BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : Application for certification to provide water and wastewater service in Clay County by Point Water and Sewer, Inc. :	DOCKET NO. 961321-WS

PROCEEDINGS:	PREHEARING CONFERENCE
BEFORE:	COMMISSIONER JOE GARCIA
DATE:	Tuesday, July 8, 1997
TIME:	Commenced at 9:30 a.m. Concluded at 10:09 a.m.
PLACE:	Betty Easley Conference Center Room 152 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	ROWENA NASH Official Commission Reporter

APPEARANCES:

DOUGLAS H. REYNOLDS, Cox & Reynolds Law Firm, 4875 North Federal Highway, Fort Lauderdale, Florida 33308, appearing on behalf of **Point Water and Sewer, Inc.**

SCOTT G. SCHILDBERG, Martin, Ade, Birchfield & Mickler, P. A., Post Office Box 59, Jacksonville, Florida 32202, appearing on behalf of the **Point Property Owners Association, Inc.**

ROSANNE CAPELESS and **LILA JABER**, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the **Commission Staff.**

PROCEEDINGS

(Hearing convened at 9:33 a.m.)

COMMISSIONER GARCIA: Good morning. We'll go on the record. Counsel, how do you want to go with this? We'll call the hearing to order, but why don't you read the notice.

MS. CAPELESS: Thank you. Pursuant to notice, this time and place has been designated -- is this on? Can you hear me?

COMMISSIONER GARCIA: Try now.

MS. CAPELESS: Testing.

THE COURT REPORTER: No.

MS. CAPELESS: Testing.

THE COURT REPORTER: Yes.

MS. CAPELESS: Okay. Thank you. Pursuant to notice, this time and place has been designated for a Prehearing Conference in Docket No. 961321-WS, application for certificates to provide water and wastewater service in Clay County by Point Water and Sewer, Inc.

COMMISSIONER GARCIA: We'll take appearances.

MR. REYNOLDS: Douglas Reynolds on behalf of Point Water and Sewer.

MR. SCHILDBERG: Scott Schildberg on behalf

of Point Property Owners Association. And with me today is Steve Glenn.

MS. CAPELESS: And I'm Rosanne Capeless appearing on behalf of the Commission Staff, and with me is Lila Jaber.

COMMISSIONER GARCIA: Okay. Staff, are there any preliminary matters?

MS. CAPELESS: Nothing preliminary, Commissioner.

COMMISSIONER GARCIA: Okay. Then we'll just go through the Prehearing Order, and as the issues arise, you gentlemen will let me know, or Ms. Capeless will let me know.

I'm on Page 6, order of witnesses.

MS. CAPELESS: Commissioner, you'll notice on Page 6 that the Utility -- for the Utility we have listed two witnesses with an asterisk that appears next to their name, that's Lori Easterling and Frank Kasper. Mr. Reynolds indicated to me yesterday that these are witnesses that he intends to call as adverse witnesses.

I would suggest that perhaps he could explain to us how it is that these potential witnesses are adverse in any sense to the Utility. The Utility has not prefiled testimony for them, and the time for

filing direct testimony has come and gone. Perhaps these witnesses occupy an adverse position towards the Utility in some way.

COMMISSIONER GARCIA: Mr. Reynolds. You are on now.

MR. REYNOLDS: I'm on now, thank you. The two witnesses, Lori Easterling and Frank Kasper, are members -- or are current members of the association, which is the PPOA, which is represented by Scott. In addition, they are officers who were previously involved with the operation of the facility. I don't know if the Hearing Officer is familiar with it. But for a period of time it's our contention that during the period 1987 to 1995, the PPOA, who is opposing us in this situation, operated the plant. And because of certain circumstances that arose or resulting of that, IGR, which is an entity that preceded the operation of Plant to PWS, these individuals had a significant involvement in the operation of plant with regard to the day-to-day operations to the day-to-day environmental issues which have now been raised by the PPOA.

On about March of 1995, they transferred operation of plant over to an entity by the name of IGR, which was an entity that was involved with the

Yonge family. And then subsequently PWS became involved approximately a year later.

