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**GTC, Inc. v. Lisa Polak Edgar**

**SC06-1786**

LET'S MOVE

ON TO OUR SECOND CASE IF WE MAY,  
GTC.

>> MAY IT PLEASE THE COURT,  
GOOD MORNING, YOUR HONOR, MY  
NAME IS KEN HOFFMAN AND WITH ME  
IS MARCIA RULE.

WE REPRESENT THE APPELANT IN  
THE PROCEEDING, GTC, KNOWN AS  
GT-COM, WHICH IS A SMALL, RURAL  
INCUMBENT LOCAL EXCHANGE  
TELEPHONE COMPANY.

GH-COM ELECTED PRICE CAP  
REGULATION WHICH MEANS THAT IT  
IS NOT SUBJECT TO TRADITIONAL  
COST-BASED REGULATION BY THE  
PSC --

>> I THINK WE'RE FAMILIAR WITH  
THE OVERVIEW OF THIS.

MY CONCERN IS THAT I THINK  
THERE IS MERIT TO CERTAIN  
ASPECTS OF YOUR CLAIM,  
PARTICULARLY AS IT RELATES TO  
CAPITAL COST EXPENDITURE BUT  
ARE YOU TAKING A GLOBAL  
POSITION THAT ANYTHING THAT  
OCCURS AFTER A STORM IS  
RECOVERABLE, EVEN IF IT IS PART  
OF YOUR NORMAL OPERATING  
EXPENSES?

AND I THINK IT IS THATZZ###\$\$  
ALL-OR-NOTHING APPROACH THAT  
SEEMED TO THE THE -- BE THE  
APPROACH AT THE PSC LEVEL AND  
CONTINUES IN TERMS OF YOUR  
BRIEFS TO BE, YEAH, WE OUGHT TO  
GET IT IF -- IF IT OCCURS AFTER  
THE STORM WE OUGHT TO GET IT.  
THEY HAVE NO BUSINESS LOOKING  
INTO WHETHER IT EXCEEDS OUR  
NORMAL OPERATING COSTS OR NOT.  
AND SO, IF YOU COULD CLARIFY  
YOUR POSITION ON THAT, AND THEN,  
YOU KNOW, GO ON.

>> YES, MA'AM.

>> OUR POSITION IS THAT THE LEGISLATURE, VERY CLEARLY, SET FORTH THREE CRITERIA. FOR COST RECOVERY.

THE FIRST IS THAT THE COSTS MUST BE INTRASTATE COSTS TO REPAIR, RESTORE OR REPLACE LINES, PLANTS OR FACILITY THAT ARE DAMAGED BY YOU A HURRICANE. SECONDLY, THE COSTS HAVE TO BE VERIFIED.

AND THEN, THIRD, THE COMPANY HAS TO SHOW THAT THE COSTS ARE REASONABLE UNDER THE CIRCUMSTANCES FOR THIS PARTICULAR HURRICANE. THOSE ARE THE ONLY THREE CRITERIA.

NOW, THERE IS NO ISSUE IN THIS APPEAL AS TO THE FIRST AND SECOND ELEMENTS.

YOUR QUESTION, JUSTICE PARIENTE I THINK GOES TO THE THIRD ELEMENTARY AND -- ELEMENT AND THE NOTION OF DOUBLE RECOVERY AND WE BELIEVE THAT THE STATUTE IS VERY CLEAR THAT THOSE TYPES OF RATE-MAKING PRINCIPLES, ADJUSTMENTS, ARE NOT APPLICABLE IN THIS PARTICULAR --

>> SO YOU MENTIONED THE WORD "DOUBLE RECOVERY."

SO THAT THE IDEA THAT THERE WOULD BE A DOUBLE RECOVERY, THAT IS, THAT IT IS ALREADY COUGHED BY YOUR -- YOU KNOW, MONTHLY RATES, SHOULD BE OF NO CONCERN TO THE PUBLIC SERVICE COMMISSION.

>> THAT'S RIGHT.

AND THE REASON IS -- JUSTICE PARIENTE IS THAT IF YOU LOOK AT WHAT THE LEGISLATURE DID IN 2005, IT PASSED TWO HURRICANE COST RECOVERY STATUTES. ONE FOR ELECTRIC COMPANIES THAT ARE FULLY REGULATED, AND ONE FOR TELEPHONE COMPANIES THAT WE FILED UNDER.

THE ELECTRIC STATUTE SPECIFICALLY HAS RATED-MAKING ADJUSTMENTS WHICH ALLOW FOR OFFSETS FOR NORMAL OPERATING

COSTS.

>> 366.82 --

>> 660.

RIGHT.

SO THE LEGISLATURE UNDERSTANDS THAT A FULLY REGULATED COMPANY LIKE AN ELECTRIC UTILITY, THAT HAS RATE CASES, CAN ONLY RECOVER ONCE.

IF IT SPENDS -- IF IT SPENDS A THOUSAND DOLLARS ON A FACILITY OR ON SOME LABOR THE THOUSAND DOLLARS IS PUT INTO ITS RATES BY THE PSC AND IS NOT ALLOWED TO EARN THAT AGAIN AND WITH THE TELEPHONE COMPANY THAT SELECTED PRICE CAP REGULATION THE COMPANY CAN DOUBLE RECOVERY, TRIPLE RECOVER, CAN LOSE MONEY, CAN MAKE MONEY.

--

>> WHAT DOES THE TERM -- SEEMS TO ME THAT IF THAT IS THIS CASE, THEN WHY WOULD THE LEGISLATURE USE THE TERM ABOUT REASONABLENESS.

WHAT DOES REASONABLENESS MEAN IF YOU CAN CHARGE ALL OF THIS, WHETHER OR NOT IT IS ACTUALLY STORM-RELATED BECAUSE BASICALLY THE PSC IS SAYING, SOME OF THIS REALLY ISN'T STORM RELATED, IT REALLY IS UPGRADES THAT YOU WERE DOING AND THINGS LIKE THAT.

SO WHAT DOES REASONABLE MEAN.

>> REASON -- THE STATUTE SAYS REASONABLE UNDER THE CIRCUMSTANCES FOR THE NAME -- MAIN TROPICAL SYSTEM AND WHAT WE THINK THAT MEANS IS THAT IF, FOR EXAMPLE, A HURRICANE COMES IN AND LET'S SAY IT IS A LIGHT ONE, A CENTRAL OFFICE HAS SOME SHINGLES TORN OFF AND A FEW WINDOWS BROKEN, GOT AWAY LUCKY, IT WOULD BE UNREASONABLE UNDER THE CIRCUMSTANCES FOR THAT HURRICANE AND THAT DAMAGE TO SPEND \$300,000 FOR -- OR WHATEVER THE COST MAY TO BE REPLACE THE WHOLE CENTRAL OFFICE, BECAUSE THE STATUTE SAYS REASONABLE UNDER THE

CIRCUMSTANCES NORTH NAME  
TROPICAL SYSTEM.

THAT IS NOT WHAT HAPPENED HERE.

>> LET'S TAKE FOR EXAMPLE, THE  
REPLACEMENT OF COPPER WIRE BY  
FIBER, CORRECT.

>> YES, MA'AM.

>> AND HOW IS THAT REASONABLE  
UNDER THE CIRCUMSTANCES, SINCE  
THERE WAS COPPER THERE AT THE  
TIME THAT THE STORM CAME AND SO,  
WHY WAS THE REPLACEMENT WITH  
THE COPPER REASONABLE UNDER THE  
CIRCUMSTANCES.

>> WELL, FROM THE COMPANY'S  
PERSPECTIVE, IT WAS THE RIGHT  
THING TO DO FROM A BUSINESS  
STANDPOINT.

