CHAIRMAN JOHNSON: Okay. There's a motion
3 and a seond. Any further discussion? Seeing none,
4 all those in favor signify by saying aye.

5 COMMISSIONER CLARK: Aye.

6 COMMISSIONER GARCIA: Aye.

7 CHAIRMAN JOHNSON: Aye.

8 COMMISSIONER KIESLING: Aye.

9 COMMISSIONER GARCIA: Aye.

10 CHAIRMAN JOHNSON: Show that approved
11 unanimously.

12 And, ladies and gentlemen, what I'll do with
13 the customers, we're going to have a place for the
14 customers to come up to the -- perhaps one of the
15 seats here on the right side, present your name and
16 provide your testimony. To the extent that there's a
17 lot you have to say and that two minutes won't allow
18 you that, I will provide some latitude there to give
19 you the time that it needs for you to present your
20 concerns and your statements to the Commission today.
21 So don't worry about being cut off. You won't be cut
22 off, and we will allow you to provide your testimony.
23 Just, again, be mindful of your neighbors and all of
24 the people that are here.

25 The Commissioners are committed to staying

1 here all day, all night, if necessary, but we want to
2 make sure that everyone is accommodated and everyone
3 has the opportunity to speak. Are there any other
4 preliminary matters, then?

5 **COMMISSIONER GARCIA:** Madam Chairman, I
6 might want to suggest that I believe there are some
7 legislators here, and perhaps we could --

8 **CHAIRMAN JOHNSON:** You are going to have to
9 speak louder.

10 **COMMISSIONER GARCIA:** I'm sorry. I believe
11 that there are some legislators here, and perhaps we
12 can take them. Many of them have pretty busy
13 schedules and may not be here for the full time, so
14 perhaps we can also take them up early in the process.

15 **CHAIRMAN JOHNSON:** Certainly. I have had an
16 opportunity to speak with both customers and with our
17 elected officials, and I know that -- and, in fact,
18 Senator Cowin's office and Representative Argenziano's
19 office called to schedule a time certain, and to
20 inform us that they did want to participate in our
21 process. And I think we have set this up in such a
22 way that all of the customers will be heard, and that
23 the Senator and the Representative will be heard at
24 the beginning of the presentations. And that way if
25 the customers have any comments based on what the

1 Senator and Representative stated, and if they'd like
2 to provide support for those statements, we're going
3 to allow that. So I think that will work quite well
4 for this process.

5 Anything else in a preliminary nature as it
6 relates to those testifying?

7 MS. JABER: Not as it relates to those
8 testifying.

9 CHAIRMAN JOHNSON: Okay. Are there any
10 other issues?

11 MS. JABER: On November 26th, Charlotte
12 County filed a motion for continuance or a deferral
13 wherein it alleges that the county should have an
14 opportunity to review all of the facts and the
15 positions, in this case, and have a opportunity to
16 evaluate all of the options.

17 Additionally, the county stated that this
18 proceeding should be continued until the Circuit Court
19 action in the St. Jude's Catholic Church case be
20 determined.

21 On December 9th, Charlotte County amended
22 its motion to correct an error. On December 5th,
23 1997, Florida Water filed a motion for continuance --
24 or deferral, wherein it adopts Charlotte County's
25 motion, but also adds that all of the parties need an

1 opportunity to review the customer comment letters and
2 e-mails, et cetera, that have been received by the
3 Commission.

4 Additionally, as in the brief, the Utility,
5 again, requests a prehearing conference to identify
6 all of the issues and a formal evidentiary hearing in
7 this matter.

8 Staff has reviewed all of the motions and is
9 prepared to make a recommendation. We do note that
10 the response period for the motions has not expired,
11 so Staff would recommend that you go ahead and hear
12 from the parties on those motions.

13 **CHAIRMAN JOHNSON:** Okay. Would it be more
14 appropriate for us to go ahead and at this time take
15 the opening comments from our customers and from our
16 elected officials before we go into those motion
17 hearings, or the motion arguments between the parties,
18 or is it more appropriate to go directly to those
19 arguments?

20 **MS. JABER:** I think that that's certainly
21 within your discretion to do either one.

22 **CHAIRMAN JOHNSON:** I think I'd like to hear
23 from the customers and the elected officials at the
24 forefront, and that will allow to the extent they
25 raise issues or concerns that the parties would like

1 to address that their presentation, they could do
2 that. But I think in an abundance of caution to
3 provide as much due process as we can, we'll allow
4 those individuals to testify first.

5 And I think we're then prepared to proceed
6 directly to the testimony, then? Are we not?

7 **MS. JABER:** This might be a good time to
8 update the customer comment part of the recommendation
9 that might prove relevant so to what you're about to
10 hear. On Page 14 of Staff's recommendation I believe
11 we included the number of letters we received, I think
12 as of December 2nd. But as of December 12th, the
13 additional responses received were 384. 39 customers
14 commented to allow refunds and surcharges with
15 interest. 139 said no refund, no surcharges. Six
16 said allow refunds and surcharges without interest.
17 One said allow refunds and surcharges over an extended
18 period of time. 73 said make refunds and they made no
19 reference to a surcharge. 94 said no surcharge and
20 made no reference to a refund.

21 **CHAIRMAN JOHNSON:** Thank you.

22 I think, then, we're prepared, Senator
23 Cowin. Certainly.

24 And, ladies and gentlemen, I'm not sure if
25 you're aware, but Senator Cowin and Representative

1 Argenziano have both approached the microphones here,
2 and to my right and to your left is the place where,
3 as the witnesses come forward if they could sit there,
4 their testimony can be taken.

5 Senator Cowin.

6 **SENATOR COWIN:** Thank you.

7 **MR. ARMSTRONG:** Senator Cowin, excuse me.

8 But, Madam Chair, I think we have had the stipulation
9 in the past that the legislators who are testifying
10 who are making presentations to the Commission are
11 testifying as a customer or in some capacity, not in
12 their legislative capacity, on behalf of constituents,
13 but rather as a customer of the Utility. And I just
14 want to clarify that Senator Cowin, I believe, is a
15 customer, and that would be her capacity.

16 **MR. TWOMEY:** Madam Chairman, pardon me.

17 **CHAIRMAN JOHNSON:** Yes, Mr. Twomey.

18 **MR. TWOMEY:** I don't know where this history
19 comes from, but I suggest to you, Madam Chair, that
20 elected officials don't need to be customers of
21 anybody to come represent their views to the
22 Commission, and that it would be most appropriate or
23 inappropriate to place any restrictions on them in
24 that regard, so I would oppose --

25 **COMMISSIONER CLARK:** Madam Chairman, before

1 this goes on, I think --

2 **CHAIRMAN JOHNSON:** Susan is speaking.

3 **COMMISSIONER CLARK:** -- the reference was
4 that when we had a protest before, we did need a
5 customer to lodge a protest. I think it has no
6 application here. They are here as representatives,
7 and if they are also customers, they can speak as
8 customers. You know, I don't see why there needs to
9 be a distinction. We know they are representatives,
10 and they will tell us if they are customers.

11 **MR. ARMSTRONG:** I believe the representation
12 of Senator Brown-Waite, the distinction was made just
13 back a month or so ago where Senator Brown-Waite had
14 to be --

15 **COMMISSIONER CLARK:** She wanted to
16 intervene.

17 **MR. TWOMEY:** That's precisely correct,
18 Commissioner Clark; that was on the basis of an
19 intervention as a party.

20 **CHAIRMAN JOHNSON:** We're going to allow the
21 Senator to speak.

22

23

24

25

1 **SENATOR ANNA COWIN**

2 appeared as a witness and testified as follows:

3 **DIRECT STATEMENT**

4 **SENATOR COWIN:** Thank you, Madam Chairman
5 and Commissioners. I'm speaking for myself and as a
6 Senator for District 11, which encompasses five
7 counties in Central Florida, which includes Lake,
8 Citrus, Marion, Sumter, and Seminole Counties.

9 As you know, I am also a customer. My
10 remarks are really geared as far as -- as a
11 legislator, though. I have been following the
12 hearings in the water and wastewater issues with
13 Florida Water Services, formally Southern States
14 Utilities, for going on almost 18 years now, and I
15 think that I have a really good grasp as to not only
16 some of the facts in the case but the history of it.

17 One of the first questions that I had before
18 I even started in the presentation here was a question
19 as to whether or not that first option that's up
20 before you as far as no refund or no surcharge was
21 indeed an option. And in my review, although I am not
22 an attorney, I certainly believe that the district
23 court case sent a remand, but the directions were
24 rather vague. And that the opinion of the district
25 court seemed to send a clear message that the Supreme

1 Court in Clark, as the intervening case said, that the
2 PSC must treat all people equally and fairly, and that
3 no one will suffer because of an erroneous decision of
4 the Public Service Commission.

5 Do I think that the Public Service
6 Commission can make one class of ratepayer pay a
7 surcharge and the other pay a refund? I believe that
8 we must make refunds. I also believe that there is
9 nothing stating that the surcharges must come from
10 customers. And I don't believe that the court states
11 where the refund must come from.

12 I think that we cannot charge the utilities
13 according to the things that I have read, nor should
14 we charge and assess the customers. And, obviously,
15 that puts you in a real bind. You're between a rock
16 and a hard place. I mean who do you charge?

17 I'd like to express a few facts in this
18 case, and I try to specify them exactly. Number one
19 -- and I've gotten some of this information from the
20 facts of the testimony of November 5th, 1997, and the
21 agenda conference.

22 Number one, the Commission imposed a
23 statewide uniform rate structure for 120 service areas
24 without any party requesting such a structure. It was
25 pushed by the Commission and Staff. There was nobody

1 applying for it.

2 Second, the customers, including myself, and
3 legislators -- I was not a legislator at that time --
4 expressed dissatisfaction to the uniform rate
5 structure. We've wanted stand-alone rates, and the
6 Commission went ahead and approved the stand-alone
7 rates at that time and again in '94. And if you
8 remember, I testified before you back in '95, November
9 of '95, and said -- when you were pushing for a
10 uniform rate, and at that time the Utility was pushing
11 for a uniform rate, and said that could not be done
12 and that had to be postponed because of the Court
13 ruling in saying it was illegal, and that's why it was
14 postponed to the January.

15 It is also a fact that the Commission
16 ordered refunds without surcharges and denied
17 intervention to the customers that were facing the
18 surcharges.

19 Beyond the next fact, four, is that the
20 Commission rejected Florida Water Services' modified
21 stand-alone rate structure proposal and imposed the
22 uniform rate for 120 service areas in 1993.

23 October 19th, 1995, as Fact No. 5, the
24 Commission approved a modified rate (sic) alone
25 structure, but ignored the Staff and ordered Florida

1 Water Services to pay the refund.

2 The statewide rate was implemented -- and
3 one thing I would like to say as a point of history,
4 when I was up before you numerous times since 1981, at
5 that time you had groups of people. Now you have a
6 whole statewide system. And trying to fit a statewide
7 system in one box, while it may simplify and make the
8 Commission's job easier because you have one case --
9 at that time there were even problems with the uniform
10 rate structure because of the way you were determining
11 the rate of return for the utilities back at that
12 time. And yet now when you look to the stand-alone
13 rates, you go to individual subdivisions instead of
14 those groups.

15 Susan Fox, the attorney, stated that no
16 customer asked for the subsidized rate. Attorney,
17 Mike Twomey, the utility didn't ask for the rates.
18 The Staff did.

19 Marshall Willis and Public Service
20 Commission, the bureau chief of accounting, the
21 customers -- he stated that the customers should get
22 interest with their refund. Mr. Hill, the Public
23 Service Commission, the director of water and
24 wastewater, stated the customers are going to be
25 protected.

1 Now, I'd like to know how the customers were
2 going to be protected back then when that was stated?
3 And then the main concern at that time was that the
4 customers were going to be -- the utility was going to
5 be short dollars. And at that time, if you remember,
6 there was a bond supposedly protecting the customers,
7 and, again, the customers were not protected, although
8 the utility apparently was.

9 Chairman Deason wanted interim rates to stay
10 and let the courts have guidance. Had we listened to
11 Chairman Deason at that time, perhaps we wouldn't be
12 here today and perhaps these customers wouldn't be
13 faced with surcharges.

14 Continuing on another fact, the PSC mandated
15 that all responses be by November 5th, an unrealistic
16 and short time for the customer to respond. There was
17 no presentation of evidence or a public hearing,
18 although you are attempting to do it apparently today.
19 The Public Service Commission beyond that, I believe,
20 has no authority to correct its erroneous uniform rate
21 structure, either administratively or statutorily.
22 And I would like any decision that this body makes
23 that they go ahead and specify what statute they are
24 following to allow customers to be surcharged.

25 The Public Service Commission again.

1 (applause) -- the Public Service Commission never
2 gave notice of the proposed uniform rate structure.
3 It's a question of fairness. And here we are are
4 taking property of the customers, their dollars. In
5 effect, some people have to give up their property in
6 order to pay these very high fees.

7 Again, there's no authority to my
8 understanding that exists for the Public Service
9 Commission to actually go ahead with the uniform rate
10 structure that it imposed. There was no application
11 for it, for the uniform rate structure. No notice for
12 it. No hearings. No statewide request. Even the
13 Utility didn't request it at that particular time, but
14 the Public Service Commission went ahead with the
15 uniform rate structure.

16 We have an unrealistic time frame. I think
17 due process has been hindered. As a result of all of
18 this, I think there is an addition of equity issue.
19 Are we basing equity on uniform rates, based on rates
20 throughout the whole state that everybody pays the
21 same, or are we looking at an equity -- as a fairness
22 issue that the costs are controlled? The Utility
23 controls its on costs to whatever extent it says so,
24 and that's how they base their rates. But the
25 customer in this case had no opportunity to control

1 its costs during the period of September 15, '93 to
2 January 23, '96, when this is the actual period that
3 they're being assessed for.

4 Likewise, as a result of all of this, there
5 are eight errors that I found that the Public Service
6 Commission has incurred.

7 Number one, the Public Service Commission
8 ordered uniform rates statewide. It was not applied
9 for and was pushed by the Staff.

10 Number two, there was lack of
11 representation, notice or the assumption of risk.

12 Number three, the Public Service Commission
13 did not appeal the decisions of the courts that stated
14 the Utility should not pay.

15 Number four, the Public Service Commission
16 erred in 1995 again when they tried to get uniform
17 rates pushed by the Staff of the Public Service
18 Commission, and at that time, even by Southern States
19 Utilities, or Florida Water Services.

20 If you remember, and I'm sure all of these
21 customers remember, they went around the state having
22 public hearings, so when the utility said they didn't
23 want uniform rates, they may not have wanted it in
24 '92, but they certainly wanted it because they knew it
25 was lining their pockets.

1 Number five, they did not allow interim
2 rates during the time when the issue was on appeal.

3 Number six, the Public Service Commission
4 erroneously stated that the customers were protected,
5 and they were not, as evidenced by the many, many
6 people that are here and being influenced.

7 Number seven, the customers were not
8 protected, and they could not even protect themselves.

9 Number eight, the Public Service Commission
10 denied petitions to intervene in the case.

11 What is the resolution to this case? I met
12 with Representative Argenziano, and we had a news
13 conference today of which you may be aware of. We are
14 both in the process of filing a bill to allow the
15 surcharges to be taken out of the tills of the Public
16 Service Commission.

17 As long as I can remember the (applause) --
18 as long as I can remember the Public Service
19 Commission has maintained an unencumbered balance in
20 the millions of dollars since 1996, if my recollection
21 is correct. It was from \$10 million which now is up
22 to \$16 million. Certainly ample dollars to pay back
23 the customers that are due the refunds and rightfully
24 so. (Applause.)

25 However, I have some precautions. Number

1 one, I don't believe that there should be any
2 additional revenues to Southern States Utilities or
3 Florida Water Services for any issue any way that they
4 can benefit at the expense of the customers. And I'm
5 talking (applause) -- the courts --

6 **CHAIRMAN JOHNSON:** Ladies and gentlemen -- I
7 apologize, Senator Cowin. Ladies and gentlemen, this
8 is a very difficult process. We have a court reporter
9 that's trying to take the comments of the Senator and
10 all of those that will speak. Certainly, if you're in
11 support of what the Senator is saying, let's try
12 raising our hands again. I know that you're excited
13 about the things that she's saying. She's a very
14 articulate advocate for you all. But so this process
15 runs smoothly, if you could, if you're in agreement as
16 opposed to clapping, if you could raise your hands or
17 wave those signs like the gentlemen are doing in the
18 back, that will help accommodate the process. Thank
19 you very much. Senator Cowin.

20 **SENATOR COWIN:** Thank you, Madam Chairman.
21 As I said, there should be no additional
22 revenues to Southern States Utilities. In all of the
23 readings, and I have not read them all, I'm sure you
24 have and probably can pick out, a number of different
25 opportunities in this case where Southern States

1 Utilities can certainly profit at the expense of the
2 taxpayers and the customers.

3 Number one, there was a request for income
4 tax liability funds to protect the Utility against
5 income tax liability. I don't believe that that --
6 that's a precaution that I think you should look very
7 strongly at.

8 I don't want the Utility, as requested not
9 only by Florida Water Services but by the association
10 of water and wastewater companies, that says that the
11 Southern States Utilities should borrow the money and
12 that the customers pay the interest, so we're looking
13 at more dollars than what is actually in the
14 surcharges and the refunds.

15 There were 30,000 notices that were refunded
16 back to the Utility when those notices came out, which
17 Southern States had sent and not the Public Service
18 Commission. Those people are no longer -- the
19 customers that are no longer customers as of June '97
20 may no longer be customers even now. And we should,
21 number one, not let other customers pay because now
22 those surcharges can't be collected from one set of
23 customers, nor should we benefit Southern States
24 Utilities because if they draw in the dollars, they
25 don't have the money to shell out.

1 That's another point that I would like to
2 make (audience waves signs), is that Southern States
3 Utilities or Florida Water Services should not be in
4 charge of the refunds and surcharges under any
5 circumstances.

6 **COMMISSIONER GARCIA:** Senator, just --

7 **SENATOR COWIN:** I have two more points and
8 I'll finish.

9 **COMMISSIONER GARCIA:** I just want to ask you
10 a question real quick, because I didn't understand.
11 You were saying that -- maybe it's how you finished it
12 off -- that the Company shouldn't be in charge of the
13 refunding of the money.

14 **SENATOR COWIN:** Yes. I'm going to address
15 that issue.

16 **COMMISSIONER GARCIA:** I'm sorry.

17 **SENATOR COWIN:** Thank you. They should not
18 be in charge of the refunds and the surcharges because
19 there's no control on a private company and the
20 collecting of dollars. That is why in this
21 legislation, not only do I take the money from the
22 trust funds of the Public Service Commission, but I
23 make sure that it's set up much like the taxes that
24 were refunded back on the automobiles -- if you
25 remember that tax that was charged to cars coming into

1 the state of Florida and the Florida government had to
2 return it back to the taxpayers. That we have a
3 window period that the people apply for it, that they
4 are living people, that those people apply for it and
5 that we repay.

6 If in the event the Public Service
7 Commission cannot pay for this, as this legislation is
8 proposed or as you can order, then I recommend that
9 the surcharges be paid first and then the money
10 collected -- I mean, the refund be paid first, and
11 then the money collected so it could be prorated down.
12 But I certainly do not -- don't take this as any
13 support that customers should be paying.

14 And lastly is that do not use any of the
15 extra funds as in the past -- and I can't believe that
16 this has happened -- that extra funds are used as cash
17 contribution in aid of construction. That certainly
18 would become a windfall to the Utility and, again, a
19 violation of the court order.

20 I think in summary I would like to say that
21 never before, never before has the Public Service
22 Commission ordered a surcharge in those instances
23 where a change in rate structure has caused an
24 increase in rates to other customers. And I think
25 that you are setting a very dangerous precedent by

1 doing so if, indeed, that is the action you take.

2 And in closing, let me just say that the
3 customers have been held hostage for too long, 18
4 years that I know of, of Florida Water Services; by a
5 utility that has complete control over the services,
6 the opportunities for changes, the rates, there -- if
7 anything, it's like an antitrust, if that was ever
8 possible. And they even have control of the policing
9 of the utility, it appears, by the Public Service
10 Commission.

11 I would hope that this Public Service
12 Commission, which is an arm of the Legislature, will
13 look to the Legislature for a remedy and look into its
14 own coffers for the mistakes and errors, and the
15 misguidance, and the misinformation, and the lack of
16 direction and all of those things that made your
17 decisions in '92, in '93, in '94 and '95 very poor.
18 And I certainly hope this will be the last time that I
19 have to come before you to tell you to do your job
20 well. Thank you very much. (Applause.)

21 **CHAIRMAN JOHNSON:** If you could settle down
22 again.

23 Representative Argenziano.

24

25

1 **REPRESENTATIVE NANCY ARGENZIANO**

2 appeared as a witness and testified as follows:

3 **DIRECT STATEMENT**

4 **REPRESENTATIVE ARGENZIANO:** Yes. I'm not
5 going to repeat all of the research and what
6 Senator Cowin just said, because I feel exactly the
7 same way and very well done.

8 I do want to open up with saying that I
9 appreciate you allowing me to speak as the
10 representative of the people that I represent. I am
11 not a customer. And it would have been -- you
12 probably would have had to drag me out of her
13 physically if you did not let me represent those
14 people that I'm here to represent.

15 Unfortunately, I believe that Staff and
16 counsel did not well serve the PSC in the uniform rate
17 matter. I think it really turned out to be the mess
18 that it is because of bad judgment, lack of common
19 sense, even in the face of the people and the
20 attorneys presenting information to you telling that
21 that was not a good idea.

22 It's clear that people who deserve refunds
23 should and will get them. And those proposed to pay
24 surcharges, as Senator Cowin alluded to, approximately
25 25% no longer live in that service area. My real fear

1 here, and I'm sure many of you might have thought
2 about this, is that these remaining here will be
3 required to bear the additional cost of those who are
4 no longer in the service area, and that should never,
5 ever be allowed to happen. And if you don't consider
6 that, I just don't know how far -- when will it take
7 this to end. (Audience waves signs.)

8 I do have a question I want to ask. Has the
9 PSC verified the proposed refund/surcharges schedule?
10 Has that been verified at all? Are you just taking
11 what the Utility has to say, and do we have any
12 verification of any of that?

13 **CHAIRMAN JOHNSON:** I think, Staff, if you
14 could address that question. I know it's a -- well,
15 there are some portions of the recommendation that
16 suggest that we go to hearing on just that issue, but
17 I think you're saying the preliminary numbers, then,
18 were they verified?

19 **REPRESENTATIVE ARGENZIANO:** Right.

20 **CHAIRMAN JOHNSON:** Staff, any comments on
21 that?

22 **MR. RENDELL:** Commissioner, Staff has not
23 done an audit of those numbers.

24 **CHAIRMAN JOHNSON:** You're going to have to
25 speak a litte louder. I see the customers can't hear

1 you.

2 **MR. RENDELL:** The Commission Staff has not
3 done an audit of those amounts. Depending on the
4 decision today, an audit could be ordered on those
5 amounts.

6 (Negative response from audience.)

7 **CHAIRMAN JOHNSON:** Representative.

8 **REPRESENTATIVE ARGENZIANO:** Okay. That's
9 why I had to ask the question.

10 This issue has caused so much friction
11 between communities, those communities that are -- for
12 the surcharge, have to pay the surcharge, and those
13 who are expected a refund.

14 This is in my district, and as I mentioned
15 before, I am the representative of those people. I
16 represent all of those people on both sides of that
17 story.

18 One thing I want to mention that
19 Senator Cowin had mentioned, if that money goes into
20 the till that she had talked about, rather than the
21 utility taking control of that money, if that has to
22 happen, the people will have accountability of where
23 that money is. And that's extremely important. I
24 want to make that point very clear. I back up that
25 position 100%.

1 I represent all of the people on both sides
2 of this issue, and the legislation that Senator Cowin
3 and I are proposing will solve everyone's problem.
4 Refunds for those who deserve it and no surcharges.
5 And, quite frankly, the PSC goofed up big time on this
6 one, and it's only right that it come from your
7 regulatory trust fund.

8 Thank you very much. (Audience waves
9 signs.) (Applause.)

10 **CHAIRMAN JOHNSON:** Thank you.

11 Representative, Senator, there may be
12 questions from the Commissioners.

13 I did have one question. With respect to
14 the legislation that has been filed, then would you
15 suggest that we -- what do we do with this proceeding?
16 Do we wait until after that legislation is passed or
17 how would you suggest that we proceed?

18 **SENATOR COWIN:** I have a legal inquiry as to
19 whether or not this Public Service Commission at this
20 time without legislative action has the authority to
21 go ahead and take money from your trust fund.

22 I anticipate that you can, although I don't
23 have legal verification of that. But, certainly --
24 I'm talking about the surcharge, the money to go to
25 pay the refund -- but, certainly, if that is the

1 intention and that is the direction of the Public
2 Service Commission, I don't know of anybody, anybody
3 that would oppose that legislation. Certainly, the
4 customers wouldn't be opposing it. All of the
5 representatives of all of the customers wouldn't be
6 opposing it. The Utility wouldn't be opposing it, and
7 it appears to me that the only person who could oppose
8 it are you guys. (Applause.)

9 **COMMISSIONER GARCIA:** Senator.

10 **CHAIRMAN JOHNSON:** Joe, you're going to have
11 to speak a little louder.

12 **COMMISSIONER GARCIA:** Senator, clearly, we
13 take our responsibility as being an arm of the
14 legislature very seriously.

15 **THE AUDIENCE:** Louder.

16 **COMMISSIONER GARCIA:** I'm sorry. Louder?
17 I'm sorry. We take our responsibility as being an arm
18 of the Legislature very seriously. It is something
19 that --

20 **THE AUDIENCE:** Can't hear.

21 **COMMISSIONER GARCIA:** I've never been called
22 quiet.

23 Certainly, Senator, we take our
24 responsibility as being an arm of the Legislature very
25 seriously. And, clearly, I think that you have found

1 that whenever you have asked information of us, we
2 have been very forthcoming. Any legislative fix --
3 and, again, this is only through a review with Staff
4 of our legal options -- clearly, we would carry out;
5 we have no choice in that case. And we have no vote
6 in the Legislature. So that understood, if the
7 Legislature passed a bill, we would be happy to do
8 whatever the Legislature said, whatever that might be
9 as long as it falls within the obligations that we
10 have by law, and, clearly, you're the ones that
11 dictate that law.

12 I do believe, however, that through the
13 study that our legal Staff has done, that we don't
14 have the power to get it from our trust fund as is, if
15 I'm not mistaken.

16 Ms. Jaber.

17 MS. JABER: That's our legal analysis.

18 CHAIRMAN JOHNSON: Could you repeat that?

19 They are raising their hands.

20 The question was whether or not we currently
21 had the legislative -- or had the statutory authority
22 to take funds out of the regulatory trust fund today,
23 and the answer.

24 MS. REYES: Our research has indicated that
25 we have -- we have arrived at the conclusion that, no,

1 we do not have that authority as it exists today,
2 Madam Chairman.

3 **COMMISSIONER CLARK:** I think yours was the
4 regulatory assessment fee, and I think what the Senator
5 is talking about is sort of the bank for that and
6 that's the trust fund.

7 And I guess, Senator Cowin, my concern would
8 be is whether or not it amounts to an appropriation.

9 What I suggest is probably your Staff of
10 finance and tax or appropriation can give us some good
11 information on that.

12 **SENATOR COWIN:** Commissioner Clark, it is
13 not my intention to have an appropriation. According
14 to the trust funds that are available, you have an
15 unencumbered cash fund balance for the '98-'99 fiscal
16 year of 16,574,358.

17 **COMMISSIONER CLARK:** Senator Cowin, I don't
18 disagree with that, but in order for us to spend that
19 money you have to tell us we can. It still has to be
20 appropriated.

21 **REPRESENTATIVE ARGENZIANO:** That is what I
22 think our bills will do. But today what I'd like to
23 hear from you is that -- since you've already,
24 obviously, looked into if you can tap into that fund,
25 is that this is something I'd like to get on public

1 record, that this is something that you would look for
2 as a resolve in this matter.

3 **COMMISSIONER GARCIA:** The point I was trying
4 to make to both of you is that I think that -- at
5 least as far as I'm concerned, and I think I speak for
6 the other Commissioners here -- that we've always done
7 as the Legislature has asked. We're an arm of the
8 Legislature, and we more properly than not respond to
9 the legislative process, since we come from that
10 process in terms of our selection to some degree.

11 So whatever it is that you pass, you can be
12 certain, because it is Florida law, that we are for
13 it. I don't know if I could be any clearer than that.

14 Clearly, if you pass something in the
15 Legislature or appropriate that money, it's the law.
16 And we'll be guided by that. And you know, just so
17 that there is no -- there's no misunderstanding here,
18 I think everybody on this Commission has voted and
19 tried to vote throughout this process in good faith.
20 We may have made an error. The court has told us --
21 (laughter from audience) -- the court has told us we
22 erred in uniform rates and, clearly, we've tried to
23 correct that. We understand the dilemma you're in and
24 the dilemma that your communities are in. And we want
25 to address that. I think that you've seen that our

1 Staff tried to go to all sorts of lengths in analyzing
2 this on the recommendation.

3 (Comments from audience.)

4 **REPRESENTATIVE ARGENZIANO:** Our point today
5 is that, first of all, the customers should not pay
6 for the errors of the PSC. (Applause)

7 And we'd like to know that you have also
8 thought that the surcharge, or think at this point --
9 and if we go ahead and help you legislatively to give
10 you that authority to do that, which I know we will
11 work hard in both houses to do, is that today you
12 agree that the surcharges should not be paid by the
13 customers and maybe do it this way.

14 **COMMISSIONER GARCIA:** Representative, let me
15 make this clear, and here I don't speak for the other
16 members of this Commission. I don't believe that you
17 can unscramble an egg. And to some degree, the error
18 we made in the past makes its almost impossible for me
19 to figure a way to do fairness in this case.

20 **REPRESENTATIVE ARGENZIANO:** I wonder if we
21 need to get a new chicken?

22 **COMMISSIONER GARCIA:** What?

23 **REPRESENTATIVE ARGENZIANO:** I wonder if we
24 need a new chicken, then

25 **COMMISSIONER GARCIA:** Well, clearly, I think

1 Senator Cowin has expressed some of the concerns that
2 I have in reading the Staff recommendation, in where
3 this comes from. I think you're just touching the
4 threshold. And I'm sure you've thought it out but
5 you're trying to speak quickly to the matter.

6 When you try to collect this money, it is
7 almost impossible. And I think there are so many
8 opportunities for not being able to collect it that it
9 becomes impossible to collect it, and it becomes an
10 undue burden on those who, in theory, would have to
11 pay this. I just don't -- then beyond that, I think
12 you made a very good point, and I think Staff makes it
13 out, that we're taxing someone, or we're asking money
14 from someone on something they had no idea they would
15 have to pay. And that leads into an even absurder
16 place. But that's where we are. And, clearly, we
17 have to work within the laws and limits. But if you
18 gave us discretion to do other things or you ordered
19 us to do other things, clearly, we would do as ordered
20 by the Legislature and the executives.

21 **CHAIRMAN JOHNSON:** Senator Cowin.