Ms. Easterling was deposed in an ancillary case involving PWS and PPOA in which she was asked certain questions regarding the operation of the facility regarding certain issues, concerns that the PPOA had as far as regulation by the PSC, and we believe that testimony, which part of it is already in the record under the prefiled statement of John Yonge, the rebuttal statement specifically, there are excerpts from her deposition transcript. We were desirous of having her testify as to those issues, especially in light of the fact that the issues of -- environmental issues have now been raised by the PPOA.

Because they are represented by Mr. Schildberg, an adverse party, we were not in a position to acquire prefiled statements from them. And, therefore, we would request permission either orally, or we'll do it in writing as well, for leave to have them testify. We did list them in our prehearing statement a couple -- about a month ago, and there would be certain exhibits which were also listed in our prehearing statement that would relate to those witnesses regarding documents that they authored and wrote to various governmental entities

regarding their operation of plant.

COMMISSIONER GARCIA: Ms. Capeless, how would you have us resolve this? You had suggested perhaps to take depositions?

MS. CAPELESS: Yes, sir. I think the Commission has done that in the past where any witness that's been adverse -- perhaps Mr. Reynolds could subpoena the witnesses for deposition and then file their deposition transcripts in lieu of direct testimony, and then -- I would suggest, is that they be required to file the depositions in advance of the hearing so that all the parties will try to submit --

COMMISSIONER GARCIA: Ms. Capeless, why don't you give us a time frame if that's all right with you.

MS. CAPELESS: Well, how about 10 days?

COMMISSIONER GARCIA: Okay.

MS. CAPELESS: When we file the -- well, actually file the transcripts. If we do it in 10 days, and then 10 days later we can file the intervenor or Staff testimony in response to it. There's not a whole lot of time.

MR. REYNOLDS: Approximately three weeks, if Scott will cooperate with regard to making them available since they are his clients. I'd be more

than happy to cooperate and make it happen within the next 10 days.

MR. SCHILDBERG: We'll be happy to cooperate to the extent that we can. I don't know Mr. Kasper. Will he be available?

MR. GLENN: I don't know.

MR. SCHILDBERG: We don't know. But we'll probably be able to get ahold of Lori.

MR. GLENN: She's in New York.

MR. SCHILDBERG: Lori's in New York.

MR. GLENN: Telephone.

MS. CAPELESS: We do phone depositions -- (Simultaneous conversation.)

MR. SCHILDBERG: We may have to do a phone deposition then.

MS. CAPELESS: And perhaps we should do a seven-day response time for the intervenor and Staff testimony since we are cutting it pretty close to the hearing.

COMMISSIONER GARCIA: Yeah. Ms. Capeless, you also had another thing on the witness?

MS. CAPELESS: Yes. The Utility in its prehearing statement identified two Staff members as witnesses. I've spoken to Mr. Reynolds about that. Staff moves to striking those witnesses names from the

Utility's prehearing statement for a couple of reasons. One is that these two Staff members are not assigned to this docket at all. They are Ms. Hillary Kemp and Ted Davis, who are both assigned to the recent Staff-assisted rate case that was processed here. And my understanding is that Mr. Reynolds intends to call them concerning issues that are ratemaking-related issues or quality-of-service issues, and these are issues that were processed and litigated in the Staff-assisted rate case which has been disposed of and is now final, and we don't believe that their testimony is necessary.

Moreover, again, the Utility didn't prefile their testimony and missed the filing deadline. We don't believe these would be adverse witnesses to the Utility in any way.

MR. REYNOLDS: Very quickly. The issue is financial ability, which has been raised by the PPOA. If the order which was approved by the Commission on May 6th is being stipulated to, and that's my understanding, and the documents that Ms. Kemp prepared, which are attached as the PPOA's exhibits, are coming into evidence, then we will not need the testimony of those individuals because those records themselves would speak to everything that they know

regarding the finances.

I think I shared that with Rosanne earlier. But that was my only concern. And she indicated to me that there was a stipulation because that was my recollection of the pre-prehearing, that there was a stipulation as to the admissibility of the order dated May 6th which covers a lot of the financial issues, and then they also attached an exhibit of Ms. Kemp's analysis of the financial situation.

The PSC Staff did a tremendous job of a financial analysis regarding this Utility, and we just want to make sure that that evidence is in this record, either through those documents or through their testimony. If the documents are in, we have no problem with them not being witnesses.