THE OLD COPPER WAS DESTROYED.  
NO ONE, NO ONE WOULD REPLACE  
COPPER CABLE -- [INAUDIBLE]  
WITH NEW COPPER AND WE'VE  
REPLACED IT WITH FIBER AND I  
WANT TO POINT OUT, JUSTICE,  
THAT AMOUNT THAT IS -- THAT  
ADDITIONAL AMOUNT THAT IT COST,  
WE ARE NOT -- IN THE APPEAL,  
DID NOT PURSUE THAT IN THE  
APPEAL WELL, ARE ONLY APPEALING  
THE DENIAL OF OF THE COST FOR  
OR INHOUSE LABOR AND CAPITAL  
ASSETS AND THE FACT THE  
COMMISSION OPPOSED AN OFFSET  
FOR HIGH COST --

>> LET ME -- A QUESTION, YOUR  
ARGUMENT IS REASONABLE, BUT AS  
I KEPT GOING OVER THIS IT SEEMS  
AS THOUGH WE HAD ISSUES WITH  
REGARD TO PROOF OF SEGREGATING  
THESE ITEMS OUT.

AND IT WAS ALMOST LIKE IT WAS  
LUMP-SUMMED AND CERTAINLY IF  
YOU GO THROUGH PENSACOLA'S  
KNOCKED OUT AND YOU HAVE TO GO  
IN AND REPLACE THE POLE SYSTEM  
AND YOU USE YOUR OWN WORKERS TO  
DO THAT, WELL, THAT IS FINE,  
WHAT IS CONTEMPLATED AND IF YOU  
DON'T SEPARATE THE COST OUT  
FROM OTHER COSTS, THEN HOW CAN  
SOMEONE ATTRIBUTE THIS STATUTE  
TO DO THAT JUST TO REPAY THOSE  
COSTS, AM I MAKING MYSELF  
CLEAR.

>> I THINK SO.

>> AND THAT IS WHAT I KEPT HITTING, AS I WAS GOING THROUGH HERE, THAT JUST THE -- A LACK OF PROOF IN SEGREGATING THESE, AND TELL ME WHY THAT IS NOT WHAT HAPPENED.

>> WELL, I THINK THAT -- I THINK THAT IS WHAT HAPPENED. WHEN IT CAME TO THE AMOUNT THAT WE SAW FOR THE OVERHEAD AND THE BENEFITS THAT WERE ASSOCIATED WITH THE ACTUAL LABOR. SO, WE DIDN'T APPEAL THAT. THE COMMISSION FOUND THAT THOSE

--

>> HOW ABOUT THE ACTUAL LABOR, THOUGH?

WERE YOU -- DID YOU PUT THE HOUR FOR HOUR IN ON THE -- ON THE INSTALLING, THE UNDERGROUND LINE DOWN WHEREVER IT WAS AND JUST HOUR FOR HOUR, THAT IS ALL SEPARATED OUT.

>> THAT IS -- THAT IS MY UNDERSTANDING.

WE DID. INVOICED THEM AND BATCHED THEM BY WORK ORDERS FOR SPECIFIC GEOGRAPHIC AREAS, YES. HOUR BY HOUR AND ITEMIZED THE AMOUNT OF LABOR.

BUT THE COMMISSION REALLY DIDN'T HAVE A PROBLEM WITH THAT. WHAT THE COMMISSION, NO ONE IS SAYING IN THIS APPEAL THAT THIS MONEY WE SAY WE SPENT WASN'T SPENT.

NO ONE IS SAYING THAT.

THESE AMOUNT ARE VERIFIED.

NO ONE IS SAYING THAT THEY DIDN'T OCCUR DIRECTLY BECAUSE OF HURRICANE DENNIS.

THE ISSUE HERE IS DOUBLE RECOVERY.

>> LET ME GET BACK TO THAT QUESTION OF DOUBLE RECOVERY. YOU ARGUE THAT THE LEGISLATURE ADOPTED TWO DIFFERENT STATUTES, ONE FOR TELEPHONE AND THE OTHER FOR ELECTRIC COMPANIES. AND YOU ARGUE THAT YOU CAN BE ALLOWED DOUBLE RECOVERY BECAUSE YOU ARE -- YOU ARE A PRICE CAP

COMPANY AND NOW THE LEGISLATURE KNEW THAT THEY HAD DIVIDED THE COMPANIES INTO PRICE CAP BE A RATE OF RETURN GIVING PEOPLE THE OPTION SINCE 1995 I BELIEVE OF GOING TO PRICE CAP.

SO, IF THE LEGISLATURE WANTED TO HAVE DIFFERENT STANDARDS FOR PRICE CAP COMPANIES AND RATE OF RETURN COMPANIES, THEY COULD HAVE RIDDEN TWO DIFFERENT SUB SECTIONS OF -- WRITTEN TWO DIFFERENT SUB SECTIONS OF THE STATUTE, DEPENDING ON WHICH ONE YOU WERE BUT THEY DIDN'T.

>> JUSTICE CANTERO, ACTUALLY I THINK THEY DO BECAUSE THE TICKET, THAT GAVE WAY INTO HURRICANE COST RECOVERY FOR THE COMPANIES AND IT IS VIRTUALLY ALL OF THEM THAT HAVE ELECTED PRICE CAP REGULATION IS UNDER THIS STATUTE THAT PROVIDES THIS SORT OF QUICK AND DIRTY EXPEDITED MECHANISM THAT WAS PASSED IN 2005.

IF YOU HAVEN'T ELECTED PRICE CAP REGULATION, AT THE PSC YOU ARE NOT ALLOWED IN BUT YOU ARE -- YOU ARE ALLOWED TO FILE A RATE CASE AND SOY YOU ARE TAKEN CARE OF ON THAT SIDE OF THE STATUTE AND SO ACTUALLY THE STATUTE DOES PROVIDE TWO WAYS, DEPENDING ON WHICH TYPE OF COMPANY YOU ARE, FOR A COMPANY TO RECOVER THE HURRICANE COSTS.

>> ONE --

>> I'D LIKE TO GO BACK TO THE LABOR ISSUE, YOU SAID YOU ARE APPEALING THE DENIAL OF THE INHOUSE LABOR BUT YOU AGREED NOT TO APPEAL THE ASSOCIATED OVERHEAD.

IF I'M UNDERSTANDING, THOUGH, WHAT IS ALLOWED, IF YOU CONTRACTED WITH THIRD PARTIES TO DO REPAIR, THAT WAS ALLOCATED AND ALLOWED, CORRECT.

>> YES, MA'AM.

>> WHAT I'M UNDERSTANDING AND THIS IS SORT OF THE QUESTION, IS THAT REASONABLE UNDER THE CIRCUMSTANCES, YES, YOUR PEOPLE

WENT OUT AND DID THIS REPAIR  
BUT THERE WASN'T ANY UNUSUAL OR  
EXTRAORDINARY OVER TIME  
ASSOCIATED OR -- COMMISSION  
SAYS THEY WOULD HAVE RECEIVED  
THAT.

AND THESE WERE PEOPLE THAT WERE  
ON THE SALARY.

AND SO THE LABOR COSTS FOR THE  
YEAR WERE ESSENTIALLY NO  
DIFFERENT THAN THEY WOULD HAVE  
BEEN ACTUALLY -- AFTER THE  
STORM AND THAT'S -- IF YOU HAD  
SHOWN THAT THEY WERE DIFFERENT,  
THEN THE COMMISSION WOULD HAVE  
ALLOWED IT.

SO, IS THAT CORRECT, THAT IS,  
THAT THERE -- THAT YOUR  
CONTROLLER AND THE PSC FOUND  
THAT -- AS FAR AS INHOUSE LABOR,  
EVEN THOUGH THOSE PEOPLE MAY  
HAVE PHYSICALLY GONE OUT THERE,  
THOSE LABOR COSTS ARE NO  
DIFFERENT THAN IF THERE HADN'T  
BEEN A STORM?

>> YES.

BUT IT IS BECAUSE --

>> I GUESS THAT IS WHERE THE  
QUESTION, BECAUSE WE ARE STILL  
-- THERE IS SOME RESPONSIBILITY  
HERE IF IRATE IS BEING IMPOSED,  
THAT IS WHAT WE ARE TALKING  
ABOUT, NOT ABOUT WHETHER YOU  
CAN GET IT BACK FROM YOUR  
INSURANCE COMPANY OR SOME  
FEDERAL FUND, THIS IS WHETHER  
YOUR CUSTOMERS CAN BE CHARGED,  
HOW IS THAT REASONABLE UNDER  
THE CIRCUMSTANCES OF THE NAMED  
STORM OR ISN'T THAT SOMETHING  
THE PSC CAN DECIDE, IF THERE  
AREN'T ANY ADDITIONAL --  
ADDITIONAL LABOR COSTS ASSOFTED  
WITH THIS RE-- REPAIR IT'S NOT  
REASONABLE UNDER THE  
CIRCUMSTANCES TO RECOVER IT.