22 **SENATOR COWIN:** Yes. I would --

23 **CHAIRMAN JOHNSON:** Ladies and gentlemen,
24 Senator Cowin is attempting to speak. And, again, the
25 court reporter cannot take the Senator's comments or

1 yours from the rear of the room unless we proceed in a
2 very orderly manner. And at the appropriate time,
3 we'll allow the customers to come forward and to
4 present their comments.

5 Senator Cowin, if you could, please.

6 **SENATOR COWIN:** Thank you, Madam Chairman.

7 The bottom line is, Commissioners, I think
8 we understand the position. Right now the very
9 difficult position that you've put yourself in. I
10 also understand that we are here as a representative
11 of the people in the district, and really with
12 senators and representatives behind us I'm convinced
13 to remedy the situation.

14 If you know of another remedy, this is the
15 remedy that we came up with. However, the bottom line
16 is, customers need refunds with interest and customers
17 shouldn't be charged surcharges. (Audience waves
18 signs) And the utility should not make money at the
19 risk of all of this. And that's the bottom line.

20 **THE AUDIENCE:** Amen. (Applause.)

21 **CHAIRMAN JOHNSON:** Senator Cowin, and
22 Representative Argenziano, I appreciate you coming and
23 providing your testimony today. I think that this
24 Commission, when we voted the last time on this case
25 we did vote for no surcharges and refunds and, of

1 course, that decision was reversed by the Court.

2 And I agree with you, Senator Cowin, in some
3 of your comments, you provided, you know, the
4 court -- -- the GTE case and the other court talked
5 about equity in being fair. And it does appear to be
6 very difficult to be fair when you're asking some
7 people to pay for things that they had no knowledge
8 they would have to pay. And it's just a situation
9 where, as Commissioner Garcia said, you can't
10 unscramble an egg, but we have to try to find some
11 equitable solution.

12 I applaud you both for trying to come up
13 with something that can protect the customers and
14 leave the process whole. Certainly, the Court decided
15 that our decision was a erroneous interpretation of
16 the law. We are now here, the customers are here and
17 we're looking for resolutions. I appreciate your
18 efforts and your resolutions, and if this can pass
19 through the Legislature, and I would agree with you
20 that it would be the most equitable resolution for us
21 to try to implement.

22 So, again, thank you very much for that
23 proposal and that legislation, but, again, my question
24 is what does that do to this process? At this point
25 in time how do we factor that into this process?

1 Perhaps the parties can comment on that. I don't know
2 if that means a deferral or how we proceed, but that's
3 something that I'd like for the parties to start
4 thinking about. And when you have your five minutes,
5 if you could speak to that issue. Because as you
6 said, you doubt that anyone would be in disagreement.
7 But we do need to hear the discussion and the dialogue
8 so that we can make some decision.

9 **SENATOR COWIN:** I'll leave all those
10 procedural things with you, Madam Chairman. And,
11 also, I think, though, certainly anything that we do
12 here, or those options that you had in your papers
13 said that it didn't exclude other options. And I
14 think that is the door for an opening to this
15 alternative.

16 **CHAIRMAN JOHNSON:** I see.

17 **SENATOR COWIN:** Thank you very much, and I
18 do appreciate your time. (Applause)

19 **MR. ARMSTRONG:** Madam Chair, at this point
20 and with that presentation, the Company would like to
21 move once again for a deferral of the issue with the
22 stipulation that all the parties and the Commission
23 will go forward and attempt to get that legislation
24 which has been referred to.

25 **CHAIRMAN JOHNSON:** What I'm going to do is

1 allow you to make that motion, but I'm going to hear
2 from the other elected officials that may want to add
3 to that. And we also have some customers that may
4 just want to provide some particular comments. But at
5 the appropriate time, we will, indeed, entertain that
6 and allow all the parties to react.

7 **MR. ARMSTRONG:** Okay. Thank you.

8 **CHAIRMAN JOHNSON:** I understand that.

9 Mr. Brad Thorpe. Yes, sir.

10 And is it Commissioner Novey?

11 **COMMISSIONER NOVEY:** Yes.

12 **CHAIRMAN JOHNSON:** Great. Okay.

13 **COMMISSIONER BRAD THORPE**

14 appeared as a witness and testified as follows:

15 **DIRECT STATEMENT**

16 **COMMISSIONER THORPE:** Good afternoon,
17 Commissioners.

18 Just to let you know that I am Brad Thorpe
19 from Citrus County, and I'm here on behalf of myself
20 and the board members of Citrus County, Board of
21 County Commissioners.

22 Believe me, as an elected official for the
23 past five years in Citrus County meeting with me
24 constituents on a weekly basis, it's been very
25 difficult for me to speak to the issue with citizens

1 on both sides of the issue. And I, as one, would like
2 to have this resolved as soon as possible, and in
3 fairness to everyone.

4 And I'm going to read a statement to you
5 explaining our beliefs on behalf of our board.

6 "The Board of County Commissioners of Citrus
7 County, Florida, became involved in the above docket
8 in 1992, when it appeared that the Public Service
9 Commission and Southern States Utilities were about to
10 embark on a utility structure known as uniform rates,
11 which the board felt as illegal and unfair to certain
12 ratepayers residing in Citrus County, particularly
13 those located in the community of Sugarmill Woods.
14 Ultimately, the First District Court of Appeal sided
15 with Citrus County that uniform rates were not
16 justified in the above referenced case.

17 "The Public Service Commission, in
18 accordance with the mandate of the First District
19 Court of Appeal, ordered refunds to be paid by the
20 utility to those who had been overcharged on an
21 uniform rates. It is now apparent that following a
22 second appeal of this issue that the Public Service
23 Commission is about to surcharge certain ratepayers in
24 order to make refunds to others.

25 "Had this result been known to the Board of

1 County Commissioners in 1992, we certainly would have
2 never become involved in this case for it has not only
3 pitted one ratepayer against another ratepayer, as a
4 result of uniform rates, but now stands to do the same
5 again with respect to refund and surcharges.

6 "Contrary to the Supreme Court's opinion in
7 GTE Florida, Inc. v. Clark, in a recent opinion
8 rendered by the First District Court of Appeal in this
9 case, the board feels that the utility should be the
10 one refunding the ill-gotten gains from uniform rates;
11 not other ratepayers who are already paying an
12 exorbitant amount for water and wastewater services.

13 "The Utility had a choice to make when the
14 first appeal was taken to withhold implementing
15 uniform rates until such time as the validity of
16 uniform rates was determined by the First District
17 Court of Appeal. The Utility chose not to do so and
18 has now created this quagmire of legal issues. While
19 the position of the board is contrary to the District
20 Court of Appeal's decision and contrary to GTE of
21 Florida, Inc. v. Clark, we recommend that the Public
22 Service Commission seek appropriate relief from the
23 Legislature in order to reverse the impact of said
24 decisions with respect to this case.

25 "Surely it was not the intent of the Supreme

1 Court in GTE of Florida, Inc. v Clark for surcharges
2 to be implemented in such a inequitable manner.

3 "The Commission should, therefore, table
4 this issue pending possible legislative relief from
5 the application of GTE Florida, Inc. v. Clark to the
6 facts of this case.

7 "Respectfully submitted," and it is signed
8 by all five Citrus County Commissioners. Thank you
9 very much. (Applause)

10 **CHAIRMAN JOHNSON:** Thank you.

11 Commissioner Novey.

12 **COMMISSIONER PAT NOVEY**

13 appeared as a witness and testified as follows:

14 **DIRECT STATEMENT**

15 **COMMISSIONER NOVEY:** Thank you, Madam
16 Chairman. I'm Commissioner Novey from Hernando
17 County, and I'm representing several thousand Spring
18 Hill, Florida, water customers.

19 My constituents were overcharged in Hernando
20 County. They were overcharged between \$7 and
21 \$8 million under the uniform rates structure.
22 Concomitantly, we have had a negative impact of
23 \$8 million to our economy in Hernando County.

24 Absent Senator Cowin's and Representative
25 Argenziano's plan for the trust fund payments, refunds

1 to my people must be paid by surcharges to other
2 customers --

3 (Negative response from audience.)

4 **COMMISSIONER NOVEY:** -- who were
5 subsidized --

6 **CHAIRMAN JOHNSON:** Please allow the
7 Commissioner to speak. Again, we have a court
8 reporter and we have to proceed in a more orderly
9 manner.

10 Commissioner.

11 **COMMISSIONER NOVEY:** Number one, it was not
12 the fault of those who were subsidized. Number two,
13 it's also not the fault of those who are paying the
14 subsidies, but the money must come from somewhere.
15 And in the plan it is described where the money should
16 really come from.

17 I implore you to connect with reality,
18 impose the refunds and possible temporary surcharges
19 today. Let the trust fund take over. As for proper
20 financing, later as it passes the legislature, surely
21 Citrus County and Hernando County will be lobbying
22 heavily for that legislation.

23 We need you to order \$2 to \$3 million from
24 SSU to be paid directly to Hernando County customers,
25 the Spring Hill water customers. They pocketed that

1 money, so our customers need to be paid back the
2 refund that they are owed beginning with the \$2 to \$3
3 million immediately. Thank you very much.

4 **CHAIRMAN JOHNSON:** Thank you. Any questions
5 of the Commissioners?

6 (Negative response from audience.)

7 (Audience waves signs.)

8 **CHAIRMAN JOHNSON:** Thank you very much for
9 your testimony.

10 Do we have -- Dr. Bane, do we have a list of
11 the customers who would like to testify? I have a
12 list of those names from Room 171. I understand that
13 we have two customers, a Michael Corb and Father
14 Anthony, they were in room 121. That no one in room
15 234 would like to speak, and then we have several
16 customers here that would like to speak.

17 **DR. BANE:** There's no one in 234. The
18 customers are in 171.

19 **CHAIRMAN JOHNSON:** Okay. So all of the
20 customers are in 171, and there are two customers that
21 would like to testify.

22 **DR. BANE:** I believe Father Anthony is here
23 in this room.

24 **CHAIRMAN JOHNSON:** Oh, I see.

25 **DR. BANE:** Some of his constituents are --

1 not constituents, that's the wrong word -- are in the
2 other room.

3 **CHAIRMAN JOHNSON:** She explained to me that
4 Father Anthony is here and present and that some of
5 his congregation and citizens that live in this area
6 were in Room 171.

7 **DR. BANE:** Carol is going to check the
8 sign-up sheet back here.

9 **CHAIRMAN JOHNSON:** Okay. And we're going to
10 check on who signed up --

11 **UNIDENTIFIED SPEAKER:** There was a list.

12 **CHAIRMAN JOHNSON:** Sir, if you could bring
13 that forward, I have to speak from the microphone.

14 **UNIDENTIFIED SPEAKER:** A sheet placed back
15 on that podium that a lot of people signed up on.

16 **CHAIRMAN JOHNSON:** Thank you.

17 **DR. BANE:** I should have picked that up and
18 did not.

19 **CHAIRMAN JOHNSON:** Okay. I believe that the
20 gentleman just brought to me the list of individuals
21 who would like to present testimony. Hold on one
22 second. (Pause)

23 We were just making sure that we had all of
24 the names and all of the individuals that wanted to
25 participate.

1 With that, Father Anthony from the Marion
2 Oaks area, if you could come forward.

3 **DR. BANE:** Chairman Johnson.

4 **CHAIRMAN JOHNSON:** Yes, ma'am.

5 **DR. BANE:** Would you like for Mr. Corb to
6 come in, as well, from 171?

7 **CHAIRMAN JOHNSON:** Mr. Corb was in the other
8 room.

9 **MR. VANDIVER:** I'll get him.

10 **FATHER ANTHONY**
11 appeared as a witness and testified as follows:

12 **DIRECT STATEMENT**

13 **FATHER ANTHONY:** Thank you, Commissioners,
14 for hearing me out. As you said, I do come from
15 Marion Oaks. I'm from St. Judes, but I represent
16 between six and 700 people; not all my own
17 parishioners, but members of the community at Marion
18 Oaks. And we, of course, oppose any type of
19 surcharge.

20 Number one, we believe that the Commission,
21 who you are, acted in good faith, no matter what. I'm
22 not going to go through all of the details that were
23 already beautifully gone through. But the people also
24 acted in good faith. They paid their bills; they
25 responded; they did what they thought was right, which

1 was legislated, and they had no idea that there would
2 be a consequence such as this. And it's not fair, nor
3 is it just, to hit them with this kind of a surcharge.
4 Because they did act in good faith and they are just
5 and good people. They are not rich people.

6 Most of my community is a retired community
7 with not a lot of income. They try to pay their
8 bills, they try to pay their taxes. But when we look
9 around and we see that there's one and two-person
10 families, and that the bills they are going to have to
11 pay, or the proposed surcharge, \$1,000 to \$2700 for
12 two people is utterly unconscionable.

13 We have to act in the best interest of all
14 of the people, and they presume and they realize that
15 you are here to protect them and to make sure that the
16 people are treated justly and fairly.

17 We want to protect the people. We look at
18 our school and our public buildings in Marion Oaks,
19 and we see if the newspaper is right, that there's to
20 be \$56,000 or a 57,000 surcharge on the school. Who
21 is going to pay that? Is that going to be my people
22 from Marion Oaks? Is that going to be the people from
23 all over Marion County? Are we going to have to repay
24 our taxes because of this? How are these people going
25 to do it? My own church will be hit, which means that

1 the people who have already paid their bills have to
2 now pay the taxes on the public buildings. Again,
3 they'll be increased; have to double their
4 contributions to the church in order to take this.
5 Everything is brought into play here. They are going
6 to really be hit two or three times for the same
7 thing. How are we going to justify that?

8 So what I really have to say, again, just to
9 make it short, is that we need very much to be
10 relieved of this pressure. These old people, elderly
11 and those of us who are not so elderly, still who are
12 on a set income, this is really going to knock these
13 people out of the box.

14 And I think that, perhaps, if you can see,
15 or if the legislator does issue that you should be
16 fined for your errors, fined by taking it out of the
17 monies that you have. I praise that, and I thank
18 that's good. I can't say that people who were
19 overcharged shouldn't be paid their money. That's
20 true. But those -- everyone acted in good faith. And
21 how do we get that to be a just decision? You have
22 the quandry. But to level that on people who have
23 asked me to represent them is really -- you can see as
24 kind of people with your own salaries, whatever they
25 are, what it would be if you got hit with that. And

1 the effects it's going to have, the snowball effect
2 that it's going to have if you hit these little people
3 who have -- don't have a lot income, and they're
4 really going to be belted with this. And it's not as
5 though it's a few bucks. It takes a lot of money to
6 pay that surcharge and interest if you charge
7 interest. It's not going to be easy.

8 So I ask you really in conscience to see the
9 plight of the people who have no place to go. They
10 have depended on you from the beginning and on the
11 Legislature to be fair and just and to do what was
12 right, on the Utility Commission -- I mean, the
13 utility's company to do what was right, and we end up
14 here, years of squabbling and fighting, and the people
15 of Florida don't need this. There's enough illness
16 going around here without the aggravation of having to
17 worry about whether the government, who is supposed to
18 protect us, is now going to nail us to the wall.
19 Whether on purpose or not on purpose, that's what is
20 really happening. And we really need that relief and
21 I ask you please to consider (signs are waved)
22 justice, justice for all. And as difficult as it may
23 be for you to say, "Well, we can't take it out of our
24 coffers." Try and find a way to do that. And if the
25 utility Company has made excess profits on that, get

1 them to pay them back. Get them to pay back the
2 people so that everybody can be treated justly and
3 fairly.

4 **THE AUDIENCE:** Yeah. (Applause.)

5 **FATHER ANTHONY:** Thank you.

6 **CHAIRMAN JOHNSON:** Mr. Corb.

7 **MICHAEL CORB**

8 appeared as a witness and testified as follows:

9 **DIRECT STATEMENT**

10 **MR. CORB:** Madam Chairman, this is very --
11 I'm probably will be the most unique speaker that
12 you'll have at this meeting.

13 I'm an individual. I came down on a bus, but
14 I'm a member of Spring Hill and also a member only of
15 the Spring Hill Civic Association. I was under the
16 impression with the rest of us that there would be no
17 public speaking by anybody; therefore, I'm not
18 prepared. But I don't have to be prepared having gone
19 through the anguish of the last, at least five years
20 of having to pay more than my fair share for a water
21 system or whatever you'd like to call it. I'm getting
22 my water, and I've been overpaying for five years,
23 okay.

24 My point is this: As far as I personally am
25 concerned, why cannot this be two issues? You and

1 everybody else has been taking our money for the last
2 five years, have been ordered by the court to refund
3 to the people of Spring Hill the money that they have
4 been overpaid. That is a thing that you should be
5 doing now. It's time. We cannot go to more meetings,
6 pay more overdue monies or anything else. As a matter
7 of fact, at the moment I believe we're not paying so
8 much as we did before. Things have gotten
9 straightened out with our county taking over the
10 water. The point is this: Don't set one organization
11 or one set of people against the other.

12 What we're owed, we should be paid. It
13 should be a separate issue to the surcharge. The
14 gentlemen I just heard the last part of him was the
15 same opinion as I have for them. I probably one day,
16 I hope, if I live long enough, to be on the good end
17 of receiving the money that I've overpaid.

18 I'm a senior citizen. I need that money as
19 well as everybody else does, probably a little bit
20 more.

21 Now this is an issue that should be settled
22 right now. We will be paying you as ordered as of
23 period such and such a time. That's it. Now take the
24 issue, whose fault is it about the recharges? Who has
25 been collecting the money for the recharges? If it's

1 been the water company, it's their fault and your
2 fault, basically, that these people have been
3 overcharged. It's up to you and the water company to
4 get together and say, "Either you pay, I pay, we both
5 pay. You pay so much, and I pay so much." The people
6 are not entitled that they should be left stranded
7 paying money that they don't believe they should pay
8 because they never asked for it, no more that we asked
9 for anybody, like the Public Service Commission to
10 keep the people of Spring Hill -- this is a
11 particularly Spring Hill issue -- and it's ended as as
12 Spring Hill issue -- pay us back what is owed by the
13 water company. That is one.

14 The other one is this: Please don't
15 sacrifice people in their living and other things
16 because you're squabbling as who's the right to pay.
17 The money is in the bank. The money is somewhere.
18 Make sure that you do not ask them to pay any more.
19 Pay them back as well. They are entitled to it as
20 much as we are entitled to it back.

21 Ours is by law. Pay us. But these other
22 people with the surcharge, why be off the table?
23 Let's start clear and let's all go home very, very
24 happy. Thank you very much. (Applause.)

25 **CHAIRMAN JOHNSON:** Thank you, Mr. Corb.

1 Next we have Joseph Hanratty. I'm sorry.
2 Okay. Well, then, you'll speak as one of the parties
3 at the appropriate time? Okay.

4 Mr. Fred Clark. After Fred Clark, Alex
5 Carmichael.

6 **FRED CLARK**
7 appeared as a witness and testified as follows:

8 **DIRECT STATEMENT**

9 **MR. CLARK:** Madam Chairman, members of the
10 Commission, Staff and interested parties, my name is
11 Fred Clark, and I'm from the Gospel Island Community
12 Association of Citrus County.

13 I applaud Senator Cowin and Representative
14 Argenziano's comments and proposals, and I appreciate
15 Commissioner Thorpe's and Commissioner Novey's
16 support.

17 My comments are simple, brief and
18 straightforward. We, as a group, have no objections
19 to refunds to Sugarmill Woods, Spring Hill and the
20 other communities that are deserving of them. We do
21 not, however, support the divide-and-conquer tactics
22 of Florida Water Services and possibly the Public
23 Service Commission. (Audience waves signs.) We do
24 object to the surcharges for our community and others
25 that are in like circumstances.

1 When I was growing up my parents, my scout
2 leaders, teachers and church leaders, impressed upon
3 me that a person's true worth was determined by his or
4 her willingness to take responsibility for their
5 actions.

6 **THE AUDIENCE:** Amen.

7 **MR. CLARK:** And not resort to political
8 doublespeak that I have heard a little of here today.

9 This situation was created by the decisions
10 of the Public Service Commission. The Public Service
11 Commission should make it right by digging into its
12 own pockets, not the pockets of the people they are
13 supposed to protect. Thus your vote on this matter
14 today will determine your worth and concern for the
15 people you were placed here to serve and will show
16 your true colors to all. Thank you. (Applause.)

17 **CHAIRMAN JOHNSON:** Thank you, Mr. Clark.

18 After Mr. Carmichael, we'll have Archie
19 Green.

20 Mr. Carmichael.

21

22

23

24

25

1 private donations. Three percent of our funds come
2 from state and federal income in terms of food
3 subsidies mostly.

4 We believe that no child should suffer
5 because they are not able to protect themselves, so we
6 seek to be the party that protects them.

7 In this situation I believe no one should
8 suffer because they are not able to protect
9 themselves, and at this point none of us who are a
10 party to Florida Water or any other water company or
11 utility do not have the right to accept or reject the
12 rates that are given us. We've paid our bills in a
13 reliable sense, all of us.

14 Senator Cowin came up, I think, with an
15 equitable solution for all of us that's a win-win.
16 And I believe those situations are very possible to
17 have happen.

18 At a time when human services are
19 increasing, we believe that a surcharge would be
20 grossly unfair and present a real -- not a perceived,
21 a real dramatic hardship for our program and all
22 persons who may be asked to pay that surcharge. And
23 for that, I hope that you will take a look at the
24 surcharge issue and, hopefully, find an equitable
25 solution for us as well as those who were overcharged

1 somewheres in that process. Thank you. (Applause)

2 CHAIRMAN JOHNSON: Thank you.

3 Mr. Green.

4 CHAIRMAN JOHNSON: I believe it's -- is it
5 Mayor Green?

6 MAYOR GREEN: Yes, ma'am.

7 MAYOR ARCHIE GREEN

8 appeared as a witness and testified as follows:

9 DIRECT STATEMENT

10 MAYOR GREEN: I'm Archie Green. I'm mayor
11 of the great city of Keystone Heights that was
12 designated Florida's Outstanding Rural Community for
13 1997.

14 I'm here today to talk about the issue, but
15 I'm not sure procedurally whether I need to talk about
16 any testimony at this point. Mr. McGlothlin is
17 representing the City of Keystone Heights. Is my
18 comment appropriate at this time?

19 MR. MCGLOTHLIN: Chairman Johnson, I
20 understood your ruling earlier to be that while you
21 normally call for parties to speak through their
22 attorneys, in this case you were engaging your ability
23 to handle all of those customers who wanted to. For
24 that reason, I indicated to the three people who are
25 here with my clients, that brief comments would be

1 appropriate.

2 **CHAIRMAN JOHNSON:** Brief comments are
3 appropriate.

4 **MAYOR GREEN:** Okay. Thank you very much.
5 Thank you very much, Madam Chairman and
6 Commissioners that are listening to me today. I've
7 testified here a couple of times, I think.

8 I'm not sure whether you received it or it's
9 in your packet, the City of Keystone Heights has
10 issued a resolution. It's Resolution 97-36, and I'd
11 like to make sure it is part of the public record.

12 The resolution of the City of Keystone
13 Heights, Florida, informing the Florida Public Service
14 Commission that the impact the proposed ruling by the
15 Florida Public Service Commission on Docket
16 No. 920199-WS will be approximately \$168,000. As the
17 City of Keystone Heights opposes a surcharge refund
18 option and requests the Florida Public Service
19 Commission to take some alternative action that will
20 not be punitive to the people of Keystone Heights.

21 I have been to many meetings here. I've
22 heard testimony today that I think has been very
23 enlightening to me. And I think you've got only one
24 option, and that is to call the whole thing off and
25 stop, cut your losses.

1 I don't quite understand why we keep going
2 through all of this on and on.

3 I would like to know what the bottom line is
4 on how much have you spent just in the regulatory --
5 what's the regulatory burden that has been generated
6 just to handle this rate refund? Or the surcharge?
7 The last time I was here there were attorneys all over
8 the place, they were meeting with Florida Water, you
9 were going to have computer people do this, you were
10 going to have the computer -- you know, all of this
11 stuff going on. I'm wondering now whether the
12 regulatory burden is greater than the refunds?

13 So if it was me, I would cut my losses short
14 and say, "Hey, that's it. No more. We're not going
15 to do anything about it," and let's see where the
16 cards fall.

17 But just spending the people's money, having
18 all of these expenses coming back in Florida Water's
19 rate base to us that we're going to have to pay. So
20 we've got their surcharge and got all of these
21 regulatory burden charges. So if it was me, I would
22 cut my losses short and vote to do nothing here.

23 What would be the fallout? The fallout
24 would be that the Legislature might have to do
25 something or they might direct you to do something.

1 **COMMISSIONER GARCIA:** Well, Mr. Mayor, the
2 fallout could be that we could be taken to court and
3 the Court would order us.

4 **MAYOR GREEN:** Then let them.

5 **COMMISSIONER GARCIA:** That's fine. I was
6 going to ask you what you thought, but you basically
7 believe --

8 **MAYOR GREEN:** I think --

9 **COMMISSIONER GARCIA:** -- no refund, no
10 surcharge.

11 **MAYOR GREEN:** I think you have been going
12 through this for so long; I mean, when is it going to
13 stop? And, you know, you've pitted everybody against
14 each other. Now just stop. See where the fallout is
15 going to be. If you're instructed to refund it --
16 the courts told you you didn't have to, you could
17 refund it or you could do nothing. So cut your losses
18 short. Say, "Okay, that's it," and let it fall out.
19 But why spend all of this money? Why keep going at
20 it? Why all the attorneys? Why is all the Staff?
21 Why is all of the computer people? Why is all of this
22 going on? And I would like to really have that part
23 of the public record. What is the cost of this
24 regulatory burden against the size of the surcharge?
25 Have you thought about that?

1 So I really think you should make it very
2 clear, vote today, let's cut it off, and then have
3 your instructions come from other people.

4 Thank you very much. (Applause)

5 **CHAIRMAN JOHNSON:** Thank you, sir.

6 There's a J.C. Netteshein.

7 **MR. MCGLOTHLIN:** Netteshein.

8 **CHAIRMAN JOHNSON:** Netteshein. Okay. And
9 after this gentlemen, Mr. Ed Slezak. I know the face.
10 And, Chris, you all are next.

11

- - - - -

12

JOE C. NETTESHEIN

13 appeared as a witness and testified as follows:

14

DIRECT STATEMENT

15

MR. NETTESHEIN: My name is Joe Netteshein.

16

I'm representing the Marion Oaks Civic Association

17

from Marion Oaks.

18

My remarks are going to be pertaining to

19

the -- some of the Staff recommendations and some of

20

the things that I have been following as I've gone

21

along.

22

When I received the letter from the Florida

23

Water Services as to the amount of the Surcharge I

24

might be responsible for, one of my first questions

25

was how did they arrive at this figure? There was no

1 indication of what the formula was that -- what it was
2 based on. There was no indication of how much the
3 interest rate was. There was no indication of whether
4 it was a compounded interest rate. And one of the
5 first things that I'm sure all of the people in Marion
6 Oaks would like to know, if this should come about
7 that they have to pay the surcharge, is they will want
8 to know how it was made up and know the formula so
9 they can go back in their own records and figure
10 things out.

11 Another thing that bothered me was this
12 matter of uncollectibles. Where I live in Marion
13 Oaks, within a couple blocks of myself where I live,
14 there's at least seven or eight homes where the
15 residents have changed since the time of the uniform
16 rates. So there's a great number of people, probably
17 30, 40% that are no longer customers of Florida Water
18 Services. And to try to collect a surcharge from
19 these people is probably impossible, if you could find
20 them.

21 So we have to be very careful that the
22 present residents of Marion Oaks don't have to cover
23 the liability of those that have left the area.

24 Now, the Staff recommendation appears to
25 simplify the fact that -- or appears to take the stand

1 that refunds -- that making refunds and making
2 surcharges are pretty much of an equal process. I
3 don't think this is true at all.

4 Refunds -- they can get. You can address a
5 letter to the people who are going to get refunds and
6 they will gladly accept it. Those people that are no
7 longer in the areas where they do a refund, I'm sure
8 they are going to jump out of the woodwork and know
9 they are due a refund. Then also the Staff has stated
10 that if they can't find a person who is due a refund,
11 that that money needs to go to build up their
12 contributions in aid of construction.

13 It's not at all going to be that easy to
14 locate people that are supposedly going to have to pay
15 a surcharge.

16 Also, in looking through some of the Staff's
17 recommendations, I was rather horrified to find three
18 different things. The one recommendation, which
19 appeared to come from the association, was that the
20 Utility be asked to take out a loan to pay the
21 refunds, and that the interest or the cost of that
22 loan then should be put on to the surcharge customers.

23 **THE AUDIENCE:** (Laughter.)

24 **MR. NETTESHEIN:** I don't really like to see
25 something like that.

1 Further, the utility has stated in their
2 briefs that if they have to do this sort of thing,
3 then that's going to impact their tax liability and so
4 they wanted some additional charges to compensate for
5 the possible tax liability.

6 And last of all, if the surcharge customers
7 have to assume the liabilities of the uncollectibles,
8 which the Utility appears to think they should, the
9 figures that surcharge customers received in the
10 letter from the Utility are going to be double or
11 maybe even triple what was there. And some indication
12 of this is that in the Staff recommendation they had
13 several charts labeled Option 1, 2 and 3, which
14 appeared to indicate what the overall surcharge would
15 be over a number of years.

16 And I've worked through this. And if I look
17 at it from the standpoint of a mortgage-type loan
18 arrangement, then the interest rate that they're
19 talking about exceeds 12%, which is extremely high,
20 and I think this is going to be very hard to sell.

21 I do like the idea of Senator Cowin, of
22 legislative action in this respect, but I realize that
23 that could take a long time. And in the meantime, the
24 way I feel, and the way I think most of the people in
25 Marion Oaks feel, is that the stand you should take

1 today is that accept as fact that the rates have been
2 adjusted prospectively and from that standpoint no
3 refunds and no surcharge. Thank you. (Applause.)

4 **CHAIRMAN JOHNSON:** Ladies and gentlemen,
5 Mr. -- is it Slezak? Did I pronounce that correctly?

6

- - - - -

7

EDWARD SLEZAK

8 appeared as a witness and testified as follows:

9

DIRECT STATEMENT

10

MR. SLEZAK: My name is Slezak.

11

Madam Chairman and the Commissioners, I'm

12

Chairman of the water committee in Pine Ridge.

13

The decision of the Court is totally wrong

14

to refund \$15 million to Spring Hill and Sugarmill

15

Woods.

16

To begin with, we, the water customers, did

17

not ask for uniform water rates. Most of the water

18

customers didn't even know what uniform water rates

19

stood or stand for. The responsibility totally falls

20

to the PSC. They are the ones who forced uniform

21

water rates on to the water customers. Surely we did

22

not ask for uniform water rates, so the blame squarely

23

falls into the laps of the PSC.

24

If a window gets knocked out your home, is

25

the fellow who installs the new window at fault? No

1 way. The fellow who knocked the window out is
2 responsible for the payment. Well, you knocked our
3 windows out and now are blaming us for your mistakes
4 and want us to pay the surcharge.

5 I respectfully request that you deny the
6 surcharge here today and pay out of your own slush
7 fund.

8 And also, not being sarcastic, I would like
9 to ask Commissioner Garcia if he asked the Legislature
10 whether he could pass uniform rates on us people?
11 He's talked about the Legislature and says they do
12 things by the Legislature's decisions, but I don't
13 think you asked the Legislature to pass uniform rates,
14 did you, Commissioner Garcia?

