



## P R O C E E D I N G S

(Transcript continues from Volume 2.)

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3           **SENATOR COWIN:** (Continuing) And I think  
4 the only fair thing to do is -- the truly only fair  
5 thing to do, rather than deal with the hand you've  
6 already had and dicker against yourself -- in other  
7 words, dicker against your own order -- would be to go  
8 to a hearing. This was an issue that I had with the  
9 constituents in my district without -- to a man and  
10 woman, they all wanted to make sure that it would go  
11 to a hearing, that it would have proper debate, and  
12 that the dollars would stay in the pockets of the  
13 consumer until the time that it's given back.

14           I have no understanding as to why the  
15 Utility would not want to go ahead and let the  
16 customers keep the dollars. And if there's a fear  
17 that they may not get their dollars back, I'm sure  
18 that by order -- if indeed you do lose it when you go  
19 to another hearing, indeed you do lose it, I'm sure  
20 you could safeguard to make sure they get the dollars  
21 back. And I don't think that that's going to be a  
22 problem. I think the only problem -- and purely, if  
23 you really bring it down to where the real issue is,  
24 is a public issue and it's a political issue. Because  
25 it's far easier now to take the dollars from the

1 public one time than to come back twice and say we  
2 need to have a refund surcharge or a surcharge and a  
3 rate increase later. But I think that is really the  
4 fair thing to do.

5 I have promised in Lecanto, and I will  
6 assure you now that I will work toward making sure  
7 legislatively that this type of prospective taking of  
8 dollars from the customers in the attempt of getting  
9 the dollars and losing a case that you've already won  
10 is totally -- is totally unfair, and something that I  
11 will legislatively try to address.

12 Be that as it may, with the issue right  
13 before us now, I think we could all settle and have a  
14 win situation for everybody if you go ahead with,  
15 though, Category 1s, implement that; work the  
16 negotiations and give that to the parties to negotiate  
17 it, and I trust they will come to an equitable  
18 solution as far as whether you keep the capbands or  
19 not. And I don't think, you know, changing things  
20 around mid-stream when you're back paying on the  
21 monies that were owed should be moved around on that,  
22 except for the rate increases. But that's my personal  
23 feeling.

24 But I think separating the two issues out  
25 will safeguard what Mr. Shreve has stated in regard to

1 a problem about refunding it. You go to hearing. If  
2 you move on it quickly, the customers are fully aware  
3 now that they may have to pay later.

4 And I think that's something you could  
5 easily sell to the people if, indeed, you lose those  
6 issues, that, yes, we are watching out for your  
7 dollars, and we will make sure that we protect you.  
8 But if indeed we do lose it -- and show your effort --  
9 but if we do lose it, you will have to pay it back and  
10 then work out a way equitably making sure the Utility  
11 gets the full amount they are due and not a shortage  
12 of dollars in the event that some people are no longer  
13 there.

14 **COMMISSIONER CLARK:** What have we won?

15 **SENATOR COWIN:** Pardon?

16 **COMMISSIONER CLARK:** You said we've already  
17 won.

18 **SENATOR COWIN:** Those Category 2.

19 **COMMISSIONER CLARK:** You mean we still have  
20 the opportunity to look at them.

21 **SENATOR COWIN:** That's what I'm referring  
22 to. It was decided -- well, I don't have to explain  
23 to you what's happened. But really they are not  
24 issues that have been quote, "lost" yet. They are  
25 still open. Those issues that were lost were the

1 Category 1 issues and we all agreed to that. And I  
2 think it's just a win situation for everyone that way.

3 I do have a plane to catch, so I probably  
4 can't see the sequella of this dialogue. But I do  
5 think that it's not as -- it is complicated, don't get  
6 me wrong. And I still think a lot of these rates,  
7 and, you know, who is paying what and how you get it  
8 is still gobbledygook. But I think there's a way out  
9 through the maze in an equitable way. And that is to  
10 go to a rehearing; give the opportunity to all the  
11 parties -- you have new parties that just came in  
12 today, that are just coming in and you're making a  
13 decision on the very day they intervened. And I think  
14 this way it's out on the table for everybody. You  
15 could put out a news release and let the customers be  
16 aware that you are meeting the customers' desires to  
17 keep the issue open, but, yes, there may be a chance  
18 we will have to come back in a year-and-a-half or  
19 whatever time it would be to take those dollars back.

20 **CHAIRMAN JOHNSON:** Thank you, Senator Cowin.  
21 Any other questions?

22 **COMMISSIONER GARCIA:** I wanted to ask Chuck  
23 or someone on the Staff, while we're waiting, give me  
24 a comparison between what the customers' increase is  
25 if Florida Water prevails as opposed to the difference

1 if we accept the offer. Is it what, 4.8%?

2           **MR. HILL:** Yes, it was -- I think again  
3 we're looking at 3.2 million on the going-forward  
4 basis versus 2.8, and roughly 6.2 million in  
5 surcharges versus their -- my understanding of a 4.7  
6 in surcharges. So, I mean, again, we're looking at a  
7 minimum of \$1.9 million difference. That doesn't even  
8 consider additional fees and expenses that that may  
9 come into play.

10           **COMMISSIONER GARCIA:** Commissioners, we're  
11 still waiting for Mr. Armstrong, let me just state --  
12 and I don't know if Senator Cowin is there or not, but  
13 this is not a question of getting tired on this issue.  
14 This is a question of we have very limited issues that  
15 have been left for us decide. Those issues have a  
16 great import but the truth is that these aren't even  
17 issues that we could really take to a significant  
18 degree to the public and begin that process. So I  
19 believe the public will be much better served to a  
20 reach a settlement. I believe Commissioner Clark is  
21 absolutely right about trying to figure out a way that  
22 everyone can agree on the surcharge. I guess there's  
23 very little I can add there.

24           **CHAIRMAN JOHNSON:** I'm going to allow  
25 Senator Cowin to make some comments and then we're

1 going to take a short break.

2           **SENATOR COWIN:** Commissioner Garcia, I'm  
3 still here. And I did hear your comments.

4           I represent five counties. And I have a  
5 very close relationship with many of the customers.  
6 As a matter of fact, I, too, am a customer of Southern  
7 States Utilities in two subdivisions. There were nine  
8 subdivisions present at that meeting in Lecanto.

9           My phone rings off the hook constantly with  
10 information and questions from Southern States  
11 Utilities. I'm in constant contact with the public  
12 through correspondence and through letters and  
13 telephone calls and information in the newspapers.

14           I really think I have a good feel for what  
15 the constituents and the customers of Southern States  
16 Utilities have, certainly in my district, which  
17 represents a very large percentage of the customers of  
18 Southern States. And I do think that it is no -- it's  
19 another example of government trying to take care of  
20 people and people wanting to assume responsibility for  
21 themselves. And I do think that it's far better for  
22 the customers to have the dollars in their pocket, to  
23 be able to pay off their bills if they were at 18%, to  
24 invest them in investments where they can get 10 and  
25 15% to pay those dollars --

1                   **COMMISSIONER GARCIA:** Senator, I totally  
2 agree with you; that part of the issue I don't  
3 disagree with you. I believe that Staff was simply  
4 trying to be efficient, trying to be predictable on  
5 this issue. And if we do not get a settlement, I will  
6 agree with your position; that we should not collect  
7 money from ratepayers and that we should go forth from  
8 that point of view, and the Company can roll the dice  
9 with us and try to get their money later on. I don't  
10 disagree with you at all.

11                   **SENATOR COWIN:** Then in reference to the  
12 issue as far as going to a proposed settlement, my  
13 problem with that is that the issue has not been  
14 brought to the public. It was not brought to the  
15 intervenors in this case except for just a few hours  
16 ago. To come up with an issue that is outside the  
17 purview of where settlements usually occur, and it's  
18 certainly not been signed off by all of the respective  
19 parties, I don't think that that's a fair approach.

20                   **COMMISSIONER GARCIA:** Senator, let me just  
21 give you my perception of what we've got before us.  
22 And you know I'm a fan of yours and I wish I was liked  
23 in your part of the state, but, unfortunately, I sit  
24 on the Commission.

25                   The truth is that what we're looking at is a



1 decision handed down by a Court, which gave us some  
2 very specific areas where they felt we did not meet  
3 the standard of burden of proof. We didn't have  
4 enough information to prove the case our way. The  
5 Court then decided to go how it perceived as we had  
6 historically done.

7 Giving us that limited range -- that limited  
8 reason -- and obviously I disagree with Mr. Twomey's  
9 legal interpretation -- I think that all we can do is  
10 hold hearings on those very specific issues. And  
11 those very specific issues, as adept as we all are on  
12 a good day, understanding the lot count for me is  
13 quite different. It's very specific, very technical,  
14 and we try to get through it to try to figure out  
15 something that's between what's best for the public  
16 and best for the Company and what's best for the state  
17 of Florida. I think that's what we're looking at  
18 today. That is very specific issue. Now, if  
19 Mr. Armstrong comes back here and he punts and he  
20 says, "You know what, Commissioners, I'm going to roll  
21 the dice with you," then I totally agree with you,  
22 Senator Cowin, and I wish you could be listening to  
23 me. I totally agree with you. I'm not going to vote  
24 to in any shape, way or form collect money on  
25 something that we're not sure. I understand why Staff

1 was doing it, because, Senator, I think retro -- this  
2 collection of surcharges is absurd. Unfortunately,  
3 the Court thinks we have to do it and so we have to do  
4 it. It's unfair. It's unfair for the customers that  
5 are left. It's unfair for those who left. They left  
6 with a windfall. And it's unfair for those who don't  
7 get charged. I think it's a horrible thing.  
8 Nonetheless, the Court has said we have to do that so  
9 here's where we find ourselves.

10 **SENATOR COWIN:** I think we're on the same  
11 page on at least the Category 1s. Thank you.

12 **CHAIRMAN JOHNSON:** Mr. Cresse.

13 **MR. CRESSE:** I'd like to make just one  
14 comment about what we just heard. About the  
15 surcharges and the desirability thereof. I recall at  
16 least one time recently when you faced that question  
17 of surcharges it was suggested you go to the  
18 legislature and get the \$14 million general revenue  
19 appropriation to pay those refunds, which is the same  
20 thing. So I'm not so sure that worked out very well.  
21 In fact, I haven't studied the appropriation bill  
22 lately, but I understand there was nothing  
23 appropriated to carry out that particular function.

24 **Secondly,** the Senator has talked about the  
25 late offer of a change. The change is not difficult

1 to understand. We've said we would accept the  
2 original rate design formula as opposed to 4.83%  
3 across the board. So that's no big issue. So I don't  
4 know why it's difficult for anybody to understand the  
5 change. That's the comment that I wanted to make.

6 **CHAIRMAN JOHNSON:** Thank you. We're going  
7 to take 10-minute break.

8 **COMMISSIONER CLARK:** Can I just say that I  
9 think it should be made clear with respect to the gain  
10 on sale, as I see it, what Commissioner Garcia is  
11 suggesting is -- that is just taken out of the  
12 equation altogether and it stands on its own bottom as  
13 a separate docket, and whatever happens there happens.  
14 It has nothing to do with what happens here.

15 **MR. CRESSE:** I understand that. Is that  
16 Commissioner Garcia's offer or is that a Commission  
17 offer?

18 **COMMISSIONER GARCIA:** If you want us to vote  
19 out now --

20 **MR. CRESSE:** Did I get an answer? Is that a  
21 Commission offer or a Commissioner Garcia offer?

22 **COMMISSIONER CLARK:** Well --

23 **COMMISSIONER GARCIA:** We haven't voted yet.

24 **CHAIRMAN JOHNSON:** I think it was part of  
25 the motion. And so we'll -- stay tuned.

1           **COMMISSIONER GARCIA:** Is part of the motion  
2 to accept the offer still pending?

3           **CHAIRMAN JOHNSON:** That's right.

4           We're going to break for about ten minutes.

5           (Brief recess taken.)

6                                   - - - - -

7           **CHAIRMAN JOHNSON:** We're going to go back on  
8 the record, if everyone could settle in.

9           Let me make one preliminary announcement.  
10 The Florida channel will stop the broadcast at 6:30,  
11 and that's really for the benefit in the listening  
12 audience so they will understand at 6:30 the coverage  
13 will cease.

14           **MR. CRESSE:** We're going to lose  
15 Commissioner Garcia at 6:30.

16           **CHAIRMAN JOHNSON:** No, we don't lose  
17 Commissioner Garcia.

18           **MR. CRESSE:** I thought you were giving us  
19 incentive to finish. (Laughter)

20           **CHAIRMAN JOHNSON:** Mr. Armstrong.

21           **MR. ARMSTRONG:** Thank you, Madam Chairman  
22 and Commissioners.

23           I've spoken with Company management and the  
24 Company has instructed me to agree to the proposal as  
25 presented, which we understand to be to accept the

1 Company's October 2nd proposal as modified by our  
2 November 12th letter. We would drop the gain on sale  
3 issue from our proposals.

4 I just had them asked just to make sure that  
5 they reiterate on the record that the gain on sale  
6 issue is a very significant issue to the Company. We  
7 do intend to reinvest monies that we have obtained  
8 through the sale of property and other facilities here  
9 in Florida. And as long as, you know, that is the  
10 motion, then we're ready to accept.

11 **COMMISSIONER GARCIA:** Madam Chairman, that's  
12 my motion. Thank you, Mr. Armstrong.

13 **MR. ARMSTRONG:** Thank you, Commissioner.