WHY WOULD THE LEGISLATURE WANT  
YOU TO HAVE A DOUBLE RECOVERY?

>> BECAUSE WE ARE A COMPETITIVE  
COMPANY.

WHETHER SOMETHING IS REASONABLE  
UNDER THE CIRCUMSTANCES AND  
THEN IT SAYS FOR THE NAME  
TROPICAL SYSTEM, IT CAN ONLY

MEAN -- GO TO WHETHER THE AMOUNT YOU SPENT WAS REASONABLE FOR WHAT HAPPENED AS A RESULT OF THAT HURRICANE.

WE ARE -- WHEN YOU LOOK AT THIS DOUBLE RECOVERY ISSUE, YOU HAVE TO KEEP IN MIND THAT THE PSC DOES NOT REGULATE US.

WE DO NOT HAVE RATE CASES.

THE INHOUSE LABOR WE JUST TALKED ABOUT, THE WORK THAT THOSE EMPLOYEES DID, THEIR NORMAL WORK DOESN'T GO AWAY, THEY HAVE TO GO BACK AND DO THEIR NORMAL WORK WHILE PROVIDING THE EC DIET RESTORATION.

>> THAT IS -- BUT IF YOU COULD PROVE, THEREFORE, SOMETHING DIDN'T GET DONE, I MEAN, THAT IS -- WHERE JUSTICE LEWIS WAS SAYING ABOUT FAILURE OF PROOF, I THINK THAT IS WHAT SEEMS TO BE MISSING FROM THIS RECORD, IS -- OKAY.

HERE'S THE COST BUT, NO EXPLANATION OF WHAT SUFFERED AS A RESULT OF THAT OCCURRING.

>> JUSTICE PARIENTE, I THINK -- I DON'T KNOW THAT WE WOULD BE REQUIRED TO SHOW WHAT SUFFERED. UNDER THE STATUTE, WE JUST HAVE TO SHOW HOW MUCH WE SPENT THAT IT WAS SPENT TO REPAIR, REPLACE OR RESTORE LINES, PLANTS OR FACILITIES FOR -- KAFD BY A HURRICANE AND THAT THE AMOUNT WAS REASONABLE UNDER THE CIRCUMSTANCES, FOR THAT HURRICANE.

AND NOW, WE ARE NOT EARNINGS REGULATED.

THIS STATUTE COULD NOT HAVE BEEN INTENDED TO YIELD A RESULT THAT, IF THEY COMPETITIVE PHONE COMPANY, WHICH TAKES THE CHANCE THAT IT MAY LOSE CUSTOMERS, IF IT COMES IN AND GETS THIS MONEY, AND IMPOSES IT RIGHT, BECAUSE IT FACES COMPETITION.

THE STATUTE COULD NOT HAVE BEEN INTENDED TO SAY, OKAY.

IF YOU ARE MAKING MONEY, YOU DON'T GET THIS.

>> WHAT DO YOU THINK, THEN,  
REALLY IS THIS PURPOSE OF THE  
STATUTE?

IT DOESN'T SEEM TO ME THE  
PURPOSE OF THE STATUTE IS TO  
LET YOU JUST GO OUT AND GET  
MONEY FROM ANY SOURCE, FOR  
THESE HURRICANE DAMAGES, SEEMS  
TO ME THE PURPOSE OF THE  
STATUTE IS TO ATTEMPT TO DRY TO  
MAKE YOU WHOLE IF YOU HAVE TO  
SPEND ADDITIONAL MONEY BECAUSE  
OF HURRICANE DAMAGE.

AND SO, ISN'T -- WHEN THE  
PUBLIC SERVICE COMMISSION  
LOOKED AT THIS, ISN'T THAT WHAT  
THEY WERE REALLY LOOKING AT?  
WHAT MONIES DID YOU HAVE TO  
SPEND BECAUSE OF THE HURRICANE  
DAMAGE AND ONLY THAT TO BE  
PASSED ON TO YOUR CUSTOMERS.

>> I THINK THAT IS EXACTLY WHAT  
THEY LOOKED AT, JUSTICE QUINCE  
AND I THINK ERRONEOUSLY SO AND  
THANK THEY EXCEEDED THEIR  
JURISDICTION BY REWRITING THE  
STATUTE AND INCORPORATING THE  
NOTIONS THAT YOU U.S.

REFERENCED --

>> ARE YOU -- EXCUSE ME.  
GO AHEAD.

>> BUT IT SEEMS TO ME THAT THAT  
IS INCLUDED IN THE WHOLE NOTION  
THAT THIS STATUTE IS BASED ON  
REASONABLE EXPENSES BY YOUR  
COMPANY.

>> NO, MA'AM.

THE STATUTE SAYS REASONABLE  
UNDER THE CIRCUMSTANCES FOR THE  
NAME TROPICAL SYSTEM.

-- NAMED TROPICAL SYSTEM AND I  
THINK THE APPROACH THE  
COMMISSION TOOK AND WHAT YOUR  
QUESTION SUGGESTS IS WE COULD  
TAKE THE WORDS FOR THE NAME  
TROPICAL SYSTEM OUT OF THE  
STATUTE.

>> LET ME -- [INAUDIBLE].

>> WELL, IT IS SORT OF THE SOME  
OF WHAT YOU ARE SAYING IS THAT  
THIS COMMISSION AND THIS COURT  
SHOULD NOT LOOK AT THIS THROUGH  
THE EYES OF A RATE CASE.  
IS THAT RIGHT.

>> YES, SIR.  
>> BECAUSE THIS IS NOT A SET --  
SETTING RATES.  
>> THIS IS NOT SETTING RATES.  
>> NOT SETTING THE RATES.  
WHAT ARE WE DOING IN THE COURT?  
>> YOU ARE --  
>> WHY ISN'T THE COURT, THE  
JURISDICTION IN THIS PROCEEDING  
IN THE DISTRICT DISTRICT COURT  
RATHER THAN THIS COURT.  
>> BECAUSE THIS IS AN ISSUE  
THAT INVOLVES THE DENIAL OF OUR  
REQUEST TO ADD A CHARGE THAT IS  
AUTHORIZED UNDER THE STATUTE  
AND I THINK THAT THAT PLACES  
JURISDICTION WITH THE COURT.  
>> THE END RESULT, THE END  
RESULT OF THE COMMISSION'S  
DECISION IS THAT WE WILL  
RECOVER THE MONEY IF WE TAKE  
THE INEFFICIENT APPROACH OF  
TAKING OUR INHOUSE FOLKS AND  
KEEPING THEM ON THEIR NORMAL  
STUFF, IF YOU WILL, THEIR  
NORMAL TASKS AND SPENDING A  
BUNCH OF NEW MONEY TO HIRE A  
THIRD PARTY PARTY AND BRINGING  
THEM IN, NOT FAMILIAR WITH OUR  
SYSTEM, SPENDING THAT MONEY AND  
WE'RE GOING TO GET THAT MONEY,  
UNDER THE COMMISSION'S  
RATIONALE.  
>> YOU WOULDN'T WANT TO DO THAT  
ANYWAY UNLESS ARE GOING TO BE  
PAYING OVERTIME TO YOUR  
EMPLOYEES BECAUSE BECAUSE YOU  
WILL BE SPENDING MONEY, YOU MAY  
NOT RECOVER LATER ON AND YOU --  
YOUR PRICE CAP COMPANY, YOU ARE  
WORKING ON REDUCING YOUR  
EXPENSES, AND WHY YOU WOULD  
HAVE -- WHY WOULD A PRICE CAP  
COMPANY DELIBERATELY GO OUT AND  
HIRE OTHER PEOPLE WHEN THEY  
COULD DO IT INHOUSE WITHOUT  
OVERTIME NOT KNOWING IF THEY'LL  
RECOVER THE EXPENSES LATER.  
>> WELL, THAT IS THE APPROACH  
WE TOOK, JUSTICE CANTERO.  
>> ALL RIGHT.  
AND NOBODY IS HERE SAYING IT  
WAS AN UNREASONABLE APPROACH  
THAT YOU TOOK.

