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Lee County Electric Cooperative, Inc. v. E. Leon Jacobs, Jr.

MR. CHIEF JUSTICE

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS LEE COUNTY ELECTRIC COOPERATIVE VERSUS MR. JACOBS. MR. BRANNOCK.

GOOD MORNING, YOUR HONOR. MAY IT PLEASE THE COURT. I AM STEVE BRANNOCK OF HOLLAND & KNIGHT, HERE REPRESENTING THE APPELLANT LEE COUNTY ELECTRIC COOPERATIVE. WE ARE HERE TODAY ON THE PUBLIC SERVICE COMMISSION'S GENERATING AN ELECTRICAL SERVICE COOPERATIVE. WE BELIEVE THAT THE COURT ERRED IN HOLDING THAT THERE WAS NO REGULATION OF THE WHOLESALE RATE STRUCTURE OF RURAL ELECTRIC COOPERATIVES, LIKE SEMINOLE, THAT SELL ONLY WHOLESALE.

ARE YOU IN A PICTURE TO GIVE US SORT OF A WORD PICTURE OF THE UTILITIES AROUND THE STATE, WITH REFERENCE TO HOW MANY COOPERATIVES THERE ARE, WHERE THEY ARE, AND THAT CAYENNE KIND -- ARE YOU IN A POS-- AND THAT KIND -- ARE YOU IN A POSTURE TO DO THAT?

I BELIEVE SEMINOLE IS THE ONLY RURAL ELECTRIC COOPERATIVE THAT SELLS ONLY AT WHOLESALE. THEY CAN CORRECT ME, IF I AM INCORRECT OF THAT. THE DECISION WAS AGAINST THE REALM REMEDDATION OF THE STAFF AND OVER -- AGAINST THE REALM REMEDDATION OF ITS STAFF AND -- AGAINST THE RECOMMENDATION OF ITS STAFF AND OVER THE OBJECTION OF ITS CHAIRMAN. THE JURISDICTION FULFILLS THE PURPOSE OF THE 1974 GRID, WHICH EXTENDS THE RURAL ELECTRIC COOPERATIVES. AND THAT THE SENTENCE TODAY WOULD LEAVE A REGULATORY GAP WHICH WE BELIEVE THIS COURT SHOULD NOT INTERPRET INTO THE STATUTE. LET ME START, FIRST, WITH THE LANGUAGE OF THE STATUTE, BECAUSE THE PUBLIC SERVICE COMMISSION'S JURISDICTION, OF COURSE, BEGINS AND ENDS WITH THE STATUTORY LANGUAGE. HERE WE THINK THAT THE STATUTE COULD HARDLY BE CLEAR. WE ARE TALKING ABOUT 366.042-B, WHICH STATES THAT THE COMMISSION HAS THE JURISDICTION TO PRESCRIBE A RATE STRUCTURE FOR ALL ELECTRIC UTILITIES. SEMINOLE IS A UTILITY, WITHIN THE MEANING OF THE STATUTE, SO WE THINK WE ARE SQUARELY WITHIN THE MEANING OF THE STATUTE. ALL ELECTRIC UTILITIES MEANS ALL ELECTRIC UTILITIES. NOW, SIMILARLY, WE WOULD ASK THE COURT TO READ THE STATUTE THAT THIS COMMISSION HAS JURISDICTION OVERALL LEVEL UTILITIES, EXCEPT THOSE THAT SELL ONLY AT WHOLESALE. THE PROBLEM THERE IS THAT THERE ISN'T A STATUTORY EXEMPTION FOR CERTAIN SALES OF WHOLESALE BY INVESTOR-OWNED UTILITIES. THAT IS 366.11. AND THE FACT THAT THE LEGISLATURE CHOSE TO SPECIFICALLY EXEMPT WHOLESALE SALES OF INTEREST VES TORO -- OF INVESTOR-OWNED UTILITIES, IT DID NOT CHOOSE TO PROVIDE AN EXEMPTION FOR THE WHOLESALE SALES OF RURAL ELECTRIC COOPERATIVES. WE THINK THE PLAIN LANGUAGE OF THE STATUTE COMPELS THE LEVELS OF JURISDICTION. NOW, LET'S LOOK AT THE PURPOSE OF THE STATUTE. THE JURISDICTION WAS FIRST EXTENDED OVER RURAL ELECTRIC COOPERATIVES IN 1974, WITH THE ENACTMENT OF THE INDIVIDUAL INDIVIDUALVILLE. THE PURPOSE OF THE GRIDVILLE -- WITH THE ENACTMENT OF THE GRIDVILLE. THE PURPOSE OF THE GRIDVILLE, AS IN OUC, IS TO PROVIDE RELIABILITY WITHIN THAT GRID. THE STATUTE DEMANDS THAT IT BE LIBERALLY CONSTRUED IN SUPPORT OF THAT PURPOSE. AND THIS CASE, WE THINK, IS A PERFECT EXAMPLE OF WHY JURISDICTION SHOULD BE EXTENDED OVER RURAL ELECTRIC COOPERATIVES IN THIS CASE. AN UTILITIES RATE STRUCTURE HAS A DIRECT IMPACT ON ENERGY CONSERVATION AND A RELIABILITY, AND WE THINK THAT SEMINOLE'S RATE STRUCTURE IS ABSOLUTELY NO EXCEPTION. AS WE HAVE EXPLAINED IN DETAIL, IN THE BRIEFS, THE PROBLEM THAT WE HAVE ASKED THE PUBLIC SERVICE COMMISSION