14 **CHAIRMAN JOHNSON:** There's been a motion.  
15 Is there a second? Any second on the motion?

16 **COMMISSIONER DEASON:** We have a motion. Is  
17 there a second?

18 **CHAIRMAN JOHNSON:** There's a second.

19 **COMMISSIONER DEASON:** Been a motion and a  
20 second. Any further discussion?

21 **COMMISSIONER CLARK:** Well, yeah. I want  
22 to -- I think it's a good offer. But what stands in  
23 the way of my accepting it is we have the Public  
24 Counsel who represents the customers, and other  
25 parties who represent the customers, who say they are

1 willing to go to hearing on this issue. They want the  
2 opportunity to put forward the proof. And I'm  
3 uncomfortable with sort of substituting my judgment  
4 for theirs. I think the settlement should be taken,  
5 and --

6           **COMMISSIONER GARCIA:** Let me ask you a few  
7 questions, and hopefully I can move one of you and I  
8 can understand Commissioner Clark's reluctance. I  
9 feel very difficult voting for something that a  
10 senator from that area feels a different way about.  
11 But I think we need to realize what it as stake here.  
12 There are people who are going to get hundreds of  
13 dollars in potential surcharges. We're limiting their  
14 exposure. Mr. Twomey may be willing to gamble  
15 \$12 million, but the group he represents doesn't have  
16 that much in the pot.

17           **COMMISSIONER CLARK:** I understand that. But  
18 Mr. Shreve represents all of the customers on this  
19 issue and he has taken the position that we should go  
20 to hearing on those two issues.

21           **COMMISSIONER GARCIA:** Give me an idea of  
22 what the exposure is on this in dollars for individual  
23 per customer?

24           **MR. HILL:** Commissioner, we don't have  
25 dollars per individual, but potentially it would be

1 hundreds of dollars a month. Again, it depends on  
2 their usage. If you take a system in general or  
3 customers that use 30- and 40,000 gallons a month,  
4 Their difference could end up being in the hundreds of  
5 dollars a month in the way of surcharges. And that  
6 was one thing that played into our recommendation, was  
7 while we are not able at this point to quantify every  
8 one, we know conceptually the potential that is there.  
9 And, in fact, many of the systems that are in this  
10 case have average usage of 30,000 gallons a month.  
11 And those are the exact customers that have the  
12 potential to be liable in hundreds of dollars per  
13 month in back bill and that is of major concern.

14           **COMMISSIONER JACOBS:** I'm persuaded in two  
15 regards here. One, I concur with Commissioner Clark's  
16 comments. I believe that there is enough reasoning  
17 and rationale to taking these issues to hearing. And  
18 I think that is particularly the case given the  
19 language of the order from the Court and the fact that  
20 this is an issue that the Commission is in an ongoing  
21 debate on, and the prospect about even greater  
22 uncertainty going forward in the resolution of this  
23 issue without -- you know, in this matter. Then I'm  
24 also persuaded by the point Public Counsel raised  
25 about if we were to go forward here -- I'm sorry, if

1 refunds ultimately were determined, how that idea of  
2 trying to get those refunds to customers would be  
3 absolutely inordinately confusing.

4           **COMMISSIONER CLARK:** I don't think that's  
5 part of his motion.

6           **COMMISSIONER GARCIA:** Let me just talk about  
7 what we have before us, because I agree with you, if  
8 there's anyone who has spoken against surcharges and  
9 the nightmare they present, and I believe the almost  
10 impossibility of collecting them, is myself. I've  
11 spoken against them every time. But what we're trying  
12 to deal with here, Commissioner Jacobs -- and I know  
13 your level of frustration is probably greater than  
14 mine because this is an area where you're trying to  
15 become an expert at it and serve in that role on  
16 NARUC.

17           What we're trying to do here is a case  
18 that's been going on for three years. The issues sent  
19 down to us from the Court are complex issues where  
20 historically we have not been in the same place where  
21 we are -- where we were on this decision, on the  
22 Florida Water Council. We have been one side or the  
23 other. The Court decided against us but said if you  
24 can prove that issue, prove it. The truth is that the  
25 exposure is huge, and what we're trying to do is



1 settle this out and finally get this case moving on.

2           This is an area where a huge percentage of  
3 the citizens are retirees. We have had massive  
4 fluctuation in rates back and forth. Here is an  
5 opportunity -- I think the Company has been sincere, I  
6 think the Company has offered something. And  
7 Mr. Twomey is probably right when he says they  
8 probably knew they couldn't get it all. He's right.  
9 That's why people decide to settle things.

10           I think this is a wonderful opportunity. I  
11 don't think it's -- it's the best of all possible  
12 worlds but it's a wonderful opportunity with the  
13 circumstance we have, with the complexity of this  
14 case. Think about the other road to take,  
15 Commissioner Jacobs. That's precisely where you're  
16 at. Holding hearings on this complex issue.  
17 Mr. Twomey has asked for us to hold them as well as  
18 Senator Cowin and I can't see myself saying no to her  
19 when we have had hearings -- every time we have  
20 something of this nature we have had hearings in the  
21 area.

22           Add to that the risk that we're presenting  
23 if we lose this. We have had our professional Staff  
24 tell us to amend -- they agreed that this settlement  
25 is the best possible of a series of bad alternatives.

1 And that's what we've got left after this long road.  
2 We can decide to take this road again but it's not  
3 going to get that much better. That being the case,  
4 this is the best of a series of bad options.

5           **CHAIRMAN JOHNSON:** Anything else,  
6 Commissioner Garcia.

7           **COMMISSIONER GARCIA:** No.

8           **CHAIRMAN JOHNSON:** I'll follow up with some  
9 explanation as to my second.

10           You know I share your concerns,  
11 Commissioner Garcia, candidly, with Public Counsel, I  
12 was perplexed by the fact that Public Counsel wanted  
13 to go to hearing. And I guess it's because they feel  
14 they could be victorious and that they believe that  
15 the customers would not have to incur any additional  
16 expenses or costs, or the revenue requirement would  
17 not go up. But I'm not that comfortable with this  
18 particular case. And looking at that and looking at  
19 the potential liability over the next several years  
20 causes me great caution. And when I look at what's on  
21 the table, no additional rate case expense, Florida  
22 Water won't file a motion for attorney's fees. We  
23 still have the gain on sale issue that we have the  
24 opportunity to deal with and to debate, and to reach  
25 final conclusion. I felt that given the circumstances

1 under the uncertainty, and the fact we have been  
2 reversed, and I'm not as comfortable us opening the  
3 record and going back in that we would be victorious.  
4 And laying all of that out, looking at if we are  
5 wrong, the kind of surcharges that these customers  
6 would face -- I'm just -- if I don't have to take the  
7 risk, then I don't want to take the risk, particularly  
8 knowing that the numbers are on the table now are less  
9 than the Company would have received had we allowed  
10 them to implement just the reversal and not gone back.  
11 So we are, we're getting more for the customers by the  
12 Company accepting less, and we take a lot of the other  
13 issues off the table. It's not a win, but I don't  
14 think it's a big loss either.

15 **COMMISSIONER DEASON:** We have a motion and  
16 second.

17 **COMMISSIONER CLARK:** I just want to say I'm  
18 pessimistic about the outcome. We've lost twice on  
19 the MMFD and the AAFD. I'm concerned about the lot  
20 count. But the point is that the Company is going to  
21 be held harmless in this. If they win, they will be  
22 entitled to those revenues. The risk is entirely on  
23 the customers. The representative of the customer has  
24 said that they want a hearing -- representatives of  
25 particular customers want a hearing, and I'm

1 uncomfortable substituting my judgment with respect to  
2 whether or not they should bear that risk. It would  
3 not be what I would do if I were representing them.

4           **COMMISSIONER DEASON:** Well, let me say  
5 before we take a vote that, first of all, I want to  
6 congratulate the Company. I think that they made an  
7 effort to enter into negotiations in good faith. I  
8 think all of the parties did. And I think that in all  
9 truthfulness I think they entered into those  
10 negotiations with the upper hand because they had a  
11 decision from the Court that said the Commission was  
12 wrong. And, Commission, if you want to try to  
13 vindicate or support your order, you're going to take  
14 more evidence. And basically they went -- came in  
15 with a strong position and they obviously have made  
16 concessions from that.

17           I think that the -- that there's great  
18 appeal to getting the matter resolved. There is  
19 appeal to not having further rate case expense;  
20 potential for attorneys fees, but I'm in the same  
21 position that I believe Commissioner Clark has just  
22 indicated that she is.

23           If we were in a situation where we had some  
24 customer parties saying, "This is good deal and we  
25 think it's best for our customers" and we had others

1 saying not, I'd be more in a position of trying to  
2 weigh the benefits, the risk factors all involved.  
3 But what I have here is I have absolutely zero  
4 customers saying, "This is a good deal. We support  
5 it. Don't go to hearing. Cut our losses. And go  
6 accept the stipulation." We have none of that.

7           So it's very difficult for me to insert  
8 myself and to say that this is a good deal and  
9 customers, and your representatives, don't know what  
10 you're talking about. They apparently are willing to  
11 take this to hearing. And obviously, according to the  
12 Court's decision, we have the discretion, if not the  
13 invitation, to carry it back to hearing.

14           I don't try to prejudge any of these issues,  
15 but I think it's going to be a contentious and a  
16 difficult case to go forward with. And that while it  
17 is two specific issues, they are involved issues and  
18 they are complex, and there's no easy answer to these.  
19 And I think that it's going to be expert testimony and  
20 I wish it were a simple thing of a right and a wrong  
21 answer. I don't know if that's going to be the case.  
22 But I am inclined to reject the settlement, even  
23 though I certainly appreciate the Company's  
24 willingness to negotiate. In fact, I think I  
25 suggested that we try to get this thing settled; that

1 the prospect of surcharges are not attractive to  
2 anyone. We would try to avoid them if we could and  
3 the stipulation minimizes -- there are surcharges but  
4 they are minimized.

5 But I cannot, in good faith, substitute my  
6 judgment for those of the parties who have indicated  
7 that they want a hearing, and that's certainly within  
8 our discretion to grant the hearing. So, that's where  
9 I find myself.

10 **COMMISSIONER GARCIA:** Madam Chairman, if I  
11 might ask a question.

12 **COMMISSIONER DEASON:** Yes.

13 **COMMISSIONER GARCIA:** Oh, I'm sorry,  
14 Chairman Deason. If I could ask the representative of  
15 Marco Island, are you against this settlement?

16 **MR. JENKINS:** I'm sorry, Commissioner, could  
17 you repeat that?

18 **COMMISSIONER GARCIA:** Are you against this  
19 settlement?

20 **MR. JENKINS:** Yes, sir. We supported the  
21 original settlement but we're against the revision, or  
22 the revised settlement you have today.

23 **COMMISSIONER GARCIA:** Give me your rationale  
24 just so I can understand. I know it's not as good but  
25 you're not going to get that other one once we start

1 down this road.

2           **MR. JENKINS:** I think I looked at it a  
3 little bit differently than perhaps some of the other  
4 parties here. But while admittedly the Utility's  
5 offering a discount on their position with regard to  
6 used and useful, which was to win 100% of what they  
7 asked for, it's not that significant a discount  
8 relative to what I think may be some issues that  
9 remain open. And it was a difficult decision to try  
10 and roll the dice on a hearing. But I think we  
11 believe that it was worth going back and looking at  
12 those issues. And that was the bottom line on the  
13 decision.

14           **COMMISSIONER CLARK:** Let me say one other  
15 thing. It seems to me that even if we have rejected  
16 the settlement, it may no longer -- if we reject it,  
17 it may no longer be on the table. But I would urge  
18 those entities representing customers to take a hard  
19 look at this and what you could gain and what you  
20 could lose. And I think the customers need to look at  
21 it too.

22           There's been a change in what we can do with  
23 respect to the APA. It's limited our discretion  
24 somewhat. It seems to me the real way to solve this  
25 is to go to rulemaking on the issues and fix the

1 policy. And I really think the customers should  
2 assess that.

3 **COMMISSIONER DEASON:** We have a motion and a  
4 second. All in favor of the motion say "aye".

5 **COMMISSIONER GARCIA:** Aye.

6 **CHAIRMAN JOHNSON:** Aye.

7 **COMMISSIONER JACOBS:** Aye -- I'm sorry, I  
8 misspoke.

9 **COMMISSIONER DEASON:** Just so the record is  
10 clear, I think Commissioner Garcia voted affirmative  
11 and Chairman Johnson voted affirmative. All opposed  
12 say "nay." Nay.

13 **COMMISSIONER CLARK:** Nay.

14 **COMMISSIONER DEASON:** Commission Jacobs have  
15 you --

16 **COMMISSIONER JACOBS:** I said nay.

17 **COMMISSIONER DEASON:** The motion fails on a  
18 three-to-two vote. And I will give the gavel back to  
19 Chairman Johnson.

20 **CHAIRMAN JOHNSON:** Is there a motion?

21 **COMMISSIONER CLARK:** I think we should be on  
22 Issue 4.

23 **COMMISSIONER DEASON:** Does the vote that we  
24 just took address Issue 3? Does it adequately resolve  
25 that issue?



1           **COMMISSIONER CLARK:** I don't think we need  
2 to do anything more than say that the Commission did  
3 not approve the settlement, the settlement -- joint  
4 offer of settlement made by the Florida Water Service  
5 Corporation. I don't think we have to reach any  
6 decision as to whether we could or anything like that.

