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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: APPLICATION OF MAD HATTER  
UTILITY, INC. FOR AMENDMENT OF  
WATER AND WASTEWATER CERTIFICATES  
IN PASCO COUNTY, FLORIDA

Docket No. 960576-WS

PETITIONER, MAD HATTER UTILITY, INC'S,  
MOTION TO DELAY AGENDA CONFERENCE, MOTION TO DELAY  
RENDERING OF DECISION, MOTION FOR STAFF TO RECONSIDER  
RECOMMENDATION, AND REQUEST TO SUPPLEMENT RECORD

The Petitioner, Mad Hatter Utility, Inc. (hereinafter "Mad Hatter" or "Utility"), through its undersigned attorney, moves the Florida Public Service Commission ("Commission") to (1) delay the Agenda Conference, (2) delay the rendering of its decision in this matter regarding the areas not granted to Mad Hatter, and (3) order the Staff to reconsider its recommendation, and further requests the right to supplement the record. In support of its motion and request, Petitioner says:

1. On May 8, 1996, Petitioner filed a petition to extend its wastewater service territory.

ACK \_\_\_\_\_ 2. A hearing on the petition was held on May 13 and 14,  
AFA \_\_\_\_\_ 1997.

APP \_\_\_\_\_ 3. On August 28, 1997, the Staff issued its recommendation,  
CAF \_\_\_\_\_ which in relevant part, recommended that portions of the requested  
CMU \_\_\_\_\_ service area not be granted to Mad Hatter.  
CTR \_\_\_\_\_

EAG \_\_\_\_\_ 4. A material issue during the hearing was whether Petition-  
LEG 1 er had available wastewater capacity to service the additional  
LIN 3 territory. Included with this issue was whether Pasco County,  
OPC \_\_\_\_\_ Florida ("County") was contractually obligated to make additional  
RCH \_\_\_\_\_ wastewater capacity in its system available to Petitioner.  
SEC 1  
WAS \_\_\_\_\_

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EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
08968 SEP-55  
EPSC-RECORDS/REPORTING

5. On September 3, 1997, which was subsequent to the Staff issuing its recommendation, the United States Magistrate assigned to Petitioner's Federal lawsuit against the County, which is pending in the United States District Court, Middle District of Florida, Tampa Division, and styled as Mad Hatter Utility, Inc. v. Pasco County, Case No. 94-1473-CIV-T-25E, conducted a Status Conference. The lawsuit seeks injunctive relief and money damages. As part of the injunctive relief sought, Petitioner seeks to compel the County to make wastewater capacity in its system available to Petitioner. At the Status Conference, the Magistrate indicated that he was inclined to rule consistent with Petitioner's first proposal, which was to require the County to make wastewater capacity in its system available to Petitioner under the terms of the 1992 Bulk Service Agreement. Specifically, the relevant colloquies are as follows:

MS. LISTER: I understand and I think -- I don't know that we disagree with that.

My question was, you know, depending on the kind of equitable relief, we asked for two kinds -- we have suggested two scenarios: One would be the county would continue to give Mad Hatter service under the contract at county facilities; and the other one would be, okay, Mad Hatter is going to serve those, but there has got to be a period of time of transition. And during that transition, there would be a period of time where Mad Hatter wouldn't be serving; that they might be able to collect damages because the county would have to continue to serve in the -- during a transition period where Mad Hatter would bring a plant on line which could take several years.

THE COURT: Well, frankly, the former position is a lot more -- made a lot more sense to me than the latter.

If you look back at the contract, although the county disputes that this particular area was a part of that contract that they were obligated to provide services for, it's pretty clear I think when you put it into context that the county at that point in time contemplated providing new services.

There's some language from Mr. Gallagher before the commission that, in fact, as new business came on, the county would be in a position to service it if it has the capacity.

MS. LISTER: Okay.

THE COURT: And if, in fact, the county has the capacity, there's some appeal to that.

(Pages 7-8 of transcript).