MS. CAPELESS: If by "the documents" you mean the attachments to the Staff-assisted Rate Case Order, we all agreed at the pre-prehearing conference that the parties would all request that the Commission take official recognition of that order. And that would include the attached schedules.

COMMISSIONER GARCIA: Very good. So that resolves that problem.

Basic positions. Any of the parties have any change with those on Page 7 or 8? Okay. We'll go

through the issues.

Let me know if do you have a problem with them, and I see that PPOA has -- these are to go with the positions that are in?

MR. SCHILDBERG: Yes. These are revised positions to those issues.

COMMISSIONER GARCIA: Okay.

MR. REYNOLDS: Can I ask one question?

COMMISSIONER GARCIA: Sure.

MR. REYNOLDS: I just want to make sure we are on the same -- I'm working from the second draft. I just want to make sure that that's the one the Commissioner has.

COMMISSIONER GARCIA: Yes. We are all working from the second draft.

MR. REYNOLDS: Thank you.

MR. SCHILDBERG: Doug, did you get a copy that I left for you of our positions there?

MR. REYNOLDS: Yes.

COMMISSIONER GARCIA: Okay. Then let's -- since I've got nothing until Issue 4, unless Staff or Mr. Reynolds has a problem with the PPOA position on 3, we're fine there. So we'll put that one in.

MR. REYNOLDS: We do have a question with regard to 3, and we talked about this in the

pre-prehearing.

COMMISSIONER GARCIA: Okay.

MR. REYNOLDS: Our concern is, is that -- and we raised this with Scott previously at that hearing -- that they do not tell us what areas of noncompliance. Obviously, there are many, many requirements with regard to the statute as to documents. We asked them at that time if they would identify by this date anything, specific items, such as what the Staff put down there about the description maps, which was the first time we'd heard about that with regard to this process.

So from that standpoint, we would ask them to specifically identify those areas they claim that were in noncompliance so we can focus on those and not play hide and go seek.

MR. SCHILDBERG: We don't believe in their direct case that they've met any of the -- almost all of the requirements. They did not file their application until the rebuttal. They do not have any maps in there, they don't have legal descriptions, they don't provide any proof of the notice. There's nothing in that in their direct case.

So, I mean, we said they haven't met the requirements because they've met -- they've virtually

missed all of them.

COMMISSIONER GARCIA: Ms. Capeless, I don't believe that they are required to state that in this issue anyway. I mean, they will have to prove it in their direct case, and then you'll have your opportunity there, through the witnesses they are going to present, and for them to make their point and you to make your point with your witnesses. I don't necessarily think that the position here is going to determine that, this issue.

MR. REYNOLDS: Thank you.

COMMISSIONER GARCIA: We'll go to the next one then.

I thought this one could be stipulated to because I think it's relatively reasonable that the service is being provided right now, therefore, it's needed. I don't think there can be a disagreement to that.

MR. SCHILDBERG: We would like a more generic statement than "Is service needed in the requested area," rather than "service provided by the applicant needed." We would rather have the more generic statement because there's service available across the street from the authority. So I think the question of whether service is needed or not, we could

stipulate to that. But whether it's needed from this particular applicant, that I don't think we can stimulate to.

COMMISSIONER GARCIA: Mr. Reynolds, would you be all right with that?

MR. REYNOLDS: We believe that the way that it's phrased, "Is the service proposed by the applicant needed" is the correct question. And I would also point out Staff's comment about the perception is that there's not even a need because there's a current customer base.

COMMISSIONER GARCIA: Mr. Schildberg, we're going to leave it as is. We'll move on.

MS. CAPELESS: Commissioner, meaning we'll leave the issue as is?

COMMISSIONER GARCIA: As is.

MS. CAPELESS: Okay.

COMMISSIONER GARCIA: And we're going to, of course, put in Issue 4 as PPOA provided.

MS. CAPELESS: Thank you.

COMMISSIONER GARCIA: We'll go Issue 5, Issue 6. Issue 7, we're going to put in PPOA's position. Issue 8, it will do the same. Issue 9.

MS. CAPELESS: Commissioner, Issue 9 is an issue that Staff believes that everybody should be

able to stipulate to. It appears that everybody's position is the same. I think we all agree that the Utility has not obtained wastewater certificates or water certificates from the Commission prior to providing the service.