THE ONLY QUESTION IS WHETHER YOU ARE ALLOWED DOUBLE RECOVERY AND THE ONLY THING THE COURT SEEMS TO BE CONCERNED ABOUT.

>> JUSTICE CANTERO YOU HAVE TO KEEP IN MIND, THE WORD DOUBLE RECOVERY, TRIPLE RECOVERY, YOU KNOW, STARBUCKS CAN RECOVERY THREE TIMES ITS COSTS WHEN IT SELLS YOU A CUP OF COFFEE AND WHEN IT PRICES IT HE TIE YOU GO TO DUNKIN' DONUTS OR SOMEWHERE ELSE TO GET YOUR COFFEE.

DOUBLE RECOVERY ASSUMES THE NOTION THAT RECOVERY THAT YOU CAN ONLY RECOVER ONCE BECAUSE YOU ARE FULLY REGULATED. THIS COMPANY IS NOT FULLY REGULATED.

>> BUT IT IS COST REGULATED, THAT'S WHY YOU HAD TO GO TO THE PSC, RIGHT, THE ABILITY TO PASS THE COSTS ON.

>> OUR ABILITY TO PASS THE COSTS ON --

>> REGULATED.

>> WE REQUIRE -- WE ARE NOT REGULATED.

>> BUT REQUIRED TO APPROVE --

>> PERMISSION FROM THE PSC.

>> AND IT SAYS -- GIVE ME YOUR DISAGREEMENT, THEY ARE SAYING THE STATUTE WASNETICKED TO DEFRAY ADDITIONAL COSTS KAFD BY EXTRAORDINARY CIRCUMSTANCES. DO YOU AGREE OR DISAGREE.

>> WE DISAGREE.

THIS STATUTE WAS -- [INAUDIBLE] PROVIDE AN EXPEDITED, NONREGULATED APPROACH, FOR COMPANIES LIKE OURS, THAT HAVE A CARRIER OF LAST RESORT OBLIGATION, SUBJECT TO COMPETITION HAVE TO MACK A BUSINESS DECISION IF THEY ARE GOING TO IMPOSE THE CHARGE AND IF THEY INCREASE THEIR RATES TOO MUCH, WIRELESS COMPANIES, CABLE COMPANIES, COMPETITIVE LAND LINE PHONE COMPANIES WILL COME IN AND TAKE THE CUSTOMERS.

>> JUSTICE --

>> BEFORE YOU SIT DOWN ON THE ISSUE OF THE SUBSIDY, IS IT

YOUR POSITION THAT IF YOU HAD RECEIVED VURNS -- IN OTHER WORDS, INSURANCE HAD REIMBURSED YOU, \$100,000, THE PSC WAS NOT ALLOWED TO TAKE IT INTO CONSIDERATION.

>> THAT'S RIGHT.

NOW THE TESTIMONY SHOWS --

>> THAT'S CORRECT THAT, NO, IF YOU HAD GOTTEN ONE AND INSURANCE COMPANY, AND THAT IS WHY YOU SAY ALSO THE SUBSIDY IS -- SHOULD NOT HAVE BEEN OFFSET.

>> IF I MAY, JUSTICE PAIR YAENLT WE WOULDN'T HAVE PURSUED IT -- PARIENTE, WE WOULDN'T HAVE PURR SIDE IT IF WE WERE PAID INSURANCE MONIES.

>> YOU FEEL LIKE YOU COULD HAVE?

>> NO, MA'AM -- YES.

THE STATUTE PROVIDES ONE OFFSET.

AND THAT IS -- NOT HAVE MONEY ALREADY IN A STORM FUND.

WHAT HAPPENED WITH THE HIGH COST RECOVERY FUND, I THINK WHAT YOU ARE RAISING IS, YOU CAN'T SQUARE WHAT HAPPENED HERE WITH A LEVEL-3 DECISION THE APP LEES CITE IN THEIR CASE AND THE LEVEL 3 CASE, A COMPETITIVE PHONE COMPANY SAID, YOU KNOW, WE HAVE RENTAL REVENUES AND THEY SHUNTS COUNT WHEN YOU CALCULATE REGULATORY ASSESSMENT FEES AND THE PSC SAID THERE IS ONLY TWO EXCLUSIONS IN THE STATUTE BS ONE FOR IN STATE REVENUES AND THE FOR WHAT WE PAY OTHER PHONE COMPANIES AND THE CO-LOCATION REVENUE COUNT. THAT WAS APPEALED, AND THE COURT AFFIRMED AND HERE, THERE IS ONLY ONE COST --

>> [INAUDIBLE].

>> HAVE MONEY SET ASIDE IN THE STORM RESERVE FUND AND WHAT THE COMMISSION DID, WE THINK, UNLAWFULLY WAS REWROTE THE STATUTE AND ADDED A SECOND OFFSET, FOR THE MONEY THAT WOULD COME IN, PROJECTED TO COME IN UNDER THE HIGH COST

PROGRAM.

>> OUT OF YOUR --

>> HOW MUCH TIME DO I HAVE LEFT.

>> 17 SECONDS.

>> THANK YOU, I'LL SAVE MY 17!

>> I'M DAVIS SMITH REPRESENTING THE FLORIDA PUBLIC SERVICE COMMISSION AND WITH ME AT COUNSEL TABLE IS PATTY CHRISTIANSEN FROM THE DEPARTMENT OF PUBLIC --

>> I'LL PRESENTED THE ARGUMENT.

>> LET ME ASK YOU, MY CONCERN AND YOU MAY SAY THAT IS NOT APPLICABLE IN THE CASE BUT SEEMS TO ME IF THE STATUTE IS DESIGNED TO DO ANYTHING, IT IS DESIGNED TO ALLOW REIMBURSEMENT WHEN -- BECAUSE OF A YOU HURRICANE, A COMPANY'S TELEPHONE LINES ALL GO DOWN AND HAVE TO REPLACE THEIR TELEPHONE LINES, AND SEEMS TO ME THAT THIS IS THE CASE WHETHER OR NOT THOSE TELEPHONE LINES HAVE BEEN FULLY DEPRECIATED, THE WHOLE PURPOSE TO SAY, IF YOU HAVE TELEPHONE LINES THAT A HURRICANE IS -- HAS KNOCKED DOWN YOU NEED REPLACE THEM AND REASONABLE COSTS UPPER THE STATUTE.

>> DOES THE COMMISSION DISAGREE WITH THAT?

>> THE COMMISSION DOESN'T DISAGREE THAT, THEY SHOULDN'T ABLE TO RECOVER THOSE COSTS FOR PUTTING IN A NEW LINE, BUT THE QUESTION IS, IS IT NORMAL COST THAT THEY WILL BE DEPRECIATING OVER A NUMBER OF YEARS?

>> WHETHER THEY SHOULD DEAPPRECIATE IT OR NOT IT MAY BE KINING ISSUE LATER ON IF THE PREVIOUS TELEPHONE LINES HAVE BEEN FULLY DEPRECIATED ALREADY MAYBE THE ANSWER IS, YOU CAN'T DEPRECIATE THE NEW ONES BECAUSE THEY ARE REPLACING THE FULLY DEPRECIATED ONES IT DOESN'T ANSWER THE QUESTION OF WHETHER THEY

SHOULD RECOVER THE COST IN THE FIRST PLACE.

>> THE COMMISSION LOOKS AT IN THE WAY, NORMAL COUNSEL COSTS ARE MATCHED TO EXPENSE THAT IS PARCELED OUT OVER A NUMBER OF YEARS THEY, THEY HAVE CAPITALIZED THE COST IN THE BOOKS, THERE IS NO QUESTION ABOUT THAT.

THE COUNSEL THOUGHT THE COMMISSION WERE NOT GOING TO ALLOW TO YOU RECOVER AGAIN ARE ALREADY ON THEIR BOOKS IN THEIR ACCOUNTING SCHEMES COUNTED FOR AND THEY WILL RECOVER THROUGH THEIR RATE.