15 **COMMISSIONER GARCIA:** I think that what this
16 Commission decided was --

17 **THE AUDIENCE:** Louder.

18 **COMMISSIONER GARCIA:** I'm sorry. What this
19 Commission decided -- and it wasn't a majority, some
20 of those --

21 **THE AUDIENCE:** Louder.

22 **COMMISSIONER GARCIA:** What we tried to do
23 when -- we thought when we passed uniform rates, at
24 least the majority of us thought, thought that we had
25 the authority to do that. We thought that the law

1 comprehended uniform rates. To some degree, some of
2 you benefited from the uniform rate system.
3 Nonetheless, the court decided that we were wrong, and
4 that we did not have the authority. It wasn't the
5 Legislature who told us; it was the courts.

6 **MR. SLEZAK:** Yeah. But you never asked the
7 Legislature for permission, either.

8 **COMMISSIONER GARCIA:** Sir, that is kind of
9 difficult to do. We read the laws and interpret them
10 as the Legislature has dictated.

11 **THE AUDIENCE:** (Conversation)

12 **COMMISSIONER GARCIA:** We were found in error
13 by the court; therefore, that's where we're at now.
14 We're trying to correct that error.

15 **MR. SLEZAK:** Thank you very much.

16 **CHAIRMAN JOHNSON:** Thank you. Ms. Slezak.
17 Chris.

18 - - - - -

19 **CHRISTINE SHERIDAN**
20 appeared as a witness and testified as follows:

21 **DIRECT STATEMENT**

22 **MS. SHERIDAN:** My name is Christine
23 Sheridan.

24 (Simultaneous conversation)

25 **MS. SHERIDAN:** It is. Okay. Sorry about

1 that. My name is Christine Sheridan, 4588 North
2 Rushmore Loop in Beverly Hills.

3 I do thank you all for allowing me to come
4 and speak to you today. I know the decisions that you
5 must make are not always easy. And I'm sure your
6 Staff has given you all sorts of facts and figures, so
7 I'm not here to do that, nor am I here to oppose my
8 neighbors. I'm only asking to speak to you to say,
9 please, say no to the surcharge. Use your slush fund.

10 There are five buses that also came here
11 today to also oppose the surcharge, and I would like
12 to ask those who are not going to speak, but who do
13 agree with me, that there should be no surcharge, to
14 please raise your hands. (Audience complies.)

15 The people have spoken. Please take heed.

16 I also would like to bear your indulgence,
17 if I may, some other ones in my group have asked me to
18 speak a couple of lines for them.

19 "Here in 1981 our rates were the highest.
20 There were no refunds offered or wanted. The Public
21 Service Commission offered both stand-alone versus
22 uniform rates. Uniform rates seemed fairest and still
23 is. The PSC does have a slush fund, so if a refund is
24 voted, the PSC should pay. But if it's warranted, no
25 refund and certainly no surcharge."

1 How about water conservation? That has not
2 been addressed here. Where would the golf courses get
3 their funds from?

4 I thank you.

5 I also would just like to ask one question,
6 if I may. Normally, when we're allowed to testify we
7 have to be sworn in. We were not today. Does that
8 still make our testimony legal?

9 **CHAIRMAN JOHNSON:** Certainly. We're
10 treating this testimony as we would when customers
11 send in information and it's placed in the
12 correspondence side of the record. But all of us are
13 here listening to your comments, and I'm sure the
14 parties are even going to respond to some of the
15 suggestions.

16 **MS. SHERIDAN:** Good. If I could just ask
17 one other quick question. In the rain, I
18 inadvertently left a statement that someone else had
19 asked me to read for them. Is it too late for that to
20 be submitted to you by mail after today?

21 **CHAIRMAN JOHNSON:** I believe we're still
22 receiving information. Ms. Jaber, is that correct?

23 **MS. JABER:** We'll certainly receive and file
24 all information we obtain. I think that what you said
25 originally was today was the drop deadline because you

1 were going to make a decision today.

2 **CHAIRMAN JOHNSON:** Ms. Sheridan, I guess it
3 would be difficult to the extent that we do vote out
4 something today.

5 **MS. SHERIDAN:** All right.

6 **CHAIRMAN JOHNSON:** But I would still suggest
7 that you send that information in. This process seems
8 to be a long process. Thank you very much.

9 **MS. SHERIDAN:** Thank you. (Applause.)

10 **CHAIRMAN JOHNSON:** The next person is Alice
11 Boomershine. And after Ms. Boomershine, Harry Jones.
12 Tape 3.

13

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14

ALICE BOOMERSHINE

15 appeared as a witness and testified as follows:

16

DIRECT STATEMENT

17

MS. BOOMERSHINE: My name is Alice

18

Bommershine, and I represent the 800 members of the

19

Citrus Springs Civic Association. And, also, I guess

20

I should say that in the the absence of James Brower,

21

who was going to represent his church; probably

22

another 300 or 400 people there. Also, I might say

23

that we have at least 100 people from Citrus Springs

24

in attendance here today, and I'm speaking for them.

25

I've asked to appear here because I'm fully

1 aware of the impact that the actions of this
2 Commission will have on the daily lives of many of our
3 citizens. You see, Citrus Springs is not an affluent
4 community. Yes, we have recently seen many upscale
5 homes being built. However, the greatest impact of
6 your actions will be upon those who are elderly and
7 have lived in Citrus Springs for many years. They
8 moved here because of affordable housing and
9 reasonably priced utilities.

10 If you don't know anything about Citrus
11 Springs, you might be interested to know that we are
12 one of the developments deserted by Deltona
13 Corporation, leaving us with roads overgrown with
14 weeds, no streetlights, few fire hydrants and a barely
15 operating fountain at our entrance. Four years ago we
16 adopted an MSBU to take over the work which Deltona
17 left undone. We're proud of our progress and our
18 community is beginning to shine.

19 We have been mostly quiet when it came to
20 the great water wars you all have created for us.
21 When we heard that there might be surcharges, we said,
22 "Nah, you've got to be kidding." So we were quiet.
23 Well, now we know that you were not kidding. Just as
24 when we decided not to let our community go to seed,
25 we now are here, letting you all know that we will no

1 longer be quiet.

2 Many of the folks I'm talking about live on
3 fixed incomes; some even survive on Social Security
4 with no additional pensions. Put yourself in the
5 position of the widow or widower, or even the couple
6 who is retired. Many think twice before flushing the
7 toilet because they know exactly how much that flush
8 is going to cost them. They have long since giving up
9 using the dishwasher or taking daily baths and
10 showers. You can't afford the water bill. The last
11 increase in water rates was more than the cost of
12 living raise many of them will receive next year. And
13 that's today.

14 If you decide to go back and apply surtax on
15 water used in past years, you will be adding the straw
16 that will break the backs of many of these seniors.

17 Then there are the young people who have
18 chosen to purchase homes in Citrus Springs. These are
19 the ones who have young families, can't find decent
20 paying jobs in our county and must drive to other
21 cities to work. They are bearly making it, if at all.
22 Increases in water rates, plus surcharges, can only
23 add to the stress they feel just trying to keep their
24 heads above water.

25 Please do not get the impression that our

1 residents are a bunch of uncivilized heathens because
2 they do what they must do to get along, and I would be
3 lying to you if I told you that we all conserve water
4 as we should.

5 Now, I know the rulings concerning
6 stand-alone rates as opposed to uniform rates have
7 been made and this is not a place to address that
8 issue. What you must decide is whether surcharges
9 will be assessed to those who, by your own order, were
10 billed under the uniform rate structure.

11 All we expect from those who do business
12 with us is that we be billed correctly and in a timely
13 fashion. Upon receipt of the bill for service, we are
14 expected to pay that bill promptly, period. End of
15 story.

16 What we do not expect from our regulators is
17 that they change the rules every time a little
18 pressure is applied. When the rates were set, whether
19 stand-alone or uniform, we were billed accordingly to
20 the rates in effect at that time. If the rates were
21 changed, our new bills reflected those changes and we
22 paid them promptly. If for some reason the Florida
23 Public Service Commission, you, now ordered us to pay
24 arrears billing plus interest, we will no longer be
25 safe from recurrences of this process.

1 You will set a precedent which will directly
2 affect our dealings with other utilities. Why not
3 extend the option to the county government, the
4 federal government? When they find a shortfall at the
5 end of the fiscal year, they can just go back and jab
6 us again.

7 Tonight when you step into that nice hot
8 shower, or bathtub, think of all the people who must
9 think every day whether they can afford that simple
10 luxury because many of them cannot. You can make the
11 difference. No surtax. No interest. Just do it.
12 Water is a necessity of life and it should be
13 affordable to all. (Applause.)

14 **CHAIRMAN JOHNSON:** Mr. Jones.

15

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16

HARRY JONES

17 appeared as a witness and testified as follows:

18

DIRECT STATEMENT

19

20 **MR. JONES:** Thank you. Excuse my voice. My
21 name is Harry Jones, and I represent the Cypress
22 Village Property Owners Association which is located
23 within Sugarmill Woods. And I want to thank you
24 because at your last meeting, or the last meeting I
25 attended, you gave us the right to intervene in this
case. So thank you.

1 And I hark back to 1981 the first time we
2 had much to do with you people, and I don't see any
3 faces that were here in 1981. So I have a feeling
4 that when Mr. Garcia is asked why don't you do
5 something, most of it may have already been done
6 before he occupied that seat. It still doesn't mean
7 he's not responsible, but so be it.

8 The reason that we wanted to speak today is
9 that we have been working and trying to make sure that
10 the Public Service Commission did what was right for
11 all of the people that they had to do business with,
12 and this was obviously in the water and sewer thing.
13 We spent uncountless hours going through all of the
14 records that were generated by their staff looking for
15 errors, pointing out things that needed to be
16 corrected, most of which impacted on all of your
17 rates; lowering them.

18 When they first brought up the idea of
19 having uniform rates, there were quite a number of
20 people whose faces I've seen in the audience today who
21 were here and who were not in favor of having uniform
22 rates.

23 Now when those got instituted, some of those
24 people who were not in favor of uniform rates got
25 reductions in their rates, and all of a sudden they

1 didn't show up at future meetings when we were arguing
2 the negative benefits of having uniform rates. Why
3 would they show up? They weren't paying as much money
4 as they paid before. In our case, we were paying a
5 lot more. So you can see what happens over the years.

6 Now, back in 1992, if the water company or
7 the Utility, in their wisdom, had known what problems
8 all of these things were going to cause they could
9 have abided by a temporary control over the rates
10 until all of this stuff got thrashed out, and we
11 wouldn't all be here over and over again.

12 And I appreciated what Senator Cowin said in
13 her earlier statement, but I see another six months
14 and then another six months, and another six months,
15 and there are some of us that are not going to be
16 around for all of that time. Last February I wasn't
17 sure I was going to make it but I did, and I hope I
18 can make it through until this thing gets resolved.
19 So thank you very much. (Applause.)

20 **CHAIRMAN JOHNSON:** Thank you, Mr. Jones.

21 Next we have Mr. Jim Whitehouse and Gordon
22 Colvin.

23

24

25

JIM WHITEHOUSE

1
2 appeared as a witness and testified as follows:

DIRECT STATEMENT

3
4 **MR. WHITEHOUSE:** Okay. I appreciate the
5 opportunity to speak to the Commission. The Chairman
6 of the Commission and their executives.

7 I am from Point O' Woods. That's in Citrus
8 County.

9 **COMMISSIONER GARCIA:** Could you state your
10 name?

11 **MR. WHITEHOUSE:** Jim Whitehouse.

12 **COMMISSIONER GARCIA:** Thank you,
13 Mr. Whitehouse.

14 **MR. JONES:** Point O' Woods, Citrus County.

15 First off, I'm not after sympathy; I'm after
16 justice.

17 I do sympathize with the people, Sugarmill
18 Woods, Citrus Hill, because they claim they have a
19 refund, and I'm sure they do. On 20,000 gallons of
20 water their rates went up so they are paying \$60 a
21 month. Well, I'll give you a little story. This is a
22 fact. I sent you all letters on this, and I also sent
23 your committee letters on this, basing on the rates
24 that I was charged.

25 I started out in 1992, the summer of '92, I

1 was paying \$27 a month for water and sewer. When they
2 put the interim rate on I went up 27%. Every year
3 since then my rates have increased. I don't know what
4 a uniform rate is, because some of the people where I
5 live don't even pay the same rate I do, but that's
6 beside the point.

7 Today I'm basing this on 5,000 gallons now,
8 not 20, but 5,000 gallons of water on a water and
9 sewer bill. My bill now is \$92 a month. Now, if you
10 think that we benefited and that we should pay a
11 surcharge because we got low rates, I don't know what
12 you all think high rates are. But I can't afford \$92
13 a month. I'm on retirement. And it's just
14 impossible.

15 So I feel about this thing, that Florida
16 Water made money on this also. They have to be. Our
17 rates are too high, and I think they should be looked
18 at one way or the other. Either the county has to do
19 it or the Public Service Commission has to do it. But
20 I feel that if there is going to be a refund, if
21 that's necessary, then I feel that the Public Service
22 Commission who made a big mistake and helped create
23 this monster, and Florida Water, who helped create
24 this monster, if they are going to pay \$15 million, I
25 prefer that it be paid by both parties, 50% each, and

1 that you make sure that there are no increases in our
2 rate to pay for what they are going to have to pay or
3 you're going to have to pay. That's all I have to
4 say. (Applause.)

5 **CHAIRMAN JOHNSON:** Thank you,
6 Mr. WhiteHouse.

7 Mr. Colvin.

8 **GORDON COLVIN**

9 appeared as a witness and testified as follows:

10 **DIRECT STATEMENT**

11 **MR. COLVIN:** Madam Chairman and
12 Commissioners, my name is Gordon Colvin. I'm a member
13 of the Spring Hill Civic Association which has been
14 involved in this rate case since 1993.

15 Since customers of Spring Hill Utilities
16 have paid a reported 7.5 million or more in subsidies,
17 we did not like the recommendation of Florida Water
18 Services to do nothing about refunds and surcharges.

19 Now, after hearing the state senator's
20 proposals -- proposed solutions and the Public Service
21 commissioners response to those proposals, I will say
22 only those customers who subsidized others should be
23 paid their refunds, but preferably not at the expense
24 of other customers since this situation was not the
25 fault of any of the customers.

1 We feel that the Public Service Commission
2 has a legal and moral responsibility to clean up this
3 mess promptly, and we look forward to getting our
4 refunds promptly. (Audience waves signs.) (Applause)

5 **CHAIRMAN JOHNSON:** Thank you Mr. Colvin.

6 Ladies and gentlemen, that concludes our
7 list of public participants that have asked to speak.
8 We're going to allow the parties five minutes each,
9 but not until after we give our court reporter a
10 break. She's been typing all of you comments down for
11 the last hour and a half. So with that, we're going
12 to take a quick 15-minute break.

13 (Brief recess taken.)

14 - - - - -

15 **CHAIRMAN JOHNSON:** Ladies and gentlemen,
16 we're going to reconvene the hearing. I apologize for
17 the lateness. One of the things that we need to do
18 before we go to the parties is hear from a couple of
19 customers that did not have the opportunity -- one
20 said he did not have the opportunity to complete his
21 comments, just two more -- just two more -- and
22 Mr. Pino who had wanted to provide comments but had
23 not signed up on the particular list. So we're going
24 to wrap up with them rather quickly. We understand
25 that everyone wants to keep this thing moving and get

1 out so you all won't be traveling too late into the
2 night. With that we're going to start with
3 Mr. Whitehouse and then Mr. Pino.

4 **JIM WHITEHOUSE**

5 appeared as a witness and testified as follows:

6 **ADDITIONAL DIRECT STATEMENT**

7 **MR. WHITEHOUSE:** Thank you, again. I don't
8 like to take up any more time, but I'd like to mention
9 something. There was a gentlemen over there that
10 asked about the surcharges and the breakdown. I just
11 want to let him know what is involved in the
12 surcharges. My surcharge is \$1,255.35. What it is is
13 supposedly the difference between the stand-alone rate
14 then the uniform. If I had been stand-alone instead
15 of uniform, they figured that I would have paid that
16 much more. Well, deduct \$178 from that, because \$178
17 of that is interest.

18 Now, the way they figured the interest, and
19 he was talking about interest on interest. September
20 of 1993 I would be charged 22.5% interest for that one
21 month. 22% for October. 20.5 -- now this is within a
22 quarter of a percent, 20.5%, and so on. It comes down
23 to where I would be paying \$178 in interest alone on
24 the money I'm supposed to have saved by paying -- I
25 was paying \$74 a month before I went back to the

1 stand-alone rate, which jumped me up to \$92 a month.
2 So I'm very fortunate that I live in this country.

3 And I don't know where I'm going to go.

4 (Laughter) I hope you all stay here with me because we
5 might get things done if we stick together like this.
6 You know, the silent majority is finally here and
7 we're going to be heard.

8 **CHAIRMAN JOHNSON:** Thank you.

9 Mr. Pino.

10

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11

ADOLPH PINO

12 appeared as a witness and testified as follows:

13

DIRECT STATEMENT

14

MR. PINO: Commissioners, my name is Adolph
15 Pino. I'm a member of the Citrus Springs Civic
16 Association, moved down to Florida in 1983; still
17 enjoying it, every bit of it.

18

For the last hour or so we have been
19 listening to the pros and cons on a controversial
20 subject that's been around since 1992. I guess the
21 concensus was that we all agree that Spring Hill and
22 Sugarmill Woods and any others should be compensated
23 for the overcharge. We're also very conscious of the
24 fact that we don't feel we're liable for the
25 overcharge for us to compensate for it.

1 And the thrust of my few words here today is
2 know your enemy. And I had this letter from Florida
3 Power admitting that this dilemma was due to the fact
4 that a mistake was made by the Public Service
5 Commission, and we heard all of that. But I wrote in
6 to Minnesota Power, a diversified company, who owns
7 SSU or Florida Water, and in their statement that they
8 have given me here it says that, "In September 1996
9 Florida Public Service Commission granted Florida
10 Water a rate increase of 11.1 million higher than was
11 authorized when the rate case was filed on June of
12 1995." Now, somewhere some of that money must be
13 around.

14 I also looked at their prospectus as a
15 possible stock buyer, and I find out that -- the light
16 here -- 44% of their assets are in electrical power,
17 providing electrical power to customers. And from
18 that 41% of assets, that added an increase of -- or
19 added to the total of a 5% in their stock dividends.

20 If you look at the water power, which they
21 were kind enough to give me here, they only have 16%
22 of their assets invested, but they equal 5 cents a
23 share profits. So on 41% of their assets they get 5%
24 profits, and on 16% of water they get 5% profits,
25 which indicates to me that their margin of profit is a

1 little out of align.

2 Now just in closing, I just want to say my
3 monthly bill, the last bill I got for \$52.80, we used
4 3720 gallons and, of course, a big sewer bill, \$13 for
5 the water and \$39.69 for the sewer, which amounts to
6 \$1.70 a day. Is that cheap or is that expensive?

7 But my concern here -- and I wanted to call
8 this to your attention, that they were given a rate
9 increase of 11.1 million over than what they've asked.
10 Thank you for your time.

11 **CHAIRMAN JOHNSON:** Thank you, Mr. Pino.

12 (Applause.)

13 **COMMISSIONER CLARK:** Mr. Pino, could I see
14 that report that you quoted from?

15 **MR. PINO:** Yes, ma'am. You can have it.

16 (Hands document to Commissioner Clark.)

17 **UNIDENTIFIED SPEAKER:** Xerox.

18 **CHAIRMAN JOHNSON:** Thank you, Mr. Pino.

19 That concludes the public comments for
20 today. (Applause.) I think we're ready to hear from
21 the parties.

22 **MS. JABER:** Commissioners, I would recommend
23 that we go back to the motions for continuance and
24 address and dispose of those first.

25 **CHAIRMAN JOHNSON:** Okay. How would we

1 handle -- the Utility's requested a deferral based
2 upon the comments made by the Senator and
3 Representative. At what time and how would we address
4 that and what's the appropriate procedure?

5 **MS. JABER:** I think you can do it all at
6 once. In their motion for a continuance they
7 requested to be able to respond to the customer
8 comments, and that was the basis for their request for
9 a deferral. You just take that a step further,
10 they're adding to their request an opportunity to
11 respond to the Legislature.

12 **CHAIRMAN JOHNSON:** Okay. Now there were
13 several parties that asked.

14 **MS. JABER:** Charlotte County filed the first
15 motion for a continuance. They amended it to a
16 correct an error and then Florida Water filed a motion
17 for a continuance. I haven't received any responses,
18 but that's because the response time had not expired.

19 **CHAIRMAN JOHNSON:** Okay. Where do we start
20 with Board of --

21 **MR. TWOMEY:** Pardon me?

22 **CHAIRMAN JOHNSON:** Yes, sir.

23 **MR. TWOMEY:** Before you get to that and
24 before you do any voting, I'd like to ask your
25 consideration of something.

1 And it may appear a little delicate, but I
2 feel obliged on behalf of my clients to do this. And
3 that is this: We're all aware that --

4 **CHAIRMAN JOHNSON:** Sorry, Mr. Twomey, they
5 are trying to figure out who's speaking.

6 **MR. TWOMEY:** My name is Mike Twomey.

7 **CHAIRMAN JOHNSON:** And you represent?

8 **MR. TWOMEY:** I'm representing a number of
9 different clients, all of whom are seeking refunds in
10 this case.

11 **CHAIRMAN JOHNSON:** Okay.

12 **MR. TWOMEY:** What I want to do is we are all
13 aware that Commissioner Kiesling got a raw deal from
14 the Public Service Commission nominating council. It
15 was rude in my view. Some would say dishonest. The
16 bottom line is she wasn't nominated so the Governor
17 could have the opportunity to reappoint her, which I
18 think he probably would have done. As a consequence,
19 this is probably the last agenda she'll be at. In any
20 event, she won't be back next year.

21 That leads to a number of things that I'm
22 concerned about.

23 One is I'm aware that Florida -- that SSU is
24 a large member of the National Association of Water
25 Companies. This year they should have paid somewhere

1 in the neighborhood of \$17,000 in dues to that
2 organization. I have been advised -- I don't know
3 that it's true, that this organization in the last
4 month or so held a dinner honoring Commissioner
5 Kiesling, which is just fine by me. But I wanted to
6 ask Commissioner Kiesling if we, as people who --
7 representing clients who are expecting surcharges to
8 other customers in order to get refunds back, if we
9 should expect there to be any bias resulting from
10 that? I'm not sure if she wants to address that.

11 The second thing I'm going to ask is that
12 I'm aware that apparently she has started a consulting
13 firm, which is fine. And I want to ask if there is
14 now -- instead of waiting until later -- if there's
15 anything that would be considered untoward; if there's
16 anything, Commissioner Kiesling, that my clients
17 should be concerned about on either of those aspects,
18 that we should be concerned now or later that those
19 would in any way affect your unbiased view in this
20 case?

21 **COMMISSIONER KIESLING:** I'll be happy to
22 respond to that. The National Association of Water
23 Companies -- I'm right here and I'm talking as loud as
24 I can, if everyone will let me. I'm trying to respond
25 to Mr. Twomey. Please allow me to do that.

1 The National Association of Water Companies
2 traditionally gives a dinner, a going-away dinner for
3 an outgoing chair of the water committee of the
4 National Association of the Regulatory Utility
5 Commissioners. I am the outgoing chair of the water
6 committee. There was a dinner. I paid for my own
7 meal. My aide paid for her own meal. I know Chairman
8 Johnson who attended paid for her own meal. And there
9 was a dinner. That's it. There was no one, to my
10 knowledge, from Florida Water Services who even
11 attended that dinner. So I don't think there's
12 anything you need to know about because there was
13 nothing to say.

14 **MR. TWOMEY:** Yes, ma'am. Well, I appreciate
15 you answering the inquiry. I felt obliged to ask and
16 that's good enough for me.

17 **COMMISSIONER KIESLING:** And I'm quite
18 willing to tell you, yes, I'm going to be opening my
19 own consulting business.

20 I have spoken to no utility. In fact, I
21 have made it very clear to anyone who wanted to know
22 that I would not talk to any potential clients until
23 after I leave the Commission. And I've also made it
24 clear to a number of entities that I have no interest
25 in representing utilities. I intend to be a public

1 policy consultant and to do international consulting;
2 helping developing countries set up water and
3 wastewater regulatory structures and to teach. That's
4 what I intend to do.

5 And so there's nothing you need to know
6 there.

7 I have not had any conversations with
8 Florida Water Services, Southern States, or any entity
9 connected with them; nor do I think they would want me
10 to since I was the one that made the motion to dock
11 their rate of return in the last rate case because of
12 questions about the propriety of their management. So
13 I don't think they have any interest in me, and I
14 don't have any interest in them.

15 MR. TWOMEY: Thank you very much and good
16 luck.

17 COMMISSIONER KIESLING: Thank you.

18 MR. TWOMEY: Thank you, Madam Chair.

19 CHAIRMAN JOHNSON: Uh-huh. As to the
20 motions. Mr. Hoffman -- or is Mr. Marks going to --

21 MR. MARKS: I'm going to defer at this point
22 to Mr. Hoffman at this point, and I would like to have
23 a few comments, however, after Mr. Hoffman speaks.

24 MR. HOFFMAN: Thank you, Madam Chairman,
25 Commissioners. My name is Kenneth Hoffman and with me

1 is Brian Armstrong, and we're both here on behalf of
2 Florida Water Services Corporation.

3 Let me first begin by saying in light of the
4 comments today that Florida Water supports a
5 continuance and deferral of all issues so that the
6 parties can work toward a legislative solution which
7 does not impose handicaps or hardships in terms of
8 surcharges in the amounts that we've heard about today
9 from some of the customers. We support a continuance
10 and a deferral to work toward a legislative solution
11 without equivocation.

12 What I'm about to talk to you about now is
13 the fact that we believe that we could also sort of
14 work on an alternative parallel path and begin working
15 toward a hearing on all issues in the event that a
16 legislative solution is not consummated.

17 Now, in focusing on the evidentiary hearing
18 aspect of this, we request that the evidentiary
19 hearing be held before you consider any legal argument
20 on these issues, and that you hold the legislative
21 hearing before you make any decision on any of the
22 issues that are currently before you in this
23 recommendation. And I group the issues in three
24 categories.

25 **COMMISSIONER GARCIA:** Sorry, Mr. Hoffman,

1 legislative hearing, did you say?

2 **MR. HOFFMAN:** No, sir. What I'm talking
3 about, Commissioner Garcia, is the scheduling of an
4 evidentiary hearing before the Commission in the event
5 a legislative solution is not consummated.

6 And the three groups of issues that I'm
7 talking about are: One, whether there should be any
8 refunds and surcharges; two, if you decide that there
9 are going to be refunds, what mechanism will you
10 implement for refunds and surcharges; and the third
11 group of issues deals with the Spring Hill refunds and
12 surcharges.

13 Now, every party, every customer has
14 procedural due process rights which must be respected
15 in this proceeding and I believe you've respected them
16 today. But taking it along the hearing route, we
17 would suggest to you that there has to be an issues
18 identification conference held. Now, the Staff has
19 listed 21 issues with respect to the refund surcharge
20 mechanisms and the options for that mechanism.

21 But undoubtedly there will be more issues,
22 and even though the Staff has strongly suggested to
23 you that there ought to be a hearing, we still believe
24 that the Staff has the cart before the horse. And
25 that's because the Staff recommendation does not

1 suggest to you that the evidentiary hearing should
2 encompass all issues, including customer input on this
3 potential rate adjustment before any decisions are
4 made. So where we are different from the Staff
5 recommendation is we are saying do not make any
6 precipitous decision today.

7 **THE AUDIENCE:** No.

8 **MR. HOFFMAN:** Schedule your hearing.

9 **CHAIRMAN JOHNSON:** Ladies and gentlemen,
10 you're going to have to be quiet as we allow the
11 attorneys their opportunity now to make their
12 arguments before the Commission. Certainly, there are
13 attorneys here that represent each and every one of
14 you and they will have the opportunity to provide
15 rebuttal or their comments as to how we should
16 proceed. If you could just be patient, certainly, you
17 won't agree with what all of the attorneys say, but
18 your particular attorneys will also have the
19 opportunity to speak and advocate on your behalf.

20 **MR. HOFFMAN:** Thank you, Madam Chairman.

21 We are suggesting that you schedule a
22 hearing with all of your typical procedural
23 requirements and that you make any and all decisions
24 concerning these issues only after that hearing is
25 held.

1 Now, Staff, again, in its recommendation has
2 laid out a number of issues for you in connection with
3 different refund and surcharge mechanisms, but I would
4 suggest to you that a hearing also is necessary on the
5 two issues, the two broad -- the issues that fall
6 within the two broad groups of one, no refunds and
7 surcharges, and two, the Spring Hill refund and
8 surcharge issues.

9 Now, first let's look at the issue of
10 whether there should be any refunds or surcharges. We
11 believe that a hearing will be useful for you because
12 it will educate you about the complexities of the
13 various refund and surcharge options. Staff has tried
14 to do that in its recommendation. We think you'll
15 learn more. And we think that by the time a hearing
16 is completed that you will agree that there's no
17 mechanism which will truly do equity to all
18 ratepayers. Commissioner Garcia said it himself about
19 a hour ago, "The error in the past makes it almost
20 impossible to do fairness in this case." That was
21 Commissioner Garcia's statement and we agree with
22 that.

23 The hearing also would provide an
24 opportunity for expert testimony on issues of
25 regulatory policy concerning the consequences of what

1 we believe would be an adverse precedent if you order
2 refunds and surcharges in this case.

3 If you order refunds and surcharges in this
4 case, we believe that you will be dealing with the
5 costs, the controversies and the complexities that
6 come with the refunds and surcharges for the years to
7 come. Not only in the water and wastewater industry,
8 but in the other industries in which you retain rate
9 of return regulation, such as in the electric
10 industry.

11 Now, if you go back and think about why you
12 ordered a refund in the first place, we think that the
13 hearing process will allow you the time to consider
14 and agree that those reasons no longer exist.

15 Now, the Staff laid out those reasons on
16 Page 11 of their recommendation. And what was the
17 first one? The first one was that you found in your
18 refund order that there was a lack of representation
19 of customers facing surcharges. The Court cured that.
20 The Court reversed you on denying intervention, and
21 now you have allowed the customers who face surcharges
22 to be represented in this case.

23 What was the second one? The second one was
24 you found there was a lack of notice to customers.
25 Well, if you go back to August 5th of this year, I

1 think you'll remember that this Company, Florida Water
2 Services Corporation, was the first party in the
3 remand stage of this proceeding to suggest to you that
4 it would be appropriate for our customers to be
5 provided a customer notice so that they would be aware
6 of the potential refund and surcharge issues. And
7 while you did not initially agree with us, after
8 separate motion was filed by Mr. Shreve's office and
9 by Mr. McGlothlin, you did order customer notices,
10 over the objections of Mr. Twomey.

11 Third, and this again is on Page 11 of the
12 Staff recommendation. You found that this Company had
13 assumed the risk of refunds when it implemented the
14 uniform rates. And as you know by now in the Southern
15 States decision, the court rejected that rational.

16 So we think through the hearing process that
17 you will agree that the grounds you stated in your
18 order for refunds no longer exist.