MS. HALE: You anticipate ruling on the injunction issue prior to the trial, I presume?

THE COURT: I think what I am hearing Ms. Lister say is that they need that in order to determine the scope of their damages. If we have to do that, if that's necessary, yes, I'll do that.

Frankly, it's going to take the form, it seems to me, of something in the nature of what the county -- or what Mad Hatter proposed by its first proposal.

MR. SAMARKOS: Where the Court enters an injunction requiring us to treat --

THE COURT: Provide the treatment.

(Page 20 of transcript).

MS. LISTER: We'll just assume that you're probably going with the first alternative and calculate our damages in that fashion.

THE COURT: It seems to me that I have said from day one that the remedy there appears to me to be intended to be equitable; and it would seem to me that after the point in time that you get equitable relief, you should not be authorized to make a claim for damages, so...

MS. LISTER: Okay. We'll move forward with that in mind and assume that you're not going to order Mad Hatter to build a treatment plant out there. We'll go forward with

that in mind. And if something changes, then we'll have to regroup, I guess.

. . .

THE COURT: I think you should anticipate the former remedy as being the one that the Court would likely adopt, if it adopts your thoughts on the matter.

(Pages 23-24 of transcript).

6. If the Magistrate enters an injunction consistent with his intent as reflected in the Status Conference, he will interpret the 1992 Bulk Service Agreement to require that the County provide additional wastewater capacity to Mad Hatter in accordance with Mad Hatter's interpretation of that contract as expressed at the hearings before the Commission and Petitioner will have available all of the wastewater treatment capacity necessary to service all of the parcels requested in the extension territory.

7. Because the issue of Petitioner's capacity to service the extended area forms a vital part of the Commission's decision to deny inclusion of several of the proposed parcels, it is prudent that the Commission delay final action as to those parcels of the proposed territory recommended for inclusion in Mad Hatter's territory until such time as the Magistrate issues a final order on the matter or to order the Staff to reconsider its recommendation in light of the Magistrate's stated intent.

8. Petitioner also requests the Commission supplement the record with a copy of the transcript of the Status Conference described above, a copy of which is attached hereto as Exhibit A.

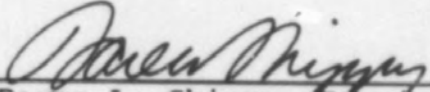
9. Petitioner has conferred with all other parties of record. Ms. Rosanne Gervasi takes no position at this time on the



motions and request. Ms. Marion Hale objects to the motions and request.

WHEREFORE, based upon the foregoing, Petitioner moves the Commission to enter its final order consistent with the Staff Recommendation issued as to those parcels proposed for inclusion in Mad Hatter's territory and delay any action as to those parcels proposed for exclusion until such time as a final decision in the Federal action is completed in January of 1998. Petitioner also requests the Commission supplement the record with Exhibit A, which is attached hereto and to grant such other relief as is consistent with these motions and request.

Respectfully submitted this 5<sup>th</sup>  
day of September, 1997, by:

  
\_\_\_\_\_  
Daren L. Shippy, Esquire  
ROSE, SUNDSTROM & BENTLEY, LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301  
(904) 877-6555

**CERTIFICATE OF SERVICE**

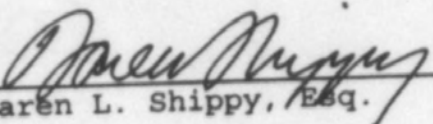
I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by the method indicated below on this 5<sup>th</sup> day of September, 1997.

Marion Hale, Esq.  
Johnson, Blakely, Pope, et al.  
Post Office Box 1368  
Clearwater, FL 34617

VIA TELECOPY & U.S. MAIL

Roseanne Gervasi, Esq.  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

VIA HAND DELIVERY

  
Daren L. Shippy, Esq.



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

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THE COURT: Good morning.

MR. BUHR: Good morning.

THE COURT: How are you?

MR. BUHR: Fine. How are you?

THE COURT: Good.

Who do we have on the phone?