>> LET ME FOLLOW-UP.

THEY WILL RECOVER IT BECAUSE THEY HAVE DEPRECIATED OUT, BUT DOES IT MATTER ON THE TERMS OF THE PSE'S VIEW AS TO WHETHER THE ASSET HAD ALREADY BEEN FULLY DEPRECIATED OR WHETHER IT WAS JUST LAST YEAR THEY FULLY PUT NEW POLLS IN AND THEY SPENT, YOU KNOW, HALF MILLION DOLLARS UPFRONT TO PAY FOR IT, AND NOW, NEXT YEAR, THEY ARE NOW HAVING TO PAY THAT EXACT -- DOES IT MATTER AT ALL IN YOUR PSE'S ANALYSIS IF

>> WELL, IT IS THE SAME QUESTION OF DOUBLE RECOVERY, IF THE COMMISSION HAD ALLOWED THEM THOSE EXPENSES TO BE RECOVERED IN ONE YEAR, THEY ARE GOING TO RECOVER IT AGAIN IN THEIR NORMAL RATE, SO THE RATE PAYERS WOULD BE PAYING TWICE LIKE WOULD YOU FOR OTHER EXPENSES THAT THEY NORMALLY INCUR.

>> THEY SAY --

>> JUST ONE SECOND.

HER QUESTION ASSUMES THEY WOULD HAVE NOT OTHERWISE REPLACED THE TOLLS OR LINES THAT YEAR.

THEY SUSTAIN --

>> CORRECT.

I UNDERSTAND.

>> THE LOSS AT ONE TIME,  
THAT IS WHAT SHE IS ASKING.  
>> THE HURRICANE CAUSED THEM  
TO HAVE TO DO IT.  
IT IS MATTER OF TIMING.  
THE QUESTION IS:  
INTERNALS OF, YOU KNOW, THE  
RECOVERY, THE COST, IS IT  
NORMAL COST OR IS NOT?  
IT IS A NORMAL COST.  
THEY DIDN'T SUFFER ANY  
ADDITIONAL LOSS ON THE  
LIGHTS BECAUSE THEY WERE  
FULLY DEPRECIATED EXCEPT FOR  
ONE LITTLE PIECE THEY DIDN'T  
INCUR A SPECIFIC LOSS  
RELATED TO THAT.  
THIGH IS WHERE WE ARE HAVING  
PROBLEMS WITH IT.  
WE ARE THINKING THAT THEY  
WOULDN'T HAVE DONE THIS.  
THEY WOULDN'T HAVE DONE,  
THEY WOULDN'T HAVE HAD A  
REPLACED PEDESTALS OR  
WHATEVER IF THEY HAD NOT  
BEEN DESTROYED.  
THEY MAY HAVE DECIDED THEY  
WERE GOING TO DO IT IN FIVE  
YEARS, THEY MAY HAVE DECIDED  
THEY WOULD FINANCE IT, I  
MEAN, I GUESS, SO, IT  
DOESN'T SEEM LIKE IT  
MATTERED IF YOU SAY, WELL,  
THEY SHOULDN'T HAVE PAID IT  
ALL UPFRONT, YOU KNOW, THEY  
SHOULD HAVE THEMSELVES  
FINANCED THIS OPERATION, SO  
THEY DIDN'T PAY IT ALL IN  
ONE YEAR OR SOMETHING LIKE  
THAT.  
BUT IT SEEMS AGAIN THAT THE  
COMMISSION HAS GOTTEN THE  
WHOLE OPPOSITE WAY TO SAY,  
KNOB OF THIS IS RECOVERABLE.  
NONE OF THESE --  
>> NO, NO.  
FIRST OF ALL, THE COMMISSION  
HAS ALLOWED CAPITAL EXPENSES  
IN THE SPRINT CASE AND SOME  
OF THE ELECTRIC CASES.  
>> EXPLAIN THU WOULD WORK,  
IN OTHER WORDS, WHY DIDN'T  
ALLOW IT HERE?  
>> I AM SORRY.

>> WHERE IS IT THAT YOU DO ALLOW THE REPLACEMENT OF THE LINES OR THE POLES OR WHAT JEFF, WHY WASN'T THAT ALLOWED HERE?

>> THEY HAVE ALLOWED, YOU KNOW, PARTICULARLY EXTRAORDINARY EXPENSE BEYOND THE NORMAL COST OF ANY INVESTMENT AND I WILL ANSWER YOUR QUESTION.

>> YOU ARE NOT HELPING. I AM TRYING TO UNDERSTAND, A POLE IS KNOCKED DOWN, RIGHT? THAT POLE WAS JUST PUT UP LAST YEAR.

NOW THEY GO OUT. THEY HAVE TO SPEND \$50,000 TO PUT BACK THOSE POLES. THIS IS NOT A RATE OF RETURN COMPANY, SO THE FACT THAT THEY DEPRECIATE IT OVER TIME MAY BE IMPORTANT FOR INCOME TAX PURPOSES, BUT FOR THE CUSTOMER, THE CUSTOMER'S RATE DOESN'T CHANGE BASED ON BUILD IT WAS DEPRECIATED OR NOT SO WHY ISN'T THAT MONEY THAT THEY HAVE PUT IN TO REPLACE THOSE POLES JUST THE ASSET ITSELF, NOT THE LABOR ASSOCIATED WITH IT, WHY ISN'T THAT DIRECTLY STORM RELATED.

>> IT IS.

>> I MEAN, I CAN'T, I CAN'T EXPLAIN IT ANY OTHER WAY THAN JUST IN TERMS OF, YOU KNOW, YOU HAVE INVESTMENTS THAT YOU MAKE OVER TIME AND IF YOU HAVE TO REPLACE THE POLE TODAY TODAY, THEY REPLACE PEDESTALS EVERY DAY ALSO.

>> BUT YOU AGREE BECAUSE SOMETHING IS DEAPPRECIATED OVER X NUMBER OF TIME DOESN'T MEAN THE COMPANY INTENDS TO REPLACE THE ITEM AT THE END OF THAT DEPRECIATION PERIOD THE LIFE OFTEN EXTENDS WAY BEYOND THE APPRECIATION PERIOD OF.

>> THAT IS CORRECT.  
>> ACCOUNTING MECHANISM FOR  
TAX PURPOSE SO WHAT IF THE  
COMPANY DEPRECIATES  
TELEPHONE LINES OVER 15  
YEARS BUT EXPECT THEM TO  
LAST 20 YEARS SO THE LAST  
FIVE YEARS THEY EXPECTED TO  
MAKE -- THEY WERE NOT AGE TO  
DEPRECIATE THEM, BUT GOING  
TO KEEP THEM THERE, THAT  
INCURREDq#Dm> THEmy EXPENSE OF  
GETTING NEW ONES NOW THEY  
HAVE TO INCUR THE EXPENSE  
FIVE YEARS EARLIER?  
WHY SHOULDN'T THEY BE ABLE  
TO RECOVER THAT?

>> I, I CAN'T, I CAN'T SAY  
OTHER THAN THAT IN THE WAY  
THAT COMMISSION LOOKS AT IT  
IS THAT THESE COSTS ARE  
COSTS THAT THEY WOULD INCUR  
IN THE NORMAL COURSE OF  
DOING BUSINESS.

>> HOW CAN YOU SAY, IT SEEMS  
TO ME, THAT YOU CAN NOT TRUL  
RY SAY THAT A COST LIKE  
REPLACING A NUMBER OF POLES  
THAT WERE KNOCKED DOWN IN A  
STORM WOULD HAVE OCCURRED IN  
THE NORMAL COURSE WHEN IT  
SEEMS THE POLES ARE  
PERFECTLY FINE UNTIL THE  
STORM COMES THROUGH, WHY  
ISN'T THAT AN EXPENSE THAT A  
COMPANY SHOULD RIGHTFULLY BE  
ABLE TO RECOVER UNDER THIS  
STATUTE THAT SAYS RESTORING,  
REPLACING OR REPAIRING?

>> IT IS NO DIFFERENT THAN  
SOMEBODY HIT THE POLE WITH A  
TRUCK.

I MEAN, THEY GET POLES  
KNOCKED DOWN ALL OF THE TIME  
BY VARIOUS THINGS.