COMMISSIONER GARCIA: I think by the answer -- the answers themselves tell the story. I mean, so I think we can drop this one.

MS. CAPELESS: Okay. Thank you.

MR. SCHILDBERG: Was that a stipulation or a dropped issue?

COMMISSIONER GARCIA: Yeah, we're going to stipulate this issue. I mean, you've both answered it the same way, so we'll move on from there. We'll go to Issue 10.

MS. CAPELESS: Similarly with Issue 10 we believe that we've got a stipulation here as well.

COMMISSIONER GARCIA: Are we all right with both parties stipulating to that?

MR. SCHILDBERG: We're okay stipulating to that.

COMMISSIONER GARCIA: Okay. Mr. Reynolds?

MR. REYNOLDS: The only point is there was no transfer of a certificate because no certificate existed at the time. So if they want to state did we

transfer the Utility assets, that is correct. The Utility was transferred.

COMMISSIONER GARCIA: How would you phrase that, Ms. Capeless, so that it works here?

MS. CAPELESS: Perhaps we could state that "PWS and its related predecessors," that the parties stipulate that PWS and its related predecessors did not obtain Commission approval prior to transferring utility assets, certificates and majority organization control.

COMMISSIONER GARCIA: Fine, and both parties stipulate to that.

MR. REYNOLDS: But there was no transfer. There was no certificate to transfer, so I mean if they want --

COMMISSIONER GARCIA: That's exactly what Ms. Capeless stated.

MR. REYNOLDS: No, she included the term "certificates" when she reread it.

MS. CAPELESS: Okay. We could take out "certificates."

COMMISSIONER GARCIA: Okay. Ms. Capeless, why don't you read the wording one more time so that we all know what we are stimulating to here.

MS. CAPELESS: PWS and its related

predecessors did not obtain Commission approval of their transfers of the Utility assets or majority organizational control.

COMMISSIONER GARCIA: Very good. We stipulated to 10. We move on. 11. That one is fine. 12. It appears to me that this was part of the SARC which we are taking official notice of, so I don't see the need for this. Now -- go ahead.

MR. SCHILDBERG: I'll let you finish.

COMMISSIONER GARCIA: Well, unless you have some concern, and that's why I was looking up.

MR. SCHILDBERG: We do have concern. Originally, this whole package came as one big ball.

COMMISSIONER GARCIA: Right.

MR. SCHILDBERG: And it was split into the SARC, and it was split into the certification process. Okay. The SARC went through -- I mean, no Staff assist that the Utility participated. The customers were able to go to a meeting --

COMMISSIONER GARCIA: Right.

MR. SCHILDBERG: -- where they mentioned some of their comments, and they also were able to send in some letters. But the Staff has consistently told the Commissioner that the customers, they were going to have an opportunity to address certification

issues in this.

COMMISSIONER GARCIA: Right.

MR. SCHILDBERG: It's hard to consider -- believe that we shouldn't consider certification issues in deciding whether granting a certificate is in the public interest.

I mean, the quality of service is going to go to the public technical ability. It's going to go to public interest. And eliminating this issue and the customer preference issue, I mean, we are shooting out most of what the customers are there to talk about, so we would prefer to leave this issue in.

MS. CAPELESS: Commissioner, if I may respond?

COMMISSIONER GARCIA: Sure.

MS. CAPELESS: As Mr. Schildberg pointed out, this kind of concern can be addressed under the technical and financial ability issues, as well as the public interest issue. He says that -- he points out that the customers were able to participate in the customer meeting, they also had an opportunity to protest the SARC order if they felt that was necessary. That order has become final. This is a second bite at the apple, I think, if we leave this issue in as it is.

MR. SCHILDBERG: As Mr. Easterling explained at the agenda conference, the Staff did as good a job as possible under the PSC rules in setting rates. I mean, he went and complimented them several times.

And to be frank, if they did as good a job as possible, any objection was going to wind up in a rate case with rate case expense and high rates. If they said, "Look, they are doing these things wrong, they were going to have to get things fixed," again it's going to lead to higher rates.

You know, they didn't have an opportunity to cross examine anybody in the SARC case. Any type of movement that they did was just going to just wind up in higher rates to them. I mean, there was no reason for them to object.