7           **COMMISSIONER DEASON:** So that resolved  
8 Issue 3 then.

9           **COMMISSIONER CLARK:** Uh-huh.

10          **CHAIRMAN JOHNSON:** Issue 4.

11          **COMMISSIONER DEASON:** I think it's clear  
12 that we have to increase rates as a result of the  
13 Court's remand in relation to the Category 1 issues.  
14 The question is how are we going to increase those  
15 rates? Under what methodology? And we've had quite a  
16 bit of discussion here today about that. And from a  
17 philosophical standpoint I think it needs to be -- I  
18 think that the rate increase, the prospective rate  
19 increase as a result of the Category 1 issues needs to  
20 be consistent with the capband rate structure. This  
21 is not in the form of a motion, it's just for that  
22 discussion at this point.

23                 But I think that the surcharge associated  
24 with the Category 1 issues does not necessarily have  
25 to be incorporated into the capband rate structure. I

1 think by doing so raises the prospect of some systems  
2 receiving rate reductions in the face of an overall  
3 increase in total company revenue requirement. I  
4 think that is a difficult position to be in while it  
5 is -- the proper result of the capband rate structure,  
6 I'm not so sure it serves us well in a remand  
7 surcharge situation.

8           So I think that we should do it under an  
9 alternative methodology. I think it should be done on  
10 a system-by-system basis, looking at total revenue  
11 requirements for each system, and then allocating that  
12 on a per-customer basis perhaps. It can either then  
13 done on past consumption or it could be done on a flat  
14 ERC basis. And I wish to have some input from Staff  
15 in regard to that.

16           I also in suggesting that we do that, do  
17 raise a flag of caution in that we don't have the  
18 numbers in front of us, and it seems to me that the  
19 potential exists for there to be a large revenue  
20 increase on a system as a result of remand issues,  
21 which is a small system, which could result in  
22 tremendous increases on a per-customer basis,  
23 regardless of whether you do it on an ERC or  
24 consumption basis. And I would want to see that  
25 information before we did that.

1           There's also the question of how are you  
2 going to treat the capband? Are you going to keep the  
3 same capbands in place, or are you going to allow  
4 those capbands be modified to some extent so that more  
5 customers share in the impact of the remand? Those  
6 are questions I think need to be answered and I'm just  
7 kind of raising these things for discussion because I  
8 think something is going to have to be resolved.

9           The only other alternative is to perhaps  
10 have the parties sit down and try to negotiate the  
11 proper rate structure. And I say that realizing  
12 there's been much effort put out already, and perhaps  
13 there's a hesitancy to enter into further negotiations  
14 but perhaps the question of rate structure would not  
15 be as contentious as the question of revenue  
16 requirement dollars. So I just lay all of that out  
17 and if anybody wants to comment and give any guidance  
18 I would welcome in it.

19           **COMMISSIONER CLARK:** Let me ask Staff to go  
20 back to -- what is Schedule A again? Is that just the  
21 things we have to do?

22           **MR. HILL:** Schedule A is water.

23           **COMMISSIONER CLARK:** I'm sorry, 4(a).

24           **MR. RENDELL:** The items we have to do are  
25 3(a) and 3(b) for the rates prospectively.

1           **COMMISSIONER CLARK:** Those are for the  
2 prospective rates. Did that do violence to the  
3 capbands?

4           **MR. RENDELL:** That's run through the capband  
5 methodology that was approved in the final order.

6           **COMMISSIONER CLARK:** What I'm asking you is  
7 did it change the groupings?

8           **MR. RENDELL:** Unfortunately, I don't have  
9 that. I didn't do a schedule on groupings for 3(a)  
10 and 3(b). I did it for 2(a) and 2(b) and that's what  
11 it reflected on 4(a) and 4(b). I don't know if the  
12 systems change bands on 3(a), 2(b).

13           **COMMISSIONER CLARK:** If you make the changes  
14 and it really doesn't change the grouping, then I  
15 presume everybody's going to have an increase. And if  
16 that's the case, I think we should just go ahead and  
17 make that change.

18           **COMMISSIONER DEASON:** So you would do it on  
19 a capband basis but no change in grouping.

20           **COMMISSIONER CLARK:** For the prospective  
21 rates. I asked the question does it change the bands?

22           **MR. RENDELL:** I think it does and the  
23 reason -- no, I'm sorry.

24           **COMMISSIONER CLARK:** They are awfully small  
25 increases.

1                   **COMMISSIONER JACOBS:** Yeah.

2                   **MR. RENDELL:** I think it does -- there are  
3 some changes. I don't have a schedule showing that.  
4 But I'm looking at another schedule I looked at that  
5 just looked at rates -- I'm sorry, bills at 10,000  
6 gallons and there are some decreases for some of them,  
7 so one of the bands did go down using -- under  
8 Schedules 3(a) and 3(b) it looks like one band that  
9 went down. Only one band.

10                   **COMMISSIONER CLARK:** All right. But did  
11 anyone move out of that band?

12                   **MR. RENDELL:** That's probably the reason it  
13 went down.

14                   **COMMISSIONER CLARK:** Okay.

15                   **MR. RENDELL:** Is someone moved out of it.

16                   **COMMISSIONER CLARK:** Do you know how  
17 significant it is?

18                   **MR. RENDELL:** .75 reduction from say  
19 forty-one forty-six based on the final orders to  
20 forty-one fifteen, so it's less than 1% reduction in  
21 that band.

22                   **COMMISSIONER CLARK:** Okay.

23                   **COMMISSIONER DEASON:** Can you do the capband  
24 with no reductions? In other words, just put a  
25 constraint into the operation of the capband

1 methodology they would not -- there would be no rate  
2 reduction resulting from the overall revenue increase.

3 **MR. RENDELL:** Not by sticking to the  
4 methodology. You'd have to alter the methodology that  
5 was approved.

6 **COMMISSIONER DEASON:** Technically  
7 Commissioner Clark's suggestion is altering the  
8 methodology. Because the pure methodology is, is that  
9 you load in all of the data, turn the crank and then  
10 you do your groupings and you just fall where you  
11 fall. So holding the groupings where they are, bands  
12 where they are, that's a modification.

13 **MS. WILSON:** Mathematically we could make  
14 that further modification where no one would get an  
15 increase.

16 **COMMISSIONER DEASON:** You mean a decrease.  
17 If you could do it where nobody gets an increase I  
18 think we'd vote that out right not.

19 **MS. WILSON:** I'm sorry, I meant decrease.

20 **COMMISSIONER CLARK:** I guess I was more  
21 concerned about if the bands -- if the groupings of  
22 customers stayed the same, not necessarily whether  
23 they went up or down.

24 **MR. RENDELL:** And one did change.  
25 Unfortunately, I can't tell you which one moved, but

1 it appears that maybe one or two did shift from the  
2 band.

3           **MS. REYES:** Commissioners, I'd just like to  
4 say if I have a concern if the change in methodology  
5 is going to affect the Company's substantial interest,  
6 that is he or she pays more under the alternative  
7 methodology than they would have paid under the  
8 methodology we have been looking at, I think you're in  
9 the situation of having to make that portion of the  
10 order PAA and you're back in the same situation of  
11 having it protested.

12           And that's exactly what you did in GTE. The  
13 first decision was a PAA decision and it was protested  
14 by the Office of Public Counsel.

15           **COMMISSIONER CLARK:** Say that again.

16           **MS. REYES:** The first order on remand  
17 imposing the onetime surcharge was issued as proposed  
18 agency action. That order was, in fact, protested by  
19 the Office of Public Counsel.

20           **COMMISSIONER CLARK:** GTE order?

21           **MS. REYES:** Yes. Subsequently there was a  
22 motion to dismiss OPC's petition for a hearing. You  
23 guys took a look at that and said it involved issues  
24 of policy and law and not issues of fact, and,  
25 therefore, you would grant on 120.57(2) as opposed to

1 a (1) hearing. And you allowed the parties to brief  
2 the issues. And you made a decision at that point  
3 after considering the briefs. And that order was  
4 issued a final agency action imposing the onetime  
5 surcharge.

6 **COMMISSIONER DEASON:** To avoid the necessity  
7 of a PAA order we would have to abide strictly by the  
8 capband methodology that was approved that -- in the  
9 last order.

10 **MS. REYES:** Absent agreement from the  
11 parties, I believe so, yes.

12 **COMMISSIONER DEASON:** Now, do you draw  
13 distinction between the prospective rate increase and  
14 the collection of surcharge?

15 **MS. REYES:** We have been.

16 **COMMISSIONER CLARK:** What did you say?

17 **COMMISSIONER DEASON:** In other words, are  
18 you saying the surcharge also has to be collected by a  
19 strict application of the capband methodology or do we  
20 have discretion when it comes to surcharge?

21 **MS. WILSON:** I think earlier today Ms. Jaber  
22 was agreeing that the surcharge could be treated  
23 differently. It's a onetime type of a charge as  
24 opposed to the prospective rates.

25 **COMMISSIONER DEASON:** How would Staff



1 recommend -- assuming that did it not have to be done  
2 by a strict compliance with the capband methodology,  
3 how would Staff recommend that we implement the  
4 surcharge in a way that is efficient and fair but not  
5 overly cumbersome and difficult to explain?

6           **MR. RENDELL:** Under the assumption that we  
7 could treat the surcharge different than prospective  
8 rates we could look at possibly a per-ERC charge and  
9 factor it up on meters. But the question I can't  
10 answer, and I do not have the answer to, is the cap  
11 systems, \$52, should they also face a surcharge, and  
12 if not, how do you spread those? I don't have that  
13 answer.

14           **COMMISSIONER DEASON:** And you don't know how  
15 it would affect the amount of increase on some  
16 systems?

17           **MR. RENDELL:** No, I apologize. We did not  
18 calculate because that wasn't our original  
19 recommendation. We recommended sticking to the  
20 capband rate structure, so that's a calculation that  
21 has not been made.

22           **COMMISSIONER DEASON:** I'm going -- is this  
23 something the parties would like to take a crack at in  
24 negotiating? Or have you all had a belly full of  
25 negotiating and want to get on to hearing?

1           **MR. CRESSE:** We'd be happy to discuss it  
2 with anybody that wants to discuss it.

3           I think the proposal we made we think is the  
4 legal people, and that's just to go across the board,  
5 whatever percentage increase that you allow. We  
6 thought it should be 4.83%, but you, in your wisdom,  
7 didn't agree with that so it's something less than  
8 that. The \$1.2 million is slightly over 2%. And we  
9 think you could put the 2% across the board.

10           **COMMISSIONER DEASON:** Your percentage  
11 increase, that was for the prospective increase --

12           **MR. CRESSE:** 1.2 million. Then there would  
13 be another increase for the surcharge amount. I hate  
14 to call it a surcharge amount but that's what we've  
15 used. It's really not a surcharge amount. It's an  
16 amount that's --

17           **COMMISSIONER CLARK:** 2.8.

18           **MR. CRESSE:** -- customers owe us for prior  
19 periods. And that's 2.8. And that happens to be  
20 about 4.8%, 4.9%. We suggest you just add that across  
21 the board. If any of the parties have a problem with  
22 the rate design, this would be the first I've heard of  
23 it, because there was no problem in the rate design in  
24 our negotiations.

25           **COMMISSIONER DEASON:** Let me respectfully

1 suggest one thing we don't need is another appeal on  
2 rate structure at this phase. If everyone could agree  
3 on a proper rate structure, I think that would be  
4 constructive but it may not be possible.

5 **MR. CRESSE:** If you could get Mr. Twomey to  
6 agree to anything we might propose it.

7 **MR. TWOMEY:** Let me give you my view, if I  
8 may.

9 I told you my clients calculated what they  
10 think they owe on the Category 1 numbers, one-half of  
11 1%. I'd just as soon -- we're totally opposed with  
12 any concept that's across the board, 4.8% or 2.8% or  
13 whatever it is. I'm more aligned with your Staff,  
14 although I'm not committed for their slavish notion of  
15 maintaining truth with the rate structure. I'll tell  
16 you again, if I may, I don't think anybody should get  
17 out of some percentage on this, whether the rates are  
18 capped or not. And I certainly don't think anybody  
19 should get a rate decrease when everybody else gets  
20 increases. But to answer the Company's proposal, we  
21 are strictly opposed to having an across-the-board  
22 percentage increase.

23 **COMMISSIONER JACOBS:** It would seem to me  
24 that if that's the position of the customers, if we're  
25 going to broach some caps by applying this surcharge,

1 you guys could indicate your willingness to accept  
2 that, right?

3 **MR. TWOMEY:** Well, Commissioner, my people  
4 aren't in the caps. And they are already subsidizing  
5 the caps and they don't want to subsidize them anymore  
6 by seeing the cap people not have increases, or by  
7 further subsidizing other people by paying amounts  
8 that aren't due them through an across-the-board  
9 percentage increase.

10 **COMMISSIONER JACOBS:** How about it,  
11 Mr. Shreve, if he'd have a word on that.

12 I heard what I think the Staff said, we  
13 don't want to do that. You don't want to mess with  
14 the caps.

15 **MS. WILSON:** The capped systems, no, sir, we  
16 do not. It was clear those dollar amounts were set in  
17 the order and upheld by the Court and to change those  
18 cap dollars we believe does change rate structure.