THE DEPUTY CLERK: Mr. Buhr.

THE COURT: Mr. Buhr?

MR. SAMARKOS: And Cheryl.

MS. HALE: And Ms. Lister.

THE COURT: I set this for a status conference so that we could get pointed in the direction of a trial date and to briefly talk about anything else that we needed to talk about today.

And then Mr. Buhr's office contacted us yesterday to indicate that they are substituting in new counsel, or something, and asked that we extend or pass this hearing for a week or two. And I just thought it would be better, frankly, if we just held the hearing and figure out where we are.

MR. BUHR: Okay.

THE COURT: We have pencilled this in for trial the first two weeks in January. I'd like to keep that date, if we can, simply because we've got that block of time



1 available.

2 Do you all know what your schedule looks like right  
3 after the first of the year?

4 MR. SAMARKOS: Judge, I had contacted your office  
5 about the first week of January. January 6th specifically is  
6 Epiphany in the orthodox religion. I'm a board of director  
7 on my church, and I'm also the ahead of our Epiphany  
8 committee. I have not missed an Epiphany since I was about  
9 two years old.

10 THE COURT: I wouldn't want you to miss one.

11 MR. SAMARKOS: Ms. Hale has informed me that if  
12 we're going on January 6th, I'm going to be here at the trial  
13 but it is --

14 THE COURT: Do you dive for the cross still, or are  
15 you too old for that?

16 MR. SAMARKOS: No, I'm too old for that.

17 (Laughter.)

18 MR. SAMARKOS: I did that before --

19 THE COURT: Did you ever win?

20 MR. SAMARKOS: I didn't win.

21 MS. HALE: No, no. We can guarantee that.

22 MR. SAMARKOS: I tell everybody I came in second  
23 along with 40 other guys.

24 THE COURT: Is that a one day --

25 MR. SAMARKOS: That's just the one day on January

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6th.

THE COURT: We could take a recess that day, if we

had to.

What day is the 6th?

MS. HALE: It's Tuesday.

MR. SAMARKOS: It's Tuesday.

THE COURT: Tuesday?

I'm aware of that. If we had to, we could take a

one-day recess.

Mr. Buhr, from your all's standpoint, are you all staying in this, or are we getting new counsel, or what's the deal?

MR. BUHR: At this point it looks like we're going to have new counsel. We'll probably have a peripheral -- (inaudible) -- but we won't be doing the work towards trial or anything else, the way it stands right now. We haven't finalized everything, but that's the way it appears at the moment.

THE COURT: Okay.

MS. HALE: Can we be told who the new counsel is?

THE COURT: Do you know who the new counsel is going to be?

MR. BUHR: Yeah. It's Bill Moore from Brigham,

Moore.

MS. HALE: Is that Ben Moore?

1 THE COURT: Bill Moore, right.

2 MS. HALE: Brigham, Moore?

3 THE COURT: Okay. Is Mr. Moore present with you?

4 MR. BUHR: No.

5 THE COURT: Okay.

6 MR. BUHR: He wasn't able to link up today. Larry  
7 is going to want to get an extension, and I -- I don't know  
8 what his calendar is going to be like in January, but I'll  
9 let him address that when he steps in.

10 THE COURT: All right. Well, we can work around  
11 Mr. Samarkos' concerns if we have to, but that's a clear  
12 two-week block right now for us, so we would propose to put  
13 it on that date, to begin that Monday, which I guess is the  
14 5th, and allow two weeks, although I hope it doesn't take  
15 that long.

16 MR. BUHR: Okay.

17 THE COURT: Judging from your response -- or your  
18 pleadings in regards to the matter of the injunction, it does  
19 appear that you wish to pursue the matter of damages. I read  
20 your pleadings in regards to the responses two ways -- in  
21 regards to the injunction two ways: One, you want to -- you  
22 don't want to give up any appellate issues you may have on my  
23 setting aside the larger verdict amount that was previously  
24 awarded.