COMMISSIONER GARCIA: Mr. Schildberg, I think you are making the point for Staff. Clearly, that part of the proceeding is gone. However, if you want people to testify about their technical ability, if you didn't want it to impact in any shape, way or form the SARC that already went through, then clearly your opportunity is through the technical capabilities and that you can comment on that. And clearly that's comprehended within the rest of the issues that are faced by this. But this particular issue is one

that's already been dealt with. And if you didn't want to address it because you didn't want to affect rates, then you are making the point for Ms. Capeless that it shouldn't be here.

MR. SCHILDBERG: So we can still address those particular issues --

COMMISSIONER GARCIA: Absolutely.

MR. SCHILDBERG: -- under technical and --

COMMISSIONER GARCIA: Including when -- if your customers want to the come and testify, we are going to listen to all their comments on whatever it is. You know that we give all the leeway possible to customer witnesses. And, in fact, you've attended several where we've had customers discuss everything from their pet to the water. So we'll, of course, give them as much leeway, but I just don't think it's necessary to have this here.

MR. SCHILDBERG: Thank you.

COMMISSIONER GARCIA: Okay. We are dropping Issue 12.

MS. CAPELESS: Thank you.

COMMISSIONER GARCIA: Issue 13. Ms. Capeless, made a point before we got here -- and maybe you should make it again, Ms. Capeless -- but I understand that we can comprehend Issue 13 as part of

Issue 11, the public interest?

MS. CAPELESS: Yes, sir. I believe that would be more appropriate. To have this issue isolated by itself, I have a legal problem with it because we do have case law which says that customers don't get to pick and choose their utility per se. Although it is certainly something that the Commission, I think, could and should consider what the customers feeling is about the Utility and why they are dissatisfied, if they are.

But those kind of concerns, again, can be consumed and covered under Issue 11, the public interest issue. We would suggest that this issue be dropped.

MR. SCHILDBERG: I understand the Staff's concern about they can't pick and choose. I would point out we are not asking for a veto here. We are just asking that this be an issue that's decided by the Commission.

COMMISSIONER GARCIA: I think it's an issue that we are going to explore. It's part of the public interest findings here. So --

We'll drop 13 then.

MS. CAPELESS: Thank you.

COMMISSIONER GARCIA: Issue 14.

Ms. Schildberg, I think this again goes back to the rates issue.

MR. SCHILDBERG: If you notice in our prepared position here that we've given you today, one of the things we're suggesting is if you are going to grant a certificate, which was not the case in the SARC, the SARC was just standing out there by itself. It was done --

COMMISSIONER GARCIA: I'm sorry, what was that?

MR. SCHILDBERG: The SARC was just out there by itself. It was not after a certificate had been granted.

COMMISSIONER GARCIA: Okay.

MR. SCHILDBERG: This question is "If the certificate is granted, what should those initial rates be?" Now, we've got two possibilities here. One possibility is they just stay operating under the SARC just as themselves. Another possibility is that they wind up being a reseller. And if that's the case, then the Commission should look and require them to have their rates readjusted for being a reseller if they connect to the authority.

MS. CAPELESS: Commissioner, if I may respond. The issue is a rates issue. The way it's

worded is what should the initial water and water rates be and return on equity be. Those issues were fully explored and disposed of in the Staff-assisted rate case.

If you look at Issue 17, that issue concerns whether the Utility should be required to connect up to the county's system. Perhaps Mr. Schildberg's position on Issue 14 can be subsumed under Issue 17. I don't see how it goes to the rates issue. I think that issue should be stricken.

COMMISSIONER GARCIA: Mr. Schildberg, you seem to be addressing in 14 what we are going to be addressing in 17.

MR. SCHILDBERG: With that caveat, we'll agree to strike 14.

COMMISSIONER GARCIA: Very good.

MR. REYNOLDS: I was going to join in that because it was originally our issue, and we agree with Staff's positions.

COMMISSIONER GARCIA: Very good. So we'll drop 14. We'll add PPOA's response to Issue 15. Issue 16 is fine. And Issue 17. Mr. Schildberg, do you want to the add anything to 17 that you had addressed in 14? I think you pretty much do the same thing, right?

MR. SCHILDBERG: I think we took care of that with the last sentence in our revised position that's --

COMMISSIONER GARCIA: Very good.