TO LOOK AT HERE, IS THE RELATIONSHIP BETWEEN THE DEMAND CHARGES AND THE ENERGY CHARGES IN SEMINOLE'S RATE STRUCTURE. WE HAVE SUGGESTED THAT SEMINOLE'S RATE STRUCTURE ARTIFICIALLY SETS A DEMAND CHARGE THAT IS TOO LOW AND SHIFTS TOO MUCH OF THE RECOVERY OF ITS COST FOR DEMAND INTO THE ENERGY CHARGE. WE THINK THAT THAT HAS A DIRECT AND ADVERSE PACT ON CONSERVATION, BECAUSE IT DISCOURAGES LOAD MANAGE THE. WE THINK IT HAS A DIRECT AND ADVERSE IMPACT ON RELIABILITY, BECAUSE IT MAY RESULT IN HIGHER PEEK LOADS, WHICH INCREASES THE DANGER OF UNDER CAPACITY, OR MAY REQUIRE THE NEED TO CONSTRUCT POWER PLANTS THAT OTHERWISE WOULD BE UNNECESSARY, SO THIS IS EXACTLY THE SORT OF SITUATION THAT IS WITHIN THE GRIDVILLE'S COMMAND OF THE COMMISSION, TO ENSURE CONSERVATION AND RELIABILITY WITHIN THE COORDINATED GRID. WE THINK THAT IT MAKES NO SENSE TO INTERPRET THAT STATUTE IN SUCH A WAY THAT WOULD GIVE THE JURISDICTION, THE COMMISSION JURISDICTION OVER RATE STRUCTURE OVERALL ELECTRIC UTILITIES, EXCEPT FOR THOSE ELECTRIC UTILITY, RURAL ELECTRIC COOPERATIVES THAT SELL ONLY WHOLESALE, WHICH LEADS ME TO MY FINAL POINT, WHICH IS THE REGULATORY GAP THAT IS CREATED. AS I SAID BEFORE, YOU RECALL THAT THERE IS AN EXEMPTION IN THE STATUTE FOR WHOLESALE SALES BY INVESTOR-OWNED UTILITIES, AND THAT IS BECAUSE THE FEDERAL ENERGY REGULATORY COMMISSION, FER, REGULATES THE RATE STRUTUE OF WHOLESALE SALES FOR INVESTOR-OWNED UTILITIES. THERE IS NO REGULATION OF THE RATE STRUCTURE BY FERK, OVER RURAL ELECTRIC COOPERATIVES, SO IF THE STATE OF FLORIDA DOESN'T STEP IN WITH THE GRIDVILLE, WITH THIS 1974 GRIDVILLE, IT WOULD LEAVE THE RATE STRUCTURE OF WHOLESALE SALES OF RURAL ELECTRIC COOPERATIVES ENTIRELY UNREGULATED. WE DON'T THINK THAT THAT IS AN INTERPRETATION THAT SHOULD BE PLACED UPON THE STATUTE.

IS SEMINOLE THE ONLY RURAL ELECTRIC THAT SELLS WHOLESALE IN FLORIDA? IS THAT CORRECT?

THAT IS MY UNDERSTANDING, YOUR HONOR.

SO IT WOULD BE UNREGULATED.

ITS RATE STRUCTURE WOULD BE ETIRELY UNREGULATED. THAT'S CORRECT. THERE ARE CERTAINLY OTHER ASPECTS OF SEMINOLE THAT ARE REGULATED THAT ARE REGULATED BY THE PUBLIC SERVICE COMMISSION, BUT ITS RATE STRUCTURE WOULD BE LEFT UNREGULATED, AND THAT IS THE DANGER THAT WE SUGGEST THIS COURT SHOULD CAUTION AGAINST AND WHY THE PUBLIC SERVICE COMMISSION'S DECISION SHOULD BE REVERSED.

SEMINOLE. WHO DOES IT SELL ITS WHOLESALE POWER TO?

TO A NUMBER OF OTHER RURAL ELECTRIC COOPERATIVES. TEN RURAL ELECTRIC COOPERATIVES, OF WHICH MY CLIENT, THE LEE COUNTY ELECTRIC COOPERATIVE IS ONE OF THOSE COOPERATIVES, AND THEY BE THESE RURAL COOPERATIVES IN TURN, SELL TO RETAIL CUSTOMERS.

THEY ARE OBLIGATED, AND THEY CAN'T GO SELL TO ANYONE, OTHER THAN THE MEMBERS. IS THAT CORRECT?

THAT IS THE WAY SEMINOLE IS SET P. I FRANKLY DON'T KNOW WHETHER THEY HAVE ANY RIGHT TO SELL BEYOND THEIR MEMBERSHIP.

THAT IS NOT IMPORTANT TO OUR INQUIRY?

NO, IT IS NOT.

WHY WOULD THIS MATTER NOT BE MORE APPROPRIATELY RESOLVED IN THE CIRCUIT COURT,

BECAUSE IT IS A CONTRACT ISSUE, AND WHAT IMPACT DOES THIS HAVE ON THE CONTRACT THAT, THE RATE IS ESTABLISHED BY THE BOARD OF DIRECTORS?

ALL RIGHT. WE DON'T -- FIRST, WE DON'T THINK THAT IT WOULD BE WEISS TO HAVE THESE DECISIONS DECIDED BY A CIRCUIT COURT, BECAUSE THE ESSENTIAL QUESTION IN THIS CASE IS WHETHER SEMINOLE'S RATE STRUCTURE IS IN ACCORDANCE WITH GENERALLY-ACCEPTED RATE-MAKING PRACTICES. THAT IS THE SORT OF DETERMINATION THAT THE PUBLIC SERVICE COMMISSION HAS THE SKILL AND EXPERTISE TO DETERMINE. IT IS CERTAINLY NOT WITHIN THE EVERYDAY KNOWLEDGE AND EXPERTISE OF A CIRCUIT COURT, AND, OF COURSE, RAISES THE SPECTER OF CIRCUIT COURTS AROUND THE STATE REACHING CONFLICTING DECISIONS ABOUT WHAT IS WITHIN GENERALLY-ACCEPTED RATE-MAKING PRACTICE, BUT IN TERMS OF THE CONTRACT, I DON'T THINK IT IS ANY ANSWER, TO SAY THAT THIS IS A RATE THAT IS SET BY CONTRACT. FIRST, WHAT THE STATUTE IS DESIGNED TO DO IS EVEN SURE THAT THE RATE STRUCTURE IS CONSISTENT WITH A RELIABLE AND A COORDINATED GRID, THAN WE ENCOURAGE CONSERVATION. A RATE THAT IS SET BY CONTRACT COULD INTERFERE WITH THOSE GOALS JUST AS ANY OTHER RATE COULD.

BUT WHAT IS THE CONTRACT? I MEAN, DON'T YOU AGREE THAT THEY SET THE RATE?

WHAT THE CONTRACT DOES IS IT HAS A PROCEDURE FOR SETTING THE RATES. THE RATES WERE SET PURSUANT TO THAT PROCEDURE. THE CONTRACT DOES NOT ACTUALLY SPECIFY THE RATE. IT SPECIFIES THE PROCEDURE FOR SETING THAT RATE.

THAT'S RIGHT.

THE CONTRACT DOES NOT STATE THE PARTIES THAT THEY DISAGREE WITH THE RATE STRUCTURE, MAY NOT GO TO THE PUBLIC SERVICE COMMISSION. THAT IS ABSENT FROM THE CONTRACT SO THERE IS NOTHING IN THE PROCEDURE OF THE CONTRACT THAT WOULD SUGGEST THAT SEMINOLE, THAT, EXCUSE ME, LEE COUNTY DOESN'T HAVE THE RIGHT TO SEEK REVIEW. BEYOND THAT, THERE IS NOTHING INCONSISTENT WITH THE CONTRACT, IN TERMS OF WHAT WE ARE TRYING TO DO HERE. THE CONTRACT COMELLS SEMINOLE TO DEVELOP A RATE STRUCTURE THAT IS CONSISTENT WITH GENERALLY GENERALLY-CCEPTED RATE-MAKING PROCEDURES AND PRACTCES, AND E BELIEVEHAT HAS NOT HAPPENED HERE, AND THAT IS WHY THE PUBLIC SERVICE COMMISSION NEEDS TO REGULATE IT.