>> NO STATUTE ON THOSE?  
ISN'T THAT THE ANSWER.  
BUT THE MALING TUDE IS  
GREATER, OBVIOUSLY.

>> AN EXAMPLE OF SOMETHING  
THAT IN THE COMMISSION THE  
OPINION WOULD BE RECOVERABLE  
BECAUSE I CAN'T THINK OF  
ANY, IF YOU CAN'T RECOVER

THIS, WHAT, WHAT IS  
SO5

TO REPLACE, REPAIR OR  
RESTORE THAT WOULD BE  
RECOVERABLE UNDER THE  
STATUTE?

>> I AM SORRY.

I AM GETTING THE QUESTION.

>> IF THE COMPANY CAN'T  
RECOVER DOWNED TELEPHONE  
POLES THAT THEY HAVE TO  
REPLACE, WHAT CAN THEY  
RECOVER UNDER THE STATUTE?

>> THEY CAN RECOVER, FOR  
INSTANCE, EXTRAORDINARY COST  
OF LABOR, WHICH THE  
COMMISSION RECOGNIZED BY THE  
WAY, WE TOOK OUT THE  
IN-HOUSE LABOR BECAUSE THE  
PERSON WHO IS DRIVING AROUND  
IN THE TRUCK FIX PEDESTALS  
TODAY, DOES THE SAME THING  
TOMORROW AS A RESULT OF A  
HURRICANE IS -- THE COMPANY  
IS INCURING AN EXPENSE THAT  
THEY COULD INCUR ANYWAY, BUT  
COMMISSION RECOGNIZED THAT  
THERE WERE ABOUT \$50,000  
WORTH OF EXTRAORDINARY  
CONTRACT LABOR THAT THE  
COMPANY HAD TO GO OUT AN  
HIRE SOME OTHER EMPLOYEES TO  
ACTUALLY FIX.

>> GIVE THE COST.

YOU SAID THAT YOU ALLOWED, I  
GUESS YOU SHOWED IN OTHER  
ORDER, HUNDREDS OF MILLIONS  
OF DOLLARS THAT ARE BEEN  
ALLOW.

GIVE ME EXAMPLE OF A CAPITAL  
COST THAT HAS BEEN ALLOWED  
BECAUSE IT HAS BEEN  
CATEGORIZED AS EXTRAORDINARY.

>> WE HAVE, COMMISSION HAS  
ALLOWED EXTRAORDINARY  
RELATED TO THE LABOR AND  
MATERIALS THAT WERE OBTAINED  
AT A PREMIUM.

>> CAPITAL ASSET ITSELF.  
THE POSITION IS THAT THE  
PRICE OF THE COST OF THE  
CAPITAL ASSET IS NOT  
RECOVERABLE.

>> NORMAL CAPITAL

INVESTMENTS, EXTRAORDINARY CAPITAL, YES.

>> AGAIN, SORRY, YOUR HONOR.

>> CAN YOU TELL HER WHAT IS THE DIFFERENCE UNDER THIS SCENARIO YES AN EXTRAORDINARY, I THINK THAT IS THE QUESTION?

>> WHAT IS EXTRAORDINARY CAPITAL EXPENDITURE?

>> IT MIGHT BE THAT YOU KNOW, THAT YOU HAD TO BUY SOME WIRE OR A MACHINE OF SOME SORT THAT YOU COULDN'T GET AT THE NORMAL PRICE, YOU HAD TO IMPORT OF IT BECAUSE OF THE CIRCUMSTANCES.

>> SO THE COST WAS MORE THAN IT WOULD HAVE BEEN?

>> THAT IS CORRECT.

>> IF I MAKE A DECISION, AGAIN, I DON'T HAVE THAT MONEY.

I DECIDE, I DON'T WANT.

I HAVE GOT TO GO OUT, BORROW THAT MONEY.

NOW, BECAUSE I WAS PLANNING TO NOT REPLACE THIS FOR TEN YEARS, SO I DIDN'T BUDGET FOR THIS THING.

AGAIN, I GUESS I AM HAVING TROUBLE UNDERSTANDING WHY IF I WASN'T GOING TO REPLACE IT, I HAVE TO FINANCE IT FOR EXAMPLE, WOULD YOU GIVE ME THE FINANCE CHARGES?

>> IN FACT, COMMISSION DID RECOGNIZE THE COST ASSOCIATED WITH SOME OF THE INVESTMENT.

I AM SORRY, SOME OF THE EXPENSES.

THERE IS NO REASON THAT COMMISSION LOOKED AT THINK IT WAY IN TERMS OF EXPENDITURES.

FIRST OF ALL, THAT IS NOW ACCEPTED PRACTICE FOR THE UTILITIES, THE OTHER COMPANIES THAT COME IN AND REMOVE THE NORMAL EXPENSE. MAIN, THAT HAS HAPPENED. THAT IS OUT OF THE STATION.

>> IN OTHER WORDS --

>> IT SEEMS TO ME, COMING  
BACK TO JUSTICE LEWIS'S  
QUESTION TO YOUR PETITIONER  
THAT IS THIS MATTER OF  
SEGOLENE GADING COSTS OR IS  
IT A MATTER OF COMING UP  
WITH A DEFINITION OF WHAT  
DAMAGE IS COVERED UNDER THIS  
STATUTE?

IS THEIR A NEED FOR  
STATUTORY CONSTRUCTION OR IS  
IT A MATTER OF COMMISSION?

>> WELL, IT IS MATTER OF THE  
COMMISSION DETERMINING WHAT  
IS REASONABLE FOR THE STORM.  
IF THE LEGISLATURE, IN FACT,  
WAS THE COMMISSION SIMPLY TO  
VERIFY THESE CALL, SAY,  
OKAY, THEY SPENT THE MONEY,  
THEY GET IT.

THEY COULD INCREASE THEIR  
RATES UP ABOVE THE PRICE CAP  
AN SIMPLY HAVE A FILE, IF  
THERE IS A STORM.

>> WORKING DEFINITION OF  
DAMAGE IS THE RESULT OF A  
TROPICAL STORM?

WHAT IS THE WORKING  
DEFINITION OF DAMAGE UNDER  
THIS STATUTE FOR THE  
COMMISSION IN?

>> WELL, I DON'T KNOW IF  
THAT IS A TERM OF ART IN  
TERMS OF COMMISSION IS  
LOOKING AT.

I MEAN, DAMAGE MEANS WHAT  
JFER THE STORM COSTS.  
AND I GUESS THE COST, A  
REASONABLE COST, I MEAN, THE  
COMPANY SAID, WELL, COST IS  
COST.

THAT MEANS, WE GET  
EVERYTHING, DON'T MATTER IF  
WE GET TWO OR THREE TIMES.

>> BUT THAT IS WHAT I SAID,  
I THINK THEY WENT OVERBOARD  
ONE WAY, BUT IT SEEMS,  
THATGAIN, I CAN'T GET AWAY  
FROM THIS, HOW CAN SOMETHING  
BE NORMAL OPERATING COST IF  
-- IF I DIDN'T PLAN IN THIS  
YEAR TO SPEND \$2200,000 TO  
REPLACE THOSE THINGS?  
MY \$200,000 WAS GOING TO BE

SPENT ON UPGRADING FACILITY,  
ANOTHER FACILITY, NOW, YOU  
CAN'T DO THAT, I MEAN, IF  
THEY COULD ESTABLISH, I  
CAN'T DO THAT BECAUSE I HAD  
TO SPEND THAT \$200,000 ON  
THIS.

WHY?

IF WITH PROPER PROOF, ISN'T  
THAT AN APPROPRIATE SUBJECT  
FOR THE, YOU KNOW, ALLOWING  
THAT, THEN ALLOWING THE  
SURCHARGE TO OCCUR?

>> BECAUSE IT IS NATURE OF  
THE EXPENSE.

IT IS -- EYE UNDERSTAND THAT  
THINGS HAPPEN.

HAVE TO PUT OUT MY -- MONEY  
AT ANY GIVEN TIME THAT YOU  
MIGHT NOT HAVE OTHERWISE.  
THE COST ASSOCIATED WITH  
THAT, \$LY, BUT THE QUESTION  
IS:

ARE YOU GOING TO GET IT  
BACK?