MR. SCHILDBERG: Okay, thank you.

COMMISSIONER GARCIA: So we'll place PPOA's response to Issue 17. Mr. Reynolds.

MR. REYNOLDS: When you finish with 17, I would like to go back to 15.

COMMISSIONER GARCIA: I finished with my sentence, so we're going back to 15?

MR. REYNOLDS: 15, Your Honor. We don't consider this to be a relevant issue. One is we have -- the rates have been approved as of May 6th. And previously -- at least Staff counsel before the Clay County Circuit Court took the position that they were not going to get involved in the rate process prior to the enactment and effective date of rates with regard to this process.

Therefore, any "refunds" could be sought by the PPOA through the Circuit Court of Clay County where a specific agreed order provided that they would have the opportunity to come back and seek a remedy with regard to that issue. Therefore, since the PSC through it's Staff took the position previously, was

not going to get involved in prior retroactive ratemaking, and the circuit court was left with that issue, we believe this is not an issue presently before you.

COMMISSIONER GARCIA: Mr. Schildberg.

MR. SCHILDBERG: My client's position is still that we don't think that they have the right to charge for water and sewer without a certificate.

COMMISSIONER GARCIA: Very good. It's going to stay in. We'll move on.

On the witness list, any changes -- on, I'm sorry, the exhibit list?

Obviously, the proposed stipulation addresses your point, Mr. Reynolds.

MR. REYNOLDS: Just a couple of questions on the exhibit list. There are no exhibits listed for the two witnesses we talked about earlier, Frank Kasper and Lori Easterling, inasmuch as at that point in time we were not allowed. We did set forth in our prehearing statement documents that were authored by them and exhibits, including their deposition transcript of Ms. Easterling which would be included as exhibits.

So if you would like, I'd be more than happy to submit our exhibit that we propose to use with

regard to those witnesses within the next 24 hours. But they were listed in our prehearing statement, which I could take some time and call through that, but it would take a little time because there were a lot of exhibits listed.

MS. CAPELESS: We only listed those exhibits that were actually prefiled, which is why they don't appear here. Perhaps Mr. Reynolds could request leave to file those exhibits when he requests for the depositions to be taken.

MR. REYNOLDS: That will be fine.

COMMISSIONER GARCIA: Okay, good.

MS. CAPELESS: While we are on the subject of Ms. Easterling and Mr. Kasper, if we go back to Page 6, if you could, just for a minute. I wonder if Mr. Reynolds could tell us which issues those two witnesses will be testifying on.

MR. REYNOLDS: They will be dealing with the issues of financial ability, technical ability, overall public interest issue and there may be a couple of other ones. I haven't had a chance to review each item, but, basically, they are as familiar with the operation of the facility as anybody.

MS. CAPELESS: Can you provide that to us perhaps by the end of the day today, Mr. Reynolds, or

by tomorrow?

MR. REYNOLDS: I can definitely provide it by the close of business tomorrow.

MS. CAPELESS: Okay, thank you. Also, Issue 4, since we are leaving that issue in, I just wanted to state for the record that Staff's position may change, or we may edit it some since we state in our position that we believe the issue is moot and should be stricken and it won't be, we probably will alter our position on that issue a little bit.

COMMISSIONER GARCIA: Okay. Very good.

MS. CAPELESS: And, Commissioner, we do have one pending objection which is an objection that Staff filed in response to some discovery that was propounded by the Utility. Mr. Reynolds and I have spoken about it. His time has not run yet for responding to it, and I've explained to him that we certainly will be more than happy to make any records available to him through a public records request as an alternative.

MR. REYNOLDS: Yes, and we talked about that, and we will work that out. On the other thing I would just like, is I'd like to make sure that the record, the official record, i.e. documents that have been filed in this docket, are going to be utilized

and made available for utilization in this process that i.e., that we can use them as to reference with regard to this proceeding.

COMMISSIONER GARCIA: I think everything except the work product of the PSC is open and you have public records ability to get all those documents.

MR. REYNOLDS: No problem, but I just wanted to make sure that that record is included as the basis, that we can use it, which is like a court file, so to speak, that in fact it can be referenced and can be utilized as evidence.