25 But in addition to that, you still believe that

1 you're entitled to damages as well as equitable relief. If  
2 that's the position, then in line with what I previously did  
3 in setting aside that jury award we will calendar that issue  
4 along with the takings issue for trial and allow you to  
5 produce what evidence you wish on the matter of damages.

6 And if that's the case, it just seems to me that  
7 we're going to have to wait on the entry of the judgment,  
8 including the matter of the injunction, until that time. It  
9 doesn't make sense to me to enter a partial final judgment at  
10 this point that does not include those matters.

11 If you're in a position to wrap up the procedural  
12 due process claim, then it would seem to me it would make  
13 some sense to go ahead and enter a partial judgment and leave  
14 the matter of the takings for a separate trial, and we'll let  
15 you start working in the Eleventh Circuit.

16 But if we're going to pursue damages, then it's my  
17 intention to defer entry of the final judgment until after we  
18 have the trial on that issue.

19 MS. HALE: Are you anticipating --

20 MS. LISTER: My only question, Judge, would be the  
21 extent that it could impact on -- unless we know what the  
22 scope -- what the injunction is going to look like, I don't  
23 know if we can calculate what our damages are going to be.

24 THE COURT: Well, one of the things that I wanted  
25 to suggest was that -- and I presume this would be up to new



1 counsel -- but at some point prior to the scheduled day,  
2 we're going to need to have a hearing on the matter of the  
3 damages on that count so that we can -- I'll take argument.

4 My thought is, frankly, that you would -- and I  
5 felt all along that, for instance, in relation to any lost  
6 revenues you might claim from the school, that you could  
7 claim that up to the point where the Court enters some type  
8 of equitable relief; and then after that, it just doesn't  
9 appear to me to be appropriate at all to allow you to claim  
10 damages out into the future.

11 MS. LISTER: I understand and I think -- I don't  
12 know that we disagree with that.

13 My question was, you know, depending on the kind of  
14 equitable relief, we asked for two kinds -- we have suggested  
15 two scenarios: One would be the county would continue to  
16 give Mad Hatter service under the contract at county  
17 facilities; and the other one would be, okay, Mad Hatter is  
18 going to serve those, but there has got to be a period of  
19 time of transition. And during that transition, there would  
20 be a period of time where Mad Hatter wouldn't be serving;  
21 that they might be able to collect damages because the county  
22 would have to continue to serve in the -- during a transition  
23 period where Mad Hatter would bring a plant on line which  
24 could take several years.

25 THE COURT: Well, frankly, the former position is a

1 lot more -- made a lot more sense to me than the latter.

2 If you look back at the contract, although the  
3 county disputes that this particular area was a part of that  
4 contract that they were obligated to provide services for,  
5 it's pretty clear I think when you put it into context that  
6 the county at that point in time contemplated providing new  
7 services.

8 There's some language from Mr. Gallagher before the  
9 commission indicating that, in fact, as new business came on,  
10 the county would be in a position to service it if it has the  
11 capacity.

12 MS. LISTER: Okay.

13 THE COURT: And if, in fact, the county has the  
14 capacity, there's some appeal to that.

15 MS. LISTER: -- (inaudible) -- coming out, but  
16 our -- and our damages would be far more minimal --

17 THE COURT: Right.

18 MS. LISTER: -- that way.

19 THE COURT: Right.

20 On the other hand, there's some -- the county's  
21 position with regards to the matter of the injunction, which  
22 would propose a much more narrow equitable relief, has some  
23 support.

24 The thing I question about the county's position in  
25 reality, though, is whether or not granting a new hearing,

1 frankly, is in any sense relief at all. I think the county  
2 has made it very clear their positions and intentions with  
3 regards to Mad Hatter.

4 And, frankly, it just seems to me that to simply  
5 say go back and let them have a hearing may not be any remedy  
6 at all. It seems to me that something beyond that would be  
7 necessary.

8 And I'm not going to reach that point until -- if  
9 we're going to go after damages on the county. I'm not  
10 stopping you; I'm not suggesting you don't have a right to do  
11 that. I think that you do if you want to do that.