19 And there's a fourth ground in that order,
20 and it has to do more with the surcharges. In your
21 refund order you refuse to order surcharges. What you
22 did was you referred to the surcharge that you ordered
23 in the GTE case, less than \$10. And you said, "If we
24 order surcharges in this case, in the Florida Water
25 case, the GTE surcharges could pale in comparison to

1 the amount of surcharges the Florida Water customers
2 could face. And wouldn't you know it. We've got
3 customers out here today, and some customers who I'm
4 sure are not here today, who are facing surcharges of
5 hundreds of dollars and thousands of dollars. So we
6 believe that through the hearing process that you will
7 agree that you ought to stick with the rationale that
8 you gave in the refund order and, therefore, there
9 would be no refunds and surcharges.

10 Now what about the Spring Hill issues? We
11 think there are a number of issues that you need to
12 consider in that hearing. First of all, there's the
13 consideration of the impact of the Company's
14 settlement with Hernando County. Through that
15 settlement our ratepayers in the Spring Hill area have
16 received stand-alone rates to the tune of \$1.6 million
17 below the cost of service. We think that you need to
18 hear evidence on that before you make any decision on
19 Spring Hill. Under the Southern States decision we
20 believe that any refunds that you may order in
21 connection with the Spring Hill issues must result in
22 surcharges.

23 We also believe that there are other issues
24 that go to the time period in connection with any
25 potential refunds for the Spring Hill customers. The

1 Staff has laid it out in their recommendation as
2 though that time period which start from January of
3 1996 through June of 1997.

4 But the first issue that you'd have to
5 decide is if there are going to be any refunds,
6 wouldn't that refund period be limited -- or excuse
7 me, be maximized from a point of time beginning on
8 August of 1996, when you, as a matter of law, ordered
9 the modified stand-alone rates for Spring Hill; not
10 before then. But you didn't make that order; you
11 didn't order modified stand-alone rates for Spring
12 Hill until August 14th of 1996.

13 We would ask you to stick with your prior
14 rulings in this case. You told the parties, "You've
15 reached Spring Hill with all of the other issues,
16 we'll decide them together." If you bifurcate that
17 issue -- our position is that if you order refunds
18 without surcharges, that decision will be met promptly
19 by this Company by an appeal and a request for a stay.
20 And I would add that I believe that we would be
21 entitled to a stay, because if you order us to reduce
22 our revenue, i.e., to make a refund, then we believe
23 that we would be entitled to a stay of that refund
24 requirement.

25 Commissioners, I'm almost finished. Let me

1 just add that I think that you could handle this
2 procedurally in terms of our request for a hearing.
3 You could handle it procedurally just as you did in
4 the GTE case where you appropriately handled your
5 decision in GTE initially as a proposed agency action,
6 and you could do that here. But we believe that if
7 you do that here that there's no question that the PAA
8 will be challenged. That is the proposed agency
9 action order will be challenged, and you'll have to go
10 to hearing anyway.

11 So I would conclude, Commissioners, by
12 saying that we believe that there are good grounds to
13 defer and continue this case and make that deferral
14 applicable to all issues. We would ask that you
15 establish a procedural schedule for hearing. I think
16 that the comments today from Senator Cowin,
17 Representative Argenziano and the representative --
18 the representative of the Citrus County Commission,
19 all calling for a legislative solution makes sense and
20 are worth pursuing. And I would suggest to you that
21 what probably makes the most sense is to have the
22 parties pursue that legislative solution, but in the
23 meantime, begin the process of scheduling a hearing so
24 that if a legislative solution is not passed this
25 session, that we could have a hearing take place on

1 all issues, say, two or three months after the session
2 ends. Thank you.

3 **COMMISSIONER DEASON:** Mr. Hoffman, I have a
4 question. You indicated the Commission should make a
5 PAA decision on what issue?

6 **MR. HOFFMAN:** On all issues.

7 **COMMISSIONER DEASON:** Our Staff recommends
8 no PAA decision whatsoever in this recommendation.
9 Are you aware of that?

10 **MR. HOFFMAN:** Well, Commissioner, I am aware
11 that in the GTE case that is how the Commission
12 handled it. The Commission initially did a PAA and
13 remands from the courts of appeal are relatively
14 infrequent with the PSC. And I would suggest to you
15 that for the purposes of consistency that on remand
16 you ought to do PAA in this case as well.

17 **MS. JABER:** Commissioners, may I clarify
18 something for your knowledge on the GTE and whether
19 that was PAA or not?

20 We went back and we looked at all three of
21 the GTE orders related to the remand. The first
22 decision on remand, I don't know why, but parties were
23 not allowed to participate and the Commission did
24 order an one-time surcharge and that order was PAA.
25 That order was protested, and I believe by OPC, I

1 could certainly look that up, but I believe by OPC. A
2 motion to dismiss was filed and a request for a
3 hearing. The Commission denied the request for a
4 hearing, I think approved the motion to dismiss and
5 said, "The issues presented here are one of a legal
6 nature. There are no disputed issues of fact.
7 Therefore, we're going to ask that parties file
8 briefs."

9 Now, what we've done here is consistent with
10 the way you've handled GTE. We recommended and you
11 agreed that parties file briefs. The stage that we're
12 at right now is the stage that you are at in the final
13 order on remand with GTE. Once the parties filed
14 briefs you allowed parties to participate. You
15 considered all of the arguments, and you issued a
16 final order on remand. Staff's recommendation is
17 consistent with that.

18 **CHAIRMAN JOHNSON:** Mr. Marks.

19 **MR. MARKS:** Thank you, Madam Chairman. My
20 name is John Marks, and I appear this afternoon on
21 behalf of Charlotte County.

22 First of all, let me say that the remarks of
23 Mr. Hoffman, for the most part, Charlotte County would
24 agree with.

25 Let me go over very briefly a short

1 chronology regarding how Charlotte County got involved
2 in this and the lateness of their involvement in it,
3 unfortunately.

4 On October 28th, 1997, Charlotte County
5 received a now infamous notice that was given to all
6 of the other parties. I received on behalf of
7 Charlotte County sometime early in November their
8 request that I participate on their behalf, and I
9 filed a notice or a petition to intervene which you
10 have granted this morning on November 21st, and at the
11 same time I filed comments.

12 After having then some opportunity to review
13 the complexity of the matters associated with this
14 entire thing, I came to the conclusion that it would
15 be difficult for me to adequately represent Charlotte
16 County without some additional time. And that's when
17 I filed on November 26th my motion for continuance and
18 deferral on behalf of Charlotte County.

19 As you well know or you may know, Charlotte
20 County may be subject to a refund that could approach
21 \$100,000. Under those circumstances, Charlotte County
22 is obviously very, very concerned. Therefore, we
23 would request a continuance.

24 Now, as for the legislative fix that was
25 addressed by Senator Cowin, I'm not sure what

1 legislative fix can be had, but I am willing, and I
2 believe on behalf of Charlotte County, would be
3 willing to seek a legislative solution to the problems
4 and complexities of the issues you have before you
5 now. So we would not oppose that and think that might
6 be an appropriate solution.

7 I also would, on behalf of Charlotte County,
8 would be favor of not only leaving it to a possible
9 legislative fix, but let's move forward to determine
10 whether or not we can resolve these matters as soon as
11 we possibly can and that would be consistent with
12 Mr. Hoffman's request that you go forward with some
13 sort of hearing process in the interim period of time
14 and don't rely on the legislature to give this fix,
15 because, frankly, I'm not certain whether or not a
16 legislative fix can be had or would be appropriate
17 under these current circumstances.

18 Now, the only other thing I would add is I'm
19 not quite certain what is the current status of the
20 matter down in -- I believe it is in Citrus County or
21 the St. Jude Catholic Church matter -- and whether or
22 not there has been a final determination in that
23 regard. To the extent there has not been a final
24 determination in that regard, I think it would be
25 appropriate for this Commission to see whether or

1 not -- wait until there is a final decision with
2 regard to the St. Jude matter.

3 So for those reasons, on behalf of Charlotte
4 County, and considering the complexity of the issues
5 and the number of issues that are associated here, and
6 by the fact that Mr. Hoffman has grown through a
7 litany of things that could possibly occur in this
8 matter, I think under the circumstances, on behalf of
9 Charlotte County, we would like the opportunity to be
10 able to address these issues in a more appropriate
11 fashion and that would require a continuance.

12 Thank you very much.

13 **CHAIRMAN JOHNSON:** Thank you.

14 **COMMISSIONER DEASON:** Mr. Marks, I have a
15 question.

16 **MR. MARKS:** Yes.

17 **COMMISSIONER DEASON:** You indicated your
18 intervention being granted today, and I think you
19 characterized it as a late intervention.

20 **MR. MARKS:** Yes.

21 **COMMISSIONER DEASON:** You do realize you
22 take the case as you find it. It was your choice to
23 intervene at the time, you chose to intervene.

24 **MR. MARKS:** Well, Commissioner, that's
25 absolutely correct. We don't object to that. But I

1 will say to you this: That we got notice, probably
2 like a lot of other customers, with regards to the
3 amount of the surcharge that we may be subject to and
4 that was the notice that was sent out sometime in
5 early October.

6 **CHAIRMAN JOHNSON:** Okay. Responses.

7 Sir, if you could state your name and who
8 you represent.

9 **MR. HANRATTY:** Joe Hanratty, Forman, Krehl &
10 Montgomery, and I represent Derovin, et al. We have
11 no objection to the deferral request. Personally, in
12 our review of the proceedings as it stands so far,
13 absent a legislative settlement or -- I had gotten
14 calls earlier in the week regarding potential
15 settlement negotiations which had not gone on prior to
16 this -- but in our opinion, absent settlement
17 negotiations or some sort of legislative fix, any
18 order that comes from the PSC regarding ordering
19 refunds or ordering surcharges is more likely than not
20 going to be appealed and we'll probably be spending
21 another two to three years trying to resolve this
22 issue.

23 Personally, it's our opinion -- you know, we
24 represent potential surcharge customers -- that no
25 refund is appropriate in this instance because there's

1 no legislative authority for this board to issue
2 refunds.

3 The statutes that deal with their authority
4 under the water and wastewater rate increases and
5 request have provisions for refunds, and those refunds
6 are allowed in situations where there's a revenue
7 requirement error, and that's not been the case in
8 situation.

9 This is a situation where the refund is due
10 solely to a rate structure, as Staff has stated in
11 their recommendations and their Staff findings, the
12 Commission has consistently held in the past that a
13 change in rate structure does not warrant a refund
14 because ratemaking is prospective in nature. The
15 Commission has never ordered surcharges in those
16 instances where a change in rate structure has meant
17 an increase in rates.

18 It's our position that you are without
19 authority to issue a refund in this instance. That
20 there's no provision for surcharges in the statutes or
21 the rules. And, therefore, any action to order
22 refunds in this instance or require surcharges is an
23 appealable issue.

24 **MR. MARKS:** Madam Chair, I misspoke just a
25 minute ago and I said that Charlotte County may be due

1 a refund of almost \$100,000. Charlotte County is
2 subject to a surcharge of almost \$100,000. Thank you.

3 **CHAIRMAN JOHNSON:** Thank you for that
4 clarification.

5 Mr. McGlothlin.

6 **MR. MCGLOTHLIN:** My name is Joe McGlothlin.

7 **CHAIRMAN JOHNSON:** You're going to have to
8 speak into the microphone, directly into the mike.

9 **MR. MCGLOTHLIN:** My name is Joe McGlothlin.
10 I represent six entities, all of whom are opposed to
11 surcharges. They are the Marion Oaks Civic
12 Association, the City of Keystone Heights, the Florida
13 United Methodist Children's Home, Inc., the Best
14 Western Deltona Inn, Sugarmill Association, Inc., and
15 the Sugarmill Country Club, Inc.

16 Chairman Johnson, I assume we're addressing
17 now only the motions for deferral.

18 The thought that we could have a deferral
19 and the scheduling of an evidentiary hearing has some
20 appeal to me in representing my clients in that it
21 appears to me that some of the things that bear on the
22 ultimate disposition in this matter lend themselves
23 to, and need an evidentiary process. But at the same
24 time, I want all of you to stop for a moment and take
25 stock of everything that is on the table here.

1 Among the issues that your Staff addressed
2 is the contention by some parties who favor refund,
3 that the Commission has no options but must order a
4 refund. And they've offered an interpretation of the
5 doctrine of law of the case, and they've offered an
6 interpretation of appellate decisions in support of
7 that. And we vigorously contest that legal issue.
8 And here's what I want to make sure doesn't happen.
9 In the Staff memorandum, Staff speaks in terms of the
10 possibility of an evidentiary proceeding. But in
11 terms of Staff's analysis, that would take place only
12 if there was a prior decision that the Commission has
13 made to the effect that there will be a refund and the
14 only issue at the hearing is how are we going to go
15 about it.

16 So while I am in favor of a deferral and an
17 evidentiary hearing that would encompass such things
18 as whether the Utility has the ability to refund with
19 the precision that you would require be made as a
20 condition of the refund, there should be no
21 implication, there should be no misunderstanding that
22 if you take that course of action, you are not
23 deciding, you are not prejudging another legal issue
24 that is before you, which is whether the law requires
25 a refund be made. Because at the appropriate time --

1 **COMMISSIONER GARCIA:** Mr. McGlothlin, If I'm
2 not mistaken what was asked for was a deferral of
3 everything, so we would not reach that issue which is
4 what you're asking, correct?

5 **MR. MCGLOTHLIN:** I believe that's what is
6 intended by all issues. But because there's the
7 potential for confusion between the Staff's treatment
8 of certain things and the utility's of certain things,
9 it's very important to my clients that there be no
10 misunderstanding. So this is in an abundance of
11 caution, that if you entertain that request that you
12 make it clear that all issues, including our
13 contention that the law does not require a refund to
14 be made under these circumstances, has been deferred
15 until further processes.

16 **CHAIRMAN JOHNSON:** Okay. Ms. Fox.

17 **MS. FOX:** Thank you. This last minute
18 request for deferral is the type of thing that gives
19 these proceedings a bad name.

20 We have had hundreds, if not a thousand
21 people who have come all of this way to get this issue
22 decided today. You've already ordered this process.
23 You've gotten briefs from everyone who cared to make
24 the presentation to you. If you are concerned about
25 the precedent you might set today, there are other

1 ways to deal with that, like have rulemaking on how to
2 handle implementation of rate structure issues in the
3 future.

4 I would also like to question SSU's standing
5 to request the deferral. At this point we're not
6 talking about their money. They don't actually have a
7 stake in this anymore, other than to discuss any
8 mechanics and timing issues that may involve them.
9 You have customers here who need to have this
10 resolved.

11 The customers that I represent -- I would go
12 into this a little bit more in my remarks on the
13 merits, but we started this process five years ago,
14 and the customers at Sugarmill Woods, as you have been
15 reminded many times, they are elderly people. They
16 have been waiting over two-and-a-half years now since
17 the court reversed the uniform rate order. They have
18 been waiting two-and-a-half years already to get their
19 money back. This case needs to come to a conclusion.

20 I suggest that you go ahead today and see if
21 you can decide it. That's what everyone is here for.
22 If you find that there are cases that you need an
23 evidentiary hearing on, then you can address that when
24 you come to such an obstacle. Thank you. (Applause.)

25

1 **ARTHUR JACOBS**

2 appeared as a witness and testified as follows:

3 **DIRECT STATEMENT**

4 **MR. PINO:** Madam Chairman, members of the
5 Commission, I'm Arthur Jacobs, here on behalf of the
6 interest of Nassau County, and particularly on Amelia
7 Island. I represent folks who have overpaid who are
8 churches. I've represent folks who have overpaid who
9 are retired. I represent people who have -- the new
10 services that have overpaid these amounts of money
11 over this period of time.

12 I, too, am concerned about any deferral or
13 -- and delay, except I'm greatly intrigued by the
14 ability the Commission has to be almost like Solomon
15 today and have it -- there's a decision out there for
16 you to make perhaps today, and there's a way to do
17 this so it doesn't come off the backs off or out of
18 the pockets of your customer base.

19 It's been a bitter battle. Whoever has done
20 this, I don't know, but there's been a pitted battle
21 between the two customers basis: Those folks who are
22 deserving of refunds and those folks who, perhaps,
23 would have to pay a surcharge so that that could be
24 done.

25 What Senator Cowin offers for you and also

1 the representative offered to you is a solution to
2 seek funds, I guess, from your trust funds by virtue
3 of having an ability to have that funding authority
4 given to you.

5 We're intrigued by that, and if any delay is
6 involved to get through the legislative process for
7 that, if that can could be done, we would not oppose
8 that. We are, however, opposed to any dragging on of
9 this procedural thing to have other further
10 evidentiary hearings and all the kinds of things you
11 talked about.

12 It's been my experience in this -- although
13 not as long as these soldiers who have fought the
14 battle up here at the table, it's been my experience
15 that the thing has a life of its own. It goes on and
16 on and on. If you could bring it to some conclusion,
17 that would be beneficial to everybody today, that
18 would be great. I don't know how you do that, making
19 everybody happy. But the win-win solution, perhaps,
20 is the legislative solution. We do not oppose
21 deferral for that purpose.

22 And I thank you for letting me speak, and I
23 wish you season's greetings and Merry Christmas.

24 (Applause.)

25 **CHAIRMAN JOHNSON:** Thank you, Mr. Jacobs.

1 Mr. Twomey.

2 MR. TWOMEY: Thank you, Madam Chairman and
3 Commissioners. My name is Mike Twomey. I represent
4 all of the parties to this case who are seeking
5 refunds, absent those represented by Ms. Fox and
6 Mr. Jacobs.

7 First, I want to raise to you the point
8 alluded to by Mrs. Fox on the standing issue. SSU has
9 no standing to raise anything in this case, absent the
10 limited point on whether they should have to pay back
11 money they owe to the people at Spring Hill out of
12 their own pockets and the implementation decision.
13 They don't have any standing. They don't have a dog
14 in the hunt on whether one group of customers should
15 have to pay back money to another group of customers
16 who are overcharged pursuant to uniform rates. They
17 don't have a dog in the hunt. They don't have
18 standing.

19 Legally, they don't have standing, ethically
20 and morally that don't have any standing because these
21 people, SSU, turned against these people in the
22 proceeding at which you determined they should have to
23 make the surcharges themselves. That is, that SSU
24 should have to pay the surcharges.

25 At that time, if you'll recall, SSU said,

1 "We don't care if Twomey and Fox's and Jacob's clients
2 get refunds, just don't make us pay them." Make the
3 other customers, these people they've managed to bus
4 in today, they said, "Make them pay, but don't make us
5 pay. We don't care if there's refunds." And you all
6 ordered SSU to make the refunds. And I was in favor
7 of that. I wish you could go back, turn the clock
8 back and keep it so those people, the stepchild of the
9 Minnesota used car lot, would have to pay out of their
10 shareholders. But you can't do it.

11 You tried. We would prefer that. And the
12 Court reversed you. And they reversed you in part,
13 Commissioners, because SSU, just like they made the
14 plea to you, they went whining to the First District
15 Court of Appeals and they said, "We didn't keep any of
16 that money. We gave it to those other people. The Ed
17 Slezaks, the people in Marion County. We didn't keep
18 it. We gave it to them. If you're going to make
19 people have refunds and you are going to pay for them,
20 make those other customers pay it back." And the
21 Court did that.

22 Now they are here, 180 degrees, two-faced,
23 hypocritical, trying to make these people believe that
24 they are supporting it. They've gone out and hired a
25 surrogate law firm to represent them. Fine. They

1 brought transportation, organized their sign-making,
2 gave them a free lunch, supposedly. There's no free
3 lunch.

4 Now, we are not here, Commissioners, ladies
5 and gentlemen, on SSU's motion. We're not here to
6 take additional weeks or additional months or
7 additional years in this process. We are here because
8 the First District Court of Appeals has reversed your
9 last order that said SSU had to make the refunds.

10 In that opinion they laid out certain things
11 that your Staff addressed in their recommendation, and
12 it is one of the finest recommendations to come out of
13 this Staff in years. I don't agree with everything
14 they've said, but it is well-researched; it is
15 well-written. It's a good recommendation. And we'll
16 talk more to the points on that when we get to the
17 main issues in this case.

18 The Court has given you something to do.
19 They issued their mandate which said, "You're
20 reversed; take actions consistent with our order
21 reversing you." They issued the mandate six full
22 months ago, Commissioners. You all have an obligation
23 to carry out the will and dictates of the First
24 District Court of Appeal who oversees your actions.
25 Six months. Now you've got these people who have no

1 standing asking you to delay further. They ask you to
2 have an evidentiary hearing.

3 The Court didn't leave any unresolved issues
4 of fact for your consideration. None. The Court, if
5 you can ascertain from its opinion, told you to do
6 certain things. They said, "You made a mistake in
7 making these people pay. Fix it." When we get into
8 the regular part of this discussion and talk about the
9 main issues here, we're going to suggest to you that
10 the Court said you have to give my clients and the
11 others refunds. And since the Utility is left off the
12 hook, there's only one other place you can get the
13 money, the customers that received undue windfalls
14 from the uniform rate structure.

15 **THE AUDIENCE:** (Simultaneous conversation.)

16 **MR. TWOMEY:** Now, they left no evidentiary
17 or factual areas open for your consideration. None.
18 None whatsoever. We consider, in opposition to your
19 Staff's recommendation, that there's no evidentiary
20 hearing required after you make the decision. And
21 there certainly isn't one required beforehand.

22 Now, they talked about notice. We didn't
23 get enough notice on this. Ms. Fox and I were here
24 four, five years ago most of you will recall.
25 Mr. Hoffman talks about he's going to get a stay. He

1 knows how to get a stay. We had a stay. I got a stay
2 on behalf of Citrus County five full years ago that
3 would have prohibited these uniform rates from going
4 into effect; that would have stopped, that would have
5 prevented any of these people paying too much money
6 and the others paying too little, unbeknownst to them.

7 You all were here, Commissioners, or all of
8 you, most of you. Do you recall who came in and said,
9 "We've got a right to lift that stay. Twomey and Fox
10 are going to lose. Ain't no way they are going to
11 win. We demand that you implement a uniform rate
12 structure by lifting that stay." It was Hoffman and
13 Armstrong. It was SSU. They made you lift the stay.
14 They made you put into place these uniform rates that
15 caused all of this trouble.

16 I'm not saying this to say I told you so,
17 Commissioners, but Susan Fox and I just short of
18 begged you not to lift that stay because we predicted
19 that precisely this would happen; that our clients
20 would be overcharged unfairly; that the others would
21 pay too little unfairly. And that if and when we got
22 the reversal there would be hell to pay trying to
23 straighten it out. And they said to you, SSU said to
24 you, with your Staff's support, legally, said, "You
25 don't have any choice, Commissioners, you have to do

1 it. You have to do it." And that's how we've gotten
2 to this point.

3 We said back then there was insufficient
4 notice when you first sprung uniform rates on us. We
5 took it to the court, the First District Court of
6 Appeal; said we didn't get adequate notice about this.
7 SSU and your Staff said, "That's not the way
8 ratemaking works. If we have to give all of these
9 fine details and particularities, we can never get
10 anything done." And the Court said back then, "Twomey
11 and Fox, you're wrong, the Commission and SSU are
12 right. You didn't get a lot of notice but you got
13 enough legal notice to get by." And that's where we
14 are now, Commissioners. You cannot delay longer.
15 Now, the legislative fix. Am I in favor of the
16 legislative fix that would allow my clients to get
17 their refund back, their overcharges back, without
18 putting the rest of these good people to the undue and
19 the very real pain they've expressed to you today? Of
20 course, I would. I'd like to see it happen. But you
21 can't wait. You can't delay.

22 I submit to you after six full months of
23 considering the Court's mandate it's time to act.
24 Don't defer for any of this business. You need to
25 make your decision now. If it is, as we suggest to

1 you, that you need to order the refund, which we say
2 the Court clearly says, and to finance the refund with
3 surcharges, as we say the Court clearly indicates that
4 you must -- it's not an option, that you must -- by
5 the time that the utility implements the procedure,
6 makes the surcharges, if there is an appeal, which
7 there may be, all of us can go out and pursue the
8 rather excellent suggestion brought to you by Senator
9 Cowin and Representative Argenziano. We can all lobby
10 for that money to come out of your trust fund to
11 finance the refunds. And I'm happy to do that. I'll
12 commit to that with everything I'm capable of doing.
13 But you can't wait until the legislative season is
14 over before making your decision in compliance with
15 the mandate of the court.

16 So I would urge you, Commissioners, that you
17 can't delay or defer or continue this case on any
18 grounds whatsoever. Thank you.

19 **THE AUDIENCE:** (Negative comments.)

20 **CHAIRMAN JOHNSON:** Thank you.

21 **MR. MARKS:** Do we have an opportunity to
22 respond?

23 **CHAIRMAN JOHNSON:** I had one matter. I
24 didn't know if Public Counsel wanted to speak to this
25 issue. If so, Jack Shreve, Public Counsel.

1 **MR. SHREVE:** Thank you, Commissioner. And I
2 am only speaking to the second part of the Spring Hill
3 issue. We're not involved because of the conflict and
4 the way the customers have been divided in the first
5 issue.

6 But I wanted to be very clear to everyone
7 here, and I know it is to you, that Southern States is
8 trying to take the additional \$3 million,
9 approximately \$3 million that they received after the
10 rates were raised and they put into effect the interim
11 rates, they did not lower -- you did not lower Spring
12 Hill's rates at that point. These other customers
13 never received one subsidy at all; Southern States
14 received all of that money. You had ordered them
15 earlier to put in a different rate, a modified
16 stand-alone rate. Southern States never put it in.
17 The rates were finally changed when you gave them an
18 interim rate increase. At that time Southern States
19 was made whole. So that the rates that were not
20 lowered for Spring Hill were not going as a subsidy to
21 anybody, so these people should not even be considered
22 to pay the \$3 million that Southern States wants to
23 have them treat it as a surcharge.

24 **MR. ARMSTRONG:** I object. The issue we're
25 discussing now is the deferral issue. If Mr. Shreve

1 is using his five minutes on the other --

2 **MR. SHREVE:** I'm discussing what I want to
3 discuss.

4 **MR. ARMSTRONG:** The issue before the
5 Commission at this point is the deferral issue, Madam
6 Chair.

7 (Simultaneous conversation.)

8 **CHAIRMAN JOHNSON:** Hold on. Hold on.

9 **MR. TWOMEY:** He talked about Spring Hill.

10 **CHAIRMAN JOHNSON:** Mr. Twomey, allow the
11 motions to come through me.

12 And, Mr. Armstrong, Public Counsel was still
13 speaking. I understand that you're making an
14 objection to him having the opportunity to speak.

15 **MR. ARMSTRONG:** Well, no, I'm not objecting
16 he has the opportunity. He should have the
17 opportunity at the appropriate time. The issue before
18 the Commission right now is whether there should be a
19 continuance granted based on Charlotte County's motion
20 or our motion, or the deferral that has been referred
21 to; not the substance of the case. And our position
22 was regarding the continuance.

23 **CHAIRMAN JOHNSON:** And it's my understanding
24 that in your discussion of the continuance you raised
25 that the continuance should also apply to the Spring

1 Hill matters?

2 **MR. ARMSTRONG:** We suggested, yes, that
3 there should be a hearing and there's a necessary
4 hearing for the Spring Hill matters. What we have
5 being addressed now is not a question of whether there
6 should be a continuance, but, rather, the substance of
7 the issue which would need to be put through a
8 hearing. And he can bang the table and do whatever he
9 likes, but that's the case.

10 **MR. SHREVE:** Mr. Hoffman very clearly
11 discussed all of this in trying to have this entire
12 matter delayed. But most of the -- what needs to be
13 argued is this one part, and I'm not talking about
14 whether to defer or not to defer the rest of it; I
15 just do not want there to be any inclination at all to
16 place an additional \$3 million on the customers that
17 are here as a surcharge when Southern States was very
18 clearly the Company that got the money from the Spring
19 Hill residents after all the rates have been changed.
20 I don't believe Mr. Marks or Mr. Forman's filing would
21 want to encourage there being an additional surcharge
22 of \$3 million placed on these people.

23 **MR. ARMSTRONG:** I renew my objection. This
24 is not the deferral issue, very obviously.

25 **MR. SHREVE:** It certainly is, and it should

1 not be deferred. It should be decided on the merits
2 right here. (Applaud.)

3 **CHAIRMAN JOHNSON:** I'm going to overrule
4 your objection, because he's trying to make the point
5 as to whether or not this particular issue should be
6 deferred. And this is -- and I will allow him to make
7 that argument, and I think he's doing that.

8 **MR. ARMSTRONG:** And he shouldn't have a
9 second opportunity to do so, is that what --

10 **MR. SHREVE:** If he'd quit interrupting me
11 and let me make the point on behalf of my customers
12 out here, we'll be okay.

13 (Simultaneous conversation.)

14 **MR. ARMSTRONG:** I've had enumerable
15 interruptions from Mr. Shreve in the past.

16 **CHAIRMAN JOHNSON:** Go ahead, Mr. Shreve.

17 **COMMISSIONER KIESLING:** You know, you two
18 keep talking to each other, and the problem is over
19 here and that you're talking at the same time and the
20 Court reporter can't take down what you're saying.

21 So, again, try not to interrupt each other.
22 And, you know, you make your objection, the Chairman
23 has ruled on it, and let's go on with Mr. Shreve and
24 let him talk and stop interrupting. Thank you.

25 **MR. SHREVE:** Thank you, Commissioner.

1 Commissioner, we have two totally different
2 situations here. We have one situation where there's
3 an argument about a refund and a surcharge because,
4 supposedly, the customers that receive the refund have
5 been subsidizing customers that were receiving the
6 benefits. That is not the case in this situation.

7 As you know, Southern States finally changed
8 Spring Hill's rates much, much later. They did not
9 put into effect the first rates. Southern States got
10 that money. None of these people were subsidized.
11 The Charlotte County people weren't subsidized, Marion
12 County, Citrus people were not subsidized and they
13 should not be in the pack.

14 Now, the legislative decision that was
15 talked about did not include this money. It was not
16 even there. This is not even included, and there has
17 been no argument except from Southern States, and they
18 feel the customers should be surcharged for this if
19 there is a refund. Southern States walked away with
20 the money, and that's all there is to it.

21 **CHAIRMAN JOHNSON:** Thank you, Mr. Shreve.

22 **COMMISSIONER DEASON:** Mr. Shreve, let me ask
23 a question on that.

24 **MR. SHREVE:** Yes, sir.

25 **COMMISSIONER DEASON:** In their argument,

1 they indicated that if we were to do something on that
2 it should be PAA. Do you have any thoughts -- our
3 Staff is recommending the refund be made and be a
4 final decision. Do you feel confident that that is
5 the appropriate measure to take?

6 MR. SHREVE: I think it's perfectly
7 appropriate. There are no arguments about the facts
8 in this case on this issue.

9 Spring Hill residents' rates were not
10 lowered, yet Southern States was made whole at the
11 time they put the interim into effect. It was a
12 mistake. The rates should have been lowered at that
13 point. They were lowered sometime later.

14 COMMISSIONER DEASON: So there's --

15 MR. SHREVE: So a final decision should be
16 made now and take that \$3 million monkey off the backs
17 of these customers. They shouldn't be exposed to it.