19 **MR. TWOMEY:** Commissioner, may I say  
20 something? That's like saying to me -- that's like  
21 saying that I will submit to you, then, that you can't  
22 change the rates you're charging my clients, which you  
23 found in your final order, the same place you found  
24 \$52 and \$65 because that's messing with capband rate  
25 structure. It doesn't make any -- let me finish -- it

1 doesn't make any more sense if you're going to raise  
2 my clients rates, 52 and the 65 without messing with  
3 the overall theory of the capband system. The capband  
4 system is the theory and a methodology, and it's not  
5 wedded to any specific numbers, including the rates  
6 you're going to charge my clients, or his clients, or  
7 any of Mr. Shreve's clients, or the capband people at  
8 52 and 65. Now, it just doesn't make any sense. It's  
9 a theory and it's not any collection of numbers.

10           **MS. WILSON:** Commissioners, the capband rate  
11 structure is a methodology. I will agree with that.  
12 But the way we looked at it again, was if we had this  
13 mandate of the -- of what the Court has said back in  
14 September of '96, when these rates were done, the  
15 affordability levels of 52 and 65 were set, and they  
16 would have been set then. And those people would have  
17 the cap of 52 and 65, and the other rates would be  
18 higher. That's what would have happened back then  
19 with a higher revenue requirement than we had at the  
20 time. That was our logic.

21           **MR. HILL:** And the difference is rates that  
22 people pay are a fallout of the rate structure  
23 methodology as opposed to the caps, which were a  
24 specific amount that you all voted on. And, again,  
25 those were appealed to the Court and those dollar

1 amounts were upheld by the Court under the  
2 affordability issue.

3           **MS. JABER:** And I have to add one more  
4 thing. Based on that assumption that the Commission  
5 would comply with the mandate and not change the  
6 capband rates, Chuck and I represented at the Citrus  
7 County people, to those people on the cap -- capped at  
8 those rates, that those rates would not be changed.

9           **COMMISSIONER CLARK:** I appreciate that.

10           Commissioner Deason, I really don't see any  
11 benefit to moving -- suggesting there be a settlement  
12 on the rate structure. I'm sure Mr. Shreve is not  
13 going to participate in that because he has a conflict  
14 of interest at every juncture. And it seems to me  
15 that there would be intractable positions with respect  
16 to how the rate should be allocated. And I think that  
17 we should simply make the decision.

18           I guess my view is that having made the  
19 decision that we're going to go to hearing on at least  
20 two issues, that perhaps we can give Staff the time to  
21 go back and look at this a little bit more. I  
22 personally think you can treat the annual revenue  
23 increase on a prospective basis. I think you probably  
24 have to stay with the capband structure.

25           With respect to the surcharge, I'm not so

1 sure. I think there's probably precedent in the GTE  
2 case that would allow you to -- if you will, impose  
3 surcharge that don't strictly follow the rate  
4 structure. I think we did that in the GTE case.

5 **MS. REYES:** You did, in fact, but that's my  
6 concern is that that was made PAA the first time  
7 around. And you allowed the parties an opportunity to  
8 be heard on that specific issue and you ended up  
9 deciding to do that through the briefing process.

10 **COMMISSIONER CLARK:** But there has been no  
11 decision of the Court saying that was necessary.

12 **MS. REYES:** No. There's not been.

13 **COMMISSIONER DEASON:** Is it Staff's opinion  
14 that whatever we do with the rate structure we should  
15 do it as a PAA?

16 **MS. JABER:** If you change the capband rate  
17 structure in any way it's our recommendation that that  
18 should be PAA.

19 **COMMISSIONER DEASON:** Well, how do you  
20 collect a surcharge within a capband rate structure so  
21 that you don't deviate from whatever the methodology  
22 is?

23 **MR. RENDELL:** I don't understand.

24 **COMMISSIONER DEASON:** My question is,  
25 because at some point the surcharge is going to go

1 away, when you do that, then is that going to change  
2 your capbands all over again?

3 **MR. RENDELL:** No. When we were looking at  
4 rates, we calculated prospective rates different.  
5 Those were going to be set until the next rate case.  
6 Surcharges we were looking at as a finite amount that  
7 would be an add-on to -- it won't be blended into the  
8 rate in any way. It will be an add on that will be  
9 identified on the bill.

10 **COMMISSIONER DEASON:** Okay. You're going to  
11 add it on to the bill. Do you add it on to people  
12 that are already at the max or you don't?

13 **MR. RENDELL:** That's a question we have not  
14 answered.

15 **COMMISSIONER DEASON:** Either way it could be  
16 argued that that's a change in rate structure. If you  
17 take the position we're not going to add it on to  
18 those customers who are already at the maximum -- or  
19 if you do -- it could be argued that's a change in  
20 rate structure.

21 **MR. RENDELL:** What we originally said was if  
22 those decisions were made two years ago September '96,  
23 they would have been at the cap then and they wouldn't  
24 have had any rate increase. They are still at the  
25 cap. So their argument, or what our argument was,



1 that they wouldn't have experienced a rate increase,  
2 then they shouldn't face any surcharge. And that's  
3 the way the methodology follows through on a capband  
4 rate structure. So that's consistent with what was  
5 decided on the rate structure. That you hold them the  
6 \$52 and \$65, and they are held there regardless.

7           **COMMISSIONER DEASON:** What's the iterations  
8 you go through? Do you go through first and calculate  
9 capband rates with the perspective rate increase and  
10 determine those rates.

11           **MR. RENDELL:** Yes.

12           **COMMISSIONER DEASON:** And then up add on to  
13 that.

14           **MR. RENDELL:** The reason why you have to do  
15 two separate calculations -- and I haven't had a  
16 chance to explain that -- prospective rates take into  
17 consideration that that 50 basis points reduction RE  
18 has already gone away; it's been two years. So  
19 prospectively they get to increase the rates for that.

20           The surcharge, they can not collect that.  
21 If they do and go back, then it's like that adjustment  
22 never occurred. That was never appealed. And it  
23 wasn't -- I mean, that was a final decision. So they  
24 can't go back and collect that 50-basis point  
25 reduction to equity. So it's going to be a separate

1 calculation regardless.

2           So I just want to be clear that no matter  
3 what, they can't collect that 50 basis points on  
4 equity. That was a two-year period and it's gone.  
5 They can't go back and collect it.

6           **COMMISSIONER DEASON:** So what is the actual  
7 mechanism for collecting the surcharge? It is a  
8 separate line item on the bill, and is it a flat  
9 amount that varies by customer? Same flat amount per  
10 month during the recovery period?

11           **MR. RENDELL:** That's what we envision. You  
12 calculate it during that period; you come with a  
13 dollar amount. That's their total liability and  
14 that's spread over a two-year period. You divide it  
15 by 24 and they pay a certain amount each month.  
16 That's what we envision.

17           **COMMISSIONER JACOBS:** Still guided by the  
18 capbands. And in that instance, the people who have  
19 capped it will never ever see it then, if we follow  
20 your logic.

21           **MR. RENDELL:** That's true. They wouldn't  
22 have seen it two years ago.

23           **COMMISSIONER DEASON:** But what about the  
24 situation -- if we strictly follow that methodology,  
25 are we going to have customers with rate reductions in

1 the face of an overall need for a revenue increase for  
2 the Company?

3 **MR. RENDELL:** Based on the schedules we  
4 passed out, there was some reductions because of the  
5 change in bands.

6 Now -- and the reason is because some of the  
7 other systems are paying higher surcharges so it  
8 balances out, when we look at total dollar amount  
9 surcharge, they are going to collect a dollar amount.  
10 How it is collect is in a different mechanism. So  
11 understandably it's going to be very difficult to  
12 explain to a customer. That's something we could look  
13 at, and, you know, the parties could discuss the  
14 different methodology.

15 **MR. JENKINS:** Madam Chairman, for what it's  
16 worth, I'm not sure given what the Staff has said how  
17 much can be achieved, but we'd be happy to sit down  
18 with the Utility and address this issue. I don't know  
19 if you'd call it in the form of a settlement. I know  
20 personally that there's been enough discussion of this  
21 today and enough different variations of this to make  
22 me think twice about exactly how this thing ought to  
23 play out.

24 **MR. HOFFMAN:** Well, Madam Chairman, I'd like  
25 to put the issue an aside for the moment and come back

1 to it. In light of the efforts that the parties and  
2 Staff has undertaken for the last two months, I'd like  
3 to talk to you reconsidering your decision on Issue 3.  
4 If now is not the time to do that, I'll stop. But I'd  
5 like to make an argument for a minute or two and bring  
6 this issue back to you before we all set out on some  
7 two to three years of litigation.

8 **MR. TWOMEY:** Madam Chairman, the parties  
9 don't make motions for reconsideration at your votes.

10 **MR. HOFFMAN:** Madam Chairman, I think I can  
11 make my argument. And I think if a Commissioner is  
12 persuaded, that Commissioner could certainly ask that  
13 the Commission reconsider its vote.

14 **CHAIRMAN JOHNSON:** I was on the losing side  
15 of that. Any of the Commissioners want to hear a  
16 motion for reconsideration?

17 **COMMISSIONER CLARK:** I'll hear it. I mean,  
18 I'll move -- I move that we hear what he has to say.  
19 I mean, you know -- there are a whole lot of things  
20 that are difficult to resolve.

21 **COMMISSIONER JACOBS:** I second that.

22 **MR. HOFFMAN:** I'll be very brief. Very  
23 brief.

24 I believe, Commissioner Clark, that -- and  
25 Commissioner Jacobs, I'm going to leave you aside for

1 a second because I think you opined that there was  
2 certainly enough merit on the issues to take the  
3 matter to hearing. But I heard Commissioner Clark and  
4 Commissioner Deason basically saying they are very  
5 uncomfortable putting themselves in the shoes of some  
6 customers who would like a hearing. And that's the  
7 primary basis for Commissioner Clark and Commissioner  
8 Deason's decision.

9           Now, Commissioners, I think if what we were  
10 talking about was a legal right to a hearing, I think  
11 you'd have a point. I think you'd have a legitimate  
12 concern that you would have addressed in your  
13 decision. Mr. Shreve has come up here and raised his  
14 major concern regarding the gain on sale issue. The  
15 Company has made a major concession of pulling that  
16 out of our modified settlement offer. Mr. Shreve also  
17 has stated that there are customers who want to  
18 hearing. And I'm sure that's true. I was down at the  
19 Citrus County hearing. I saw that. I'm sure there  
20 are other customers who don't want a hearing. I'm  
21 sure that there are other customers who if you asked  
22 them and said you can go to hearing, and if you lose  
23 on appeal, you'll be part of the customer base that  
24 has to pay \$9 million more in surcharges.

25           And what I'm saying to you is, I think,

1 Commissioner, respectfully that it's your duty to make  
2 this decision, the best decision on behalf of all of  
3 the customers. You have no legal obligation to reopen  
4 this record. You go back and look at what you did  
5 when the uniform rate case came back to you in Docket  
6 No. 920199, the Staff laid out your options. And they  
7 said you can reopen it or you can not reopen it. And  
8 what did you decide to do? You decided not to reopen  
9 the record. Now, I'll bet you there are customers  
10 from that case who would have liked to have seen that  
11 record reopened and liked to have seen a hearing on  
12 the areas of functionally related service areas to  
13 keep those uniform rates in effect. You made a policy  
14 decision not to reopen that record. Now, here, you're  
15 taking the opposite course, when you know -- you know  
16 that there's conservatively \$9 million in surcharges  
17 that could be added to that tab. And what I am  
18 suggesting to you respectfully is you don't have to  
19 take that course. And you can make your own decision  
20 not to reopen the record and accept the settlement  
21 offer as modified.

22           **COMMISSIONER CLARK:** I understand that,  
23 Mr. Hoffman. I didn't understand that Mr. Shreve's  
24 view was limited to the notion of gain on sale.

25           **MR. TWOMEY:** That's because it's not,

1 Commissioner. And to the extent that he suggested  
2 that -- he didn't suggest that completely but he tried  
3 to sway into it. Let me respond to that, please.  
4 This guy for the utility lawyer, he can speak for the  
5 utility --

6 **COMMISSIONER CLARK:** Mr. Twomey, would you  
7 just stick to the issues here. If there's no reason  
8 to get personal about this. Just give your view.

9 **MR. TWOMEY:** He can't suggest that he can  
10 speak for any customers of this utility. I represent  
11 specific Commissioners of this customers Utility and a  
12 lot of them. I told you I want to have a hearing. My  
13 clients want to have a hearing. Mr. Jenkins  
14 represents a large number of customers. He told you  
15 he wanted to have a hearing. I think Mr. Stephens  
16 indicated he wanted to have hearing as well as for his  
17 clients. Every other customer of this utility that is  
18 not represented by myself, Mr. Jenkins and Mr. Stevens  
19 is represented by the Public Counsel. And while he  
20 made -- I won't presume to speak for him, he made some  
21 comment about the gain on sale issue, he told you  
22 specifically and straight out that he wanted a  
23 hearing, as I heard him, on behalf of all of the  
24 customers of this utility.

25 Now, I thought it was wonderful,

1 Commissioners -- Commissioner Clark, Commissioner  
2 Deason, Commissioner Jacobs -- that you respected the  
3 fact, even though you might not have agreed if you  
4 were making the decision for us and for our client,  
5 that it was -- you respected our call and our clients'  
6 call that we wanted to go to hearing on this issue.

7           And I apologize for -- I don't mean anything  
8 personal -- being a utility lawyer is not a bad deal.  
9 There's lots of them around. It's our call and you  
10 observed that. And I would urge you not to have any  
11 kind of a retreat from that.