COULD YOU ADDRESS THE QUESTION, AND MAYBE I AM GETTING THIS WONDERING -- GETTING THIS WRONG, BECAUSE RATESTRUTURE ISN'T DEFINED, WHETHER WHAT WE HAVE IS A WHOLESALE RATE SCHEDULE, AND IF THAT IS DIFFERENT AND THAT IS WHY IT IS NOT UNDER THE REGULATION, IS THAT PART OF THE STATUTORY CONSTRUCTION ARGUMENT?

WE, WHAT WE DEALT WITH, THAT RATE STRUCTURE VERSUS RATE MAKING ANALYSIS VERY EXTENSIVELY IN OUR REPLY BRIEF. I THINK WE KNOW, FIRST, THAT THE COMMISSION DID NOT DETERMINE IN THIS CASE THAT THIS IS A MATTER OF RATE-MAKING AS OPPOSED TO EIGHT STRUCTURE. THE COMMISSION'S DETERMINATION WAS BASED ON WHETHER THERE IS WHOLESALE AS OPPOSED TO RETAIL. IF YOU LOOK AT THE COMMISSION'S OWN RULES, 25-9.051, DEFINES RATE STRUCTURE TO INCLUDE THE RATE RELATIONSHIP WITHIN A CLASS AS OPPOSED TO RATE RELATIONSHIPS AMONG CLASSES, SO IT INCLUDES PRECISELY THE QUESTION THAT WE HAVE HERE, WHEN YOU HAVE A RATE STRUCTURE THAT WE BELIEVE IS UNFAIR TO CERTAIN MEMBERS WITHIN A PARTICULAR CLASS. THE PSC, ALSO, HAS CASES THAT WE HAVE CITED IN OUR REPLY BRIEF, THAT SUGGEST THAT THE DIFFERENCE BETWEEN RATE MAKING AND A RATE STRUCTURE, IS THAT RATE MAKING IS THE AMOUNT OF THE RATES. RATE STRUCTURE IS THE METHOD BY WHICH YOU GET TO THOSE RATES, AND THAT IS EXACTLY WHAT WE ARE TALKING ABOUT HERE IS THE METHOD BY WHICH YOU GET TO THE RATE. FINALLY, THERE ARE A NUMBER OF PSC DETERMINATION THAT IS WE CITED IN OUR REPLY BRIEF, WHERE THE PSC HAS LOOKED AT

PRECISELY THESE SORTS OF QUESTIONS, LOOK AT DEMAND, CHARGES AND ELECTRIC CHARGES, AND HAS TAKEN IT UNDER REVIEW AS PART OF THE RATE STRUCTURE, SO WE DON'T BELIEVE THAT THE QUESTION WE HAVE HERE IS A QUESTION THAT IS RAISED AS A MATTER OF RATE STRUCTURE JURISDICTION AS OPPOSED TO RATE-MAKING JURISDICTION, SO FOR ALL THOSE REASONS, WE THINK THAT THE COMMISSION'S DECISION SHOULD BE OVERTURNED, AND I WOULD LIKE TO RESERVE THE REST OF MY TIME FOR REBUTTAL. MR. CHIEF JUSTICE

THANK YOU, MR. BRADDOCK. MS. HELTON.

MAY IT PLEASE THE COURT. I AM MERRIAM HELTON REPRESENTING THE FLORIDA PUBLIC SERVICE COMMISSION. WITH ME IS MR. MELSON AND MR. STENGLE, REPRESENTING THE PSC. WE HAVE SPLIT OUR TIME IN HALF.

DO YOU BELIEVE THAT THE PSC HAS JURISDICTION OVER ALL ELECTRIC UTILITIES.

FOR THE STATUTE AS APPLIED, TO ALL ELECTRIC UTILITIES.

GO AHEAD.

AT THE HEART OF THE COMMISSION AND STRUGGLE IN DECIDING WHETHER IT HAD JURISDICTION OVER THE SUBJECT MATTER OF LEE COUNTY'S COMPLAINT WAS THAT THE WHOLESALE RATE SCHEDULE AT ISSUE HERE WAS PART OF A NEGOTIATED CONTRACT BETWEEN TWO SELF-REGULATED UTILITIES. THE COMMISSION FOUND THAT THERE WERE COGENT REASONS TO BELIEVE THAT THE COMMISSION'S RATE STRUCTURE JURISDICTION DID NOT EXTEND TO THE WHOLESALE RATE SCHEDULE AT ISSUE HERE. I DISAGREE WITH COUNSEL FOR LEE COUNTY, THAT THE COMMISSION'S BASIS FOR ITS DECISION WAS THE WHOLESALE VERSUS RETAIL DISTINCTION. I THINK THE COMMISSION MADE THAT CLEAR. I THINK IT WAS IN THE LAST PARAGRAPH OR THE SECOND TO THE LAST PARAGRAPH OF THE ORDER, THAT THAT IS NOT WHAT THEY WERE BASING ITS DECISION ON. IT WAS THAT THEY COULD NOT RECONCILE ITS RATE STRUCTURE JURISDICTIONS WITH THE NEGOTIATED CONTRACT THAT IS AT ISSUE HERE. AND ONE REASON WAS THE AMBIGUITY SURROUNDING THE MEANING OF THE TERM "RATE STRUCTURE" IN 366.042-B. RATE STRUCTURE IS NOT DEFINED ANYWHERE IN THE STATUTE. OR IN CHAPTER 33 366 -- OR IN CHAPTER 366, AND IT DID NOT FIT INTO THE COMMISSION'S UNDERSTANDING OF WHAT A RATE STRUCTURE IS.

AND WHY IS THAT AND EXPLAIN WHAT THAT IS.

RATE STRUCTURE IS THE CLASSIFICATION OF CUSTOMERS INTO DIFFERENT CLASSES, SUCH AS RESIDENTIAL, COMMERCIAL, INDUSTRIAL. HERE WE HAVE ONE RATE SCHEDULE THAT IS ATTACHED TO A NEGOTIATED CONTRACT THAT IS GOING TO APPLY ACROSS THE BOARD, TO ALL OF SEMINOLE'S MEMBERS. SO THE COMMISSION COULD NOT SQUARE ITS UNDERSTANDING OF HOW YOU WOULD CLASSIFY RATES INTO DIFFERENT CLASSES WITH HAVING ONLY ONE CLASS OR ONE RATE SCHEDULE THAT IS PART OF A NEGOTIATED CONTRACT.

SO YOU DISAGREE WITH THE APPELLANT'S DEFINITION OF WHAT A RATE STRUCTURE IS, THAT IT ISN'T JUST METHOD OF GETTING TO A PARTICULAR RATE THAT IS BEING CHARGED.