12 What I am suggesting is we're not going to enter a  
13 partial judgment at this time. We're going to defer until we  
14 have had the trial and then we'll just enter one, one  
15 judgment.

16 MS. HALE: You're contemplating that the trial  
17 would be both the taking plan and damages on Count 8?

18 THE COURT: Yes. Right.

19 MS. LISTER: What was -- I'm sorry. I didn't catch  
20 the last -- our phone is breaking up --

21 THE COURT: It's not your fault; it's on this end.  
22 This speaker phone is -- although brand new, it's not working  
23 worth a darn.

24 In my contemplation, we just have one trial to  
25 clean up the remaining issues on damages.

1 MS. LISTER: Okay.

2 THE COURT: Ms. Hale was questioning that and I --  
3 we have to have a trial on the matter of the taking.

4 MS. LISTER: And our only question is, you know,  
5 having some guidance on what the injunction is going to look  
6 like, because until we know what that looks like, it's hard  
7 to frame our damages.

8 THE COURT: All right.

9 MR. SAMARKOS: We're going to have 12 people decide  
10 the damages count on Count 8?

11 THE COURT: Right. That's my proposal.

12 MS. HALE: We asked for 12 people to begin with --  
13 (inaudible) --

14 THE COURT: What else is out there that I have  
15 missed? It seems to me that --

16 MR. SAMARKOS: Judge, I think one of the things  
17 with your order is that we're going to need to see what their  
18 expert comes up with fairly quickly, because in our minds  
19 there's still outstanding issues that relate to the damages  
20 that they are going to be able to seek even in light of your  
21 amended order.

22 And if we're going to have a trial date in January,  
23 I am going to tell you from now that I don't want to have  
24 happen what happened the last time, which is the expert keeps  
25 changing his opinions right up through trial.



1 MS. HALE: We're also -- just so everybody knows,  
2 we are filing a motion for rehearing on your -- even on your  
3 amended order. We have some issues that -- such as we  
4 stopped taking any flow from the Plaintiff on December 4th of  
5 '91 as opposed to February of '92. A couple issues like that  
6 that we think need to be clarified.

7 So, we're going to end up -- again, we're going to  
8 be asking to file a motion on that subject. We have delayed  
9 any discovery pending a ruling on our motion for rehearing on  
10 the original order of taking.

11 We don't want a situation like Mr. Samarkos just  
12 suggested where we keep getting changes in the expert  
13 testimony like we did last time.

14 THE COURT: Do both sides know who their experts  
15 are going to be on the matter of the taking?

16 MR. BUHR: Not yet, Your Honor.

17 I just wanted to mention I only got about 10  
18 percent of what Ms. Hale said there but --

19 THE COURT: She's going to file a rehearing -- a  
20 motion for rehearing on the matter of my amended takings  
21 order --

22 MR. BUHR: Okay.

23 THE COURT: -- which I suppose it could cause me to  
24 change the order, which would have some impact on what your  
25 experts do; but I think you all ought to be moving out and

1 obtaining the services of experts.

2 MR. BUHR: All right. We intend to do that. We  
3 just didn't want to commit ourselves to an expert that the  
4 Brigham firm wouldn't prefer to work with. It is more their  
5 bailiwick than ours.

6 THE COURT: How long does each side think they'll  
7 need to obtain an expert? I think we ought to exchange the  
8 identities of the experts relatively quickly.

9 MR. BUHR: All right. Well, I don't know offhand,  
10 but they should be on board by next week. And perhaps it  
11 would be that we -- that we can perhaps -- everybody could  
12 touch base shortly thereafter and talk about the time  
13 schedules and so on.

14 I'm sort of hesitant to try and commit them to  
15 something that maybe I would do that they would have more  
16 problems doing.

17 MR. SAMARKOS: Judge, our expert is going to --  
18 part of it is going to depend on what their expert eventually  
19 opines.