12           **COMMISSIONER GARCIA:** Commissioners, I just  
13 caution you, it is our call. It is not Mr. Twomey's  
14 call. We have to act in the best interest of the  
15 people of the state of Florida as a whole. And I  
16 understand, Mr. Twomey. And I accept his position.  
17 It's very clear. I understand Mr. Hoffman's position.  
18 I accept it. It's very clear. And I even understand  
19 Jack Shreve's position. It's a very difficult one as  
20 is ours.

21           But the key issue here that we have to look  
22 at is what's in the best interest of the Florida  
23 ratepayers. And I think Mr. Hoffman laid out some  
24 precedent that we've established in this case. We  
25 have given procedure. We have given consideration.



1 Every time the Court's have come in, we've opened this  
2 thing up. And here finally we have the opportunity to  
3 protect ratepayers from what could be great harm and  
4 chaos. If we go down the Staff, I guarantee we're not  
5 going to find anyone that has any doubt that this is a  
6 better deal than anything else we could have done.

7           Commissioners, I know it's difficult and I  
8 know it's been late, but think about the other option.  
9 I mean, we're just beginning to discuss this other  
10 issue. I don't force it upon you because it's a  
11 difficult issue. We can stay here all night, all  
12 week, whatever it takes, but what I do want to address  
13 is the truth is, is that we're not going to solve it  
14 going down that road. Giving Mr. Twomey the hearing  
15 that he's asking for, the hearing that the Court gave  
16 us, the choice to decide or not. Going into those  
17 service territories, renoting this, we're talking  
18 two years litigation, a surcharge of unfathomable  
19 proportion. And the truth is we have the solution to  
20 had case here. This Company has stepped back. It is  
21 a tremendous opportunity to get this behind us and  
22 straighten this case out and move forward.

23           **COMMISSIONER DEASON:** Let me say,  
24 Mr. Hoffman, I appreciate you bringing up the fact  
25 that this Commission chose at one previous time not to

1 reopen the record. But I would -- I would suggest to  
2 you there was very vocal participation on customers  
3 from both sides of that issue.

4           Here we have every customer group is adamant  
5 they want to take this to hearing. And when an issue  
6 is squarely in front of me and there's the pros and  
7 the cons, I don't mind making a decision. And that's  
8 what we're going to do. We're going to go to hearing  
9 unless there's a change in the vote. And Commissioner  
10 Garcia made some fine arguments, some very appealing  
11 arguments. As it stands right now, everybody is going  
12 to have their opportunity to take this to hearing.  
13 And then the Commission will make that decision and  
14 having all of the input. Who knows, maybe there will  
15 be some customer group that wants to say you should  
16 have accepted the stipulation, or something different.  
17 I don't know. But we don't are that in front of us.  
18 And you're asking me to substitute here, not having  
19 the benefit of the record evidence that hopefully  
20 we're going to get, you're asking me to substitute my  
21 knowledge a my judgment for those customers and their  
22 representatives who say -- and very adamantly say --  
23 we want the hearing. We can prove to you that these  
24 issues should be determined in our favor. And the  
25 only way I can judge whether they are right or wrong

1 is to prejudge the issues and say how am I going to  
2 vote on the issues? And I'm not going to do that. I  
3 can't do that. And that's where I find myself.

4           **CHAIRMAN JOHNSON:** Let me add one thing,  
5 because I, of course, am more inclined and more  
6 sympathetic to the arguments that were made. I  
7 respect Mr. Twomey's position, and I understand his  
8 position as an advocate for his customers. And also  
9 Mr. Shreve too. I think Mr. Shreve is really put in a  
10 particularly tough position on the issues. But as I  
11 sit as a Commissioner, and with all due respect to  
12 Mr. Shreve and to you, too, Mr. Twomey, I'm kind of  
13 balancing the public interest.

14           And I'll tell you the hard thing for me to  
15 swallow is if we did lose this case, and if we did  
16 have \$12 million sitting out there, and could I really  
17 impose to his kind of surcharges on customers? And  
18 what happens to this regulatory process, because if I  
19 did, could the Company collect that kind of money?  
20 Those kind of issues just become overwhelming, and  
21 that kind of risk just becomes too much. And I think  
22 that given that, and given the fact that the Company  
23 has provided a settlement -- again, it's not perfect,  
24 and I wish it could be better, but it is good under  
25 the circumstances in my opinion. Of course, I know

1 you disagree, Mr. Twomey. Because you're looking at  
2 fewer surcharges, you're looking at recover of less  
3 money than perhaps they were entitled to. You're  
4 looking at not getting attorneys fees. You're looking  
5 at no rate case expense, and when I balance the public  
6 interest I understand your position and I would be  
7 where you were. I understand Mr. Shreve's position.  
8 If I was Mr. Shreve I'd be where he is. But I'm  
9 Julia, Public Service Commissioner and I'm balancing  
10 the public the interest and this is where I end up.

11 **COMMISSIONER CLARK:** I would just add that I  
12 think the customers have to be aware that I think the  
13 cases have set the precedent. The Company will be  
14 entitled to be made financially whole for this. And  
15 if they can't get the refund, then I think we'll have  
16 to make the adjustments to CIAC and increase their  
17 rate base. I think you are kidding yourselves if you  
18 think there's some way that the customers won't bear  
19 the full responsibility. And I would add should we  
20 lose -- I'm willing to listen to the evidence too.

21 **MR. TWOMEY:** Just to be clear,  
22 Commissioners, I think Mr. Shreve addressed -- well, I  
23 think it was Mr. Shreve addressed it rather eloquently  
24 earlier.

25 First of all, none of us claim that this

1 Utility, if it wins, isn't entitled to surcharges.  
2 And Mr. Shreve addressed it hours ago when he said  
3 it's not a question of whether they get the money or  
4 not if they win. It's who holds it until that time  
5 and who has the use of it.

6 **COMMISSIONER CLARK:** And I appreciate your  
7 saying that on the record.

8 **MR. TWOMEY:** I wanted to make clear we're  
9 not suggesting, nor will I take a position later, that  
10 if they win that they are not entitled to the money.

11 **COMMISSIONER GARCIA:** Mr. Twomey, are you  
12 prepared, if this Commission votes Staff's position  
13 that we should begin to collect that money up front  
14 because the Company is going to be liable for it. I  
15 don't think any of the Commissioners -- and you heard  
16 me and I argued the other side of this 20 minutes  
17 ago -- but are you prepared to collect the money that  
18 the Company has a right to get and you know has a  
19 very, very good chance of getting?

20 **MR. TWOMEY:** I am apologize, you're breaking  
21 up there, Commissioner Garcia --

22 **COMMISSIONER CLARK:** No, I don't think you  
23 agreed to that. You don't agree to increasing the  
24 rates now to assure the money is there.

25 **MR. TWOMEY:** Of course not.

1                   **COMMISSIONER GARCIA:** That's point here,  
2 Mr. Twomey. Everybody has to be on the line for  
3 something. I can adopt the rhetoric of no here and we  
4 move to nowhere. But the truth is surcharges are  
5 almost impossible to collect and we're about a find  
6 that out whichever way we vote this out.

7                   **MR. TWOMEY:** Yes, sir. And to the extent it  
8 becomes difficult, I'd rather have the utility have  
9 the difficulty of doing it after they've won.

10                   **COMMISSIONER GARCIA:** Mr. Twomey, I don't  
11 disagree with that, but you're willing to roll the  
12 dice with someone else's money.

13                   **MR. TWOMEY:** No, sir. I'm not here as Mike  
14 Twomey, the Utility customer. I'm here just like  
15 Mr. Shreve is and just like Mr. Jenkins and  
16 Mr. Stephens here, representing not my views,  
17 Commissioner, but those of my clients.

18                   **CHAIRMAN JOHNSON:** Any other comments?

19                   **COMMISSIONER JACOBS:** One thing that does  
20 give me a greet deal of concern is that as we toss  
21 this dice, if we come back and we do lose, it sounds  
22 to me like the people who have their rate capped are  
23 not risking anything.

24                   **MS. JABER:** That is correct. And Joanne can  
25 correct me if I'm wrong, there's one thing you need to

1 know about the Moorings, Point of Woods. Mr. Twomey  
2 has referred to that group a couple of times because  
3 Mr. Stephens, on behalf of his client, was granted  
4 intervention. Point of Woods is a capped system.  
5 They are at the cap, capped rates. So they are not  
6 affected with or without a hearing. Is that correct,  
7 Joanne?

8 **MS. WILSON:** That's correct. Unless the  
9 caps are changed, or when the caps are changed, those  
10 customers will not be impacted by any of this.

11 **COMMISSIONER CLARK:** Does that impact  
12 Mr. Twomey's customers? Impact Mr. Jenkin's  
13 customers?

14 **MS. WILSON:** It would not impact  
15 Mr. Jenkin's customers.

16 **COMMISSIONER CLARK:** It won't impact Marco  
17 Island?

18 **MS. WILSON:** Marco Island, yes.

19 **COMMISSIONER CLARK:** You're just the city of  
20 Marco Island.

21 **MR. JENKINS:** No. I'm here today also on  
22 behalf of Fred Kramer who represents the customer  
23 group, the Fair Water Rate Defense Committee, and  
24 Marco Island would be affected.

25 **MS. JABER:** Just to kind of elaborate on

1 what you have been saying about not hearing from the  
2 customers who don't want a hearing. I don't know that  
3 you could. I mean, this is -- either customers will  
4 be facing the surcharge and the prospective rate  
5 increase or they are at the cap. Again, correct me --  
6 so you're looking for a feeling from customers who  
7 would not want to go to hearing. This isn't one of  
8 those cases. Those people are at the cap. They are  
9 not affected so they are not going to show up today.

10 **COMMISSIONER CLARK:** And they are not at  
11 risk.

12 **COMMISSIONER DEASON:** Aren't there customers  
13 out there who should say if this is really a good deal  
14 that I don't want to be subject to potential rate case  
15 expense. I don't want to be subject to having the  
16 Commission litigate these issues and losing them. I  
17 am willing to accept this and cut my potential loses.  
18 And I want to go ahead and get the matter resolved so  
19 I know what I have to pay and don't have this unknown  
20 factor confronting me. Nobody has come forward to say  
21 that.

22 **MS. JABER:** Right. But who would bring  
23 them? You know, the only entities that --

24 **COMMISSIONER DEASON:** Whoever thinks it's a  
25 good deal.



1           **COMMISSIONER GARCIA:** But what entity is in  
2 that position, Commissioner Deason?

3           **COMMISSIONER DEASON:** I'm sorry, what?

4           **COMMISSIONER GARCIA:** What Commissioner is  
5 in that position? Staff has laid it out. A lot of  
6 customers are at the capband, so they don't face this.  
7 And the truth is these other ones -- the ones who are  
8 on the hook for the surcharge are on the hook, period.

9           **MR. TWOMEY:** Mr. Stephens represents a group  
10 that he said wanted a hearing. I mean, we're going to  
11 construct a phantom group of customers out of your  
12 Staff's comments, Commissioners, that would be here  
13 saying they didn't want a hearing? And their logic  
14 only stands if after a hearing you continue to accept  
15 the notion that you can't raise the rest of these  
16 people up a little bit if it's required. If you raise  
17 them even a penny then they may or may not want to --

18           **COMMISSIONER GARCIA:** Commissioners, I just  
19 want you to look at the place where we're at right  
20 now. Mr. Twomey is talking about rate increases.  
21 That's where we've gotten to. Trying to figure out a  
22 balance here.

23           Commissioners, the balance we have before us  
24 is what has been offered. It is the way out of this  
25 morass that is Florida Water.

1                   **COMMISSIONER JACOBS:** Can you look at  
2 Schedule 4(a) here for a second? Tell me what that is  
3 saying again.

4                   **MR. RENDELL:** 4(a) represents the different  
5 bands and the caps for all of the items, including the  
6 ones that would go to hearing, which the Category 1  
7 and Category 2 combined. That's what 4(a) is.

8                   **COMMISSIONER JACOBS:** Is it also saying if  
9 they go to hearing and the Company prevails, all of  
10 these will stay the same?

11                   **MR. RENDELL:** If the Company prevails, this  
12 is what we estimated would be the worst-case scenario,  
13 that Staff would lose and the Company would win.  
14 These are the rates.

15                   **MS. WILSON:** Commissioner, the column under  
16 recommended rates would be the rates if the Company  
17 wins all of the issues. We do not have a similar  
18 system for those that we're talking about right now  
19 where we are just confessing error and correcting  
20 things. We did not have a similar schedule for that.

21                   **MR. RENDELL:** 4(a) is a result of 2(a) and  
22 2(b). It's just you're taking those rates and you're  
23 showing it on a bill at 10,000 gallons for comparison  
24 purposes.

25                   **CHAIRMAN JOHNSON:** Any other questions,

1 Commissioners? I know we were just listening and  
2 responding to Mr. Hoffman's suggestion that there be  
3 some reconsideration. I don't think -- is there a  
4 motion? Commissioner Jacobs?

5 **COMMISSIONER JACOBS:** I'm pondering.

6 **MR. TWOMEY:** May I say something to  
7 Commissioner Jacobs, Madam Chairman? Commissioner  
8 Jacobs, if there's any confusion left remaining on  
9 this issue, there aren't -- there are not any  
10 customers that aren't being represented by my views,  
11 Mr. Jenkins, Mr. Stephens and the views of the Public  
12 Counsel, Jack Shreve. There are no such customers.  
13 Those customers that I don't represent, Mr. Jenkins  
14 doesn't represent, Mr. Stephens doesn't represent, and  
15 any that I'm aware of, it's the statutory  
16 responsibility of Mr. Shreve to represent those  
17 people.