THAT IS A NORMAL INVEST.

>> IF IT IS ISN'T, THE  
COMMISSION BY DISALLOWING  
THESE COSTS CAN IN ESSENCE  
TAKE REGULATORY PRINCIPAL  
AND RATE MAKE PRINCIPAL AND  
NOW IN KORM OPERATING THEM  
IN AN AREA THAT THEY WERE  
NOT DESIGNED FOR.

ISN'T THAT REALLY WHAT THE  
COMMISSION ENDS UP DOING  
THEN IN TAKING THIS  
REASONABLE AND FILLING IT  
FULL OF THESE REGULATORY  
PRINCIPALS IN AN INSTANCE  
WHERE WE DON'T HAVE A  
REGULATED COMPANY?  
AND THAT IS WHERE I AM  
HAVING DIFFICULTY BECAUSE IT  
SEEMS LIKE EVERYTHING THAT  
THE COMMISSION IS TALKING  
ABOUT AND DENYING THESE  
CHARGES IS BASED ON THE LONG  
HAUL AND WOULD THEY HAVE  
BEEN REPLACED ANYWAY?

ALL OF THE THINGS THAT  
ORDINARILY WOULD MAKE  
PERFECTLY GOOD SENSE IN  
TERMS OF REGING LA TORY

PRINCIPAL, BUT IN TERMS OF WHAT THE APPARENT INTENT OF THE LEGISLATURE WAS WITH THIS STATUTE IT WAS TO SAY GET OUT THERE AND DO THIS NOW, SO YOUR CUSTOMERS WILL BENEFIT FROM THIS BY YOU ACTING RIGHT AWAY AND AS LONG AS WHAT YOU DID WAS REASONABLE UNDER THE CIRCUMSTANCES OF THIS TERRIBLE STORM, THEN YOU ARE GOING TO BE ALLOWED TO RECOVER IT.

>> HELP ME WITH THE WAY THE COMMISSION HAS DONE THIS BECAUSE IT JUST LOOKS LIKE THE WAY THAT YOU ARE JUSTIFYING THESE DENIALS LIKE OLD FASHION REGULATORY PRINCIPAL.

>> WELL, FIRST OF ALL, I MEAN, THIS IS NOT AN ANSWER TO THE QUESTION, BUT THE WAY THE COMMISSION LOOKED AT IT, EVERY BUSINESS DOES YOUR ACCOUNTING THE SAME WAY, THERE IS NO QUESTION THAT THIS COMPANY DOES ITS ACCOUNTING FOR THE ASSETS BY DEPRECIATING THEM OVER A PERIOD OF TIME, 15 YEAR, THEY HAVE TO DO THAT, IN PART, BECAUSE THE APPLICATION THETION FEDERAL HIGH COST FUND, BUT I THINK, THE OTHER ANSWER IS --

>> I MEAN, HAD ANY BUS NES OF THE COMMISSION IN THIS INSTANCE?

>> YOU HAVE TO LOOK, I THINK AT THE INTENT OF THE PRICE GAP STATUTE GENERALLY. IS IT NOT TOTALLY, THE COMPANY IS NOT TOTALLY UNREGULATED.

THE LEGISLATURE PASSED THE STATUTE, IT SAID, OKAY, WE ARE GOING TO LET YOU GO OUT DLN A COMPETE WITHIN A PRICE GAP, IT IS GOING TO BE INFLATION MINUS 1%, YOU CAN RAISE YOUR RATES AND REVENUE.

THE STATUTE IS, WHEN IT WAS ENACTED IS THAT THE COMPANY WILL BE ABLE TO COVER ITS NORMAL COST IN THAT SCENARIO AND IF IT HAS AN EXTRAORDINARY, HAS AN EXTRAORDINARY CIRCUMSTANCES WHICH CAUSE IT TO FAIL UNDER THAT PRICE CAP REGIME, KIT COME TO THE COMMISSION AND ASK FOR RATE HIKES, SO THE TACKED ON PART OF THE STATUTE SIMPLY SAYS THERE WILL BE PRESUMPTION, A COMPELLING CHANGE OF CIRCUMSTANCE AND THE COMMISSION CAN GRANT YOU RELIEF, OTHERWISE WOULD NOT BE ABLE TO GET IT BECAUSE THE PRESUMPTION IS THERE IS A STATUTE THAT YOU ARE MAKING ENOUGH MONEY TO RUN A BUSINESS AND TO RUN A PROFIT.

>> LET ME ASK YOU THIS ON THE LABOR COST BECAUSE THAT IS SOMETHING THAT WAS EASIER JUST TO GET YOUR ARMS AROUND.

YOU SAID THAT THEY WERE ENTITLED TO GET ANY OF THEIR CONTRACT LABOR, BUT CLEARLY, THE PEOPLE, YOU SAID, WELL, THEY WOULD BE DRIVING TRUCKS AROUND, REPLACING PED STOOLS EVERY DAY, WELL, WE SEE PICTURES OF THE DEVASTATION THAT OCCURRED, DON'T -- AREN'T WE ENTITLED OR AREN'T THEY ENTITLED TO BE ABLE TO SAY, THOSE PEOPLE WERE NOT GOING TO BE THAT WORK ON THOSE, THAT STORM-RELATED DAMAGE, THEY WERE GOING TO BE DOING OTHER THINGS. YOU ARE CERTAINLY NOT GOING TO MAKE US GO OUT AND CONTRACT BECAUSE THEY COULD HAVE DONE THAT, RIGHT? THEY COULD HAVE CONTRACTED FOR ALL OF THAT LABOR BECAUSE THEY NEED THEIR PEOPLE WHEREVER THEIR PEOPLE NORMALLY AN RECOVER MOST OF

THAT, SO WHY SHOULDN'T YOU BE ABLE TO RECOVER THE REASONABLE COST OF THE LABOR THAT WAS ASSOCIATED WITH IT WITH SOMETHING THAT IS FOR SURE AN EXTRAORDINARY SITUATION WHICH IS HAVING TO REPAIR DEVASTATION, DEVASTATING DAMAGE FROM HURRICANE?

>> WELL, THE COMMISSION ON ANY ACTIVITY THAT IT UNDERTAKES HAS TO LOOK AT THE ENTRANCE OF THE COMPANY AND THE INTEREST OF THE RATE PAYER, AND IN THE CASE, IT COMES BACK TO THE QUESTION, ARE YOU GOING TO LET THE RATE PAYERS PAY FOR IT TWICE OR ARE YOU GOING TO TRY PARCEL OUT THOSE THINGS THAT YOU RECOGNIZE AS BEING EXTRAORDINARY EXPENSES THAT WOULDN'T HAVE BEEN IN KURD FOR THE HURRICANE ADDITION TO WHAT YOU NORMALLY PAYING YOUR, WHATEVER YOUR NORMAL COST, THAT MAKES SENSE BECAUSE THE RATE PAYERS ARE THEN PICKING UP THE TABS OF THE REAL EXTRA DAMAGE. THEY ARE NOT PAY FOING FOR IT TWICE.

>> IN THE CASE, THEY HIRED THE OUTSIDE CONTRACTORS TO DO IT AS JUSTICE PARIENTE JUST SAID, AGREED THAT COULD HAVE BEEN PAST ON, RIGHT?