COMMISSIONER GARCIA: When your examining the witnesses? I don't see what you are driving at. Clearly, you can present any of the documents. We've taken official recognition of the SARC. Any documents that you grab from Staff that you want to interrogate the customers -- witnesses with, you have a right to do that. I don't see what you are referring to here that we can't deal with.

MR. REYNOLDS: Well, an issue came up earlier in our proceeding where Scott indicated that he felt that we had not, "timely filed" our application regarding the prefiled statements. And we believe since the application was part of the official

record that initially started this process that we should be able to utilize that exhibit and should not be prejudiced by the fact that he contends that it was filed with a rebuttal statement rather than filed with the original direct testimony, which takes me to my next point, which is we would like to have the benefit of having certain rebuttal witnesses testify as direct witnesses when, in fact, they were identified originally as direct witnesses.

In other words, we had certain direct witnesses who filed direct testimony, then they also filed rebuttal testimony. We would like to combine those testimonies and do them on direct one time at the hearing so we don't have to call them twice. There are three people that I believe that applies to.

MS. CAPELESS: A couple of thoughts here, Commissioner. One, I think that it's important for everybody to keep in mind is that there's nothing in the record yet.

COMMISSIONER GARCIA: Right.

MS. CAPELESS: The record will open at the hearing. Anything that has been prefiled, any of the prefiled exhibits that have been filed in the docket, if the parties want them in the record, we are all going to have to offer them up at that time.

COMMISSIONER GARCIA: Exactly.

MS. CAPELESS: As far as offering witnesses as rebuttal witnesses, or as direct witnesses instead of rebuttal witnesses, I'm not certain I understand that request entirely. I know we have at times --

(Simultaneous conversation.)

COMMISSIONER GARCIA: Combined them for efficiency.

MS. CAPELESS: -- put them together.

MR. REYNOLDS: Right. And that would be Mr. Yonge, Mr. John Yonge, and Mr. --

COMMISSIONER GARCIA: Well, I understand the customers wanting to take them for efficiency, but you'll have your crack at them either way. I mean, I don't understand why you want to combine them. I don't know what that does for flushing out the issues or a better understanding of what's before us.

MR. REYNOLDS: I'm trying to save time at the hearing from the standpoint there are two people that are direct and rebuttal witnesses for us, and I'd like to do them as both, as direct testimony initially up front and combine their testimony so that we don't have to call them back and forth.

COMMISSIONER GARCIA: That's something we can deal with at the hearing if we need time, and

we'll consider that then. So we don't even need a response from you, Mr. Schildberg.

MR. SCHILDBERG: Thank you.

COMMISSIONER GARCIA: That, however, leads us back to a pending motion. I think we've satisfied your request or at least your understanding of how we proceed here. You still have a few days to run on this.

MR. REYNOLDS: Right. And I haven't had a chance to review the research. I was gone for two weeks. So I just received it and actually read it yesterday, so I will definitely be working on it tomorrow.

COMMISSIONER GARCIA: All right. Very good. Ms. Capeless?

MS. CAPELESS: Staff has nothing further.

COMMISSIONER GARCIA: Okay. Is there anything else to be taken up? Okay. Thank you very much. We'll adjourn this.

Ms. Capeless, just one second, for a time frame. You gave -- on the deposition we gave the time frame already which is 10 days?

MS. CAPELESS: Ten days within which to take the deposition and then seven days for intervenors and Staff to file testimony in response thereto.

COMMISSIONER GARCIA: Okay. Very good. Thank you.

(Thereupon, the prehearing concluded at 10:09 a.m.)

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STATE OF FLORIDA)
:
COUNTY OF LEON)

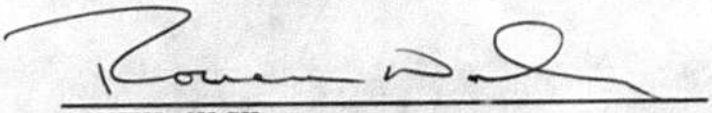
CERTIFICATE OF REPORTER

I, ROWENA NASH Official Commission Reporter,

DO HEREBY CERTIFY that the Prehearing Conference in Docket No. 961321-WS was heard by the Prehearing Officer at the time and place herein stated; it is further

CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 32 pages, constitutes a true transcription of my notes of said proceedings

DATED this 8th day of July, 1997.



ROWENA NASH
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