18 **COMMISSIONER JACOBS:** That's not my concern.  
19 I fully expect that -- for your clients you're  
20 representing their views. The concern is one that --  
21 and I'm coming to understand pretty clearly now is  
22 that the further down this road we go, the weight and  
23 the burden on the customers becomes more and more  
24 concentrated. Because the more people that hit that  
25 cap, the further down the road we go, the more is

1 shifting down the load down the road. And what sounds  
2 like a smaller group of people -- if I'm mistaken  
3 about that I'd like to know, but it sounds like the  
4 further down the road we go, the higher this tail  
5 gets, the more people are likely to roll into the  
6 higher -- I mean roll into a cap rate, and the more  
7 burden of whatever ultimately gets decided falls on a  
8 narrow -- more narrow band of ratepayers. Is that a  
9 correct understanding?

10 **MR. TWOMEY:** That's the goal of your Staff  
11 in constructing this thing. That's the way the thing  
12 is set up. But, Commissioner, if I understand what  
13 your question is, but that's got nothing to do with,  
14 in my view, with the issue before you.

15 **COMMISSIONER GARCIA:** Yes, it does, Mr.  
16 Twomey, because then it brings the question -- the  
17 rates that we have, and you're saying that we should  
18 take those up also, the rate structure in this case.

19 **COMMISSIONER CLARK:** As I understand it, the  
20 higher risk falls on those in the lower categories?

21 **COMMISSIONER GARCIA:** No, but that's not  
22 what Mr. Twomey is willing to say. Mr. Twomey is  
23 saying we need them to address the rate structure.

24 **MR. TWOMEY:** First of all, I'm trying to  
25 address Commissioner Jacobs' question. But the point

1 is that you don't -- Commissioner Deason and others of  
2 you have at least implicitly, if not explicitly,  
3 recognized the problems of the capband, not just the  
4 capband system but the capbands themselves; the  
5 inherent unfairness, at least in my view, and maybe  
6 some of yours, that revenues should increase and these  
7 people stay exactly the same. And I'm suggesting to  
8 you, if you go to the hearing as you voted a few  
9 moments ago, that's something you may want to take  
10 testimony on. You may want to have briefs legally on  
11 whether you can change it or not. It's not something  
12 you have to assume.

13 **COMMISSIONER GARCIA:** See where we're taking  
14 ourselves?

15 **CHAIRMAN JOHNSON:** Were you finished,  
16 Mr. Twomey?

17 **MR. TWOMEY:** I'm addressing his question.  
18 That doesn't -- it doesn't make things worse by  
19 accepting the settlement. And, again, I want to  
20 reiterate, the customers are beseeching you, all of us  
21 for an end.

22 **COMMISSIONER CLARK:** But you do understand,  
23 Mr. Twomey, to the extent we feel constrained and that  
24 we have to go with the cap that was established in the  
25 capband services, the onus of any refund will grow

1 greater on those in the lower capbands where your  
2 customers are.

3           **MR. TWOMEY:** Yes, Commissioner Clark,  
4 because mathematically there's no other way for that  
5 work. We've known that for all along and that's not a  
6 problem.

7           **COMMISSIONER GARCIA:** Commissioners, when I  
8 hear Mr. Twomey's argument -- and let me say,  
9 Mr. Twomey, your customers really got their money's  
10 worth. You have been an incredible advocate and today  
11 you have been sharper than ever. But let me just tell  
12 you it reminds me, Commissioner Clark, of the Yucca  
13 (ph) Mountain debate in nuclear storage. I'm not for  
14 or against nuclear storage -- I mean the nuclear  
15 energy people say, I'm just against nuclear storage.  
16 Well, then you're against nuclear energy because you  
17 can't go forward. And that's where we find ourselves  
18 today.

19           By not accepting this settlement we go  
20 forward into an area where we know it's going,  
21 inevitably is going to affect the rate structure and  
22 the Court's not going to take that. And so bang,  
23 we're going to come back and Mr. Hoffman is going to  
24 walk in, let's say with 9 million. How are we going  
25 to get there?

1           **COMMISSIONER CLARK:** Commissioner Garcia, I  
2 would point out that all of the representatives of the  
3 customers acknowledge that they will be entitled to  
4 that money.

5           **COMMISSIONER GARCIA:** Commissioner, I have  
6 yet to walk into a hearing where we're talking about  
7 rate increases, and we have the customers, that we get  
8 a resounding applause when we announce we're from the  
9 Public Service Commission. So I just -- I understand  
10 that specifically. That's why this is a particularly  
11 difficult situation. I know that -- I'm not taking  
12 this lightly, but the truth is that we have our  
13 professional staff that agrees that this is the best  
14 possible situation for us.

15           **COMMISSIONER CLARK:** Likewise, Mr. Shreve  
16 has a professional Staff that made a determination  
17 that they think they should go to hearing.

18           **CHAIRMAN JOHNSON:** Is there a motion?

19           **COMMISSIONER JACOBS:** I have another point.

20           **CHAIRMAN JOHNSON:** Okay.

21           **COMMISSIONER JACOBS:** Staff, if you can go  
22 quickly, explain something to me real quickly. When  
23 this case came back to the court and we were reversed  
24 on the original rate structure, the uniform rates, and  
25 we arrived at the capband, if I recall, the Court

1 placed particular importance on that.

2 **MS. JABER:** You're mixing up both dockets.  
3 Let me try to give you brief history.

4 In the 199 docket the Commission approved  
5 the uniform rate. That docket went up on appeal and  
6 we were overturned. Because this rate case came in in  
7 the interim, the Commission found it appropriate to go  
8 back to the record and use a modified stand-alone  
9 rate. In this docket you found it appropriate to use  
10 a capband rate structure. This docket goes up on  
11 appeal because Mr. Twomey and several other people  
12 appealed that order. The Court came back in this  
13 docket then said, "You know what, we were wrong. You  
14 had authority to do uniform rates all along. We mixed  
15 up jurisdiction and ratemaking statutes. And, by the  
16 way, the capband rate structure is okay too." I'm  
17 summarizing; paraphrasing. It's late in the game, but  
18 that's essentially it.

19 **COMMISSIONER JACOBS:** So your view that  
20 we're bound to the capband is merely on the facts of  
21 this case and the record on appeal more so than any  
22 restriction on authority?

23 **MS. JABER:** I think this Court recognizes  
24 you have broad authority in ratemaking and upheld this  
25 rate structure. And because it's been upheld, I'm



1 recommending you not revisit that. And I think  
2 Mr. Garcia's point, if I could be so bold as to  
3 articulate it, is that Mr. Twomey's comments appear to  
4 be a suggestion that you can revisit rate structure.  
5 And I think that's what Commissioner Garcia was  
6 alluding to; that that's the road you might be going  
7 to. Just to caution you.

8 **MS. WILSON:** And rate structure was not sent  
9 back by the Court.

10 **COMMISSIONER GARCIA:** We were given a very  
11 limited area to go back to, very specific, very  
12 technical. Mr. Twomey wants to have hearings on this.  
13 And if we don't decide that very specific technical  
14 area within those very specific constraints, we're  
15 going to get thrown back. And the Court's not going  
16 to say, "Hey, by the way, revisit this." What the  
17 Court is going to say, "Pop. You lose. Here's the  
18 bill."

19 **COMMISSIONER JACOBS:** I would suggest to you  
20 that if we see the kind of results occurring in our  
21 decision in an area that was not specifically  
22 addressed but clearly having the potential of  
23 long-term customer detriment, and the Court would  
24 not -- I would suggest that the Court would not have  
25 intended that we impose such harm on consumers just by

1 blind response to its remand.

2           **COMMISSIONER GARCIA:** Commissioner, I --  
3 that's what I always thought but that isn't what we've  
4 gotten from the Court. I mean the Court on several  
5 occasions, on what we thought was sensible, what we  
6 felt was pragmatic in a difficult situation, has  
7 slammed us. And here we are looking at the  
8 possibility of the end of this case. And I understand  
9 that you haven't walked this thousand miles with the  
10 rest of us. But the truth is that what Mr. Twomey is  
11 arguing, by the very nature of the argument, puts us  
12 at that impossible place again. And I tell you, the  
13 Court's not going to say, "Oh, look at this again."  
14 The Court's just going to slam us. We have a way of  
15 walking away with this and protecting customers. And  
16 I think we should take it.

17           **MR. TWOMEY:** Commissioner Garcia, I  
18 appreciate your compliment, and the fact that you  
19 picked me out is maybe because I have been the loudest  
20 and most shrill in my comment.

21           **COMMISSIONER GARCIA:** You have been anything  
22 but shrill today, Mr. Twomey. You have been wonderful  
23 I think.

24           **MR. TWOMEY:** Thank you. But I want to  
25 reiterate, this is not my idea. I mean, I represent a

1 small percentage of the customers compared to Mr. Jack  
2 Shreve. And that's it. It's not -- this is not me.  
3 This is not Mike Twomey's idea.

4 **COMMISSIONER GARCIA:** I understand,  
5 Mr. Twomey. But I think today you have been the most  
6 articulate proponent of this, and I would be arguing  
7 exactly the same thing if I were sitting.

8 **MR. SHREVE:** Did you say "most"?

9 **MR. TWOMEY:** I just want to suggest,  
10 Commissioner Garcia, that the notion that accepting  
11 this settlement puts you at the end of the case may  
12 not be correct.

13 **COMMISSIONER GARCIA:** Tell me how it isn't?

14 **MR. TWOMEY:** Sir, I would suggest to you  
15 there's a high probability that the customers who  
16 wanted hearing will still appeal. On the other hand,  
17 if you go to hearing, nobody -- it would be my view,  
18 nobody, if you go to hearing --

19 **COMMISSIONER GARCIA:** Before you move past,  
20 what grounds would they have for a hearing? The Court  
21 has said you can either give me more information on  
22 this or not. If not, here is the outcome. If you do  
23 it well, we'll take a look at it.

24 **MR. TWOMEY:** Mr. Stephens noted that he took  
25 the trouble to read the language because he's new to

1 this and many of us haven't -- myself included -- read  
2 it recently. He takes the view, and I agree with him,  
3 that the language says you're to have a hearing. Let  
4 me just finish this thought, please.

5           We'll probably appeal that if you impose  
6 this settlement upon us against our wishes. The  
7 Company, on the other hand, I would suggest to you, if  
8 you order a hearing and give them all of the money  
9 that it is undoubtedly determined that they are  
10 required to have immediately, I don't think they are  
11 going to go to the Court and appeal and say it was  
12 beyond your discretion to hold a hearing on this when  
13 the Court clearly said you couldn't.

14           So what I'm suggesting, Commissioner Garcia,  
15 is that if you impose this settlement upon us, you're  
16 likely to get an appeal. Whereas, if you -- won't  
17 have an end to the case. And if you go to hearing,  
18 give the Company all of the money it deserves  
19 immediately you'll get --

20           **COMMISSIONER GARCIA:** Maybe your  
21 characterization is based on the looseness of my  
22 language, and pardon me, I apologize. I'm not  
23 accepting or imposing a settlement on you. I am  
24 accepting a settlement offered to this Commission, and  
25 only this Commission, on issues that this Commission

1 has before it. They are not issues before anyone  
2 else, and I'm not affecting anyone else's procedural  
3 rights.

4           **COMMISSIONER JACOBS:** This problem that we  
5 have been speaking about is not necessarily determined  
6 by whether or not we go to hearing or settlement. It  
7 occurs even if we accept the settlement; is that  
8 correct?

9           **MS. WILSON:** That's correct.

10           **COMMISSIONER JACOBS:** I won't belabor this  
11 anymore. I'm not going to go with the motion. I  
12 would say this: I would ask the parties to look at  
13 this real closely. It gives me a lot of heartburn at  
14 this moment. And if something could be done to look  
15 at that issue -- I don't know. But at this moment,  
16 I'm going to go with what -- stick by what I said.

17           **CHAIRMAN JOHNSON:** Motion won't be  
18 reconsidered. Mr. Shreve.

19           **MR. SHREVE:** Thank you very much. Everybody  
20 keeps referring to me, and I think everybody heard  
21 what I said earlier and I want to go back.

22           I some this as a revenue issue. I think  
23 that's where we are with this. I don't intend to  
24 speak to any rate structure issue. I don't intend to  
25 participate for or against any settlement that would

1 have any effect on a rate structure issue because I  
2 think that would have a conflict of interest.

3 I maintain, and have the entire time, that  
4 we want a hearing. We do not want the Company to be  
5 given the money ahead of time until the hearing --  
6 until you have decided. You made a decision earlier  
7 to go with the customers as opposed to the Company on  
8 this. I'm asking for a hearing. I've asked for a  
9 hearing earlier, to do exactly that and back you up in  
10 your earlier decision. The Staff has committed much  
11 earlier when they made the recommendation to go to  
12 hearing; they thought we could win. They are going to  
13 put on a case; we are going to put on a case. That's  
14 my position on this and that's where it's going to  
15 stay. And I'm not going to get involved in any -- and  
16 I don't expect anyone to speak for me on anything  
17 concerning any issue that involves the rate structure  
18 settlement, no settlement or whatever. I'm going to  
19 stay totally away from that and have all the time.  
20 And I think that's what I've said earlier. I can  
21 speak for myself I guess.