I THINK IT IS MORE THAN JUST THAT. IT IS HOW THE RATE IS BROKEN INTO DIFFERENT CLASSES, AND HERE THERE WAS NOT MORE THAN ONE CLASS, AND IT WAS PART OF A NEGOTIATED CONTRACT THAT WAS SET --

THE TEN PEOPLE OR TEN UTILITIES THAT ARE, GET THEIR POWER FROM SEMINOLE, ALL FALL INTO THIS ONE CLASS, AND THEY PAY THIS SAME RATE. SINCE YOU DON'T HAVE ANY DIFFERENT RATES, YOU DON'T HAVE A RATE STRUCTURE.

CORRECT.

IN SOME AREAS, THE PSC BECOMES INVOLVED, IN THE APPROVAL OF CONTRACTS FOR THE PURPOSE OF -- FOR THE PURCHASE OF SOURCES OF ELECTRICITY. UNDER THESE CIRCUMSTANCES WITH THE RURAL POWER SITUATION, DOES THE PSC BECOME INVOLVED AT ALL IN THOSE CONTRACTS, AND IF SO, IS THAT IMPORTANT, AND IF NOT, IS THAT IMPORTANT?

THE COMMISSION, UNDER THE TERMS OF THE CONTRACT BETWEEN SEMINOLE ELECTRIC AND ITS TEN MEMBERS, THE ONLY REGULATORY APPROVAL THAT IS REQUIRED FOR THAT CONTRACT IS FROM WHAT IS NOW THE RURAL UTILITY SERVICE. IT WAS THE REA. THE COMMISSION, NOWHERE UNDER THE LANGUAGE OF THE CONTRACT, IS THE COMMISSION REQUIRED TO APPROVE THAT CONTRACT, AND I THINK THAT IS IMPORTANT, BECAUSE I THINK THAT WAS THE INTENT OF THE PARTIES WAS THAT YOU'D NEVER BRING ANY PART OF THAT CONTRACT BEFORE THE COMMISSION, FOR ANY KIND OF A RESOLUTION.

WELL, ISN'T THAT, THOUGH, A ROUTINE TASK THAT THE COMMISSION PERFORMS WITH OTHER CONTRACTS?

THE COMMISSION APPROVES STANDARD OFFER CONTRACTS, AND HAS CONTINUING JURISDICTION OVER THE STANDARD OFFER CONTRACTS, BECAUSE THE STANDARD OFFERS ARE, IN EFFECT, A PART OF -- THE COMMISSION HELPS DEVELOP THOSE. THE COMMISSION, ALSO, APPROVES NEGOTIATED CONTRACTS FOR FIRM CAPACITY OF ENERGY. THE COMMISSION DOES NOT HAVE CONTINUING, AS A GENERAL, IT DOES NOT HAVE CONTINUING JURISDICTION OVER THOSE CONTRACTS. THE COMMISSION APPROVES TERRITORIAL AGREEMENTS, AS SPECIFIED AND AS PART OF THE GRIDVILLE, IN 366.042, BUT THERE THE COMMISSION, ALSO, HAS THE CONTINUING JURISDICTION OVER THOSE CONTRACTS AND CONTINUES TO REVIEW THOSE. HERE, THE COMMISSION NEVER SAW THIS CONTRACT, UNTIL 25 YEARS AFTER IT WAS FIRST ENTERED INTO, LEE COUNTY FILED ITS COMPLAINT.

THEORETICALLY, IF WE HAVE THE COMMISSION AS BEING THE SUPERVISORY AUTHORITY AND, TO SOME DEGREE, SETTING POLICY ON THE GROUND, WITH REFERENCE TO THE ISSUES THAT ARISE HERE, AREN'T WE TALKING ABOUT HUGE GAPS, THEN, IN THE ENERGY POLICY FOR THE STATE OF FLORIDA, IF WE ASSUME THAT THE COMMISSION HAS NO AUTHORITY TO REGULATE CONTRACTS LIKE THIS? AND WHILE WE ONLY HAVE ONE, IT SEEMS TO BE CONCEDED HERE, ALTHOUGH IT AFFECTS A NUMBER OF PEOPLE, THEORETICALLY YOU COULD HAVE MANY MORE GAPS THAN JUST THIS ONE, COULD YOU NOT, THROUGHOUT THE STATE OF FLORIDA? SO I AM CONCERNED ABOUT THE OPTIONS OF WHY WOULD IT NOT MAKE MORE SENSE, ESPECIALLY GIVEN THE LANGUAGE OF THE STATUTE THAT YOUR OPPONENTS RELY ON AND THAT JUSTICE SHAW QUOTED TO YOU A MINUTE AGO, FOR THE COMMISSION TO BE IN THE POSITION TO REVIEW CONTRACTS LIKE THIS, AND PERHAPS APPROVE THEM, YOU KNOW, COMPLETELY, AND THEN DEFEND THAT POSITION, INsofar AS GOOD POLICY IS CONCERNED, ENERGY POLICY, IN THE STATE OF FLORIDA, AS OPPOSED TO THE POTENTIAL, IF IT IS A HANDS-OFF KIND OF THING, FOR THESE GREAT GAPS TO BE THERE WITH REFERENCE TO ENERGY POLICY FOR THE STATE OF FLORIDA.

FIRST OFF, I GUESS LET ME START BY SAYING THAT I BELIEVE THAT LEE COUNTY'S ARGUMENT THAT THIS WOULD CREATE A REGULATORY GAP IS A RED HERRING. I DON'T SEE THAT GAP AS BEING HUGE, AND I DON'T SEE THAT GAP AS BEING A PROBLEM. WHEN FLORIDA POWER COMMISSION, NOW FERC, NOW LOOKED AT THE RATE STRUCTURE OF ELECTRIC COOPERATIVES, ONE OF THE REASONS WHY IT DECIDED THAT IT DID NOT HAVE JURISDICTION OVER THE WHOLESALE RATE STRUCTURE OF COOPERATIVES, WAS BECAUSE OF THE REGULATION OF THE REA, NOW THE RUS. IT BELIEVES THAT IT WAS PERVASIVE ENOUGH, WHERE THAT COULD DEAL WITH THOSE ASPECTS THAT NEEDED TO BE REGULATED, AND THE ARKANSAS CASE, IN 1983, BY THE UNITED STATES SUPREME COURT, I THINK THEY, WE TAKE A DIFFERENT LIGHT ON IT THAN LEE COUNTY DID IN THAT CASE, THE UNITED STATES SUPREME COURT SAID STATES MAY REGULATE THE WHOLESALE RATE

STRUCTURE OF RURAL ELECTRIC COOPERATIVES, IF THE ORGANIC STATUTE WITHIN THE STATE HAS GIVEN THE PSC OR THE PUBLIC SERVICE COMMISSION IN THAT STATE, AUTHORITY TO DO SO, BUT IT DID NOT SAY THAT THE STATES MUST REGULATE THE WHOLESALE RATE STRUCTURE OF RURAL ELECTRIC COOPERATIVES.