18 COMMISSIONER DEASON: You're comfortable
19 with having that decision made as a final order by
20 this Commission?

21 MR. SHREVE: Yes, sir.

22 COMMISSIONER DEASON: Okay.

23 MR. SHREVE: Thank you.

24 MR. MARKS: Can we respond very briefly?

25 CHAIRMAN JOHNSON: Hold on one second.

1 **MR. MARKS:** I'm sorry.

2 **CHAIRMAN JOHNSON:** Staff, were you -- I
3 thought you were gesturing that you had something to
4 say. Perhaps you weren't.

5 **MS. JABER:** I was going to add and then I
6 was going to wait until you recognized us for the
7 entire response.

8 But when you issued the order on remand that
9 implemented the modified stand-alone rate structure
10 and ordered a refund, it was a final order, as well.
11 I just wanted to clarify that this recommendation is
12 also consistent with that order.

13 **CHAIRMAN JOHNSON:** I'll allow a brief
14 response, Mr. Marks.

15 **MR. MARKS:** First of all, Commissioners, on
16 the standing issue, I don't think anybody objected to
17 the fact that this -- my client, Charlotte County,
18 does have standing under the circumstances to file
19 this motion for continuance.

20 The other matter is, as far as Spring Hill
21 is concerned, we don't, as Mr. Twomey so aptly said,
22 Charlotte County does not have a dog in that hunt,
23 certainly. And we don't intend to, Mr. Shreve, have a
24 dog in that hunt.

25 As far as the legislative fix is concerned,

1 frankly, I don't see how you can seek a legislative
2 fix under these circumstances and make a substantive
3 decision on this matter today.

4 If we're going to allow an opportunity for
5 Senator Cowin's comments and her suggestion to go
6 forward, from my standpoint I think that we would have
7 to allow the legislative process to work. And I don't
8 know how a substantive decision today would aid in
9 that particular process.

10 If we're going to seek a legislative fix, I
11 think we probably need to either defer or continue
12 this matter or in the interim period while we are
13 deferring in this matter, I think that we ought not
14 sit on our hands, frankly. And I don't want to on
15 behalf of my client. I'd like to seek something else.
16 Seek and see whether or not something else can occur,
17 and see whether or not the parties can get together
18 and determine whether or not there is some sort of
19 other solution. Thank you.

20 **MR. HOFFMAN:** Madam Chairman, if I may
21 respond?

22 **CHAIRMAN JOHNSON:** Briefly.

23 **MR. HOFFMAN:** Having been involved in this
24 case now for a number of years, I've gotten used to
25 Mr. Twomey's inclination to try and sort of incite the

1 crowd, call the Company, call the Commission stupid,
2 lazy, dishonest; call the Utility two-faced,
3 hypocritical. Today I think we added stepchild,
4 something. That has nothing to do with what is going
5 on here. And I would respectfully submit to you that
6 in the past your decisions may have been injected with
7 too much emotion in trying to do right by certain
8 ratepayers. And I would say to you that it is
9 important for you today to be deliberate in your
10 decision-making.

11 The allegations from Mr. Twomey come --
12 remember, now, Mr. Twomey only a couple of months ago
13 was passing out pictures to you which were
14 misrepresentations of the facts of this case.

15 I want to straighten out two of his factual
16 allegations, to the extent you view them relevant.
17 Mr. Twomey points down here to Mr. Armstrong and I,
18 and says that the Utility has taken the position all
19 along that the Utility doesn't care if you order us to
20 make refunds, and that, of course, has never been our
21 position. Our position has always been, in a rate
22 design issue, do not order refunds, do not do what no
23 other state regulatory Commission has done. But,
24 certainly, if you order refunds, you must order
25 surcharges because you cannot impair our final revenue

1 requirement. That's the correct statement of what our
2 position has been.

3 Mr. Twomey also said that Mr. Armstrong and
4 I come marching before you and say in 1993, "Lift that
5 stay because we're going to win." Check the
6 transcript. Check our pleadings. See if it says
7 that.

8 We came before you to lift that stay because
9 we felt like we were entitled to our final revenue
10 requirement. That's why we came in to lift that stay.
11 And we had a mounting interim refund liability that we
12 had to terminate. And so we did by filing the motion
13 and you vacated the stay. And, ultimately, in the
14 most recent Southern States decision the court
15 vindicated what we did.

16 Real briefly on the PAA, if you go back and
17 look at the GTE case, you'll see that the first order
18 that you issued on remand where you made a decision
19 was a PAA, Order No. PSC-96-0667. You took initial
20 action through a PAA. That was my only point. You
21 have not yet taken initial action in this case. Now,
22 the Staff itself -- let me go back to GTE. It was
23 issued as an AA, but clearly the parties felt as
24 though -- or the Commission felt as though they were
25 not disputed issues of material fact. So Ms. Jaber is

1 correct in that briefs were ultimately filed and an
2 informal hearing under Section 120.57(2) was held and
3 a decision made. But here you have not issued the
4 initial PAA as you did in GTE. And, clearly, the
5 Staff itself recognizes that there needs to be an
6 evidentiary hearing because they have recommended one.

7 Finally, Commissioners, on Spring Hill, I
8 would just say to you again that there are facts,
9 evidentiary facts which may be disputed by the Office
10 of Public Counsel that you need to have a hearing on,
11 which consider the impacts of our settlement, which
12 consider our earnings in 1996, which consider the
13 appropriate length of time that the Commission has
14 jurisdiction -- that the Commission's jurisdiction
15 applies to any refunds ordered for that stay period.
16 Thank you.

17 **COMMISSIONER CLARK:** Can I ask a question?
18 When you talk about the earnings in 1996, are you
19 talking about the earnings with respect to Spring
20 Hill?

21 **MR. HOFFMAN:** I'm talking about the overall
22 Company earnings, Commissioner Clark.

23 **COMMISSIONER GARCIA:** Mike, how would us
24 making a decision today in any way or form help the
25 legislature in the task that Senator Cowin and

1 Representative Argenziano have proposed? As someone
2 who has worked that process to some degree, you
3 realize that if there's finality here, we sort of then
4 bring ourselves back into question. Shouldn't we at
5 least postpone this until the Senator -- and as Staff
6 member here, usually when the Legislature was
7 considering matters before it that affected our
8 policy, the Commission generally -- and, obviously,
9 you were here much before I was and it was a different
10 Commission to some degree -- but at least since I have
11 been here the Commission sort of steps back and let's
12 the Legislature do what it intends to do. If it does
13 not act, then we act according to what we think
14 statutorily we're required to do. But if we make a
15 determination today, a final decision, and let's say
16 we were to decide refunds and surcharges, and off we
17 went, I don't think that helps Senator Cowin or
18 Representative Argenziano in their effort to try to
19 find a legislative solution to the problem we're in.

20 **MR. TWOMEY:** That's a good question,
21 Commissioner, and let me answer you this way.

22 The Commission is a subordinate arm of the
23 Legislature as you are aware. I tried to suggest that
24 the pressure you are under now or that you should feel
25 that you are under now doesn't come from the

1 Legislature, it comes from the Court. You carried
2 out -- I will accept in good faith the Commission
3 carried out a policy that turned out wrong. The Court
4 said so. Ms. Fox pointed out the initial decision
5 reversing uniform rates some two-and-a-half years ago.
6 So the pressure comes from the court. The mandate, as
7 I said, was issued six full months ago. If you were
8 to act today and get your order out within 20 days or
9 so, it will be seven months, seven full months will
10 pass.

11 So the -- I don't think you can afford to
12 step aside and wait for a legislative solution. At
13 best, probably a decision on this proposal won't come
14 until the end of May, so we're adding, what, another
15 five months to the process, if I'm counting my months
16 right.

17 **COMMISSIONER CLARK:** Why do you think a
18 decision on this won't come until May?

19 **MR. TWOMEY:** Because I don't think anything
20 would get done in the first part of a legislative
21 session. That's just my point of view. I meant the
22 legislative session.

23 **COMMISSIONER GARCIA:** Let's say we set this
24 for hearing sometime in the middle of the session.
25 And then we set it, if we have the time constraints

1 possible, we set it for a vote 10, 15 days after the
2 session is over, which by that time the Governor has
3 signed what he's going to sign and done what he's
4 done, and then we know where we're at. And we move at
5 that point. We've considered everything. We've
6 looked at everything that's before us, and we've
7 decided once the the Legislature has moved. And it
8 allows the Legislature some leeway as opposed to us
9 making a determination. I mean --

10 **MR. TWOMEY:** Here is the answer. Again,
11 I'll go back to the Court is compelling you to work.
12 I mean the -- I have maintained all along that the
13 amount of time we have spent thus far with briefing
14 and so forth was excessive. That there should have
15 been a response to the Commission -- the court's
16 directive to you; it's not me that's pushing you, it's
17 the Court. You have to respond to the Court.

18 Now, in terms of the sequence of things, I
19 would suggest this to you, Commissioner: View it
20 differently.

21 If you accept my view that the First
22 District Court of Appeals has said unequivocally
23 pretty much what your Staff comes down on, that you
24 have to order refunds and you have to order surcharges
25 to pay for them and that's what the Court said.

1 If you carry that out today, put it in your
2 final order, then the Legislature will be under the
3 gun to either utilize your trust fund under the
4 legislative proposal of Senator Cowin and
5 Representative Argenziano or they will know, in fact,
6 that the customer surcharge will have to pay those or
7 be in the process of it. If you do it in the reverse
8 order that you have suggested, it may make more sense.

9 They, the Legislature, can look back and say
10 there's no imperative to act here. We don't know yet
11 what the PSC is going to do. They may say -- I would
12 ask the question -- they may say the Public Service
13 Commission may decide, not knowing anything about --

14 **COMMISSIONER GARCIA:** You would believe that
15 we would have to put into motion a surcharge mechanism
16 and a refund mechanism and send out the Company to get
17 a loan or however -- and we'd begin that whole complex
18 procedure, which I think by -- no matter how much
19 Staff tries to explain it, it is, I think, a Solomonic
20 task at best to try to figure out something that would
21 be fair and just. But let's say we did that, you
22 would want us to begin that process and all of the
23 expense that that would entail to put pressure on the
24 Legislature so that come May the Governor signs a bill
25 taking our money or some other general revenue fund,

1 or whatever, to pay those that have to receive a
2 refund?

3 **MR. TWOMEY:** Yes, sir, because the
4 difficulty you speak of, complexity, which SSU has
5 complained of as the reason for not doing this.

6 **COMMISSIONER GARCIA:** The Staff
7 recommendation is pretty clear on that.

8 **MR. TWOMEY:** There's going to be complexity.
9 There's mechanical accounting problems here. We knew
10 that all along, those of us that thought about it.

11 But the half of it in any event is going to
12 have to be accomplished no matter what happens. If
13 the legislature coughs up the money from the trust
14 fund, we're not going to put it into a bushel basket
15 and have people dip in. Somebody is going to have to
16 make the refund to those that are entitled to it. And
17 SSU -- if you've seen that box of materials that
18 Senator Cowin's was carrying around, the 5,000 pages,
19 front and back, SSU has already made a pretty good
20 calculation of what each customer, based upon their
21 consumption during that 28-and-a-third-month, is
22 entitled to in refund. So they've already done that.

23 **MR. ARMSTRONG:** Commissioner --

24 **COMMISSIONER GARCIA:** I understand, Mike --
25 let me ask Mr. Twomey just one more point.

1 I understand that, but then we would find
2 ourselves -- let's say the legislature acted. May
3 10th the Governor signed, they take it out of our
4 trust fund, as an example. Then we would find
5 ourselves having to refund those who paid the
6 surcharge. And we'd also have to distribute the
7 monies according to whatever formula we finally decide
8 on on those that are owed a refund; while if we simply
9 waited until the Legislature acted, then we would have
10 a much clearer picture of exactly -- I'm not arguing
11 your point that we know exactly where we would be if
12 happened in the Legislature, but once we act, it's not
13 like we can act and sort of leave it in limbo waiting
14 for the Legislature to act.

15 MR. ARMSTRONG: Commissioner, if I may. Let
16 me answer --

17 CHAIRMAN JOHNSON: Mr. Armstrong.

18 MR. TWOMEY: Mr. Armstrong --

19 (Simultaneous conversation.)

20 CHAIRMAN JOHNSON: Mr. Armstrong, allow him
21 to complete. And if you have an objection, take that
22 through me but please do not interrupt.

23 MR. ARMSTRONG: As long as I'll have a
24 chance to --

25 (Simultaneous conversation)

1 **COMMISSIONER GARCIA:** And the question was
2 placed to Mr. Twomey, and if you want to make a
3 comment after that, then that's fine, Mr. Armstrong,
4 but I'd like to hear Mr. Twomey's response.

5 **MR. TWOMEY:** Commissioner, I think the sad
6 reality, and the answer to your question is that like
7 every other final order this Commission has entered
8 over the last five years, it will be appealed. And
9 that the likelihood that any of these folks have
10 surcharges imposed upon them immediately, that is
11 before the legislative session starts and begins, is
12 relatively low.

13 And so I would suggest to you, again, that I
14 think it is your obligation to the Court to place this
15 into action. The Court will be fulfilled, the
16 legislature will know where you come down on, and
17 everybody will know where everyone else stands on what
18 will happen if they don't come through with the
19 legislative solution.

20 **MR. MCGLOTHLIN:** Chairman Johnson, may I
21 respond to that dialogue for just a minute?

22 **CHAIRMAN JOHNSON:** Hold on for just a
23 second. Mr. Armstrong.

24 **MR. ARMSTRONG:** Thank you. Commissioners,
25 you're being led down a path that would cause another

1 reversal. A number of you are lawyers, and you've
2 heard of ex post facto law. If the Commission were to
3 enter an order today ordering refunds and surcharges,
4 and the legislature were to attempt to address that
5 through a statute that would do something other than
6 what you've already ordered, you can't do it. That's
7 called ex post facto laws and they are not valid.

8 **COMMISSIONER CLARK:** I don't think that is
9 what he's suggesting. He's suggesting that if the
10 Legislature said that the refunds would come from the
11 regulatory assessment fee, and I don't think that
12 would be ex post facto.

13 **MR. ARMSTRONG:** Well, if you would order the
14 Company to make refunds to -- or the customers
15 today -- the Company to make refunds and customers to
16 be surcharged, I think you'd have a tough time trying
17 to evade the concept of ex post facto laws if the
18 Legislature came in and tried to say, "Oh, no, sir,
19 you don't have to pay surcharges to customers, we'll
20 pay it out of the regulatory trust fund." I think
21 that would be a tough thing to evade.

22 **COMMISSIONER CLARK:** Okay.

23 **COMMISSIONER DEASON:** Let me ask a question.
24 I wanted to ask a question about five minutes ago, and
25 I waited patiently. I'm going to ask it now. And

1 I'll first direct it to you, Mr. Armstrong.

2 What if this Commission's decision today
3 were to say there's going to be no surcharges period.
4 If there is going to be a refund, the only way that we
5 would agree to a refund is if there's money
6 appropriated by the Legislature for that purpose, but
7 there's to be no surcharge. (Applause)

8 **MR. ARMSTRONG:** Absolutely not. It wouldn't
9 be acceptable. The Commission has already been
10 reversed at the prompting of Mr. Twomey who has
11 suggested that one-sided refund would be appropriate.
12 At the prompting of Mr. Twomey not to have any notice
13 to the customers here who may be surcharged, which we
14 had requested and which this Commission denied back in
15 August of this year at five to zero vote, which nobody
16 else in this room supported, including the Office of
17 Public Counsel who sat back here with three of his
18 lawyers and said no, let's not give notice to people.

19 **COMMISSIONER DEASON:** Mr. Armstrong, I don't
20 think you understand the question.

21 **MR. ARMSTRONG:** I'm addressing your
22 question. It appeared that this Commission --

23 **COMMISSIONER DEASON:** Well, you're not
24 answering my question, but go ahead. But you're not
25 answering the question I asked.

1 (Simultaneous conversation.)

2 MR. ARMSTRONG: It appeared that this
3 Commission was prepared back then in August, or
4 possibly in October, to require surcharges without any
5 notification of the customers.

6 Now, we have sat here for three years, and
7 when we get to the substance of the issues here I'd
8 like to address that. But in 1993 this Company came
9 before this Commission. The Commission ordered a
10 uniform rate structure, and we said in a hundred years
11 of utility regulation no commission, when there's a
12 reversal of a uniform rate structure or a rate
13 structure by a court, no commission has ever imposed
14 refunds and surcharges. The sole remedy is to change
15 the rate structure prospectively. That's what we said
16 back in 1993. This Commission ignored us. In 1995
17 they ordered a one-sided refund. The Supreme Court of
18 this state in the GTE Florida decision said, "You must
19 treat" -- exactly as we maintained throughout, "you
20 must treat the utility and customers fairly and
21 equitably." This Commission -- well, the majority, I
22 should say, only three of you tried to distinguish the
23 GTE Florida decision. So what happened? Another year
24 and a half go by and, ultimately, yes, you're reversed
25 once again.

1 It is this Commission which has been
2 repeatedly reversed, repeatedly have made mistakes
3 based on poor advice either of Mr. Twomey and others.
4 But now we are sitting here, we have a law in our
5 favor, and the Court of Appeals has said you cannot
6 order surcharges without refunds, Commissioner Deason.
7 So that's the answer to your question. You cannot do
8 that. And we should not be expected to have our
9 shareholders incur any of that cost.

10 **MS. JABER:** Commissioners.

11 **COMMISSIONER DEASON:** Let me ask my question
12 again and please listen to my question.

13 You're raising the point that if this
14 Commission were to make a decision today that it could
15 have an influence, perhaps an unintended influence on
16 what the Legislature could or could not do with the
17 legislation that's being proposed by Senator Cowin and
18 Representative Argenziano.

19 My question to you, listen very carefully,
20 if this Commission were to decide today there would be
21 no surcharges, which means no refunds unless the
22 Commission -- I'm sorry, the Legislature makes an
23 appropriation to fund the refunds through the
24 regulatory trust account, would that impair the
25 Legislature's ability to pass such legislation?

1 **MR. ARMSTRONG:** Commissioner Deason, I
2 appreciate -- the clarification was no surcharge
3 without the refund. So maybe I missed that in the
4 first part. With that clarification, I don't know --
5 I don't think you have a problem with the ex post
6 facto prohibition.

7 **CHAIRMAN JOHNSON:** Mr. McGlothlin.

8 **MR. MCGLOTHLIN:** I want to comment for a
9 moment on the exchange between Commissioner Garcia and
10 Mr. Twomey.

11 This has gone on several times this morning.
12 Mr. Twomey has a habit of responding to questions
13 about a procedural item in terms that presuppose or
14 assume that the end result he advocates is necessarily
15 the end result that's going to be talked about at the
16 Commission. That's something I was able to avoid in
17 addressing procedural points, so I want you to keep in
18 mind that before you is the issue of what to do in the
19 situation. One of the options that's been identified
20 to you by Staff and briefed by parties is the option
21 of either refunds or surcharges.

22 Now, another example of that is when he
23 argues that there's no factual issues left by the
24 Court, again stems from the starting position that the
25 Court has dictated the result.

1 If the decision about a refund/surcharge
2 depends not on the dictates of the Court but upon a
3 weighing of the equities, then a lot of things that
4 you've heard from customers today would bear on
5 whether you should do anything all.

6 You have heard it estimated that some 25% of
7 the customers who would otherwise be potential
8 surchargees are no longer on the system. That's a
9 factual circumstance to take into account. If you
10 have any hesitation or doubt as to your ability to
11 factor that into the equation, or if you think that,
12 perhaps, other customers who want the refunds are
13 going to argue that you can't take that into account
14 because it's not part of the record, then that's a
15 reason to hold an evidentiary hearing.

16 You've heard Reverend Carmichael say that
17 the children's home would be faced with a surcharge of
18 \$52,000 that would have to come out of a budget that
19 is intended for meeting children's needs. If you
20 think that you can't take that into account in
21 weighing the equities, then that's an evidentiary
22 matter that you ought to have a record on.

23 So I just hope you'll bear in mind that some
24 of these arguments are -- begin at a place that you're
25 not there yet. And I haven't made that argument yet,

1 and you shouldn't take it as any kind of fait accompli
2 either.

3 **MR. MARKS:** Madam Chair. I'm over here.

4 **CHAIRMAN JOHNSON:** Hold on for a second,
5 Mr. Marks. Someone else had their -- was it you
6 Ms. Fox, after Mr. McGlothlin?

7 **MS. FOX:** Well, I was going to respond to
8 something that went on about ten minutes ago. I don't
9 know if we can go back to it, but there was a
10 procedure -- this is in reponse to Commissioner
11 Garcia's question after -- it wasn't necessarily a
12 similar debacle. But the citrus canker situation in
13 which the state managed to incur a lot of liability
14 through destroying a number of plants in a misguided
15 effort to, you know --

16 **CHAIRMAN JOHNSON:** Ms. Fox, if you could
17 speak louder.

18 **MS. FOX:** Okay. After the initial decisions
19 came down that demonstrated that there was going to be
20 some liability faced by the state, the Legislature
21 then came forward and adopted a claims process. And I
22 have been debating, as I listen to this today and
23 heard the legislators, which was somewhat of a suprise
24 to me, although I would have come more prepared to
25 address it -- but it strikes me that they would

1 probably be looking at a similar type process where
2 individuals come to an agency that they set up and
3 present their individual facts for a claim if they can
4 prove they were a customer, and so on and so forth.
5 Then they would actually appropriate the money, pay
6 out the money through that process.

7 Now, I think that they can still do that,
8 even if you decide this today, because I presume in
9 the ordinary course of things that take place at this
10 Commission, if you make a decision it's going to take
11 a month or so, 20 days to 30 or 40 to be reduced to
12 writing. There will be motions for reconsideration.
13 The refunds, we expect you to order them, of course,
14 will -- I believe under your rules, they would
15 ordinarily take effect in 90 days.

16 Now, I think we can assume that that gives
17 the Legislature time to act and create a process for
18 claims would be paid in a alternative fashion.

19 Now, I don't think the Legislature is going
20 to do anything for us except provide the revenues that
21 are needed to resolve the problem. If you don't want
22 to surcharge the customers, then they'll provide you
23 an alternative source for the revenues. If you do
24 vote for the surcharges, if you take the alternate
25 route, then they might provide a source for the

1 refunds.

2 I hope that that made some sense. You know,
3 it's kind of hard to --

4 **CHAIRMAN JOHNSON:** Hold on. Are there any
5 Commissioners -- questions from the Commissioners?

6 **COMMISSIONER KIESLING:** Well, actually, mine
7 is not so much a question as it is a comment.

8 **THE AUDIENCE:** Talk up.

9 **COMMISSIONER KIESLING:** Okay. Mine is not a
10 question it is a comment.

11 It seems to me that we have spent now almost
12 two hours just on the motions, and that we've heard
13 the same arguments more than once.

14 **THE AUDIENCE:** Right.

15 **COMMISSIONER KIESLING:** And I would suggest
16 that we have a number of customers here who probably
17 wonder why we don't move on, and I can tell you I'm
18 wondering the same thing. (Applause)

19 And all I'm suggesting is that perhaps we
20 ought to hear the recommendation from our Staff on
21 these motions for continuance and deferral and we
22 ought to decide whether we are going to do that or not
23 and move on.

24 **UNIDENTIFIED SPEAKER:** Speak into the mike.

25 **CHAIRMAN JOHNSON:** Do any of the other

1 Commissioners have any questions before we proceed?

2 Seeing none, Ms. Jaber.

3 **MS. JABER:** Commissioners, Staff does
4 recommend that both motions for a continuance be
5 denied. I'll start with each of the arguments and
6 attempt to summarize the rationale for Staff's
7 recommendation.

8 On the St. Jude's Catholic Church case, with
9 all due respect to the Circuit Court, Staff believes
10 the Commission has exclusive jurisdiction over this
11 matter and whatever the Circuit Court ultimately
12 decides is irrelevant. I will note that the writ quo
13 warranto was denied, or the motion that was actually
14 filed was denied. There is a pending motion for
15 rehearing but that doesn't change Staff's
16 recommendation in that regard.

17 The arguments related to the evidentiary
18 hearing brought up by Mr. Hoffman, we only note those
19 are addressed in the recommendation. Staff doesn't
20 believe that those are relevant to any sort of
21 continuance or deferral. They are inherent in what
22 you have to decide today.

23 There was a reference or two to Staff
24 recognizing that there's a need for an evidentiary
25 hearing. I have to clarify that we are recommending

1 that if you decide the refund surcharge option is the
2 way you want to go, that there are issues related to
3 the mechanism by which you implement the surcharge
4 that we are incapable of answering, and it's on those
5 limited issues that we think you should have an
6 one-day hearing. In any case, Staff is not
7 recommending a hearing related to Spring Hill. We
8 need to clarify that.

9 There is a basic fundamental concern that
10 Staff has related to the mandate. We've talked about
11 a need for a hearing and we've talked about a
12 legislative fix. We need to come back to that
13 mandate. You know, your role at this point is
14 ministerial, and we have quoted that all over in the
15 rec. We can't lose site of that. There are cases
16 that say you can't alter or modify or change or
17 attempt to change the mandate in any regard. I don't
18 know if seeking a legislative fix is another way of
19 doing that. But the way you are supposed to do
20 business here is you issue an order, and it will get
21 appealed. And in the meantime, the Legislature is
22 free to do whatever it is that it needs to do in its
23 infinite wisdom, but the course that you have to
24 follow right now is that you've got to comply with the
25 mandate.

1 I'm going to let Bobbie take over and tell
2 you what our recommendation is on deferring is with
3 regard to the legislative fix.

4 MS. REYES: Just the same sentiments, that
5 at this time Staff would recommend that with the
6 information before us today, we would recommend
7 against a deferral for the purpose of awaiting
8 legislative change. First of all, it's been said that
9 it's uncertain as to whether or not the legislative
10 change would even be enacted. And second of all,
11 Staff has not even had a chance or an opportunity to
12 review the bill; and, therefore, we're not even sure
13 what the bill would amend or the changes that would be
14 contained within it. And there may be some policy
15 concerns that are raised by that as well.

16 CHAIRMAN JOHNSON: What about the argument
17 raised by Mr. Armstrong with respect to the -- if we
18 were to decide today that if the legislature acted
19 after our decision today, that that would not apply to
20 this particular case?

21 MS. JABER: He's right. There is an
22 argument with respect to ex post facto, but, again,
23 that proposal came as a surprise to us, so I'm not
24 going to pretend I've researched that issue. I have
25 not. You know, it depends on what they have put in

1 the bill, and what Mr. Reyes is saying is absolutely
2 true, we haven't analyzed any proposed bill. I don't
3 know. I think the Legislature is capable of putting
4 in some sort of clause that would make this apply, but
5 I'm guessing.

6 **CHAIRMAN JOHNSON:** Any other questions,
7 Commissioners?

8 **CHAIRMAN DEASON:** If now is the appropriate
9 time, I move we adopt Staff's recommendation and deny
10 both motions for continuance.

11 **COMMISSIONER KIESLING:** I second that
12 motion. And I need to, I guess, make sure that all of
13 you understand that I do not think that us going
14 forward today in any way will impede the possibility
15 of the legislative fix of some sort; that the two just
16 are not the same. And any money that comes out of our
17 trust fund has to come out pursuant to an
18 appropriation. If the Legislature chooses to
19 appropriate funds out of that trust fund to address
20 whatever we order here, they can do that, and it does
21 not impede the ability to go forward here and reach a
22 resolution. So that's my purpose in -- and my
23 thoughts in seconding it.

24 **CHAIRMAN JOHNSON:** There's a motion and a
25 second. Any further discussion? All those in favor

1 signify by saying "aye."

2 COMMISSIONER DEASON: Aye.

3 COMMISSIONER CLARK: Aye.

4 COMMISSIONER KIESLING: Aye.

5 CHAIRMAN JOHNSON: Opposed.

6 COMMISSIONER GARCIA: Nay.

7 CHAIRMAN JOHNSON: Nay.

8 The motion passes on a three-to-two vote,
9 and I'll state my reasons for the denial.

10 I understand, and I'm very sympathetic to,
11 particularly, Mr. Twomey's clients that would like for
12 us to move on with this as quickly as possible to
13 supply the refunds that they believe that they
14 deserve. But I am concerned that we may have an
15 opportunity through the legislative process to provide
16 a mechanism that could protect all of the customers
17 and the Company. And I'm concerned that by moving
18 forward today that we will be barred from allowing a
19 law to be applied retroactively.

20 COMMISSIONER CLARK: Madam Chairman, I want
21 to it make clear that I don't think that's a problem,
22 and at the appropriate time I'd like to explain that
23 because I don't think granting a continuance today or
24 not addresses that issue.

25 CHAIRMAN JOHNSON: Well, that would be

1 helpful, because when our legal Staff stated that they
2 aren't certain -- they haven't read the law and they
3 aren't certain as to -- or the bill; it's not a law --
4 they haven't read the bill and they weren't certain as
5 to how our decision today might be impacted by that,
6 that uncertainty causes me some concern. But I'm
7 certain we will have a opportunity to continue to
8 discuss it as we go through our issues.

9 So with that, I apologize but we're going to
10 have to take another break for our court reporter.
11 Let's break and we're going to stick to it this time
12 until 5:10. We'll take a short recess.

13 (Brief recess.)

14 - - - - -

15 (Transcript continues in sequence in
16 Volume 2.)

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I N D E X**MISCELLANEOUS**

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P R O C E E D I N G S

(Hearing reconvened at 5:10 p.m.)

(Transcript continues in sequence from
Volume 1.)

CHAIRMAN JOHNSON: Ladies and gentlemen,
we're going to reconvene the hearing. It is now 5:10
and we're going to reconvene the hearing. Staff
counsel?

MS. JABER: Commissioners, we are at
Issue 3. That is Staff's recommendation on the
appropriate action the Commission should take in light
of the Southern States decision. This is a good time
to hear from the parties on the merits of the issue.

CHAIRMAN JOHNSON: Okay. We're going to
hear from the parties on the merits of the issue.
We'll be voting on Issue 3.

At this point in time I will be limiting the
parties to five minutes. The customers have been
waiting patiently and participating in this process,
and we're going to limit the parties strictly to their
five-minute presentations.

Where do we begin? Company?

MR. ARMSTRONG: Thank you, Madame Chair,
Commissioners.

CHAIRMAN JOHNSON: If you'd like to save

1 some of your time for rebuttal, you might want to do
2 that up front; otherwise, you'll only be able to
3 answer Commissioners' questions.

4 **MR. ARMSTRONG:** Thank you. The PSC ordered
5 uniform rates in 1993. When was the first time
6 Florida Water informed the Commission that if its
7 uniform rate structure was reversed, the only
8 necessary remedy was to change rates prospectively?
9 The first time was in 1993.

10 When was the first time Florida Water
11 informed the PSC that it could not require a refund
12 1993? When was the next time the PSC ignored Florida
13 Water advice that to require refunds without
14 surcharges would be illegal? In 1995.

15 The PSC ignored us and issued a one-sided
16 refund order in October 1995. If the PSC had
17 researched the issue first, it would have known
18 Florida Water was right. No refund could be made
19 without surcharges when a rate structure is reversed.

20 If the PSC had listened to Florida Water, it
21 would have realized that when a rate structure is
22 reversed, the remedy used by every other regulatory
23 Commission in the country during the 100 years or so
24 of utility ratemaking regulation would solely be a
25 prospective change in rates, not refunds and

1 surcharges.