22 COMMISSIONER CLARK: Let's see where we are  
23 in terms of the -- we have not -- we've simply  
24 rejected the settlement at this point. The offer of  
25 settlement. Then now what we really need to do is go

1 to Issue 4. And I'm willing to move Staff that we go  
2 to hearing on the Category 2 issues, and that we do  
3 not change rates except for those issues on which we  
4 have no choice. And that with respect to the change  
5 of rates, I'm just uncomfortable -- I guess I'm  
6 comfortable with the notion of staying within the  
7 capbands for the prospective changes, but I think the  
8 surcharges should be handled a different way. And I'm  
9 comfortable, I think, with an across-the-board  
10 increase.

11 **COMMISSIONER DEASON:** When you say across  
12 the board, how do you mean? What would be the actual  
13 mechanics of that determination?

14 **COMMISSIONER CLARK:** A percentage. I'm  
15 thinking it would be all right to do what the Utility  
16 proposed.

17 **COMMISSIONER DEASON:** That would be applied  
18 even to customers at the cap?

19 **COMMISSIONER CLARK:** Yes. But, you know,  
20 I'm willing to listen to any other reasonable  
21 suggestion. Or one thing we can do is just make a  
22 decision about the hearing and the fact that we want  
23 to do the prospective rates and the surcharge. Tell  
24 Staff to come back to us at the next agenda with what  
25 they recommend.

1           **MR. HILL:** I think you have our  
2 recommendation, Commissioner. You're welcome to do  
3 whatever you want but you do have our recommendation  
4 on this docket.

5           **COMMISSIONER CLARK:** Yeah. But your  
6 recommendation on the surcharge was that we had no  
7 choice with respect to the surcharge. And now I hear  
8 legal counsel saying well, maybe we do have a choice.

9           **MS. JABER:** No. We have been consistent.  
10 What Chuck is saying is our recommendation is that the  
11 surcharge be done within the parameters of the capband  
12 rate structure. We were answering you, can we do  
13 something different? And Bobby researched GTE and the  
14 answer is if you do something different, pursuant to  
15 GTE, you might want to make that PAA, because in her  
16 view, and I have no reason to doubt, that that could  
17 result in substantially affecting a customer.

18           **COMMISSIONER CLARK:** Okay.

19           **COMMISSIONER DEASON:** Under Staff's  
20 recommendation that would not necessitate a PAA order,  
21 what is the actual mechanics? Do you go through  
22 several iterations? Do you do one iteration? How do  
23 you distinguish between the prospective increase and  
24 the surcharge increase?

25           **MS. JABER:** I think what you're asking is



1 for Staff to explain our recommendation on the  
2 surcharge.

3           **MR. RENDELL:** And under the recommendation  
4 as written, it follows the schedule that was handed  
5 out earlier under surcharges for admissions of errors  
6 and reversal, and what I want to be clear is when I've  
7 mentioned there's a percentage way to do it like we do  
8 in final orders, it's the same point. It's how to get  
9 to Point A to Point B. There's two roads to take.

10           **COMMISSIONER DEASON:** So are you changing  
11 your recommendation?

12           **MR. RENDELL:** What I'm doing is -- the  
13 recommendation is based on these surcharges, but using  
14 a percentage these --

15           **COMMISSIONER DEASON:** These things that you  
16 handed out today. That's the basis of our  
17 recommendation?

18           **MR. RENDELL:** That is the recommendation as  
19 written. What I'm saying is the percentage method  
20 gets to the same spot. It's easier to do the  
21 percentage method. This is the company's method. The  
22 way they wanted to do earlier. I don't have a problem  
23 with the percentage method because it gets to the same  
24 exact place. It's just a mathematical how you do it.  
25 Percentagewise or ratewise you're going to get to the

1 same spot. It should work out to the exact same  
2 dollar amount. I could support either way. That's  
3 what I'm trying to say.

4           **COMMISSIONER DEASON:** Okay. Explain -- And  
5 you've done this with me, but for the benefit of  
6 everyone else, explain your percentage method.

7           **MR. RENDELL:** The percentage method -- and I  
8 would have to talk a little bit further about the  
9 exact percentage -- but the percentage method, in a  
10 nutshell, is when you do a rate case, and you have  
11 interim rate increase, you know that dollar amount of  
12 the interim rate increase, you come down and you have  
13 a final revenue requirement, you look at the  
14 percentage difference. That percentage is applied to  
15 bills, customer bills during that period. It's a  
16 little easier for the customers to understand because  
17 they know what their bills were. They know the  
18 percentage method and they can just apply it. It's  
19 easier for the Company to do that. That's what Staff  
20 recommended. Like I said earlier, in 199 it's  
21 consistent with that recommendation.

22           The only reason these rates were calculated  
23 because that's the way the Company proposed back in  
24 199 when they were facing potential surcharges. It's  
25 more complicated; more complicated to explain to

1 customers. It's more complicated on the Company. But  
2 I believed that this was consistent with what they  
3 were offering.

4 **COMMISSIONER DEASON:** Is this for the  
5 prospective rate increase you would do it under your  
6 percentage method?

7 **MR. RENDELL:** No. Only on surcharge.

8 **COMMISSIONER DEASON:** Only on surcharge.

9 **MR. RENDELL:** Prospective is consistent with  
10 Schedules 3(a) and 3(b). And I do want to caution  
11 you, the 4% across the board on top of the current  
12 rates, you can't compare that to what rates were  
13 because of the equity adjustment, the 50-basis point  
14 equity adjustment. If you allow them to do that, that  
15 adjustment never occurs. I just want to caution you  
16 on that methodology that I heard earlier. I would be  
17 remiss if I didn't bring that to your attention.

18 **COMMISSIONER DEASON:** So would you implement  
19 the prospective rate increase and within the capband  
20 methodology, and you would continue to use the same  
21 caps, and you would group them as to however they fell  
22 out, and that would be your prospective rates. And  
23 then you would take those rates, the percentage  
24 difference on a system-by-system basis and recalculate  
25 customers' bills to determine what their liability is

1 under the surcharge?

2           **MR. RENDELL:** No. The surcharges have  
3 nothing to do with the prospective rates. Prospective  
4 rates include that equity adjustment. It's a totally  
5 separate calculation. You have a separate revenue  
6 requirement, the surcharge amount that doesn't include  
7 that percent basis point reduction to equity.

8           **COMMISSIONER DEASON:** Do you go through an  
9 iteration?

10           **MR. RENDELL:** The same iteration.

11           **COMMISSIONER DEASON:** You go through another  
12 iteration and you may have different bands and systems  
13 within one band for purposes of surcharge and a whole  
14 other group of bands and systems within a band for  
15 prospective rate increase?

16           **MS. WILSON:** Commissioner, that's not going  
17 to happen. The dollar difference he's talking about  
18 is a very small. It's something like the 100,000.  
19 That's not going to create a shift in a band.

20           **COMMISSIONER CLARK:** As I understand it,  
21 you're going to figure the surcharge as a percentage  
22 of the difference as a result of the prospective  
23 rates.

24           **MR. RENDELL:** No, that's not correct. It  
25 would be a percentage difference of the rates that

1 were in effect on the final order, whatever the  
2 percentage. The way the surcharge amounts were  
3 calculated, we had to go through and we had to  
4 calculate revenue requirements per service area  
5 without the 50 basis points. And we have those  
6 revenue requirements which result in the numbers on  
7 the bottom of Schedule 1(a). Those were run through  
8 the capband methodology to come up with rates. That's  
9 compared to final order rates. That's the difference  
10 that's calculated here.

11 **COMMISSIONER CLARK:** That difference is a  
12 percentage, and that would be the basis on which you  
13 would make the surcharge.

14 **MR. RENDELL:** You can do it that way.  
15 That's correct. You get to the same spot. It's  
16 easier doing a percentage than it is doing rates.

17 **COMMISSIONER CLARK:** Commissioners, that  
18 sounds okay to me, but I'd still like to see what the  
19 numbers are and how they fall out. And it doesn't  
20 seem to me that waiting -- maybe you could present it  
21 to us at agenda on Tuesday and we could decide on  
22 Tuesday.

23 **MR. RENDELL:** I don't think I'd be able to  
24 have it for this Tuesday. But I do want to let you  
25 know when you vote on rates it stops the surcharge

1 from growing. So they are not going to grow anymore.  
2 So I can come back to a separate agenda on surcharges  
3 as long as prospective rates are changed. Surcharges  
4 are going to stop once there's rates in place. The  
5 only thing that may --

6 **COMMISSIONER CLARK:** We may delay when the  
7 surcharge goes into effect and it may collect some  
8 more interest.

9 **MR. RENDELL:** That's correct. So I'd want  
10 you to be aware it's not going to continue to grow if  
11 we delay --

12 **COMMISSIONER CLARK:** That's acceptable to  
13 me.

14 **COMMISSIONER DEASON:** It's acceptable to me,  
15 especially given the hour.

16 **COMMISSIONER CLARK:** I would move that on  
17 Issue 4, that we would authorize the Utility to  
18 implement rates on a going-forward basis for those  
19 items for which the Commission admitted error or for  
20 which the Court reversed without giving discretion to  
21 reopen the record.

22 **COMMISSIONER GARCIA:** Susan, what rate  
23 structure -- how are we going to do them, percentage  
24 or --

25 **COMMISSIONER CLARK:** Just give me a chance,

1 I'll get there.

2 We would change the rates prospectively to  
3 account for those differences by cranking it into the  
4 capband methodology. But that Staff would come back  
5 to us on a recommendation on the surcharge for those  
6 items which were reversed. That we would reopen the  
7 record to take additional testimony on the use of the  
8 lot count methodology and AADF in the used and useful,  
9 but we would not authorize the Utility to implement a  
10 rate increase at this time to reflect a difference in  
11 the methodologies. That's my motion.

12 **CHAIRMAN JOHNSON:** There's a motion. Is  
13 there a second?

14 **COMMISSIONER DEASON:** I second the motion.  
15 But let me raise one question. At what point are we  
16 going to give notice to customers of the decision to  
17 go to hearing? What's at risk? The fact that there  
18 are surcharges that continue to grow, so they are  
19 fully informed of the potential liability. That's not  
20 to -- not going to be happy with it, I understand, but  
21 at least they are going to be fully informed. Do we  
22 address that in any of these issues?

23 **MS. WILSON:** In Issue 5 is really where  
24 you're talking about what would the rates be  
25 prospectively. And we did talk about customer notice

1 and that could include all of these things.

2           **MR. RENDELL:** It would be the discretion of  
3 the Commission to require the Utility to include that  
4 in the notice of rates so that all customers are fully  
5 informed of the impact they may be facing.

6           **MR. JAEGER:** There's a (c) under Issue 4,  
7 defer the decision with regard to refund of interim;  
8 would you move Staff on that?

9           **COMMISSIONER CLARK:** Yes.

10           **COMMISSIONER DEASON:** And I also second that  
11 as well.

12           **CHAIRMAN JOHNSON:** There's a motion and a  
13 second. Any further discussions?

14           **MR. HOFFMAN:** Madam Chairman, may I ask one  
15 question before you vote in connection with the  
16 motion? And that is, is the Commission attaching a  
17 time certain for Staff to come back on the surcharge  
18 issue because the clock continues to run? I think we  
19 all want to cut it off as soon as possible.

20           **COMMISSIONER DEASON:** Only in terms of  
21 interest is the clock still running. Once the  
22 prospective rates get in place, but I understand it  
23 needs to be addressed quickly.

24           **COMMISSIONER CLARK:** So it wouldn't put a  
25 time certain but it would tell Staff to do it quickly.



1 We understand that until those prospective rates are  
2 in effect that the surcharge amount grows. So we need  
3 to get it decided quickly.

4 **COMMISSIONER DEASON:** I would hope that  
5 Staff would be able to present its results to the  
6 Company. And if there's any mathematical errors, we  
7 can get those resolved. I don't want to --  
8 philosophically, hopefully, it's behind us. But to  
9 make sure that we're all on the same page as far as  
10 the actual calculation, that we're all comfortable it  
11 was calculated correctly, the mechanics.

12 **MR. CRESSE:** Did the motion clarify how  
13 based upon 1 or 2 million increase?

14 **COMMISSIONER CLARK:** Prospective  
15 1.2 million. Yes, that it follow the capband rate  
16 structure.

17 **MR. CRESSE:** Does that mean those who are  
18 already at the top of the caps would not get any  
19 increase. It would go to everybody that's below the  
20 top?

21 **COMMISSIONER CLARK:** That's my view.

22 **MR. CRESSE:** I just wanted that clarified.

23 **CHAIRMAN JOHNSON:** There's a motion and  
24 second. Any further discussion? All those in favor  
25 signify by saying "aye."

1           **COMMISSIONER DEASON:** Aye.

2           **COMMISSIONER JACOBS:** Aye.

3           **COMMISSIONER CLARK:** Aye.

4           **CHAIRMAN JOHNSON:** Opposed? Nay.

5           **COMMISSIONER GARCIA:** Nay.

6           **CHAIRMAN JOHNSON:** Show it approved on a 3  
7 to 2 vote.

8           **COMMISSIONER DEASON:** Let me ask a question  
9 just so that we're clear. What is it that you're  
10 voting against? Because we already resolved the fact  
11 we're not accepting the stipulation. Now, I know,  
12 Chairman Johnson, your position on that and I know  
13 Commissioner Garcia's position on that. What is it  
14 that you disagree with in relation to Issue 4?