SO IF WE DETERMINE THAT THIS IS, IN FACT, A RATE STRUCTURE, THEN WOULD SEMINOLE FALL UNDER THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION?

I THINK --

IN SPITE OF THE FACT THAT YOU SAY THIS IS ALL JUST ONE, YOU KNOW, RATE THAT IS SET FOR THE TEN MEMBERS, IF IT IS A RATE STRUCTURE, WOULD IT FALL UNDER THEIR JURISDICTION?

I THINK THAT, IF YOU FIND THAT IT IS A RATE STRUCTURE, AS THE LEGISLATURE MEANT THAT TERM, AND THE GRIDVILLE, THEN, YES, IT WOULD FOLLOW UNDER OUR JURISDICTION, BUT I THINK IT IS IMPORTANT FOR YOU TO KEEP IN MIND THAT THE COMMISSION, WITH ITS EXPERTISE AND ITS UNDERSTANDING OF WHAT RATE STRUCTURES IS, HAS NEVER, IN THE 25 YEARS SINCE THE GRIDVILLE, HAS BEEN ENACTED, CONTEMPLATED THAT ITS RATE STRUCTURE JURISDICTION OVER ELECTRIC UTILITIES WOULD COVER A RATE SCHEDULE THAT IS PART OF A NEGOTIATED CONTRACT BETWEEN TWO SELF-GOVERNING UTILITIES.

HAS IT EVER BEEN PRESENTED TO THEM BEFORE?

NOT SQUARELY LIKE THIS. THE COMMISSION HAS HAD A COUPLE OF OPPORTUNITIES, THOUGH, HOWEVER, IN THE 25 YEARS SINCE THE GRIDVILLE WAS ENACTED, TO EXERCISE ITS JURISDICTION OVER THE RATE -- TO EXERCISE ITS JURISDICTION OVER THE RATE STRUCTURE. MR. CHIEF JUSTICE

JUSTICE ANSTEAD HAD A QUESTION.

I GUESS I WOULD FOLLOW-UP, IS IT GOOD POLICY, THOUGH, THAT IF THE STATE, OR IF THE PSC DOES HAVE THE OPTION TO REGULATE THE RURAL CO-OPS, WHY ISN'T IT JUST GOOD STATE POLICY TO REGULATE? UNIFORMLY.

THE COMMISSION, I DON'T THINK BELIEVES THAT IT HAD THE OPTION. I THINK THE COMMISSION FOUND THAT IT DID NOT HAVE THE JURISDICTION TO REGULATE THE RATE SCHEDULE AT ISSUE IN THIS CASE. AND PART OF THE REASON IS BECAUSE THE RATE SCHEDULE THAT WAS SET IS DEVELOPED BETWEEN TWO SELF-GOVERNING UTILITIES. THE BOARD OF SEMINOLE VOTED ON THE RATE SCHEDULE THAT IS AT ISSUE HERE TODAY. THE COMMISSION DID NOT SEE A NEED TO EXERCISE ITS INFLUENCE INTO SITUATIONS SUCH AS THAT. I SEE THAT --

WHAT DO YOU BASE YOUR CONCLUSION THAT YOU DON'T HAVE THE AUTHORITY TO DO IT? IS THAT BY STATUTE? HOW DO YOU COME TO THAT CONCLUSION?

THE COMMISSION LOOKED AT THE STATUTE, BELIEVED THAT THE RATE SCHEDULE HERE DID NOT FALL UNDER THE RATE STRUCTURE JURISDICTION OF ELECTRIC UTILITIES AND FOUND THAT THERE WERE COGENT REASONS WHY THE LEGISLATURE DID NOT BELIEVE THAT IT SHOULD EXERCISE JURISDICTION HERE. I SEE THAT -- JURISDICTION HERE. I SEE THAT MY TIME IS UP. MR. CHIEF JUSTICE

THANK YOU. MR. MELSON.

MAY IT PLEASE THE COURT. I AM RICHARD MELSON REPRESENTING SEMINOLE ELECTRIC COOP. LET ME BEGIN BY TRYING TO RESPOND TO A COUPLE OF QUESTIONS THAT MS. HELTON GOT FROM THE COURT. JUSTICE SHAW, THE SUPREME COURT, US SUPREME COURT CASE IN ARKANSAS SAID THAT STATE REGULATION OF CO-OPS WAS NOT PREEMPTED BY FEDERAL LAW. THAT DOESN'T

ANSWER THE QUESTION WHETHER THE STATE LEGISLATURE IN FLORIDA GAVE THE COMMISSION AUTHORITY OVER RURAL CO-OPS OR HOW MUCH AUTHORITY THEY GAVE THEM, BUT THE COMMISSION DECIDED IN THIS CASE, IS THAT THEIR RATE STRUCTURE JURISDICTION, UNDER 366.04 SUB2, DID NOT EXTEND TO A CONTRACT BETWEEN RURAL ELECTRIC CO-OPS. AND WITH REGARD, JUSTICE ANSTEAD TO A POLICY REASON, THE REGULATION OF ELECTRIC UTILITIES IS A COMBINATION IN THIS COUNTRY OF FEDERAL REGULATION BY THE FERC, AND THE UTILITY SERVICE, BY THE VARIOUS STATE PUBLIC UTILITIES COMMISSIONS LIKE THE PUBLIC SERVICE COMMISSION, AND IN E AS OF COOPERATIVES AND MUNICIPALITIES, SOME DEGREE OF SELF-GOVERNANCE. THERE IS NO QUESTION IN FLORIDA, THAT MUNICIPALS AND COOPERATIVES INCLUDING LEE COUNTY, NOBODY HAS NO ONE OTHER THAN RUS, EXERCISES ANY JURISDICTION OVER THEIR RATE LEVELS, AS OPPOSED TO THE RATE STRUCTURE. THERE IS A REGULATORY GAP. THE LEGISLATURE HAS SAID WE ARE GOING TO LEAVE THOSE RATE LEVEL DECISIONS IN THE CO-OP SPORT ROOMS.

WHERE HAS THE LEGISLATURE SAID THAT?