2 Even after the PSC issued its one-sided
3 refund order in October of 1995, the Supreme Court of
4 Florida confirmed what Florida Water has maintained
5 all along; that fairness and equity applies to the
6 utility as well as its customers.

7 A majority of this Commission repeatedly
8 ignored that fact and continued to ignore fairness by
9 attempting to distinguish the Supreme Court's GTE
10 decision for reasons which the 1st Court of Appeals
11 concluded, and I quote, "did not hold water."

12 Staff on two separate occasions, in
13 October 1995 and again in August of 1996, argued and
14 recommended that no refunds and no surcharges should
15 be made.

16 Staff recommended that a prospective change
17 in rates is all that is required, and Staff argued
18 that Florida Water did not assume a risk by placing
19 the uniform rate into effect and asking the Commission
20 to vacate the Citrus County automatic stay.

21 Now Staff argues that this Commission's
22 one-sided refund order, which was reversed, has made
23 the refund part of the order the law of the case.

24 The Black's Law Dictionary defines "to
25 reverse" as "to vacate or set aside". Black's Law

1 Dictionary defines "to vacate" as "to set aside". The
2 terms are interchangeable from a legal perspective.
3 Staff's argument is purely a cop-out.

4 Another fact that must be remembered, this
5 Commission never even issued a final order
6 establishing an alternative rate structure in this
7 case other than uniform rates until August of 1996,
8 and the appeal by the City of Keystone Heights created
9 an automatic stay of that order in its entirety.

10 No party lifted that stay or requested that
11 that stay be lifted. No alternative to the uniform
12 rate structure was available to Florida Water Services
13 as a result of that stay. The result? The PSC's
14 prior mistakes in October 1995 and August 1996 and the
15 implementation of the automatic stay caused the
16 accumulation of potential refunds and surcharges, and
17 Florida Water Services could do nothing to avoid it.

18 Staff's recommendation also ignores the fact
19 that this Commission first ordered Florida Water to
20 include Spring Hill in a 1995 rate case, but then, on
21 the Commission's own motion, removed Spring Hill from
22 the rate case while the Commission fought with
23 Hernando County over jurisdiction. It is wrong to try
24 to hold Florida Water accountable for such activities.

25 Why did Florida Water do nothing in 1996

1 regarding the Spring Hill rates? Because in 1993
2 Florida Water acted by vacating an automatic stay so
3 that Florida Water could receive the higher revenues
4 this Commission had authorized it to collect and to
5 stop an increasing refund liability.

6 What did this Commission do? The majority
7 of this Commission tried to hold Florida Water
8 accountable for the Commission's rate structure
9 mistakes suggesting that Florida Water had assumed the
10 risk of a one-sided refund when it asked the
11 Commission to vacate the automatic stay.

12 The Court of Appeals rejected the
13 Commission's novel assumption of the risk argument,
14 but not until June of 1997. Prior to June of 1997,
15 all that Florida Water knew was that the request that
16 an automatic stay be vacated was to risk further
17 retribution from this Commission. So we did nothing.

18 Incredibly, now Staff is suggesting to this
19 Commission that Florida Water be held accountable for
20 not vacating or otherwise acting in a manner contrary
21 to the automatic stay of Keystone Heights, which arose
22 when the Commission issued its August 1996 refund
23 order, and Keystone Heights appealed.

24 **CHAIRMAN JOHNSON:** You have 30 seconds.

25 **MR. ARMSTRONG:** Staff suggests that because

1 the Commission modified a stay which had been awarded
2 to Florida Water, the City's automatic stay magically
3 was modified. This is a preposterous legal
4 proposition.

5 One party's statutory right to a stay cannot
6 be modified just because some other party's stay is
7 modified. The Commission's August 1996 order,
8 including that part of the order imposing a modified
9 stand-alone rate structure, was on appeal.

10 We could only imagine how this Commission
11 would have punished Florida Water if we had moved to
12 vacate the City's automatic stay, put modified
13 stand-alone rates in effect, and then a uniform rate
14 structure was upheld by the Court of Appeals.

15 **CHAIRMAN JOHNSON:** Mr. Armstrong, your time
16 is up.

17 **MR. ARMSTRONG:** I have one more comment
18 regarding this issue, Madame Chair.

19 **CHAIRMAN JOHNSON:** I'm sorry. You have
20 what?

21 **MR. ARMSTRONG:** I have one more comment
22 regarding this issue on the stay, which Mr. Shreve had
23 unrestrained time and ability to address. (Audience
24 comments.)

25 **CHAIRMAN JOHNSON:** Your time is up.

1 **MR. HANRATTY:** Joseph Hanratty here on
2 behalf of potential surcharge victims.

3 We have filed our brief in this matter
4 alleging that the PSC has no authority to issue
5 surcharges in this case. If you review the statutory
6 authorities that create the Public Service Commission
7 and authorize it to regulate water and wastewater
8 matters, you will find nowhere in those statutes does
9 the word "surcharge" even appear, much less is it
10 discussed.

11 But I think further beyond that, before you
12 even answer whether or not is a surcharge appropriate
13 in this instance, why don't you question whether or
14 not a refund is even appropriate in this instance.

15 The statutes go into great detail outlining
16 the procedures under which refunds will be required
17 when a rate increase is requested. And those
18 instances -- in the provisions of the statutes under
19 which you are authorized to act, the only provisions
20 for refunds are when there is an error in the revenue
21 requirement.

22 Staff has brought this matter to your
23 attention on numerous occasions during this procedure
24 throughout the years that this is not an appropriate
25 manner in which a refund to be -- in which to order a

1 refund. They're now arguing in their recommendation
2 that it's now a matter of law of the case.

3 Essentially, I would submit to you that that
4 goes to the issue of subject matter jurisdiction. The
5 subject matter jurisdiction of this board cannot be
6 waived or cannot be subject to the law of the case.
7 You do not have jurisdiction in this instance to order
8 a refund.

9 The Legislature would not have gone through
10 such explicit details in describing the matter and the
11 method in which you could issue a refund only to have
12 you or Staff say, we're authorized to do refunds under
13 the broad powers that are granted us under the other
14 provisions of the statutes.

15 The statutes are specific when refunds are
16 allowed and required, and this is not one of those
17 instances.

18 I would go further to say that there is no
19 provision in the statutes that provide for surcharges
20 in a situation such as this.

21 Prospective ratemaking concepts have created
22 a process whereby errors are handled by allowing
23 utilities to collect the rates subject to them being
24 required to make refunds. That did not happen in this
25 instance. The error that is claimed here does not

1 trigger the statutory powers that enable the PSC to
2 collect refunds.

3 We're simply saying that you do not have
4 authority to act in this situation, and it would be
5 appealable error for you to require a refund in this
6 situation, and there is no authority for this board to
7 issue surcharges.

8 **CHAIRMAN JOHNSON:** Thank you.

9 Mr. McGlothlin?

10 **MR. MCGLOTHLIN:** A refund is not required as
11 a matter of law in this case, and when one takes into
12 account all the equities, the better course is to
13 order neither a refund nor a surcharge.

14 The one rationale that has been put forward
15 by those who contend that the Commission must order a
16 refund is the doctrine of the law of the case. The
17 law of the case doctrine applies to bar
18 reconsideration of questions that were actually
19 considered and decided on a former appeal involving
20 the same action.

21 I've just read from the Commission's brief
22 in the most recent appeal before the 1st DCA. In that
23 case Florida Water was contending that because the
24 matter had been to court earlier, it was entitled to
25 have its entire revenue requirements undisturbed.

1 The Commission, my clients, and Citrus
2 County and the others who contend for the refund all
3 opposed that interpretation of law of the case,
4 because the only point in that earlier appeal had been
5 the ratemaking disposition of a gain on the sale of
6 one asset.

7 Here's what the brief of Citrus County and
8 Sugarmill Woods Civic Association said about the law
9 of the case at that point: "The law of the case
10 doctrine does not apply to protect SSU's revenue
11 requirements in this case. There was no issue in the
12 prior appeal concerning SSU's combined or individual
13 revenue requirements in that sense. Only an issue
14 concerning whether the gain from sale of a
15 nonjurisdictional system should be included in the
16 county." And based on that they adopted the arguments
17 presented by the Commission and by my clients.

18 But in this case the same parties have taken
19 a very different position. At Page 9 they say "The
20 Commission's goal, therefore, must be the full and
21 complete implementation of the 1st DCA's mandate
22 reached through full compliance with the controlling
23 appellate court decisions, as well as the holdings of
24 the Commission's prior orders in this docket to the
25 extent these orders have not otherwise been reversed."

1 The controlling appellate decisions are GTE
2 Florida, Inc., the Clark and Southern States, Inc. v.
3 Public Service Commission.

4 "The unaltered provisions of the
5 Commission's previous final orders that must now be
6 observed are those mandating refunds within 90 days
7 and, most importantly, the payment of interest
8 pursuant to Commission rule."

9 So we have a complete flip-flop. Instead of
10 arguing that only those points actually considered in
11 the same case are the law of the case, they first of
12 all bring in GTE, which isn't the same case, and they
13 also contend that even details such as a refund within
14 90 days and with interest are somehow law of the case,
15 even though it's clear that those were not points on
16 appeal.

17 Furthermore, neither was the issue of a
18 refund, a point decided on in the earlier appeal as is
19 evident by the language in the 1st DCA's opinion which
20 said in the course of directing the Commission to
21 consider petitions to intervene by my clients, "These
22 people are exposed to potential surcharges."

23 If there was such a thing as a potential
24 surcharge in a case in which the court had ordered
25 refunds, the word "potential" would not have been in

1 its vocabulary. That's also true because of the way
2 the appealing entity, the utility, posed the question
3 on appeal.

4 In its prayer for relief, it asked the court
5 to either order a refund with surcharges or,
6 alternatively, to order neither a refund nor a
7 surcharge. So it's clear, based upon the way the
8 question was presented and by the language in the
9 court's order, that the refund was not a matter that
10 was adjudicated by the reviewing court; therefore,
11 it's not law of the case. So it isn't required as a
12 matter of law. What do the equities say?

13 Well, bear in mind that at the point in time
14 when you made the decision to refund, you
15 Commissioners regarded the possibilities -- the
16 surcharge as a legal impossibility. And I think it's
17 for that reason in part that you were willing to go in
18 the direction of a refund.

19 Now the court has told you that that's not
20 the case, and like the commercial on TV, "This changes
21 everything." And it's exemplified by numerous
22 customers who have appeared to tell you some of the
23 practical impacts of the implementation. There are
24 some very serious competing equities, and I won't go
25 into repeating those, but I want you to consider one

1 more point.

2 **CHAIRMAN JOHNSON:** You have about 30
3 seconds.

4 **MR. MCGLOTHLIN:** All right. In the Staff's
5 recommendation, at this point they are already looking
6 forward in time and anticipating such things as those
7 customers who can't afford to pay the surcharge, the
8 possibility that the Commission may -- that the
9 utility may move to discontinue service for the
10 refusal or inability to pay a surcharge.

11 And so it's clear to me, and it should be
12 clear to you, that at this point in time to order a
13 refund and surcharge would not be a resolution of this
14 matter, it would be an escalation of the matter; and
15 instead of achieving justice, you're simply creating
16 worse problems.

17 The mayor from Keystone Heights said it well
18 when he says --

19 **CHAIRMAN JOHNSON:** Your time is up.

20 **MR. MCGLOTHLIN:** -- cut your losses, because
21 sometimes the best course in order to achieve equity
22 is to avoid worse inequities in the future.

23 Thank you.

24 **MS. FOX:** Susan Fox on behalf of Sugarmill
25 Woods.

1 I believe four of you were here in the fall
2 of 1993 when Southern States Utilities moved to lift
3 the stay, and I believe you remember your promise to
4 the customers of Sugarmill Woods at that time that
5 they would be protected in the event of a reversal.

6 I'd like to remind you, also -- I don't want
7 to dwell on this -- but I would like for you to
8 discount what Southern States Utilities has to say
9 today, and let me read what they said to you when they
10 asked you to reconsider your prior refund order.

11 "Southern takes no position on refunds for
12 customers. The Commission is free to provide refunds
13 for those who overpaid pending appeal and whose
14 efforts secured prospective benefits through the
15 implementation of modified stand-alone rates so long
16 as the Commission draws the revenues for any refunds
17 from those who underpaid during the period of time
18 that the refunds were calculated."

19 That's the position that they've taken all
20 along. Now, you've already ordered a refund. It went
21 up on appeal. SSU raised a point on appeal that said
22 "no refunds, no surcharges". You have an order from
23 the 1st District that disposes of that issue. It says
24 "affirmed in part, reversed in part."

25 The court's opinion says "We reverse that

1 part of the order -- and I don't want to quote at
2 length -- we reverse that part of the order that --
3 let's see -- the PSC erred in its consideration of GTE
4 with regard to the issue of whether SSU may surcharge
5 the customers who underpaid under the erroneously
6 approved uniform rate."

7 They reversed as to that issue. They said
8 "The PSC in this case has allowed those customers who
9 underpaid for services they received to benefit from
10 its erroneous order. As a legal proposition this will
11 not hold water." That was the proposition that did
12 not hold water.

13 We've cited the cases over and over again.
14 Restitution is required here. We paid money. The
15 customers of Sugarmill Woods paid money that they
16 shouldn't have had to pay. They're entitled to get it
17 back. The refund portion of the order still stands.

18 As to the authority to surcharge, it's in
19 the GTE case. It says that when the money has changed
20 hands erroneously, then a surcharge is appropriate.
21 It's in the Southern States case. I mean, the 1st
22 District remanded --

23 **COMMISSIONER CLARK:** You need to get closer.
24 They can't hear you.

25 **MS. FOX:** Okay. Can you hear?

1 **COMMISSIONER CLARK:** I can. They can't back
2 there.

3 **MS. FOX:** All right. Now, just very briefly
4 on the fairness issue.

5 This case has been extremely painful and
6 expensive for all of us, no less so for the customers
7 of Sugarmill Woods who suffered all the same kind of
8 hardships that were talked about earlier today during
9 the period that they were paying about \$500 a year
10 more than -- than they should have been paying under
11 modified stand-alone rates.

12 We don't think you have any choice but to
13 order the refund here. It's unfortunate that we're in
14 the situation that we're in, and I hope the
15 Legislature comes up with a solution that avoids
16 surcharges, but given the present legal status of the
17 case, I don't see what other choice you have.

18 **CHAIRMAN JOHNSON:** Thank you. Mr. Jacobs?

19 **MR. JACOBS:** Thank you, Madame Chairman.

20 I'm sure everybody can hear me fairly well.

21 I'd like to think that there is a solution
22 that people could go home tonight and feel good about,
23 and I would offer you the following: In your Staff
24 analysis on Page 33 in their conclusion of
25 no refund/no surcharges, they say "In conclusion,

1 Staff believes that the Commission can reasonably
2 infer that the refund portion of its order has been
3 affirmed by the court and/or that the Southern States
4 decision requires refunds and surcharges to be made,
5 because to do otherwise would result in one group of
6 customers receiving a windfall."

7 Then they go on to say on Page 53 -- and I
8 think that your Staff deserves a lot of credit for
9 having a crystal ball. Myself, when I predict the
10 future, I just do it often. That way I'm successful.

11 But they have, in their wisdom, placed in
12 here on Page 53, they say "Therefore, Staff does not
13 believe that the Commission should nor can, absent
14 statutory vision, utilize funds generated by
15 regulatory assessment fees to refund to those FWSC's
16 customers who overpaid under the uniform rate
17 structure."

18 It seems to me that -- I don't disagree at
19 all with Susan or Mike's remarks about what the law
20 is, and I think your Staff agrees that a refund is an
21 order on the customers; and I guess logically and
22 legally you have to order a surcharge in order to get
23 that done.

24 However, if you're going to do that, why not
25 place that surcharge to begin being paid back so that

1 a rebate can happen on or about August 1st of 1998,
2 which gives the Legislature plenty of time -- it gives
3 it to past July 1, which is the fiscal year of the
4 state, because if they put in the appropriations bill
5 that you're authorized to expend your trust funds in
6 the appropriations bill, then you have plenty of time
7 to get that put together. They may try to do a
8 general act, and a general act would certainly have
9 plenty of time to be done by August 1st.

10 So I'd submit to you that I think that folks
11 that are here today would rest easier knowing that
12 there is that solution out there.

13 I would also suggest that you might want to
14 place in this order that the Public Service Commission
15 would recommend that the Legislature do this so that
16 we know we have all of your support. And so then,
17 from what I hear today, everybody is in agreement that
18 this ought to be done, and we move forward. And we
19 ought to all work together for a change, instead of
20 just pulling at each other to try to find the
21 solution. That's all I have.

22 **CHAIRMAN JOHNSON:** Thank you. Mr. Twomey?

23 **MR. TWOMEY:** Thank you, Madam Chairman,
24 Commissioners.

25 Let me say first that I think Mr. Jacobs'

1 comments, to the extent that I understand them, if I
2 understand them correctly, are excellent in terms of
3 the timing.

4 Mr. Hanratty says that he finds no statutory
5 authority for the Commission to do surcharges. As
6 suggested by Ms. Fox, he hasn't read the case law.
7 Apparently case law is controlling as well as
8 statutes. The courts interpret the statutes, and
9 that's why we're here.

10 As we discussed before, you're here on
11 remand from a reversal by the 1st District Court of
12 Appeals. It's the Southern States decision.

13 Southern States decision tells you you must
14 do certain things. We all disagree about what it
15 says. Don't take my word for what it says. Listen to
16 what your Staff has to say that it says.

17 They say essentially that if it's law of the
18 case -- if it's not law of the case, that is, on the
19 refund, Southern States, you've got two choices; no
20 refunds/no surcharges, refunds/surcharges.

21 They say if it is law of the case -- and
22 they say this strongly in the recommendation -- if
23 it's law of the case on the refund issue, then you
24 must choose the refund surcharges. That's what they
25 say. I hope they will tell you again.

1 GTE decision speaks to surcharges. You
2 don't need a statute. GTE made you give back customer
3 money to the telephone monopoly company. With
4 interest, by the way.

5 The GTE decision says that it would be
6 inequitable for one side to have a windfall as a
7 result of an erroneous order. We clearly have an
8 erroneous order here. We have a couple of them. The
9 uniform rate order was reversed. The order in
10 Southern States was reversed.

11 Was there a windfall? We know there was a
12 windfall. The \$15 million we're talking about didn't
13 come out of the thin air. SSU has established who
14 will get refunds, who will pay surcharges. People
15 that underpaid got windfalls, and the court recognized
16 that.

17 And the court, as quoted by your Staff,
18 said -- and I think Ms. Fox said it a minute ago --
19 the 1st District said, "Contrary to this principle,
20 the PSC in this case has allowed customers who
21 underpaid for services they received under the uniform
22 rates to benefit from its erroneous order adopting
23 uniform rates. As a legal position, this will not
24 hold water."

25 What they're saying is, is you can't let

1 those people underpay, especially at the expense of
2 those that overpaid.

3 Southern States is law of the case on the
4 refunds. Your Staff said, at the middle of Page 25 of
5 their excellent recommendation, "It's law of the case.
6 Staff believes the 1st District's statements,
7 specifically the issue on remand as to whether SSU can
8 charge its customers, has limited the Commission's
9 options on remand to the implementation of a
10 surcharge, a concept used in GTE, which the
11 1st District expressly has stated is applicable in
12 this case."

13 They go on -- this is the most important
14 part -- they say "Staff believes that this language
15 constitutes an implicit affirmance by the court of the
16 Commission's decision to require refunds. In fact,
17 the only portion of the order that the court
18 criticized and found to be in error was the
19 Commission's failure to require surcharges, not the
20 decision to require refunds."

21 Your Staff says the court opinion says the
22 only error was not to require surcharges, and not the
23 part that says you had to do refunds.

24 "Therefore, Staff believes that the refund
25 portion of the Commission's order may have been

1 decided by the court and, accordingly, has become law
2 of the case.

3 That's your Staff speaking. It's not me. I
4 happen to agree with what they've said. They have
5 recommended to you that it's law of the case. They
6 say at the outset of their excellent recommendation
7 that if it's found to be law of the case, you can't do
8 the refund; no refund/no surcharge. You don't have a
9 choice.

10 They say if it's law of the case, you're
11 bound by the court's determination. You can't go back
12 and make other determinations on functional
13 relatedness and those type things. If it's law of the
14 case, which they say it is, and I agree, Ms. Fox and
15 Mr. Jacobs, I think, then you can only go with the
16 refund and surcharges.

17 Thank you.

18 **CHAIRMAN JOHNSON:** Thank you. I'm sorry,
19 Mr. Marks. I forgot you were sitting over there.

20 **MR. MARKS:** I'm stuck over here in the
21 corner.

22 **CHAIRMAN JOHNSON:** Sorry about that.

23 **MR. MARKS:** Thank you very much, Madam
24 Chairman.

25 You know, two words come to mind when I look

1 at the Staff's recommendation and I look at the
2 matters associated with that case, and those two words
3 are equity and fairness.

4 You've heard lot of legal arguments so far
5 this afternoon, or this evening. I think there's
6 another doctrine that's worthy of your consideration,
7 and that doctrine in the law is equity and fairness.
8 I realize that you're not a court of equity, but I
9 also realize that on many occasions you consider
10 equitable positions.

11 And as a matter of fact, in the Staff's
12 recommendation on Page 40 it states quite clearly
13 this: "What is legally correct may be impossible to
14 implement in any reasonable and equitable manner."
15 early on, Commissioner Garcia espoused essentially the
16 same comment.

17 No matter what you do today -- and there are
18 going to be some winners and there are going to be
19 some losers, and I don't know how you're going to get
20 around that -- but I would submit to you that it's
21 time to stop the bleeding, and you've been bleeding
22 for a long time, and the customers of these utilities
23 have been bleeding for a long time, and it's time to
24 move forward. And I think equity is the key.

25 A former colleague of mine used to say it in

1 another way. He used to say "What's always legal
2 ain't always right," and that's the case here.

3 And again, as I said, in the Staff's
4 recommendation they're saying the same thing. And
5 it's an excellent, an outstanding Staff
6 recommendation, although it's not the only one that
7 I've seen in my 20-odd years being associated with
8 this Commission. But it's time to get to reason.
9 It's time to think about what we have here and what
10 these circumstances are.

11 And in the comments by Mr. McGlothlin on
12 behalf of his people, I had to agree with him, the
13 people that he represents; and there were a number --
14 and his arguments primarily dealt with equity and
15 what's fair and what's equitable under these
16 circumstances, and I would urge you to consider that.

17 Now, in addition to that, if you remember
18 earlier the mayor from Keystone Heights, Mr. Archie
19 Greene, spoke. And I think Mr. Archie Greene said the
20 same thing. In essence he says "It's time to cut your
21 losses." And it is time to cut the losses.

22 And it's time to act again, as I said
23 before, in an equitable manner; and we believe, and I
24 believe on behalf of Charlotte County, that will
25 require you to impose no refund or no surcharge, and I

1 think you legally can do that.

2 I don't think that the cases that have been
3 cited would preclude you from reaching that
4 conclusion, and I would urge you on behalf of the
5 utility, I would urge you on behalf of the customers
6 of this utility that that would be the appropriate
7 solution under these circumstances.

8 Thank you very much. (Applause)

9 **CHAIRMAN JOHNSON:** There may be questions.

10 **COMMISSIONER CLARK:** I would like to ask
11 Staff something and also inquire of Commissioner
12 Deason. I think one of the things that keeps -- I
13 think we have to go forward and make some decisions,
14 but leave the option of the Legislature addressing the
15 funding of refunds a viable option.

16 And I am concerned that if we make a
17 decision that if there is going to be surcharges,
18 we're not going to order refunds, if that's our final
19 decision, I'm concerned it will go up to the court and
20 the court will say, you're wrong again, and you've got
21 to do both; and we're that much further down the line.

22 And what I want to suggest is that we take
23 Staff's recommendation with respect to an evidentiary
24 hearing on how we would implement a refund and a
25 surcharge so that it is clear what the impact would

1 be, so that both the Legislature and the court,
2 hopefully, will get a clear picture of what this
3 means. Because I have frankly been frustrated with
4 what I think is the court's not looking at what these
5 rates mean.

6 Even these stand-alone rates, as some people
7 have indicated, create enormous economic pressure on
8 them, and that's exactly why I think the Staff
9 recommended uniform rates besides the other arguments
10 that were supportive of that.

11 And I appreciate there's a debate on uniform
12 rates, but I want you all to know that we pursued that
13 because we thought it was in the best interests of all
14 customers. And, yes, we made a mistake, but I want to
15 assure you that we were thinking of you all who have
16 to pay high rates. (Audience comments.)

17 I'm telling you what we did. I appreciate
18 the fact we're here now. What I want to suggest is
19 that we go ahead and hold that evidentiary hearing; we
20 also make -- allow the parties to address -- that
21 there be three issues; basically Issues 3, 4 and 5;
22 but that we focus most of our attention on how to
23 implement the refund and the -- refund and surcharge
24 and the ramifications of that, and that one of the
25 options we would pursue in a final order that I hope

1 would be issued -- I hope we would hold that
2 evidentiary hearing in January, issue that order,
3 hopefully in February, and then the order would take
4 the view that -- or it would make a decision on
5 issuing refunds and surcharges.

6 Let me just -- I'm thinking on my feet. But
7 order refunds if it does not require a surcharge. And
8 in there mention the fact that the Legislature has
9 suggested there may be an opportunity to use other
10 funds to make that.

11 Then make a decision on whether or not -- if
12 it is not so funded by the Legislature, would our
13 decision be not to order the refunds because it
14 requires a surcharge. And then say "If the court
15 tells us that we cannot not order a refund, here's how
16 we think the refund and surcharge have to be done."
17 So the whole thing is before the Legislature and the
18 whole thing is before the courts, and we don't extend
19 this anymore. (Audience comments.)

20 We can't continue to leave this in abeyance,
21 and that's why I didn't think the continuance. But I
22 want to leave open the option of having a legislative
23 solution, and that's how I think we should proceed.

24 **CHAIRMAN JOHNSON:** Let me make --

25 **COMMISSIONER CLARK:** That order would be

1 final --

2 COMMISSIONER GARCIA: Susan, let's --

3 COMMISSIONER CLARK: Let me say that order
4 would be final, but it would not be effective until
5 after the legislative session, so that by being final,
6 it can be taken up on appeal immediately and,
7 hopefully, the courts will be prompted to act as
8 expeditiously as possible.

9 One thing that has been difficult is that we
10 think we know the law. We thought we knew the law on
11 intervention, we thought we knew the law on rate
12 structure, and we've been frankly surprised by what
13 they have said the law is.

14 MS. JABER: I need to make sure that I
15 understand.

16 CHAIRMAN JOHNSON: You're going to have to
17 speak directly into the microphone, Ms. Jaber.

18 MS. JABER: Commissioner Clark, I need to
19 make sure that I understand what you're thinking
20 about.

21 Basically you're saying, "Go to hearing as
22 we recommend, but not limit the issues." And you see
23 three main issues; the first being can refunds be
24 ordered without a surcharge because --

25 COMMISSIONER CLARK: The first one --

1 **MS. JABER:** -- there is a legislative
2 option.

3 **COMMISSIONER CLARK:** Can we say that we are
4 not going to order refunds if it requires a surcharge?
5 That leaves open two options. The Legislature decides
6 to fund the refund. If it decides not to, then
7 there's no refund; and if the court says it doesn't
8 matter what the Legislature does -- (Audience
9 comments.)

10 I'm just trying to expedite it and get
11 information from the court, and if the --

12 **CHAIRMAN JOHNSON:** Ladies and gentlemen --
13 hold on, Susan. Ladies and gentlemen, you're going to
14 have to contain yourself and not make any statements.
15 We have a court reporter who is trying to record these
16 statements so that this record can be used for
17 whichever party decides to take this up on appeal. So
18 if you could please just sit and listen to the
19 comments and the statements and the dialogue that's
20 occurring, we're all trying to reach an appropriate
21 resolution to help protect everyone here in the
22 fairest manner possible, but we do need the
23 opportunity to have that dialogue.

24 So if you could just -- I know this is an
25 emotional issue. It's emotional for all us, but if

1 you could, just try to restrain yourself and allow us
2 to deliberate.

3 **COMMISSIONER CLARK:** So what I'm suggesting
4 is if the court says it doesn't matter what the
5 Legislature does, or if it says the law of the case is
6 that you will order refunds, and that we can't order
7 refunds without surcharges, they will know how we
8 intend to implement it; and they could also rule on
9 that.

10 Here's what I'm concerned about; is that we
11 do something and the court says, no, you're wrong, and
12 we have to do it again; and it is -- extends the
13 process and it extends the uncertainty and it extends
14 interest accruing.

15 **MS. JABER:** It sounds, though, to me that
16 what you may be attempting to do is to recommend
17 something in the version of a final order and have
18 that appealed and have the court come back and tell
19 you whether what you're contemplating is going to
20 work --

21 **COMMISSIONER CLARK:** No, no, no. What we
22 would say is "If you tell us in fact the law of the
23 case was you have to do a refund and you have to do a
24 surcharge, here's how we would implement it."

25 **MS. JABER:** And you would --

1 **COMMISSIONER CLARK:** You know, we may decide
2 that that's appropriate, but Commissioner Deason
3 seems -- if I understood his comments, he suggested
4 the notion of -- that we would not order a refund if
5 it required a surcharge.

6 Now, if the Legislature steps in and says
7 it's going to be funded otherwise and it doesn't
8 require a surcharge, "That answers the question. But
9 if the court says, that's not an option for you, no
10 refund," then they have before them how we would do
11 the refund and surcharge. One of the advantages of
12 that is the court to see exactly what the impact is.

13 **MS. JABER:** So you would have alternatives
14 built into your order, basically?

15 **COMMISSIONER CLARK:** Yeah, and it would be a
16 final order; that when the court acted, it would --
17 there would be no further steps to take.

18 **MS. JABER:** "If, court, you say we're wrong,
19 here's what we'll do"? And that would be in the form
20 of an order --

21 **COMMISSIONER DEASON:** It seems to me we're
22 answering questions that aren't legitimately before us
23 if we do that. Now, I share Commissioner Clark's
24 concern that the court be fully informed of all of the
25 ramifications and complexities and perhaps inequities

1 that could result from any type of a refund, because
2 it's just impossible to do it.

3 Sometimes it's easy to sit on the bench and
4 make a decision; do it this way, it sounds fair and
5 equitable. And then when you try to implement it, you
6 think of all kinds of problems and uncertainties and
7 concerns and inequities that make it very, very
8 difficult from a practical standpoint to do what
9 sounds fair and, quote, unquote, legal.

10 But it seems to me that we can include in
11 our order all of the complexities that our Staff has
12 delineated for us in their very complete
13 recommendation here.

14 A number of problems arise in trying to make
15 any type of a refund. That makes it difficult,
16 time-consuming, and also questions of equity arise in
17 any type of a refund. And I think it's very critical
18 that -- I tend to agree with the arguments of
19 Mr. Marks.

20 I think we've got to look at GTE, what it
21 stands for, and not read any more into it than is
22 absolutely necessary. It seems to me that the
23 paramount thing GTE is saying to this Commission is
24 "be fair and equitable," and it doesn't dictate to us
25 how we have to be fair and equitable.