>> IF -- IF THEY HAD INSTEAD OF HAVING THEIR IN-HOUSE EMPLOYEES DO THIS REPAIR WORK DUE THE STORM, DHOOE HAVE CONTRACTED IT OUT, IF THEY HAD CONTRACTED IT OUT, WOULD IT BE YOUR POSITION, THAT WOULD HAVE BEEN CHARGEABLE TO THE --

>> IF THAT WERE NECESSARY TO ADDRESS THE SITUATION, OF COURSE, THEY BUDGET A CERTAIN AMOUNT OF CONTRACT LABOR ANYWAY, BUT LIKE SAID, THE COMMISSION DID RECOGNIZE THERE WERE ABOUT \$50,000 IN

EXPENSES THAT WERE FOR  
CONTRACT LABOR WHICH  
OTHERWISE WOULD BE IR  
RECOGNIZABLE ON THE EXPENSE.  
BUT THE COMMISSION HAS TO  
LOOK AT THE OPERATIONS OF  
THE COMPANY AND, YOU KNOW,  
KNOW WHAT THEIR PERIMETERS  
ARE FOR GIVING IT.  
DIE WANT TO ASK YOU ABOUT  
THE STATUTE SEEMS TO SAY  
THAT THERE IS ONLY ONE ITEM  
THAT YOU REALLY TAKE INTO  
CONSIDERATION AND  
DETERMINING TO SUBTRACT  
SOMETHING HERE AND THAT IS  
THE AMOUNT THAT YOU MIGHT  
HAVE RABL IN A RESERVE SO  
WHERE DO YOU, WHERE DOES THE  
COMMISSION GET THE AUTHORITY  
TO TAKE INTO CONSIDERATION  
THIS OTHER FUND THAT AS YOUR  
OPPONENTS SEEMED TO SUGGEST  
IS EVEN SPECULATIVE AT THIS  
POINT AND THEY WOULD NOT  
HAVE GOTTEN IT ANY TIME TO  
ACTUALLY HELP WITH THE STORM  
PAYMENT.

>> WELL, FIRST OF ALL, I  
THINK THE COMPANIES  
MISCONSTRUING THE MEANING OF  
THAT STATUTE, THAT SECTION,  
ITH DOES NOT RELIEVE THE  
COMMISSION OF THE DUTY TO  
DETERMINE WHAT OUR  
REASONABLE EXPENSE IS.  
REASONABLE UNDER THE  
CIRCUMSTANCES STILL HAVE TO  
APPLY WHEN YOU DETERMINE  
WHAT GOES INTO THERE, WHAT  
IS CHARGED AGAINST THE STORM  
RESERVE.

SO IT DOESN'T CONTRADICT  
WITH THE IDEA, IT DOESN'T  
THE NEED TO MAKE  
DETERMINATION OF WHAT IS A  
REASONABLE EXPENSE, SO THE  
EXCEPTION DOESN'T NOT DO  
AWAY THE COMMISSION'S  
PROBLEM OF DEALING WITH WHAT  
REASONABLE EXPENSE UNDER THE  
CIRCUMSTANCES.

I THINK SHE WAS ASKING IS  
THAT ANSWER YOUR QUESTION?

>> WELL, IT JUST SIMS TO ME,  
THE STATUTE HAS THIS ONE  
EXCLUSION SO WITHOUT ANY  
SAYING AND YOU CAN TAKE INTO  
CONSIDERATION OTHER THINGS  
THAT MAY BE REIMBURSED AND  
THE LEGISLATURE COULD HAVE  
EASILY SAID THAT, THAT I AM  
NOT SURE THAT I SEE WHERE  
THE COMMISSION HAS RIGHT TO  
TAKE INTO CONSIDERATION SOME  
FUND THAT MAY OR MAY NOT BE  
PAID DOWN THE LINE.

>> IT HAS ALREADY COME UP IN  
DISCUSSION, THAT I WOULD BE,  
FOR INSTANCE, THE COMMISSION  
COULD NOT TAKE INTO ACCOUNT,  
RECOVERED BY INSURANCE.  
IT JUST DOESN'T MAKE ANY  
SENSE.

COMMISSION, OF COURSE,  
LOOKED AT THE HIGH COST THAT  
THESE COMPANIES DISCOVERED.

>> THANK YOU VERY MUCH.  
WITH OUR ASSISTANCE, YOU NOT  
ONLY EXHAUSTED YOUR TIME,  
YOU HAVE GONE BEYOND.

>> MR. HOFFMAN, WE'LL GIVE  
YOU A COUPLE MINUTES.

>> THANK YOU, YOUR HONOR.  
I WILL TRY MAKE FEW POINTS  
TO CONCLUDE MY REMARKS.  
FIRST OF ALL, THE ARGUMENT  
REGARDING THE DISCUSSION  
REGARDING DOUBLE RECOVERY.  
DOUBLE RECOVERY REQUIRES AN  
EARNINGS TEST.

YOU DON'T KNOW IF THE  
COMPANY HAS DOUBLE RECOVERED  
UNLESS YOU LOOK AT THEIR  
EARNINGS.

EARNINGS TEST -- FULLY  
REGULATED COMPANIES AT THE  
PSE LIKE ELECTRIC UTILITIES  
AN LIKE WATER UTILITIES.

>> LET ME ASK YOU THIS.  
SAID EARLIER WERE YOU NOT  
NOW APPEALING THE FIBER  
VERSUS THE COPPER, AND THAT  
WAS INVOLVED IN THE POINT  
SITUATION SO YOU ARE YOU NOT  
APPEALING AT ALL ANYTHING  
ABOUT ALLIGATOR POINT ARE  
YOU STILL, YOU HAVE THE

LABOR IN THE CAPITAL.

>> THE LABOR.

>> WHAT DO YOU CONSIDER TO BE THE CAPITAL BECAUSE I THOUGHT THE CAPITAL WAS A PART OF THIS WHOLE COPPER VERSUS FIBER.

>> JUSTICE, I THINK WERE OTHER SORT OF CAPITAL REPLACEMENT ITEMS THAT WERE INSTALLED THROUGHOUT THE SERVICE AREAS INCLUDING ALLIGATOR POINT, YOU KNOW, WHETHER YOU ARE TALKING ABOUT PED DY STOOLS AN SO FORTH, THE ITEM THAT WE DID NOT APPEAL, THE MORE CONTRAVERSION ISSUE US THE REPLACEMENT OF COPPER WITH FIBER.

SO ON THE DOUBLE RECOVERY ISSUE AGAIN, THAT REQUIRES AN EARNINGS TEST, THERE IS NOTHING MENTIONED OF AN EARNINGS TEST IN THIS STATUTE AND BY WAY OF COMPARISON, THERE IS THE ELECTRIC STATUTE PASSING THE SAME LEGISLATIVE SESSION, THE EARNINGS TEST, PER SAY, DOES NOT APPLY TO COMPETITIVE INCUMBENT LOCAL PHONE COMPANY.

>> WELL, YOUR BOTTOM LINE IS, HOW MUCH OF THIS AMOUNT THAT YOU CLAIMED DO YOU NOW CLAIM THE COMMISSION SHOULD HAVE ALLOWED?

>> \$225,000.

WE SAW IT.

WE SAW PETITION FOR \$312,000 OF COST, THE COMMISSION AWARD US AROUND \$1,000 OUT OF THAT \$312 PLUS A FEW THOUSAND IN CARING COST.

>> SO IF YOU TOOK OUT -- IF YOU TAKE OUT THE SUBSIDY THAT \$140, WOULD THAT BRING YOU DOWN TO \$80,000?

>> WELL, THE -- DARNL SORRY, JUSTICE, THE WAY THAT I SORT OF PUT IT TOGETHER, WE ASKED FOR \$312.

THEY GAVE US \$311.

WE ARE NOT APPEALING THE DENIAL OF THE EVERHEAD AND BENEFITS THAT IS ASSOCIATED WITH THE IN-HOUSE LABOR. THAT IS ABOUT \$59.

WE'RE NOT APPEALING THE REPLACEMENT, THE INCREMENTAL COST ASSOCIATED WITH USING FIBER INSTEAD OF COPPER. THAT IS ABOUT \$28, SO WHEN DO YOU THE MATH, WHAT YOU ARE LEFT WITH IS APPROXIMATELY \$225 HOWE.

>> IF WE AGREE WITH YOU ON EVERYTHING EXCEPT THE SUBDAY THIS WOULD ABOUT 80,000?

>> SUB DY BEING THE HIGH COST?

YES.

>> THAT BASS \$40,000.

>> \$40,000?

>> OKAY.

>> WITH OUR HELP, YOU HAVE EXHAUSTED THE ARE RIDGE NAL TIME AND EXTRA MINUTES AS WELL.

WE THANK YOU FOR YOUR ARGUMENTS THESE CASES ARE ALWAYS VERY INTERESTING, ENLIGHTENINGEN, THE COURT WILL TAKE IT UNDER ADVISEMENT.

WE'LL TAKE MORNING RECESS.