THEY HAVE SAID THAT BY EXTENDING JURISDICTION UNDER 366 ONLY OVER RATE STRUCTURE AND NOT OVER RATE LEVELS. AND THIS COURT, IN THE CITY OF TALLAHASSEE VERSUS MANN AND A NUMBER OF OTHER DECISIONS, HAS RECOGNIZED THAT RATE LEVELS AND RATE STRUCTURE ARE TWO DIFFERENT THINGS, AND THAT RATE LEVEL IS NOT A POWER THAT HAS EVER BEEN GIVEN TO THE COMMISSION, SO YOU HAVE GOT A REGULATORY GAP THERE. THE QUESTION POSED BY THIS CASE IS DID THE LEGISLATURE INTEND FOR RATE STRUCTURE JURISDICTION, WHICH DOES APPLY, TO MUNICIPALS AND CO-OPS, TO REACH THE TYPE OF WHOLESALE CONTRACT WE HAVE GOT HERE, BETWEEN A CO-OP AND ITS MEMBER OWNERS, AND THE COMMISSION PROBABLY NOT THE ONLY POSSIBLE CONSTRUCTION OF THE STATUTE, THE COMMISSION SAID, BASED ON THEIR EXPERTISE, BASED ON THEIR UNDERSTANDING OF WHAT THE TERM "RATE STRUCTURE" COMMONLY CON OATED, BASED ON THEIR UNDERSTANDING OF LEGISLATIVE INTENT, DIDN'T THINK THE LEGISLATURE GAVE THEM THAT JURISDICTION, AND THEY APPLIED THE PRINCIPLE THAT THIS COURT HAS ARTICULATED MANY TIMES, THAT IF THERE IS A REASONABLE DOUBT ABOUT THE JURISDICTION OF AN AGENCY, THAT QUESTION SHOULD BE RESOLVED AGAINST THE EXERCISED JURISDICTION.

HOW MUCH DEFERENCE, THIS IS IN A QUESTION OF LAW, THE AGENCY DECIDES THE, AT TEFIRST INSTANCE, WHAT THE CONSTRUCTION OF ITS OWN, OF THE STATUTE OF ITS OWN JURISDICTION IS, IN THIS CASE YOU HAVE GOT THE STAFF, WHO PRESUMABLY HAVE THEIR OWN EXPERTISE, AS I UNDERSTAND IT, RECOMMENDING THAT THE PSC DOES HAVE THE JURISDICTION AND SHOULD EXERCISE JURISDICTION, AND THEN YOU HAVE GOT HOW MANY, YOU HAVE GOT A SPLIT COMMISSION MAKING A DECISION, HOW DO WE, WHAT, WHAT WOULD YOU URGE ABOUT OUR STANDARD OF REVIEW BEING DE NOVO BUT HOW MUCH DEFERENCE DO WE GIVE TO THE AGENCY'S INTERPRETATION, UNDER THESE CIRCUMSTANCES?

JUSTICE PARIENTE, I DON'T BELIEVE THE STANDARD OF REVIEW, REALLY, IS DE NOVO. WHEN YOU ARE DEALING WITH AN AGENCY INTERPRETATION OF A STATUTE IT IS CHARGED WITH ADMINISTERING, I THINK THAT THIS COURT, ASER OF JUDGE-MADE POLL -- THIS COURT, AS A MATTER OF JUDGE MADE POLICY, THIS COURT HAS INTERPRETED THAT MATTER SO LONG AS WE ARE WITHIN A RANK OF INTERPRETATION. CLEARLY THERE ARE A RANGE OF INTERPRETATIONS THAT THIS COURT WOULD CLEARLY EXERCISE IS OUT OF THE RANGE OF JURISDICTION. I THINK YOU HAVE DEFERRED TO THE EXPERT AGENCY.

SO WE DON'T LOOK AT THE FACT THAT THE STAFF REACHED A CONTRARY CONCLUSION AND PERHAPS THE STAFF HAD MORE EXPERTISE IN HOW THE PSC SHOULD BE EXERCISING ITS JURISDICTION?

YOUR HONOR, IF THIS WAS AN APPEAL FROM A DISTRICT COURT OF APPEAL, YOU WOULDN'T

HAVE, IN FRONT OF YOU, WHAT THE LAW CLERKS THOUGHT, HOW THE LAW CLERKS THOUGHT THE CASE WOULD BE DECIDED. YOU WOULD HAVE THE DECISION OF THE COLLEGIAL BODY.

BUT WE DON'T DEFER ON A QUESTION OF LAW, TO WHAT THE DISTRICT COURT OF APPEALS HAS TO SAY.

TRUE. BUT HERE, YOU HAVE GOT COMMISSIONERS WHO ARE, YOU KNOW, GO THROUGH A SELECTION PROCESS, AN APPOINTMENT PROCESS. YOU HAVE GOT COMMISSIONERS ON THE PANELS THAT VOTED ON THIS, WHO HAD MANY, MANY YEARS OF REGULATORY EXPERIENCE, AND ULTIMATELY, IT IS THEIR CALL, AS THE AGENCY, TO DETERMINE IN THE FIRST INSTANCE, WHAT IS THE SCOPE OF THEIR JURISDICTION.

THIS IS REALLY, EITHER WAY IT IS A VERY NARROW RULING, AS I UNDERSTAND IT, BECAUSE IF WE KEEP ON, IF -- DO YOU AGREE THAT IT IS NOT A QUESTION OF WHETHER THIS WAS RETAIL OR WHOLESALE, THAT THE KEY HERE, IS THAT YOU HAVE A NEGOTIATED CONTRACT WITH A RATE SCHEDULE, AND THAT ALL THESE UTILITIES ARE GOING TO BE PAYING UNDER THE SAME STRUCTURE, ESSENTIALLY, THAT THAT IS REALLY THE NARROW?

I BELIEVE IT IS. I THINK THE COMMISSION WAS VERY CAREFUL, TO CIRCUMSCRIBE THEIR OPINION. THEY SAID, GIVEN THE UNIQUE SITUATION AFTER WHOLESALE CONTRACT BETWEEN A COOP AND ITS MEMBERS, AND RECOGNIZING WHAT OTHER COURTS HAVE SAID, IS THAT CO-OPS ARE IN MANY WAYS SELF GOVERNING, THAT THEY DIDN'T BELIEVE THAT THE LEGISLATURE INTENDED TO GIVE THEM JURISDICTION OVER THAT NARROW CLASS OF WHOLESALE CONTRACTS. REMEMBER, YOU HAVE GOT A CONTRACT, ESSENTIALLY, BETWEEN TEN OWNER MEMBERS OF SEMINOLE AND SEMINOLE, ITSELF. AND IN THAT CONTRACT, THE PARTIES AGREED THE METHOD BY WHICH RATES WOULD BE SET. THEY WOULD BE SET IN THE BOARDROOM, BY A VOTE OF THE BOARD OF TRUSTEES. THEY WOULD HAVE TO MEET CERTAIN RATE-MAKING STANDARDS THAT ARE SET OUT IN THE CONTRACT, AND IT WOULD BE REVIEWABLE IN CIRCUIT COURT, IF A MEMBER CHOSE TO SAY THE RATES HAVE NOT BEEN SET IN IT CORNERS WITH THE CONTRACT, AND A PROCESS THAT CONTEMPLATES APPROVAL OF THAT CONTRACT BY THE RURAL UTILITY SERVICE.