1 And I think it's reading too much in the
2 1st DCA opinion to say that we have to do refunds, we
3 have to do surcharges, because to me it is more
4 inequitable to surcharge these customers who had no
5 ability to change their consumption, or even choose to
6 remain a customer of Southern States at the time, and
7 now to go back to them and tell them that they're
8 obligated to pay back an amount that they had no
9 control over, and then on top of that, perhaps to make
10 up the difference for those customers who have left
11 the system.

12 That is a double inequity, and there's no
13 way around that inequity, and that is what GTE is
14 saying to us, "be fair, be equitable".

15 Now, my heart goes out to those persons that
16 have overpaid. I have from day one advocated, first
17 of all, against uniform rates. But that's all water
18 under the bridge now. And I didn't argue against
19 uniform rates because I thought they were illegal, I
20 argued against uniform rates because I thought they
21 were bad public policy.

22 The court in essence agreed, but disagreed.
23 They said they were illegal. I still think this
24 Commission had a valid order that was legal. Those
25 were the rates that were in effect. I thought that a

1 better rate structure could have been implemented, but
2 I didn't ever say that the uniform rates were illegal.

3 Now, I think in the best of all situations
4 there should be a refund, but if the 1st DCA says the
5 only way we can do a refund is with a surcharge, I
6 think that is trying to cure one inequity with a much
7 worse inequity to the surcharge customers. We're in a
8 no win situation. I think that is the only way we can
9 treat this. (Applause)

10 Now, I think it is very important that if
11 there is to be some type of a legislative fix, that
12 that be given full opportunity to be proposed,
13 discussed and perhaps come to fruition, and if we can
14 do in any way to provide information and expedite
15 that, I'm not opposed to doing that.

16 I think there are some very real problems
17 when you come to the amount of the money. I'm not so
18 sure there's that amount of money in our regulatory
19 trust fund to start with, and I guess there could be
20 some arguments about its constitutionality and things
21 like that. I'm not trying to throw cold water on it.
22 There's going to be a very serious debate in the
23 Legislature about this, but I don't want to do
24 anything that would preclude that opportunity.

25 But I think this Commission -- I also agree

1 with Mr. Marks that this Commission has an obligation
2 to make a decision and that we need to make it today,
3 and if anything that we can do to shed light on all
4 the complexities in our order and share that with the
5 court so that perhaps before they make a decision,
6 they understand some of the things that we have to
7 deal with, I say by all means include it --

8 **COMMISSIONER GARCIA:** So what you're
9 suggesting is that we deny Staff?

10 **COMMISSIONER DEASON:** My suggestion is we
11 deny our Staff. It --

12 **COMMISSIONER GARCIA:** We deny Staff, and we
13 do no surcharge/no refund.

14 **COMMISSIONER DEASON:** No surcharge/no
15 refund, but we leave the door open.

16 (Applause)

17 **COMMISSIONER GARCIA:** Let me just --

18 (Applause)

19 **COMMISSIONER GARCIA:** Let me --

20 **COMMISSIONER CLARK:** Commissioner Garcia,
21 let Commissioner Deason finish his thought on leaving
22 the door open.

23 **COMMISSIONER DEASON:** I think we need to
24 leave the door open. I think that we need to make the
25 decision. Under our interpretation of what is fair

1 and equitable, there can be no surcharges. That to me
2 is I don't see how you can call it anything else but
3 retroactive ratemaking.

4 If there is a way that refunds can be funded
5 by some means other than surcharging the customers,
6 we're open to that; and the only way I know to do that
7 is through a legislative action. I think everyone
8 here has expressed, if not outright support, at least
9 the hope that perhaps that is a solution.

10 I think I have a hope that that's the
11 solution, and if it can come to fruition, I would say
12 by all means, refund those moneys, because I think
13 those folks have overpaid. But I cannot in good
14 faith, and in trying to reach a fair and equitable
15 judgment here, say that those refunds while they
16 should be made, have to be funded by surcharges.
17 That, to me, is a greater inequity.

18 **COMMISSIONER GARCIA:** Let me just say that
19 if that's a motion, I'll second it; and I'll go
20 further. I think what the court has asked us to do is
21 impossible. They can ask us to turn water into wine
22 all they want. We just can't do it here.

23 The issue before us -- and -- is where we
24 get in money from, and I just don't see any way to do
25 it; and, further, I don't see any way to do it

1 equitably.

2 It is unjust and unfair for us to ask those
3 people who paid a lower rate, not knowing it, to come
4 up with more money for that service, and on top of
5 that, to pay for those that are not in the system
6 because they've left.

7 You add to that the fact that I think it is,
8 again, impossible for the company, if we put this
9 burden on the company, to fine these people, and to
10 somehow encumber those who aren't even on the system,
11 and it becomes that much more ludicrous.

12 I know that this Commission -- and let me
13 speak for myself. I know we made an error here, or at
14 least the court has told us we made an error. But to
15 try to do refunds and surcharges would be a far worse
16 error, because it's just not -- it doesn't meet what
17 the court was talking about, which is fairness and
18 equity in these cases.

19 So with that, I have a few questions to ask
20 some of the parties here, Madam Chairman, but I'll
21 second that motion.

22 **COMMISSIONER DEASON:** One other thought
23 before we go on -- and we can have as much discussion
24 as we like -- but I think one of the things that we're
25 going to have to concentrate on if we go forward with

1 this decision is try to somehow -- and we've tried it
2 before when it was not successful -- but try to
3 distinguish GTE from what is happening here presently.

4 And to me it is very important that what the
5 Commission did in GTE was that there was a one-time
6 surcharge on all customers, not one segment of the
7 customer group versus another, generally all customers
8 who subscribed to local service, and it was not a
9 usage based surcharge.

10 The customers that were on the system paid
11 the surcharge. It was a one-time thing, and it wasn't
12 in any way related to number of toll calls they made
13 or anything; so that it was that, a one-time flat
14 charge on every customer.

15 If we do a surcharge here, one of the gross
16 inequities is applying it to customers who cannot now
17 go back and change their consumption. If they had
18 known what those rates would have been back then,
19 perhaps their consumption would have changed. Perhaps
20 they would have chosen not to even be a customer of
21 Southern States if they knew what the rates were. But
22 now we're precluding that option from them, and how
23 you cannot call that retroactive ratemaking is beyond
24 me.

25 But I want to distinguish that what we did

1 in GTE was no usage based surcharge whatsoever; what's
2 being proposed here is a usage based surcharge.

3 **COMMISSIONER GARCIA:** And I also think that
4 in GTE it was easier to do equity because the amounts
5 were smaller, and you were only dealing with one
6 system and one base of customer. At least on that
7 ground, this is nowhere near that.

8 **COMMISSIONER DEASON:** And I think it's
9 important that GTE was just to the question of equity
10 between customers and --

11 **COMMISSIONER GARCIA:** Exactly.

12 **COMMISSIONER DEASON:** -- not a question of
13 equity between one customer group versus another
14 customer group.

15 **CHAIRMAN JOHNSON:** There --

16 **COMMISSIONER GARCIA:** Mike, I wanted to ask
17 you some questions. Mike, you -- I want to hear from
18 you what you think in terms of equity and how we do
19 equity.

20 I don't know how we do it, and perhaps you
21 know a way to do it, but I just can't see it. And I
22 know Staff is trained to do it, and I think that it
23 was a good recommendation on what they had before
24 them; but if you look at the broader picture, I just
25 don't see how we can meet the refund with surcharges.

1 while I want to keep that option open of a legislative
2 fix.

3 **MR. TWOMEY:** Commissioner, first I would ask
4 you to seriously consider giving your Staff the
5 courtesy of explaining their explanation before you
6 vote on this. I would implore you to do that.

7 Now, you are not a court of equity. I don't
8 care what anybody else at these tables says, you are
9 not a court of equity. This is not a determination of
10 first impression. You are here on a remand.

11 Now, all I can say, Commissioner Garcia, is
12 as your Staff said, the court said they seemed to
13 think I know or believe that the court said that --
14 two things; you have to do two things. You have to
15 make refunds and you have to make surcharges.

16 They didn't ask you to weigh any equities
17 involved in it. I don't care what that surplusage
18 language is. It's dicta.

19 Now, it's not just that opinion,
20 Commissioner. GTE -- and GTE didn't have any
21 problems. I don't -- there's differences. GTE didn't
22 have any problem whatsoever. The court made you take
23 customer money and give it to the utility, made you
24 take more than they, on an individual basis, received
25 the benefit of and give back more plus interest on

1 top.

2 So it's not a question of equity. You have
3 to look closely at what the court said that you had to
4 do to follow those directions. And don't -- again,
5 don't take my word for it. Please listen to what your
6 Staff has to say in this. It is an excellent
7 recommendation.

8 Now, as far as the mechanics and the
9 practicalities of this, SSU gave you that great big
10 box that has -- you made them do it. They did it
11 wrong the first time. I didn't -- I shouldn't say
12 wrong. They didn't give you what you wanted the first
13 time. They gave you back 5,000 sheets of paper.

14 And what you decided a long time ago, I
15 think, was is that if there was going to be refunds
16 and there were going to be surcharges, it wouldn't be
17 on an average basis, it would be based upon the
18 consumption of each person during the 28 months
19 involved; and they went and calculated that.

20 I don't know if it's right. I haven't
21 audited it. It's beyond my abilities to do that. But
22 they used their computers and they calculated a bill,
23 and they said, somebody got paid this too much and
24 somebody paid that.

25 Now, in terms of the mechanics of it, they

1 implement it; order surcharges over whatever time
2 period you would decide they pay it back; pay back
3 refunds over whatever period you decide. So I hope
4 that answers your question.

5 I understand the difficulty that you all are
6 facing in trying to deal with this, because there are
7 a lot of people out here who genuinely -- I don't
8 doubt anybody that's testified --

9 **COMMISSIONER GARCIA:** But, Mike, let's say
10 none of these people here -- let's say it's just you
11 and I. And I want to you tell me how I figure out,
12 how I can in some rational way figure out how to get
13 these people's money back to them, taking it from this
14 group in the changing reality that that is a consumer
15 base.

16 Let's say we give each of the parties two
17 years to pay this back. We surcharge one group and we
18 credit one group for the same amount until eventually
19 we reach that balance. What do we do when people move
20 away? What do we do when people die? What do we do
21 when people have disputes? I mean, all these things
22 are going to be happening.

23 And some of these are such huge amounts,
24 like the church where you can actually show up -- and
25 I'm sure that you can attach something -- but when

1 you're talking about a few hundred dollars, I mean,
2 the costs involved in getting that money back from
3 that client, what do I do with a client who simply
4 says, I'm no longer at this address, and puts the bill
5 in his wife's name? I just don't know how I can do
6 that, and that's what I'm asking, for some guidance
7 because --

8 MR. TWOMEY: Yes, sir. I --

9 COMMISSIONER GARCIA: -- you've seen that
10 problem.

11 MR. TWOMEY: I understand. And my response
12 to that is, is that that's the area I think your Staff
13 suggested that you needed to have the evidentiary
14 hearing after you made your decision on this; and
15 that's where you decide these things.

16 I think they're all capable of being
17 resolved. If you're asking me what kind of answer I
18 can give you to make you feel better about not taking
19 money away from these people by depriving my clients
20 of it, keep in mind out of every dollar that these
21 folks -- I'm saying the ones that were undercharged
22 under the rate structure -- every dollar, every penny
23 that there was a person that was undercharged, there
24 was somebody that was overcharged.

25 And I think it was incorrect for you all, if

1 you're assuming this, to assume that the people that
2 were forced to overpay over the course of 28 months
3 were any less financially disadvantaged or
4 economically disadvantaged than the ones that have to
5 pay it back. (Applause)

6 And what's your decision that it appears
7 you're on the verge of making is saying that what's
8 done is done, and the people that were overcharged,
9 they're out of luck. So I can't give you an easy
10 solution, because it is clear there is not an easy
11 solution to this problem. I appreciate your asking.

12 **CHAIRMAN JOHNSON:** Mr. Twomey, listening to
13 your comments and to Mr. Marks and to the other
14 Commissioners here, in a lot of ways you are correct.

15 When we talk about the GTE opinion, and
16 perhaps even the Southern States opinion, and we talk
17 about equity and fairness, certainly the court said we
18 had to look at the ratepayers and the company and make
19 sure that what we did was equitable and fair.

20 But as it relates to the customers,
21 certainly I agree that it is not fair to make
22 customers who perhaps paid less than they will be
23 required to pay under the new regulatory regime, it's
24 not fair to go back and say, oh, even though you
25 didn't know how much your water costs, and it cost

1 more than you thought, you've got to give us that
2 money.

3 But on the other hand it's not fair to make
4 the customers who thought they were paying too much,
5 who filed all of these appeals, who said from the
6 beginning, no, we shouldn't have to pay this, but they
7 were forced to pay it or their water would have been
8 turned off. So the fair -- it is a very, very, very
9 difficult predicament to be in, because there is no
10 way for this Commission to come up with a decision
11 that is equitable and fair to everyone.

12 So I'm sympathetic to your arguments about
13 what do these people do that overpaid, and we've been
14 trying to get that rectified. But we've got to do
15 something. You know, you send one order up that said
16 require refunds but don't surcharge, and they sent
17 that back to us. So what are our other solutions?

18 **MR. TWOMEY:** Commissioner, I implore you,
19 listen to your Staff explain their -- give them a
20 chance to explain their recommendation.

21 **MR. MCGLOTHLIN:** Excuse me. Chairman
22 Johnson and Commissioner Garcia, before you all go
23 further down the road, could I --

24 **CHAIRMAN JOHNSON:** Yeah. Hold on a second.
25 This gentleman, Mr. Jacobs, he raised his hand a long

1 time ago, and I'm going to allow him to speak first,
2 and I did -- I acknowledged him. And I'll allow you
3 to speak.

4 **MR. JACOBS:** Thank you very much, Madam
5 Chairman. I would submit to you I think there is a
6 way to solve this problem. And I stated earlier, you
7 know, I'm not very good at predicting the courts, but
8 I'm a fair predictor of the Legislature. Fair; fair
9 as anybody can be. I've been involved in both
10 processes over 30 years.

11 And I would submit to you that today you had
12 a senator and a representative here who said "I know
13 where the money is. The money is in your coffers."
14 Y'all didn't object to them coming after your money in
15 your coffers. And they said, "We'll get that
16 authority for you to spend that money and then you can
17 do equity, you can be fair, and you can pay back to
18 those folks who have been overcharged."

19 Both those representatives of the
20 Legislature said they thought that folks who overpaid
21 ought to be rebated. They just said that the people
22 who are going to be surcharged ought not to be
23 surcharged. And they offered you a solution. It's a
24 win/win for everybody.

25 I would submit to you that if you vote to

1 have no rebate -- and certainly incumbent with that is
2 no surcharge -- that that's going to be in the courts;
3 it's going to be appealed. We're going to be dragging
4 it out again, and then it's up to us who are
5 representing the folks that ought to be rebated to go
6 out and get busloads of folks and drive them all over
7 the place and show up and get everybody aggravated and
8 upset and we go on with another year or so. The
9 millennium is close upon us. I'd like to see the end
10 of this prior to that date.

11 And I submit to you that you have the money,
12 the money is there. You didn't object to them talking
13 about taking your money.

14 COMMISSIONER DEASON: Mr. Jacobs, that's not
15 our money.

16 MR. JACOBS: Okay. I mean --

17 COMMISSIONER DEASON: It's regulatory trust
18 fund --

19 MR. JACOBS: Who's --

20 COMMISSIONER DEASON: We have no control
21 whatsoever --

22 MR. JACOBS: Who's everyone --

23 COMMISSIONER DEASON: -- that fund unless
24 the Legislature appropriates it --

25 MR. JACOBS: I know you don't have

1 control --

2 (Simultaneous conversation.)

3 **MR. JACOBS:** I know you don't have control.
4 If I misstated that, I'm sorry. Some people call it a
5 slush fund. I know it's not a slush fund. So you
6 didn't object to that, so I didn't think you'd object
7 to this. (Laughter)

8 But I would submit to you --

9 **COMMISSIONER DEASON:** I asked Mr. Ward where
10 our slush fund was. He assured me that there's no
11 such --

12 **MR. JACOBS:** I was going to say I hadn't
13 seen a whole lot of slush around here, so I -- but I
14 would submit to you that there is a solution out
15 there, and if you take what I consider to be
16 precipitous acts, and you vote and then it's again a
17 confrontation and we go forward, to me the idea of
18 waiting a couple months, a few months -- and I
19 represent folks who are supposed to get money back,
20 and if we don't mind waiting to see if the Legislature
21 can't solve this problem with your cooperation, with
22 our cooperation, the utility company is not opposed.
23 I don't know anybody who is opposed to that at all all
24 day long.

25 And so I submit to you, why raise another

1 issue which has to be confronted in the courts for
2 more delay, more cause to be concerned by everybody
3 and the machinations of all kinds of folks and the
4 anguish over it, why not just let's just wait through
5 the process and see if the Legislature won't fund this
6 thing? I believe they will.

7 I think if you took the energy that I've
8 seen in this room today and you put it behind that
9 issue before the Legislature, it's going to pass. And
10 I'm a guy that's supposed to receive money.

11 So I would submit to you that I think that's
12 an equitable way to move. Everybody here can go home
13 and enjoy Christmas, not worry about it. But if you
14 make a decision tonight that's going to cause one side
15 or the other to appeal you, you know, you haven't
16 served anybody, and that's -- I firmly believe that.

17 I think you have been given an opportunity
18 here today to solve this problem in an equitable and a
19 fair way and so it has an end. And there's a certain
20 equality that this project finally coming to some
21 conclusion --

22 **COMMISSIONER GARCIA:** Let me just --

23 **COMMISSIONER DEASON:** There's two thoughts.
24 First of all, we're under a remand from the court. I
25 think we have an obligation to affirmatively go

1 forward. The second thing is I don't want to give
2 false hope out there that there's going to be a
3 legislative fix to this thing and solve everybody's
4 problems.

5 If there is a legislative solution, great,
6 but I don't want this Commission's decision to give
7 false hope to customers that they're going to get a
8 refund via legislative action.

9 MR. JACOBS: May I respond?

10 CHAIRMAN JOHNSON: Yes.

11 MR. JACOBS: I submit to you, Commissioner
12 Deason -- and I want you to know I agreed with
13 everything you said about all these processes except
14 right now -- and I submit to you that you're giving
15 them false hope when you vote tonight to say
16 no refund/no surcharge, because that's going to be
17 appealed and you don't know what the court is going to
18 do.

19 I would also submit to you that the court
20 has not said, do this in six months, do this in eight
21 months, or do it in ten months.

22 COMMISSIONER GARCIA: So what would you
23 suggest we do, Mr. Jacobs?

24 MR. JACOBS: I would suggest that you defer
25 this matter until after the Legislature meets --

1 (Audience comments.)

2 MR. JACOBS: -- that the pressure is on the
3 Legislature to solve the problem.

4 CHAIRMAN JOHNSON: Hold on, Mr. Jacobs.

5 MR. JACOBS: In that way -- and again --

6 CHAIRMAN JOHNSON: Ladies and gentlemen in
7 the audience, we cannot hear his comments, and we need
8 to do that as a part our deliberative process. If you
9 could hold down the noise.

10 Mr. Jabobs?

11 MR. JACOBS: I'm not here to ride the wave
12 of popularity up and down. I just would submit to you
13 that there are both sides of this issue. There are
14 folks who have paid overly over 28 and a-third months.
15 They deserve to have the money returned. You agree
16 with that. The senator agreed with that and the
17 representative agreed with that. I don't think
18 anybody in this room would disagree with that.

19 All right. How do you solve that problem?

20 Well, I submit to you the way you solve it is that you
21 have this -- excuse me -- there's a trust fund out
22 there that the Legislature has to give you authority
23 to spend, so let them give you that authority; and I
24 submit to you I think the chances are very, very
25 excellent that that will be done.

1 I think there also -- I can almost guarantee
2 you if you vote tonight -- and I'm not -- that's not a
3 threat on anybody's part. There's just lawyers out
4 here -- but if you vote tonight no rebate, you know
5 that's going to be tied up in the courts, and you know
6 we're going to be back here at some further juncture.
7 And I think our chances of winning are better than the
8 other side because we have some real good indicia from
9 the court as to how they would rule.

10 So I think the best path for everybody to
11 have security that this is going to be done, and one
12 that's within their control, one that's in the control
13 of the people in this room tonight, is to have your
14 elected representatives pass this measure in the
15 Legislature. And they have a lot more control over
16 that than they do over the 1st District Court of
17 Appeals, and their best forum for their resolution and
18 our resolution is in the Legislature, not in the
19 1st DCA.

20 And so I would submit to you that if we move
21 forward tonight to defer this matter beyond the
22 legislative session, I think you have an opportunity
23 for a win/win, and if we would utilize the energy the
24 company had committed, that they would support that.

25 The other lawyers in this table have

1 committed that they would support that rebate coming
2 from the Legislature's authority to spend that money.
3 I would submit to you we're all better served, we have
4 an end in sight and it's over, and there is control by
5 the people to see that that does get done; and I offer
6 that to you as, I think, a solution for everybody.

7 **CHAIRMAN JOHNSON:** Thank you.

8 **UNIDENTIFIED SPEAKER:** Madam Chair?

9 **CHAIRMAN JOHNSON:** One moment.

10 Mr. McGlothlin is next.

11 **MR. MCGLOTHLIN:** This is not in response to
12 the last comments, but in response to the dialogue
13 between Commissioner Garcia and Mr. Twomey. And so
14 that you have the full picture of the issue of law of
15 the case, including your Staff's view of law of the
16 case -- and I'm certain they will speak for
17 themselves -- but there was the suggestion that goes
18 beyond the assertion that you have no discretion,
19 which has always been Mr. Twomey's argument.

20 His suggestion now is that even the Staff
21 sees this as a hard and fast situation. I'm reading
22 from Page 27 of the Staff recommendation. "However,
23 consistent with the positions of Keystone-Marion,
24 Derouin et al and FWSC, it can reasonably be argued
25 that since the refund issue was a material issue

1 before the 1st District, the court would not impliedly
2 affirm by silence such a core issue. If the court
3 intended to affirm the refund portion of the
4 Commission's order, it could have expressly done so.
5 Further, courts do not always reach all issues
6 presented to them, answer only those questions that
7 need to be answered to dispose of a matter. Thus, a
8 good faith argument can be made that the Commission
9 should review not only the issue of surcharge, but the
10 issue of refund also."

11 Commissioners, my view is that the stronger
12 legal analysis is that the 1st District Court did not
13 give you a decision that you have to require refunds.
14 And that being the case, Commissioners, you needn't
15 feel badly before about the fact that you're wrestling
16 with fairness and equity, because if there is no legal
17 requirement that a refund be made, then the whole case
18 is what is fair and what is equitable, and your focus
19 is where it should be.

20 **CHAIRMAN JOHNSON:** Thank you. Mr. Marks?

21 **MR. MARKS:** Thank you, Madam Chair.

22 Mr. Twomey indicated that this is not a court of
23 equity. I think that's correct, but that does not
24 preclude you from imposing an equitable solution.
25 This Commission has done that on many, many occasions

1 in the past.

2 I want to comment also on Mr. Jacob's
3 comments related to the legislative solution. I know
4 he represented that all the attorneys at this table --
5 and I'm not at that table right there -- would not
6 disagree with that legislative solution. But I have
7 not conferred with my client on that. So I cannot
8 stand here or sit here this afternoon and tell you
9 that I would agree with that legislative solution.

10 And I'm not sure whether or not that
11 legislative solution would be appropriate in the first
12 place, because as I understand it, obtaining those
13 funds from the regulatory trust fund will require all
14 of the ratepayers in the state of Florida to fund that
15 surcharge to fund those refunds. And I'm not so sure
16 if there's an equitable solution for all other
17 ratepayers to do that, to be very honest with you. It
18 may be, and it may be that the Legislature can do
19 that.

20 Now, as far as the courts are concerned, I
21 think that if this matter is approached in an
22 appropriate manner, as we have suggested here, and
23 that there not be any refunds or a surcharge, I'm
24 inclined to think the courts can resolve that issue
25 and take a very, very close look at it. And I think

1 it would stop, as I indicated earlier, stop the
2 bleeding in this matter and we can all move forward.
3 Thank you.

4 **CHAIRMAN JOHNSON:** Mr. Marks, I have a
5 question for you. Understanding your argument and
6 your position as it relates to equity, how is it
7 equitable for us to not provide those customers with
8 the refunds?

9 There are two issues that we need to
10 resolve; one, the law of the case and how it should be
11 applied. I've heard the arguments as to why it's not
12 really applicable here. But we also have the
13 standards of fairness and equity. How will we be able
14 to argue -- because I'm certain if we don't allow the
15 refunds, this will go up -- how do we argue that this
16 is consistent with GTE, that this is consistent with
17 the DCA opinion?

18 **MR. MARKS:** First of all, I guess we all can
19 be convinced if you say no surcharges and no refunds,
20 that it will be appealed. I'm not absolutely
21 convinced of that. I think that if the parties take a
22 look at that, maybe they will see the wisdom in that
23 kind of a decision in not taking this up on appeal.

24 But, nevertheless, having said that and
25 realizing that it might draw a few snickers through

1 this crowd, let me address the second part of that. I
2 think you have to look at --

3 **COMMISSIONER GARCIA:** Just in case you don't
4 know, we're in appeal now, if I'm not mistaken, with
5 the modified stand-alone rates, correct? We're before
6 the court. So we could get even that --

7 **MR. MARKS:** That's --

8 **COMMISSIONER GARCIA:** -- as we went forward
9 with a refund -- if we went forward with a refund
10 surcharge, then we'd have to look at what outcome the
11 court deciding against this Commission on that would
12 have and how that would play out with what we have.

13 **MR. MARKS:** Madam Chair, equity, as I
14 understand it, generally will impose some inequitable
15 solutions on some parties, and I don't think you can
16 get around that. I think it's quite clear that if
17 you, under these circumstances, do not allow a refund,
18 that some people are going to lose as a result of
19 that. And there are going to be some winners, because
20 they don't have to -- they won't have to provide a
21 surcharge.

22 I really honestly believe that under those
23 circumstances, I don't think equity would allow you to
24 get around that particular result.

25 The fact of the matter is you might want to

1 look at this in terms, as I think it may have been
2 said, in terms of a rate case proceeding, and
3 prospectively go forward.

4 Those persons who had to pay more,
5 unfortunately had a rate increase. Those persons who
6 had to pay less, fortunately had a rate decrease. But
7 I would suggest to you that probably the appropriate
8 solution is just to move forward at this point in
9 time, and that would resolve a lot of the problems
10 that we have. Thank you.

11 **CHAIRMAN JOHNSON:** Did you have a question?

12 **COMMISSIONER CLARK:** There's a motion. Can
13 you restate your motion? And I know you indicated you
14 wanted to give some accommodation to the possibility
15 of the Legislature acting, and I was just wondering
16 how we could do that, given the idea that there might
17 be a problem with ex post facto, although I don't see
18 it, but how would we --

19 **COMMISSIONER DEASON:** It seems to me that we
20 can include in our order, we can order Southern States
21 or Florida Water Services to keep all the information
22 intact to provide a refund if there is a funding
23 source obtained and have the mechanism in place, or at
24 least the concept that it's going to be funded from
25 that source, not surcharges, and for them to have the

1 necessary information to identify these people who are
2 entitled to a refund and to implement that refund.

3 Now, if that is the decision that's made by
4 the Legislature, we may have to have some type of
5 further proceeding to further define and refine the
6 actual process that's going to take place. I can't at
7 this point envision all that may be involved in that.
8 A great deal of that may depend on actually the way
9 the legislation is written and adopted.

10 But I think that in our order we can require
11 that information to preserve so if that were the
12 decision of the Legislature, to go ahead and have that
13 implemented. I think we can have language in the
14 order doing that.

15 I also think it's important to have language
16 in our order describing all of the different, various
17 scenarios that we considered if there were to be a
18 refund and surcharges, and that that, all of the
19 complexities and the inherent inequities within each
20 one of those options, is one of the reasons we
21 factored in in coming to our ultimate decision that
22 the most equitable solution -- not saying that it is
23 pure 100% equitable to every individual customer --
24 that the most equitable solution is
25 no refunds/no surcharges, and have that part of the

1 order.

2 **COMMISSIONER CLARK:** Thank you. I
3 understand it now.

4 **MS. JABER:** Commissioners, may I ask a
5 question in the event this is moved?

6 Your motion is no refund/no surcharge, but
7 you want the utility to maintain all of the records in
8 the event the Legislature does do something in the
9 interim while there's an appeal pending?

10 **COMMISSIONER DEASON:** I guess the decision
11 is no surcharge, which under the 1st DCA means there
12 can be no refund, okay; unless there is another
13 source, that the source of the refund cannot be --
14 under our interpretation of equity, which the court
15 may overturn -- but under our interpretation of equity
16 that the source of the refund cannot be surcharges on
17 these customers.

18 A lot of the reasons which I've tried to
19 describe are reasons contained in your own
20 recommendation and some things, I think, that
21 distinguish this case from GTE.

22 **MS. JABER:** And I need to ask you about
23 that, too. I understand the impossibility of
24 implementing some sort of mechanism that's feasible.
25 We all recognize that. That's not a problem. I think

1 I can write an order that says you reject the legal
2 analysis of the no refund part, and you're moving no
3 surcharge because of the new inequities that arise.

4 **COMMISSIONER DEASON:** Absolutely.

5 **MS. JABER:** As Staff counsel, I need to
6 caution you against trying to find a distinguishing
7 factor between GTE and this case again. I think that
8 that part of the opinion is very clear. I think that
9 they are saying GTE is applicable. So in writing the
10 order, I know I would have difficulty writing that
11 order.

12 **COMMISSIONER DEASON:** It's applicable, but
13 only to the extent that the company has to be made
14 whole from customers. It doesn't say a word about
15 customer to customer inequities or a way to try to
16 eliminate --

17 **MS. JABER:** But actually it does.

18 **COMMISSIONER DEASON:** -- to rectify that.

19 **MS. JABER:** Actually it does. It --

20 **COMMISSIONER GARCIA:** Ms. Davis maybe could
21 help us with formulating that, because I believe that
22 Noreen, I think, agreed with the position of
23 no refund/no surcharge, and so maybe she could lend --

24 **COMMISSIONER CLARK:** While she's coming up,
25 Lila, would you say what it is that you have concern

1 with?

2 **MS. JABER:** It's just that the Southern
3 States opinion in talking about GTE does recognize
4 that you have three interests. They've been there.
5 They've done that. They've said, yeah, we know that
6 in GTE it was the customers versus the utility, so to
7 speak.

8 But in Southern States you've got three
9 groups, and you've got to keep the interests of all
10 three groups in mind, and where you erred was that you
11 only took the interests of the refund people into
12 account and, of course, the surcharge people because
13 you didn't order a surcharge.

14 **COMMISSIONER CLARK:** You can't say "and of
15 course the surcharge people."