15           **CHAIRMAN JOHNSON:** My position would still  
16 be the same with respect to my concerns of the  
17 surcharges, so I would allow the companies to collect  
18 the revenues, subject to refund, just again with that  
19 same fear.

20           **COMMISSIONER DEASON:** That's what you  
21 disagree with then. You would allow the rates to be  
22 collected so as to minimize surcharges.

23           **CHAIRMAN JOHNSON:** Uh-huh.

24           **COMMISSIONER DEASON:** Okay.

25           **COMMISSIONER GARCIA:** Commissioner Deason,

1 while I wouldn't want all of it to be collected, I  
2 would want some form of protection. I feel that this  
3 is an irresponsible road we're taking. I know your  
4 reasons and I'm not calling you irresponsible; let me  
5 take the word back. What I'm saying is that I think  
6 it's -- this is a road that's going to lead us to  
7 nowhere. And it's not for your lack of wanting to do  
8 something good, I just don't think it's going to do  
9 good, and, unfortunately, we're going to have to  
10 distribute possibly some \$9- to \$12 million. We're  
11 going to have to find it from those ratepayers.

12 **COMMISSIONER DEASON:** Okay. Thank you.

13 **CHAIRMAN JOHNSON:** That resolves Issue 4.

14 **MR. RENDELL:** I believe Issue 5 was taken  
15 care of in your vote when you approved Schedules 3(a)  
16 and 3(b), but you may want to reiterate it. It's  
17 based on capband rate structure. It's the  
18 corresponding rate.

19 **COMMISSIONER CLARK:** Well, my motion on  
20 Issue 5 would be that the needed increase in rates to  
21 reflect the roughly \$1.2 million on a going-forward  
22 basis would be done in accordance with the capband  
23 rate structure. And that you would come back to us  
24 with the rates and the calculations for the surcharge.  
25 And that no other rates be changed at this point.

1           **COMMISSIONER DEASON:** The vote so Issue 4  
2 really addresses Issue 5 then.

3           **CHAIRMAN JOHNSON:** So there's Issue 6.

4           **MS. REYES:** That also, I think, has been  
5 addressed in Commissioner Clark's motion, and, again,  
6 it's been reflected on her vote, I think.

7           **CHAIRMAN JOHNSON:** Issue 7 is.

8           **MR. WILLIS:** Issue 7, I think has also been  
9 handled through your vote on that too. This is where  
10 you're going to defer any action upon the interim  
11 refunds and AFDI charges, as well as the vote on the  
12 final revenue requirement and all of the fallout  
13 issues.

14           **CHAIRMAN JOHNSON:** Issue 8. I guess the  
15 docket stays open. Is there a motion?

16           **COMMISSIONER CLARK:** Move Staff.

17           **COMMISSIONER DEASON:** Second.

18           **CHAIRMAN JOHNSON:** Well, wait. Oh, it does  
19 say it will remain open. Okay. Any further  
20 discussion?

21           **COMMISSIONER GARCIA:** Madam Chairman,  
22 there's a motion and a second on Issue 8.

23           **CHAIRMAN JOHNSON:** Any further discussion?  
24 Joe, was yours a discussion or can we vote?

25           **COMMISSIONER GARCIA:** No. I wanted to say

1 something before you adjourn.

2           **CHAIRMAN JOHNSON:** Before we -- I'm sorry,  
3 Joe, we couldn't hear you.

4           **COMMISSIONER GARCIA:** Before we adjourn.

5           **CHAIRMAN JOHNSON:** There's a motion and a  
6 second. All those in favor signify by saying "aye."  
7 Aye. opposed.

8           **COMMISSIONER CLARK:** Aye.

9           **COMMISSIONER GARCIA:** Aye.

10          **COMMISSIONER DEASON:** Aye.

11          **COMMISSIONER JACOBS:** Aye.

12          **CHAIRMAN JOHNSON:** Show it approved  
13 unanimously. Any comments, Commissioners? Joe.

14          **COMMISSIONER GARCIA:** Madam Chairman, I just  
15 wanted to thank you and the other Commissioners and  
16 the parties for your indulgence of allowing me to  
17 participate by videoconference. And I'm sorry for any  
18 inconvenience that may have caused. But you can feel  
19 gratified that the air conditioning in this building  
20 was turned off somewhere around 4:00.

21          **CHAIRMAN JOHNSON:** Thank you. I want to  
22 thank you all of the --

23          **MR. SHREVE:** Commissioner, who is this? Who  
24 was doing the talking? (Laughter)

25          **CHAIRMAN JOHNSON:** I want to thank Public

1 Counsel.

2 COMMISSIONER GARCIA: That wasn't fair.

3 CHAIRMAN JOHNSON: And Staff and Mr. Twomey  
4 for their participation. It's been a long day but the  
5 excellence (sic) made have been excellent.

6 MR. HOFFMAN: Madam Chairman, before we  
7 close, could I just ask for a clarification on what if  
8 anything the Commission has determined this evening in  
9 connection with a customer notice.

10 CHAIRMAN JOHNSON: Oh.

11 COMMISSIONER CLARK: Good point.

12 CHAIRMAN JOHNSON: That is a very good  
13 point.

14 MS. WILSON: Commissioners, in Issue 5 there  
15 is a requirement that the customers be noticed of this  
16 rate increase that you did approve. And what we were  
17 saying is that notice should include, of course,  
18 letting them know about the rate increase and would  
19 also let them know about the future hearings and the  
20 potential surcharges.

21 MR. RENDELL: There's a way if the Company  
22 wants to implement rates now to stop the surcharge  
23 liability, they could notice those, get those in  
24 effect, but they are going to face a second notice on  
25 surcharge potential in hearings, so I just want them

1 to be aware of that.

2           **CHAIRMAN JOHNSON:** Now, how does the notice  
3 process work? Will you all review that? You know, we  
4 have had problems with these, just miscommunication,  
5 but problems with the notices and what they say and  
6 what is sufficient and what is not. Do we have a  
7 process of review to make sure everyone is okay with  
8 the notice?

9           **MS. JABER:** Yes. It's my recollection that  
10 someplace in here we recommended that the Staff  
11 preapprove the notice. And we can certainly work with  
12 the utility.

13           **CHAIRMAN JOHNSON:** And Public Counsel.

14           **MR. SHREVE:** I think that's good. And I  
15 think it should be very clear that this was a remand  
16 and that you had no choice in it. It came in from the  
17 appellate court.

18           **COMMISSIONER CLARK:** Mr. Rendell, you just  
19 said something that caused me concern.

20           **MR. RENDELL:** To get the rates into effect  
21 you have to notice pursuant to rule. I don't think at  
22 this point in time they could draft a notice on the  
23 surcharge because we have to come back to an agenda.  
24 But they can get the rates into effect by just  
25 noticing the rates, and then notice the surcharge and

1 the hearings at a later date. But that's the only way  
2 you can get the rates into effect is stop the  
3 surcharge.

4 **MS. JABER:** Troy is saying at this point  
5 we're talking about two different notices. You'll  
6 have a notice associated with the prospective rate  
7 increase, and since we're coming back on the  
8 surcharge, we'll do a subsequent notice on the  
9 surcharges.

10 **COMMISSIONER CLARK:** I don't think that's a  
11 good idea.

12 **COMMISSIONER DEASON:** I don't either. It's  
13 just more confusion. And I think it should be one  
14 notice.

15 **MS. JABER:** So you want to delay the  
16 implementation then of the rate increase -- which you  
17 can do, but I think that's --

18 **COMMISSIONER CLARK:** How soon can you get  
19 that back to us?

20 **MR. RENDELL:** We'll try to get it back on  
21 the December 1st agenda. I will not be able to get it  
22 to you Tuesday.

23 **COMMISSIONER CLARK:** I think we could delay  
24 it until then. I think it's worth saving the second  
25 notice.



1           **MR. RENDELL:** That's fine.

2           **MS. JABER:** You probably need to take a  
3 formal vote since that is different from what Issue 5  
4 states.

5           **COMMISSIONER CLARK:** I would move that --  
6 what exactly do you want me to move?

7           **MS. JABER:** That there's a delay in the  
8 implementation of the rates pending resolution of the  
9 surcharges issue. At such time one notice will be  
10 sent by the Utility that will address the prospective  
11 rate increase and the surcharge.

12           **COMMISSIONER CLARK:** I so move.

13           **COMMISSIONER DEASON:** Second.

14           **CHAIRMAN JOHNSON:** All those in favor  
15 signify by saying -- any discussion?

16           **MR. CRESSE:** Yes. Did I understand her to  
17 say she wanted to delay the implementation until you  
18 could do both of them simultaneously?

19           **COMMISSIONER CLARK:** No. Both notices  
20 simultaneously.

21           **MR. HOFFMAN:** Commissioner Clark, I think  
22 the potential problem with that, though, is we can't  
23 notice the surcharges until we put a finite end on a  
24 date for the rates.

25           **COMMISSIONER CLARK:** I agree with you. But

1 I think we can do that. We can say when we're going  
2 to have those rates into effect so they can handle --  
3 be handled at the same time. We can make it clear  
4 when the prospective rates are going to take effect.

5 **MR. CRESSE:** Make it clear when the  
6 prospective rates take effect by running whatever you  
7 want to run through that rate design now. You can't  
8 make it clear on what happens to the surcharges until  
9 such time as you determine the structure of your  
10 surcharges. You determine the amount of surcharges,  
11 they usually determine the effective date of the new  
12 rates.

13 **COMMISSIONER CLARK:** Right.

14 **MR. CRESSE:** Now, we could send out a notice  
15 of the effective date of the new rates and what those  
16 new rates would be and put in there a notice also that  
17 surcharges will appear on your bill starting in  
18 February, which you would be notified later the  
19 amount, something to that effect.

20 **COMMISSIONER CLARK:** Here was my concern. I  
21 didn't want to have the expense of two notices. It  
22 seems to me if we say, all right, on December 1st  
23 we'll make a decision as to the surcharge and we'll  
24 assume that the new rates will go into effect, what,  
25 December 15th or December 1st? If they can go into

1 effect December 1st, soon the new rates are in effect  
2 December 1st, that cuts off the date for the  
3 surcharge. You can have all of that information for  
4 us on the 1st. One notice goes out.

5 **MR. CRESSE:** Our second notice would go in  
6 the bills so there would be no extra postage on the  
7 second, it would just be on the first notice, so the  
8 expense is not that great.

9 **MS. JABER:** Commissioners, I need to tell  
10 you what our effective date rule says, which is what  
11 governs this, and that's what Troy was trying to bring  
12 to your attention. 25-30.475, and off the top of my  
13 head as I recall, it says that rates shall be  
14 effective for service rendered on or after the stamped  
15 approval date, provide the customers have received  
16 notice. So on December 1st the customers would not  
17 have received notice.

18 **MR. RENDELL:** That's correct.

19 **COMMISSIONER CLARK:** Well --

20 **MR. JAEGER:** The final sentence says "In no  
21 event shall the rates be affected for service rendered  
22 prior to the --" and then it says they must receive  
23 notice as Ms. Jaber says.

24 **MS. JABER:** I'll tell you what we possibly  
25 could do.

1                   **COMMISSIONER DEASON:** That means the  
2 Supreme Court's decision is in violation of our rule.

3                   **MS. JABER:** Let's tell them. Perhaps we  
4 could iron out the language of the Notice and get it  
5 as complete as possible so it goes out as soon as  
6 possible.

7                   **MR. RENDELL:** Also if we could go ahead and  
8 supply the tariff sheets now. We have the schedules  
9 of the rates. They can go ahead, get those tariff  
10 sheets to us before December 1st. Then we can work on  
11 the language of the Notice before the December 1st.

12                   **CHAIRMAN JOHNSON:** What do you need?

13                   **MR. CRESSE:** We think we can work within  
14 those parameters. We'll try. If we have a problem,  
15 we'll get back to you.

16                   **CHAIRMAN JOHNSON:** There's a motion and a  
17 second. All those in favor signify by saying "aye."  
18 Aye.

19                   **COMMISSIONER CLARK:** Aye.

20                   **COMMISSIONER GARCIA:** Aye.

21                   **COMMISSIONER DEASON:** Aye.

22                   **COMMISSIONER JACOBS:** Aye.

23                   **CHAIRMAN JOHNSON:** Show it approved  
24 unanimously. Thank you again. Good night.

25                   (Hearing concluded at 8:00 p.m.)

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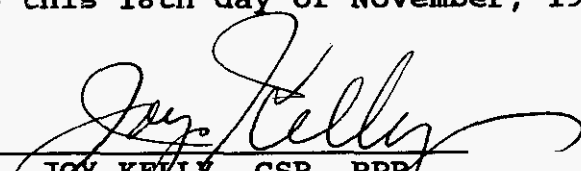
CERTIFICATE OF REPORTER

We, JOY KELLY, CSR, RPR, Chief, Bureau of Reporting, Official Commission Reporter, and RAY CONVERY, Court Reporter

DO HEREBY CERTIFY that the Special Agenda Conference in Docket No. 950495-WS was heard by the Florida Public Service Commission at the time and place herein stated; it is further

CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript, consisting of 389 pages, constitutes a true transcription of our notes of said proceedings.

DATED this 18th day of November, 1998.

  
JOY KELLY, CSR, RPR  
FLORIDA PUBLIC SERVICE COMMISSION  
Chief, Bureau of Reporting

(904) 413-6732

  
RAY CONVERY, Court Reporter