SO YOU SEE THIS AS BEING A CONTRACT DISPUTE THAT HAS TO BE IN CIRCUIT COURT.

YES, MA'AM.

AND WHAT WOULD THE DISPUTE BE?

THE DISPUTE WOULD BE WHETHER THE RATE SCHEDULE THAT WAS ADOPTED COMPORTED WITH THE COST OF SERVICE AND OTHER RATE-MAKING STANDARDS THAT ARE EMBODIED IN THE IN THE LANGUAGE OF THE CONTRACT.

WOULD YOU AGREE THAT THAT PARTICULAR DETERMINATION DOES, AND I REALIZE THIS IS NOT WHY TO GO INTO CIRCUIT COURT VERSUS SOMEPLACE ELSE, BUT AS NOT JUST A MATTER OF LAY INTERPRETATION, BUT DOES REQUIRE SOME DEGREE OF EXPERTISE, AND IS THE AREA THAT THE PSC DOES REGULARLY REVIEW IN OTHER AREAS?

IT IS AN AREA IN WHICH THE COMMISSION HAS EXPERTISE, BUT IT IS, ALSO, THE TYPE OF ISSUE ON WHICH THE CIRCUIT COURT WOULD HEAR EXPERT TESTIMONY. TRIAL JUDGES ARE NOT EXPERTS IN EVERY MATTER THAT COMES BEFORE THEM. THAT IS WHY THE PROCESS USES EXPERT WITNESSES TO INFORM THE COURT AND TO ASSIST IT IN MAKING ITS JUDGMENTS.

WE NORTH EXPERTS, EITHER, SO WOULD YOU DE -- WE ARE NOT EXPERTS, EITHER, SO WOULD YOU DEFINE, AGAIN, RATE LEVEL AS OPPOSED TO RATE STRUCTURE, AND WHERE DOES THE RATE SCHEDULE FALL INTO ALL OF THIS?

OKAY. TO ME, RATE LEVEL MEANS HOW MANY TOTAL DOLLARS ARE YOU GOING TO COLLECT? WHAT IS THE UTILITIES REVENUE REQUIREMENT? WHAT DOES IT NEED, IN THE CASE AFTER INVESTOR-OWNED UTILITY DURING OF A CO-OP'S COST. RATE STRUCTURE IS TYPICALLY HOW IS THAT REVENUE DIFFERENT FROM THE REST OF THE CLASSES OF CUSTOMERS, RESIDENTIAL, COMMERCIAL, VERSUS, RESIDENTIAL AND COMMERCIAL, INDUSTRIAL. A RATE SCHEDULE IS NOTHING MORE THAN THE PROVISIONS THAT LAY OUT THE WRA THE RATE -- THE WAY THE RATE APPLIES, AND MAY, IN FACT, YOU KNOW, IT IS SET IN LIGHT OF THE LEVEL OF RATES NEEDED TO BE GENERATED. ONE LAST POINT, VERY QUICKLY, 366.11, CONTRARY TO THE READING BY LEE COUNTY, DOES NOT EXEMPT INVESTOR-OWNED UTILITY CONTRACTS FROM ALL OF THE PROVISIONS OF THE CHAPTER. IT EXCEPT OUT THE SAME RATE STRUCTURE JURISDICTION THAT IS AT ISSUE HERE, SO THEIR PLAIN MEANING ARGUMENT, THE RATE STRUCTURE KNOWS HOW TO GRANT WHAT AN INVESTOR-OWNED DIDN'T GRANT HERE. IF YOU READ THAT SECTION CAREFULLY, THE INVESTOR-OWNED ARE NO MORE PERMITTED EXEMPTION THAN SEMINOLE. MR. CHIEF JUSTICE

THANK YOU,. MR. BRANNOCK.

YOUR HONOR, WHEN WE FIRST STARTED WITH THE ISSUE OF WHETHER THIS IS A MATTER OF RATE LEVEL OR RATE STRUCTURE, I THINK THE QUESTION CAN BE ANSWERED JUST BY LOOKING AT THE COMMISSION'S OWN RULE 29-9-1-7, AND IT HAS DEFINITION OF THE RATE STRUCTURE. RATE STRUCTURE, THE COMMISSION'S DEFINITION, IS USED FOR THE CLASSIFICATION USED TO JUSTIFY DIFFERENT RATES AND MORE SPECIFICALLY AS TO THE RATE BETWEEN VARIOUS CLASSES OF CUSTOMERS, AS WELL AS THE RELATIONSHIP BETWEEN MEMBERS OF A CUSTOMER CLASS. SO IT INCLUDES BOTH, THE RELATIONSHIP BETWEEN CUSTOMERS IN DIFFERENT CLASSES AND HOW THE RATE IMPACTS BETWEEN THE STRUCTURE OF THE CUSTOMERS WITHIN A DIFFERENTCLASS, AND THAT IS WHAT WE CITED IN OUR REPLY BRIEF, WHERE HISTORICALLY THE COMMISSION HAS DECIDED THIS SORT OF RATE STRUCTURE JURISDICTION OVER MATTERS OF THE RELATIONSHIP DEMAND CHARGE AND AN ENERGY CHARGE, WHICH IS EXACTLY WHAT WE ARE FACING IN THIS CASE. INTERESTINGLY, A COUPLE OF CASES IN THE '80s, THE TALLAHASSEE AND THE POLK COUNTY CASE, BOTH OF WHICH WE CITED IN OUR REPLY BRIEF. THOSE WERE CASES WHERE THE COMMISSION LOOKED AT RATE STRUCTURES THAT DISTINGUISHED BETWEEN CUSTOMERS INSIDE A CITY AND OUTSIDE OF THE CITY. AGAIN, YOU REALLY HAVE CUSTOMERS WITHIN A SINGLE CLASS THAT HAPPEN TO BE ON EITHER SIDE OF THE CITY BORDER. THAT WAS DETERMINED TO BE A MATTER OF RATE STRUCTURE, AND THIS COURT REVIEWED THOSE CASES, AS MATTER OF RATE STRUCTURE, SO WE THINK THERE IS NO QUESTION HERE THAT WE ARE DEALING WITH A MATTER OF RATE STRUCTURE. THEY ALSO PLACE AN EMPHASIS ON RATE STRUCTURE. JUST A FEW POINTS I WOULD LIKE TO MAKE THERE. THE GRIDVILLE, THE GOAL OF THE GRIDVILLE IS TO ENSURE A COORDINATED NERGY GRID. HOW CAN YOU ENSURE A COORDINATED ENERGY GRID, WHEN YOU LEAVE ENERGY CAPS. -- GAPS. HOW CAN YOU HAVE A COORDINATED ENERGY GRID, WHEN YOU LEAVE SEMINOLE OUT OF THE EQUATION. WE DON'T THINK THAT IS WHAT THE LEGISLATURE INTENDED AND WE THINK THAT IS WHY IT USED THE VERY CLEAR LANGUAGE THAT IT USED. THERE IS NOTHING ABOUT WHAT WE SEEK HERE THAT IS INCONSISTENT WITH ANY WAY WITH THE CONTRACT. THE CONTRACT REQUIRES RATES TO BE SET IN ACCORDANCE WITH GENERALLY-ACCEPTED RATE-MAKING PRINCIPLES. OUR ENTIRE POINT HERE IS THAT THIS RATE STRUCTURE IS NOT SET IN ACCORDANCE WITH GENERALLY GENERALLY-ACCEPTED RATE-MAKING PRINCIPLES. THERE IS NOTHING IN THE CONTRACT THAT SAYS THAT WE CANNOT GO TO THE PUBLIC SERVICE COMMISSION, IF WE HAVE THAT FUNDAMENTAL DISAGREEMENT, AND THAT IS EXACTLY WHAT WE HAVE DONE. FINALLY, THERE IS NOTHING THAT THE PARTIES CAN DO BY CONTRACT, TO ELIMINATE THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION. THE PARTIES CAN'T CREATE JURISDICTION BY CONTRACT. THEY CAN'T ELIMINATE JURISDICTION BY CONTRACT, SO WE THINK THE CONTRACT ARGUMENT DOESN'T SOLVE THE PROBLEM HERE. FINALLY --