16 **MS. JABER:** Well, the potential --

17 **COMMISSIONER CLARK:** Because they told us to
18 hold a hearing and consider the potential refund
19 charges, and I think what Commissioner Deason is
20 saying is that while GTE considered it between two
21 parties, you recognized yourself, court, that there
22 were three parties, and now we have looked at the
23 equities from a surcharge standpoint. I think that's
24 what he's saying --

25 **COMMISSIONER DEASON:** We've done exactly

1 what the court told us to do. We have listened to
2 those persons that we have given intervention status
3 to, and they have informed us about what they consider
4 to be the inequities of a surcharge. And I think
5 that's exactly what the court decision wanted us to
6 do.

7 See, I'm not -- but I'm not at the point of
8 interpreting that that says there must be refunds and
9 surcharges and the only question is what mechanism we
10 put in place.

11 MS. JABER: And, again, I go back to say I
12 can understand that. That's not what I'm cautioning
13 you to be careful about. I'm cautioning you to be
14 careful about looking for a distinction between the
15 two cases that might not be there.

16 This is Lila two years ago saying SSU didn't
17 assume the risk. That's not a distinct -- a
18 distinguishing factor. I'm doing it again. I'm
19 saying, be careful in looking for a distinguishing
20 factor that may not be there.

21 I think that the Southern States decision is
22 very clear in that regard. They've taken every factor
23 in your order for saying no surcharge previously, and
24 they've said it didn't work, it didn't work, it didn't
25 work. SSU didn't assume the risk. The notice wasn't

1 a problem. The lack of representation was a problem.

2 I can write an order that says "We the
3 Commission as a body can't implement any sort of
4 surcharge mechanism because it's practically
5 impossible."

6 **COMMISSIONER DEASON:** Do you disagree that
7 the GTE decision was not a usage based surcharge and
8 what is contemplated here is a usaged based surcharge,
9 and you think that is not a distinction --

10 **MS. JABER:** No, but here's --

11 **COMMISSIONER DEASON:** -- has any
12 importance --

13 **MS. JABER:** No, but where they're alike, gTE
14 was an order -- was an opinion that recognized that
15 the clear -- that the Commission issued an order that
16 was clearly erroneous; the same thing with this case.
17 What the court has said is this was a clearly
18 erroneous order. GTE is applicable in that regard.
19 They don't get to the facts and the circumstances of
20 the case. It's more -- it's broad.

21 **COMMISSIONER CLARK:** But, Lila, I think
22 you're talking past each other, because what
23 Commissioner Deason is saying is you sent it back to
24 us and said we need to consider the equities between
25 the three parties, and they also said to us, you

1 better hear from potential surcharges. Why would we
2 hear from them if it wasn't an option to say if it's
3 inequitable to the -- either refund?

4 MS. JABER: What if they just wanted you to
5 hear from them to determine what the mechanism should
6 be or what the period of time should be, or whether
7 there were other --

8 COMMISSIONER CLARK: Well, I agree with you,
9 Lila, that that may be, in fact, what they said, but
10 for you to conclude right now that it isn't one of
11 the -- they specifically precluded that, I'm not sure
12 they have.

13 COMMISSIONER GARCIA: But I think that
14 should be part of the rationale that it can't be done.
15 I mean -- and obviously you said you have no problem
16 in stating that part of it; and I think that's part of
17 the reason that it should be included, because --
18 Commissioner, you're an accountant. You probably know
19 that there's only a certain way you can do things, and
20 I just don't see that we can do this, and that's, I
21 think, something that has to be included in this
22 Commission's order so that the court understands --
23 and I'm not saying it didn't when it made this
24 decision -- but so that the court understands the
25 complexities involved here and the impossibility of

1 what we were trying to do.

2 **COMMISSIONER DEASON:** To me, there's a
3 distinction between a one-time surcharge on every
4 customer not based upon any type of consumption level
5 or any choice that the customer had, other than they
6 were just signed up as a customer, they had to pay it.

7 To me, here was a very different situation,
8 and, again, along with the fact that there's a huge
9 difference in the amount of the refund, or surcharge
10 rather, the fact that that surcharge as it is proposed
11 would be based upon consumption that took place years
12 ago, and to me it is fundamentally unfair; and it goes
13 backs to the whole equity concept of what is in GTE.

14 It said, "Commission, you've got to do
15 what's fair and equitable," and, in GTE, said it
16 wasn't fair to GTE not to have their revenue
17 requirements met.

18 And we've tried to devise a way to try to do
19 it the most fair way that we could, and that's what we
20 did. I think we're under the same obligation here,
21 and I think that we have an obligation to weigh what
22 did we think is most equitable, and I'm coming down on
23 the side that there is no 100% equitable treatment for
24 everybody involved.

25 What is the -- to coin a new phrase, what is

1 the least inequitable? And to me the least
2 inequitable is to have no surcharges, and if that
3 means no refunds, so be it; even though I think that's
4 still inequitable.

5 **MS. DAVIS:** Commissioner, I think you've
6 nailed the issue right on the head. It seems to me
7 that we're not necessarily -- if you do decide to go
8 the no surcharge route, you're not necessarily
9 distinguishing GTE. You've applied GTE in your
10 analysis in that you have now looked at the interests
11 of all three of the players; the utility, the two
12 customer groups. And in applying the equity concept
13 enunciated in the GTE decision, you've come to the
14 conclusion that the only equity is to not make the
15 situation even worse by surcharging, because that
16 would have an iniquitous result by trying to do the
17 formula kind of equity that GTE seems to say.

18 **COMMISSIONER DEASON:** If it is poor legal
19 strategy to try to further distinguish GTE, I'll
20 remove that from my motion, because I think it's
21 still -- my motion is valid, I think, for the reasons
22 I've stated; that it is my interpretation of what I
23 consider to be equity is. And I think GTE stands for
24 the proposition that we have to infuse equity in our
25 decisions.

1 MS. DAVIS: Yes.

2 COMMISSIONER DEASON: And that we do have
3 some discretion, and I don't think that the 1st DCA
4 opinions mandated refunds and rebates -- I mean,
5 sorry -- and surcharges.

6 MR. McGLOTHLIN: Mr. Deason, could I offer
7 just one thought on the discussion?

8 CHAIRMAN JOHNSON: Hold on. Hold --

9 COMMISSIONER GARCIA: Hold on --

10 CHAIRMAN JOHNSON: -- on. There's a motion
11 and a second. Did the Commissioners -- do you have
12 any more --

13 COMMISSIONER GARCIA: I just wanted -- I
14 want our rationale to include what you discussed
15 earlier, Lila, which is the impossibility -- and I
16 hope that the Commissioner isn't precluding that with
17 his distinction of GTE.

18 I just think that we have to go beyond that
19 so that when we make the -- I'm sorry -- so that when
20 this order comes out, we address this, because I think
21 it is central, at least to my thinking.

22 We've been asked to do something that cannot
23 be done. We tried to do it. That's why we heard from
24 the customers, and we can't do it. And I think that's
25 also got to be part of the rationale that we use in

1 arriving at this decision.

2 **CHAIRMAN JOHNSON:** Did you have a question,
3 commissioner Clark?

4 **COMMISSIONER CLARK:** No, I have no more
5 questions.

6 **COMMISSIONER DEASON:** Well, if I can indulge
7 the Commission for a moment, I'd like to hear from
8 Mr. McGlothlin. I thought he had a comment in
9 relation to the motion, and I would like to hear that.

10 **CHAIRMAN JOHNSON:** Mr. McGlothlin?

11 **MR. MCGLOTHLIN:** It's very brief.

12 **CHAIRMAN JOHNSON:** One of the attorneys is
13 getting ready to respond to Commissioner Deason.

14 (Audience comments.)

15 Mr. McGlothlin, if you could continue.

16 **COMMISSIONER DEASON:** Briefly.

17 **MR. MCGLOTHLIN:** It will be very brief. On
18 the subject of the applicability or distinction --
19 distinguishing of the --

20 **CHAIRMAN JOHNSON:** Speak loudly.

21 **MR. MCGLOTHLIN:** As to the GTE case, one
22 observation is that in that case a surcharge was
23 necessary in order to make the utility whole because
24 the utility had been disallowed the collection
25 expenses. That's not true here, but in addition to

1 that, there's this language in the opinion.

2 "Finally we address the structure of the
3 current surcharge. The PSC has acknowledged it has
4 the ability to closely tailor the implementation of
5 refunds and to accurately monitor refund payments to
6 ensure that the recipients of such refunds truly are
7 those who were overcharged. While no procedure can
8 perfectly account for the transient nature of utility
9 customers, we envision that the surcharge in this case
10 can be administered with the same standard of care
11 afforded to refunds," et cetera.

12 So it appears to me that the GTE court
13 viewed the implementation of a refund and surcharge,
14 or that type of a step, as manageable with a certain
15 degree of precision. And I think what you
16 Commissioners have discussed today is the very
17 different circumstances you have here.

18 **CHAIRMAN JOHNSON:** Okay. There's a motion
19 and a second. The Commissioners don't have any other
20 questions and we've heard from all the attorneys. Any
21 further discussion? (Audience comments.)

22 **COMMISSIONER DEASON:** The motion is no
23 refunds/no surcharges, and the only way there could be
24 a refund, if there's a source of funding that refund
25 other than surcharging customers. (Applause)

1 **CHAIRMAN JOHNSON:** There's a motion and a
2 second. Any further discussion? Seeing none, all
3 those in favor signify by saying aye.

4 Opposed? (Audience comments.)

5 The motion passes on a three to two vote.
6 (Applause and audience comments.)

7 **COMMISSIONER CLARK:** Madame Chair, the
8 only -- I guess it's not -- (Audience comments.)

9 **CHAIRMAN JOHNSON:** We'll go off the record
10 and let them leave.

11 **COMMISSIONER CLARK:** I just wanted to
12 indicate that I voted in favor of it. I would go one
13 step further --

14 **CHAIRMAN JOHNSON:** Susan, wait. Let's wait.

15 **COMMISSIONER CLARK:** Okay.

16 **CHAIRMAN JOHNSON:** We're going to go off the
17 record until the room settles down. If you'd like to
18 sit and hear the rest of our proceeding, that's fine.
19 If not, if you could as quickly as possible exit the
20 room, that would be helpful. (Pause)

21 We'll go back on the record. Commissioner
22 Clark?

23 **COMMISSIONER CLARK:** Madam Chair, I voted
24 for the motion. The only thing I would have done was
25 also have said, you know, if the court tells us we

1 have to do it, I would have gone ahead and had the
2 hearing and gotten a method to do that, because I'm
3 just concerned about it coming back to us when we
4 think we've done the right thing. But there seemed to
5 be no sentiment for that, and --

6 COMMISSIONER GARCIA: Madame --

7 COMMISSIONER CLARK: -- that's -- and I am
8 supportive of what was moved.

9 COMMISSIONER GARCIA: Commissioner --

10 CHAIRMAN JOHNSON: We need to vote again,
11 because she couldn't even record the vote and then we
12 can go through the explanations of the vote.

13 She recorded the motion. So I can go back
14 to all those in favor -- she recorded the motion and
15 the second.

16 All those in favor, signify by saying aye.

17 COMMISSIONER CLARK: Aye.

18 COMMISSIONER DEASON: Aye.

19 COMMISSIONER GARCIA: Aye.

20 CHAIRMAN JOHNSON: Opposed, nay.

21 COMMISSIONER KIESLING: Nay.

22 CHAIRMAN JOHNSON: Nay. The vote passes on
23 a three to two vote.

24 COMMISSIONER GARCIA: Let me just say,
25 Commissioner Clark, while I thought your idea had

1 merit, I just don't know how you give the court a
2 suggestion in case you overturn us, and God knows what
3 they're going to have in that decision. We've been
4 surprised several times throughout this proceeding in
5 how they interpreted what we had done before.

6 But let me ask Staff. Issue 4 doesn't have
7 to be addressed now?

8 MS. JABER: No.

9 COMMISSIONER CLARK: But Issue 5 does.

10 COMMISSIONER GARCIA: But Issue 5 does.

11 MS. JABER: Right.

12 COMMISSIONER GARCIA: And in Issue 5 are we
13 going to listen to the parties, or can we just move
14 it?

15 CHAIRMAN JOHNSON: We can move, I think.
16 Wait. Let me make sure I know what it is. Oh. Is
17 this --

18 COMMISSIONER CLARK: Spring Hill.

19 CHAIRMAN JOHNSON: This is Spring Hill
20 issue. We did say we would give the parties five
21 minutes to address it.

22 MS. JABER: Commissioners, I believe that
23 OPC has already addressed it.

24 CHAIRMAN JOHNSON: They've waived. Okay.
25 Fine. Do you have any additional comments, or it's

1 been waived?

2 **MR. ARMSTRONG:** Madame Chair, we do have
3 some additional comments regarding this issue. As I
4 indicated in my prior comments -- and I won't
5 re-address it -- but the facts and circumstances that
6 existed put Southern States in a -- or Florida Water
7 in a quandary as to whether or not we can go ahead and
8 modify an automatic stay which applied as a result of
9 the Keystone Heights appeal.

10 And since we had been in the position at
11 that time and had an order of this Commission before
12 the court of appeals that said "You moved to modify an
13 automatic stay, therefore, we're holding you
14 accountable for the ramifications of that," we
15 couldn't do anything, because we knew, as I said
16 before, if we had appealed the Commission's
17 determination to change the rate structure of -- to a
18 modified stand-alone rate; if we had vacated that had
19 automatic stay, come in and said put in the modified
20 stand-alone rates, and then found that the court of
21 appeals affirmed and upheld our appeal, then what
22 would happen?

23 **COMMISSIONER KIESLING:** Could I ask you a
24 question to help me clarify these arguments?

25 **MR. ARMSTRONG:** Sure.

1 **COMMISSIONER KIESLING:** And my question is
2 really a very simple one. We know what revenue
3 requirement you are entitled to collect, and we know
4 now what you collected from while the uniform rates
5 were in effect and while the modified rates were in
6 effect.

7 Did you collect from the Spring Hill
8 customers more than was -- than should have been --
9 more than the modified stand-alone rates during that
10 time period that we're talking about from January to
11 June?

12 **MR. ARMSTRONG:** During that period of time
13 the company collected more under -- because the
14 uniform rates remained in effect and we had no other
15 alternative structure to go to.

16 **COMMISSIONER KIESLING:** I don't need to hear
17 your arguments. All I want to know is follow the
18 dollars.

19 **MR. ARMSTRONG:** We collected more than we
20 would have collected under the modified stand-alone
21 rate structure.

22 **COMMISSIONER KIESLING:** So you collected
23 more than what we had designed as it related to your
24 revenue requirement?

25 **MR. ARMSTRONG:** No. And that's the crux of

1 the matter; that this Commission never did design
2 modified stand-alone rates for Spring Hill, because
3 where you designed the modified stand-alone rates was
4 in January of 1996 in another docket for those other
5 facilities. It wasn't until August of 1996 that you
6 designed anything that had to do with Spring Hill.

7 **COMMISSIONER CLARK:** Yes. And at that time
8 didn't we say you need to reduce the rates?

9 **MR. ARMSTRONG:** At that time you suggested
10 we needed to reduce the rates. At that time the issue
11 was pending before the court of appeals as to whether
12 or not we will be held accountable if you move to
13 vacate a stay that applied when Keystone Heights
14 appealed the decision.

15 **COMMISSIONER CLARK:** Well, I guess what it
16 boils down to me what was -- we had adjusted the
17 revenue coming in for the other systems to the
18 stand-alone, so you recovered your rates.

19 I felt like you should have on your own
20 adjusted the Spring Hill rates. And I know that you
21 also entered into an agreement on rates with them, and
22 it seems to me at that time you should have addressed
23 the issue; and I feel like the refund is due.

24 **MR. ARMSTRONG:** And in answer to that,
25 there's no evidence before this Commission that we

1 were overearning at any time during the period of time
2 these rates were in effect.

3 **COMMISSIONER CLARK:** Yes. But then we would
4 have a whole new rate case to see what you were doing
5 otherwise to not overearn. What you're saying to me,
6 Mr. Armstrong, is the only reason you didn't overearn
7 is the rate structure.

8 **MR. ARMSTRONG:** What I'm saying is we did
9 not overearn, period. And I think before -- if you're
10 going to say no refunds and no surcharges regarding
11 the other issue, I don't see how it's even possible to
12 suggest that now the company can be held accountable
13 for what happened in another docket, irrespective of
14 this docket, what happened in another docket when
15 rates changed there.

16 Now we get held accountable even though we
17 were not overearning at any point in time. I don't
18 think that's the fairness that we're talking about.
19 What the Staff recommendation says is use the cudgel
20 of not -- these aren't guaranteed rates of return;
21 these are just allowed rates of return.

22 The company was not overearning during that
23 period of time, and yet we are told "You should have
24 reduced rates to underearn, and by the way, you only
25 could have reduced those rates if you modified a stay,

1 and by the way, we just nailed you and extracted
2 retribution against you for modifying a stay before;
3 so should you be successful on your appeal, don't come
4 and ask us to give you back that uniform rate and give
5 you those -- when people come and claim, why did you
6 switch me from modified stand-alone rates to something
7 else, don't come back and talk to me about it."

8 **COMMISSIONER CLARK:** Let me ask the question
9 this way: Did we address all the other rates to the
10 necessary stand-alone rates for your revenue
11 requirement?

12 **MR. ARMSTRONG:** In another docket in the
13 1995 rate case --

14 **COMMISSIONER CLARK:** Don't tell me about
15 dockets. Did we do that?

16 **MR. ARMSTRONG:** Based on another test year,
17 based on other facts and circumstances, based on an
18 docket where you first said bring in Spring Hill, then
19 you said let them out, which wasted a lot of time and
20 money and effort, and denied us a rate relief for
21 another period of time based on the Hernando County
22 board having taken back jurisdiction, the Hernando
23 County Board now having come in and spoken with us and
24 we reached a settlement, and no counsel at this table
25 participated in that settlement other than I and the

1 Hernando County Board, and we reached a settlement
2 where we agreed that we would take \$1.6 million less
3 than our cost of service through the year 2,000.

4 And we all acknowledged this was a give-back
5 because the -- Spring Hill had paid higher rates. And
6 we said, and specifically in that agreement, "Let's
7 let the Commission decide the refund issue." But
8 there we knew if there was going to be a determination
9 of refunds for this company, we're going to appeal
10 that, and it's going to go on for three years.

11 And I would like to caution as well, if
12 we're going to have the legislative solution based on
13 the ex post facto prohibitions, if you make a
14 determination of refunds in this case, the ex post
15 facto prohibition probably would say that the
16 Legislature can't take care of that situation. So,
17 Spring Hill won't get the refunds, because we'll
18 appeal and we'll be successful there as well.

19 **COMMISSIONER KIESLING:** Well, I'm willing to
20 test that.

21 **CHAIRMAN JOHNSON:** Public Counsel?

22 **MR. SHREVE:** Thank you, Madame Chairman.
23 I'll be very brief. I think all of you know what the
24 situation is here. You ordered -- after the court
25 made their finding, you ordered modified stand-alone

1 rates for the company across the board while Spring
2 Hill was still in. Spring Hill did not implement
3 those rates, so Spring Hill's rates were not lowered
4 at that point.

5 Then you granted, at their request, an
6 interim rate increase which was calculated without
7 Spring Hill. So the company was made whole at that
8 time. To make the company totally whole with Spring
9 Hill, all you really would have had to give them is
10 stand-alone rates.

11 The modified stand-alone rate is still a
12 little bit higher, but that's the order that was out
13 there. They're getting a windfall of that amount of
14 money anyway.

15 As far as their legislative decision, here
16 we're talking about not a situation where you had one
17 group of customers subsidizing another group of
18 customers. So it's totally different. If GTE stands
19 for anything as far as the company being able to make
20 a surcharge against a customer, surely it also means
21 that equity applies to the customers and not just to
22 the company.

23 Thank you.

24 **MR. ARMSTRONG:** Brief rebuttal, Madam Chair?

25 **MR. TWOMEY:** Let me go first, please, Madame

1 Chair. I represent Spring Hill Civic Association.

2 CHAIRMAN JOHNSON: Is your mike on?

3 MR. TWOMEY: Yes, it is.

4 CHAIRMAN JOHNSON: I'm sorry.

5 MR. TWOMEY: I represent Spring Hill Civic
6 Association, and Mr. Morrey Miller and Senator Ginny
7 Brown-Waite who, if I didn't mention it earlier, is
8 ill today and couldn't be here.

9 As Mr. Shreve said, this is pretty
10 clear-cut, or it should be pretty clear-cut. After
11 the uniform rates were found unlawful and reversed,
12 you went ahead and waited for the rest of the systems,
13 and you changed over by adopting modified stand-alone
14 rates, as I recall, in the interim rates in the new
15 rate case. You ordered at that time that all the
16 uniform rates would be eliminated.

17 Hernando County had taken back jurisdiction
18 from the Commission, and SSU did not lower the rates
19 from the uniform rates. They were still charging the
20 uniform rates which contained massive subsidies.

21 Because the rest of the systems at your
22 direction and order had gone to modified stand-alone
23 rates, which eliminated the vast majority of the
24 subsidies amongst the customer groups, the difference
25 was no longer; that is the massive subsidy inherent in

1 the Spring Hill uniform rate which is still being
2 charged didn't go anyplace else.

3 It couldn't go anyplace else, because that
4 system was now on a stand-alone basis truly in the
5 sense that it was regulated by Hernando County and not
6 this Commission.

7 SSU took the difference and they pocketed
8 it. That's my term. I like it. They took the
9 difference and they pocketed it for the benefit of
10 their shareholders until -- and they slipped through
11 the crack; and until you all came along later and
12 said, hey, wait a minute -- Mr. Shreve brought it to
13 your attention and said, "There's been a mistake here,
14 fix this," and you all do.

15 **COMMISSIONER CLARK:** You agree with Staff's
16 recommendation on this one?

17 **MR. TWOMEY:** Yes, I do; I do, indeed. And
18 I'll be brief. And now they come along and what
19 they're suggesting to you is they start -- they say,
20 let's look at earnings, okay. And that's totally
21 disingenuous. You don't look at earnings of anything.
22 What you look at is, is what the difference between
23 what the unlawful uniform rate was and what the
24 modified stand-alone rate was, which is still too
25 much, as Mr. Shreve pointed out. But you look at the

1 difference and you make them give that back.

2 And the last failing they had when they were
3 arguing about earnings is, if I understand it
4 correctly, is they want you to drag in -- they want
5 you to look at earnings on a company-wide basis, and
6 they want to drag in systems beyond your jurisdiction
7 that are included in Hillsborough County and other
8 places so they can say whatever the failings are --
9 regulation in there, the operation of our systems --
10 overall we weren't earning our return; therefore we
11 should keep it.

12 So I would urge you to adopt your Staff
13 recommendation and make them -- make the refunds.

14 Thank you.

15 **MR. ARMSTRONG:** The brief rebuttal is, there
16 is absolutely no windfall to the company. The rate
17 filing we made with the Hernando County Board
18 indicated a revenue requirement of \$7.9 million. We
19 agreed to \$6.3 revenue requirement on the basis that
20 the Spring Hill customers had paid more under uniform
21 rate for a period of time. So that the continuous
22 allegations of windfalls to the company are totally
23 inaccurate.

24 Thank you.

25 **CHAIRMAN JOHNSON:** Okay. Commissioners, any

1 questions? Is there a motion?

2 COMMISSIONER CLARK: I move Staff.

3 COMMISSIONER KIESLING: Second.

4 CHAIRMAN JOHNSON: There's a motion and a
5 second. Any further discussion?

6 Seeing none, all those in favor signify by
7 say aye.

8 COMMISSIONER CLARK: Aye.

9 COMMISSIONER DEASON: Aye.

10 COMMISSIONER GARCIA: Aye.

11 COMMISSIONER KIESLING: Aye.

12 CHAIRMAN JOHNSON: Aye. Opposed? Show it
13 approved unanimously.

14 MS. JABER: Commissioners, in Issue 6 I need
15 to modify the recommendation now. It should read that
16 the docket should be closed upon expiration of the
17 appeal time. I do want to clarify also that we will
18 be doing an order during the normal course of the 20
19 days.

20 COMMISSIONER KIESLING: I'm probably going
21 to write a dissent, and so I'll need to coordinate
22 that with you.

23 MS. JABER: No problem.

24 CHAIRMAN JOHNSON: Mr. Twomey, you had one
25 question?

1 **MR. TWOMEY:** Yes, ma'am. I don't mean to
2 belabor this, Madame Chairman, but, I mean, you voted
3 and everything. I don't understand the -- which --
4 what the impossibility is, and I don't know if your
5 Staff attorneys understand, but if it's at all
6 possible, I would request that you specifically, or
7 more specifically, state what the impossibility is
8 that you find in carrying out any refunds and
9 surcharges that led you to decide that you can't do
10 this.

11 I mean, I don't know if it's a mechanical
12 impossibility, accounting impossibility, the
13 impossibility to do equity both ways. I mean, there's
14 a difference. And rather than just let your Staff
15 wander about trying to -- maybe they understand it
16 better than I do, but I would ask you to state what is
17 the impossibility. Is it equity impossibility, ease
18 of administration of the refunds, or what is it?

19 **COMMISSIONER DEASON:** In my opinion, the
20 impossibility is 100% equity to every customer
21 involved. That, to me, is the impossibility. Now
22 it's highlighted by a lot of the other practical
23 considerations which were considered in the issue
24 which we did not vote on, but Staff has a very, under
25 your own words, a very excellent recommendation under

1 your own words concerning that. That's what my
2 concern is.

3 I think there's no way to be 100% equitable
4 to every customer. That's where the impossibility
5 lies. Now, the people that voted with that motion may
6 have further amplification. I don't know. But that's
7 the basis of the motion.

8 **CHAIRMAN JOHNSON:** Are there any further
9 issues?

10 **MR. ARMSTRONG:** Madame Chair and
11 Commissioners, I hate to be the last one with notice,
12 but Mr. Pino introduced the documents regarding the --

13 **UNIDENTIFIED SPEAKER:** (Inaudible comment.)

14 **MR. ARMSTRONG:** I just -- clarification just
15 for the record. I believe -- and I don't have the
16 exact numbers -- but I know that the assets of -- the
17 water assets of MP, possibly about 14%. As he
18 mentioned, five cents per share was the earning. The
19 total earnings for Minnesota Power that year was in
20 the neighborhood of \$2.30.

21 The electric assets constitute about 44%, I
22 believe you indicated. The total earnings per share
23 coming from electric was somewhere in the neighbor of
24 \$1.30. So it's a \$1.30 for 40%. 16% came up with
25 five cents a share.

1 **CHAIRMAN JOHNSON:** Thank you for the
2 clarification.

3 **MR. ARMSTRONG:** Thank you.

4 **MR. JACOBS:** I want to do Mr. Armstrong a
5 favor and not let him be last, and just would offer to
6 you that as you're writing up this final order, I hope
7 that -- see, I'm quite concerned you've now closed the
8 door for the legislative solution and that we're going
9 to go to court and be back here without a solution
10 through the Legislature, and that's what I'm about
11 here today.

12 And I would just suggest to you that
13 whenever you write up this order, if you do make some
14 remarks, that there perhaps is a solution with the
15 Legislature to do equity to both sides. And you might
16 amplify that a bit more in obiter dictum, or however
17 you call it up here, in writing that order, because
18 I'm concerned that now we won't see any legislation to
19 try to get the rebate folks taken care of.

20 So as you write that, if you would kind of
21 give that some eye, I'd appreciate it.

22 **CHAIRMAN JOHNSON:** I think that that was
23 encompassed in the motion. The Commissioner did state
24 that to the extent that that's where the refund could
25 be found, then that that would be wonderful. So we'll

1 make sure that Staff considers that.

2 And, Mr. Jacobs, I share your concern, and
3 that was one of the reasons why I voted -- and I
4 didn't speak earlier because the audience was pretty
5 rowdy, but that's one of the reasons why I voted
6 against it.

7 And the other was the issue of whether or
8 not we could, indeed, do refunds and surcharge; and to
9 me it wasn't necessarily clear in our record. There
10 were issues raised, but it wasn't definitive as to the
11 impossibility of doing that.

12 **MR. JACOBS:** All right. Thank you very
13 much.

14 **COMMISSIONER KIESLING:** Then let me go
15 ahead. You're right, they were a little rowdy, and we
16 didn't have a chance to -- I'm quite willing to
17 explain why I voted the way I did, and I will amplify
18 on that.

19 I believe that the refund and a surcharge is
20 the appropriate outcome, and I think that the
21 equitable problems would be best addressed in the
22 mechanisms that we use to implement these things in
23 order to reduce, to the maximum extent possible, the
24 inequities that could result.

25 **CHAIRMAN JOHNSON:** I think we were in the

1 same place, then. Certainly Staff had raised several
2 concerns, but that went to implementation.

3 **COMMISSIONER GARCIA:** Let me just ask. I'm
4 sorry. I wanted just to understand. You believe that
5 we should have gone and had a hearing so that --

6 **COMMISSIONER KIESLING:** No. I believe we
7 should have ordered refunds and surcharges today and
8 not done a hearing. We never got to the issue on the
9 hearing or I would have addressed that. But I don't
10 think that the hearing was necessary. I think that we
11 can fashion the mechanics without the need for a
12 hearing. Could have.

13 **CHAIRMAN JOHNSON:** I would have gone for the
14 hearing, but it would end up in the same place.

15 **COMMISSIONER GARCIA:** I just wanted to
16 clarify that for the record.

17 **CHAIRMAN JOHNSON:** I think with that, we are
18 adjourned. Oh, I'm sorry.

19 **MS. REYES:** Did you take a vote on Issue 6?

20 **COMMISSIONER KIESLING:** I don't think so. I
21 move it.

22 **CHAIRMAN JOHNSON:** Oh. Go ahead. There's a
23 motion. Is there a second?

24 **COMMISSIONER CLARK:** Second.

25 **CHAIRMAN JOHNSON:** Show it approved

1 unanimously. Thank you. Any other issues?

2 **COMMISSIONER KIESLING:** No, that's it.

3 **CHAIRMAN JOHNSON:** We're adjourned.

4 (Thereupon, the hearing concluded at

5 7:00 p.m.)

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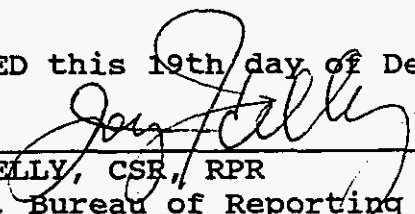
1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTERS
 2 COUNTY OF LEON)

3 We, JOY KELLY, CSR, RPR, Chief, Bureau of
 Reporting and H. RUTHE POTAMI, CSR, RPR, Official
 4 Commission Reporters,

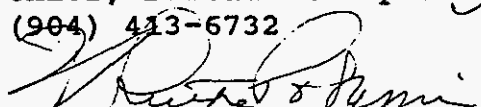
5 DO HEREBY CERTIFY that the Special Agenda
 Conference in Docket No. 920199-WS was heard by the
 6 Florida Public Service Commission at the time and
 place herein stated; it is further

7
 8 CERTIFIED that we stenographically reported
 the said proceedings; that the same has been
 transcribed under our direct supervision; and that
 9 this transcript, consisting of 250 pages, Volumes 1
 and 2, constitutes a true transcription of our notes
 10 of said proceedings.

11 DATED this 19th day of December, 1996.

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 13 

 JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting
 14 (904) 413-6732

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 H. RUTHE POTAMI, CSR, RPR
 16 Official Commission Reporter
 (904) 413-6732