OUR STANDARD OF REVIEW. DO YOU WANT TO ADDRESS WHETHER WE NORMALLY SAY THAT, EVEN ON A QUESTION OF INTERPRETATION STATUTE, THAT WE DEFER TO THE AGENCY'S

INTERPRETATION OF THAT STATUTE? WHAT IS, HOW DO WE DEAL WITH THAT PRINCIPLE HERE?

THAT IS CERTAINLY THE GENERAL RULE. WE THINK THAT GENERAL RULE, THOUGH, WAS TEMPERED BY SEVERAL THINGS HERE. FIRST IT IS TEMPERED BY 366.01, WHICH SUGGESTS THAT THE STATUTE HAS TO BE LIBERALLY CONSTRUED IN FAVOR OF ITS PURPOSE, AND, AGAIN THE PURPOSE IS VERY CLEAR TO ENSURE THIS VERY COORDINATED AND RELIABLE GRID, SO YOU HAVE TO BALANCE THE USUAL DEFERENCE AGAINST -- THE USUAL DEFERENCE AGAINST THE STATUTE'S REQUIREMENT THAT IT BE LIBERALLY CONSTRUED. SECONDLY, WE THINK IT IS ENTITLED TO WHICH LESS DEFERENCE THAN THE SITUATION WHERE THE COMMISSION AS DISAGREED WITH ITS PROFESSIONAL STAFF AND WHERE YOU HAVE A SPLIT DECISION OF THE COMMISSION. I THINK THAT MAKES THE COMMISSION STATEMENT MUCH LESS POWERFUL.

DO WE HAVE ANY CASES THAT WOULD --

I HAVEN'T BEEN ABLE TO FIND ANY CASES ON THAT POINT, BUT IT SEEMS A MATTER OF COMMON SENSE TO ME, THAT THE WHOLE PURPOSE OF DEFERENCE IS THAT YOU ARE DEFERRING TO THE EXPERTISE OF THE AGENCY. BUT HERE THE TRAINED PROFESSIONALS WITHIN THE AGENCY HAVE REACHED THE OPPOSITE CONCLUSION OF THE COMMISSION, SO I THINK -- MR. CHIEF JUSTICE JUSTICE SHAW HAD A QUESTION.

THE STANDARD OF REVIEW, WHEN IT COMES BEFORE US, THOUGH, ISN'T IT CLEARLY ERRONEOUS STANDARD?

THE STANDARD OF REVIEW, D THIS WAS CONCEDED, I BELIEVE, BY THE COMMISSION IN ITS BRIEF, DE NOVO, BUT PLACED UPON THAT DE NOVO IS SOME DEGREE OF DEFERENCE AND WE ARE SUGGESTING THAT, IN THIS CASE, IT SHOULDN'T BE VERY MUCH DEFERENCE, BECAUSE OF THE ONE -- DEFERENCE, BECAUSE OF THE REQUIREMENT THAT YOU LIBERALLY CONSTRUE THE STATUTE, AND SECONDLY BECAUSE OF THE DECEMBER AGREEMENT BETWEEN THE STAFF AND -- OF THE DISAGREEMENT BETWEEN THE STAFF AND THE COMMISSION AND THE COMMISSION'S SPLIT DECISION, ITSELF, AND FINALLY, THE COMMISSION DOES CONCEDE IF IT IS CLEAR THERE, IS NO ROOM FOR INTERPRETATION. IN THIS CASE HERE, I DON'T THINK THE STATUTE COULD BE ANYMORE CLEAR. THERE IS RATE STRUCTURE OVERALL THE YOUTH ITS.

THE FACT THAT THERE IS A SPLIT DECISION DOESN'T INDICATE THAT THERE IS SOME AMBIGUITY?

THAT IS AN ARGUMENT THAT IS OFTEN RAISED AND JUST AS OFTEN REJECTED. THIS COURT --

WE HAVE DECIDED 4-3, THAT SOMETHING IS CLEAR AND UNAMBIGUOUS.

EXACTLY. THERE IS A U.S. SUPREME COURT CASE THAT WE CITED IN OUR BRIEF THAT SAYS EXACTLY THE SAME THING. JUST BECAUSE CIRCUIT COURT ONE SAYS THAT IT MEANS ONE THING AND CIRCUIT COURT TWO SAYS IT MEANS ANOTHER THING, DOESN'T MEAN THAT IT CAN'T BE CLEAR AND UNAMBIGUOUS. IF THAT WERE THE CASE, THIS COURT WOULD NEVER HAVE A ROLE, BECAUSE THE COMMISSION SAYS ONE THING AND THIS COURT DISAGREES, AND TO SAY THAT IT MUST BE UNAMBIGUOUS BECAUSE OF THAT DISAGREEMENT, THIS COURT HAS NEVER COME TO THAT CONCLUSION. IN FACT THIS COURT HAS ALWAYS EXERCISED ITS JURISDICTION AND AT TIMES HAS DISAGREED WITH THE PUBLIC SERVICE COMMISSION. WE THINK THIS IS ONE OF THOSE TIMES WHERE DISAGREEMENT IS APPROPRIATE AND THAT THE PUBLIC SERVICE COMMISSION'S DECISION NOT TO EXERCISE JURISDICTION SHOULD BE REVERSED. MR. CHIEF JUSTICE

THANK YOU, MR. BRANNOCK. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.