20 We had Mr. Moses in our last case, and we would  
21 anticipate using him; but we may reserve the right to have  
22 somebody else because we don't know exactly what their expert  
23 is going to say on the damages.

24 MR. BUHR: I will not agree that it would be  
25 appropriate for them to choose their expert after our expert

1 has already been disclosed and presented his report. That  
2 kind of goes contrary to what he said about us choosing an  
3 expert.

4 THE COURT: I think he's already disclosed his  
5 expert to be Mr. Moses.

6 MR. BUHR: I didn't know that that's what he said.  
7 What I could hear, which was probably about 50  
8 percent, was that he didn't know what they were going to do  
9 until he saw our expert's report.

10 If Mr. Moses is going to be their expert, then  
11 fine.

12 MR. SAMARKOS: What I said, to make it clear, was  
13 that we anticipate using Mr. Moses. However, until we see  
14 your expert's report, we don't know whether Mr. Moses is  
15 going to be able to testify about all the issues your expert  
16 may allege are damages.

17 MS. HALE: We may use Mr. O'Connor as another  
18 possibility in conjunction with Mr. Moses.

19 MR. BUHR: Well, then, we'll reserve the right  
20 to -- (inaudible) -- expert ourselves because if -- this  
21 thing goes on and on and on, and I think if we're going to  
22 be -- (inaudible) -- we need to do it in a fairly quick  
23 manner, but I think both sides need the same thing.

24 This is not a new case. Everybody knows what the  
25 issues are. Everybody knows what the elements of damage are.

1 I anticipate they are not going to be able to put together  
2 their report until our report is done, but I  
3 think -- (inaudible) -- with the time we have left -- we're  
4 looking at January -- it could take a week to a month for an  
5 expert to put together a report. That's presuming we -- you  
6 know, we're looking at November before we have, you know, a  
7 full report. If they're going to do a report in December,  
8 we're not going to know at that point?

9 I think the time limit is pretty critical here if  
10 we're going to stick with a January deadline.

11 THE COURT: Well, it seems to me that allowing four  
12 to six weeks for the expert to get up to speed to put his  
13 opinions together would put you in the middle of October; and  
14 that still leaves you a pretty good amount of time until the  
15 end of the year in order to take depositions. It just  
16 doesn't seem that insurmountable to me.

17 MR. BUHR: Well, I guess --

18 THE COURT: You know, if we get into this later in  
19 the fall and it's not workable, then you can come back to me,  
20 but, frankly, I want to get rid of this case. You all have  
21 raised dozens of issues that's not going to be resolved,  
22 apparently, until this case gets up to the Eleventh Circuit.  
23 We need to wrap it up on this end and let you all take your  
24 appeal and see what happens.

25 It's taking up an inordinate amount of my time, and



1 I'm sure it's taking up an inordinate amount of your time. I  
2 just want to get it wrapped up as soon as possible.

3 It doesn't seem insurmountable with the time period  
4 we've got until January to wrap this up so...

5 MR. BUHR: (Inaudible.)

6 THE COURT: If we get into the fall and it's not  
7 working, then you'll have to come back; but it seems to me  
8 certainly within the next three weeks or so there ought to be  
9 an exchange of the proposed experts on this, the names. You  
10 all ought to talk about it and set up a schedule to -- when  
11 you can exchange your reports, when you can take depositions.

12 Where is Mr. Moore located? I may know him, but I  
13 don't know that I do.

14 MR. BUHR: His office is in Sarasota, but his firm  
15 has an office here in Tampa and probably -- (inaudible) --  
16 for the inverse condemnation section.

17 THE COURT: Okay. Well, I'm sure I'll learn a lot,  
18 then.

19 MR. BUHR: I certainly have learned a lot from him.

20 THE COURT: What else do we have?

21 MR. BUHR: I don't know if there's anything else --  
22 (inaudible) -- other than the -- (inaudible) -- we still  
23 haven't had the amount set yet, and we -- (inaudible) --  
24 information on it.

25 THE COURT: I know. I keep putting that on my

1 to-do list.

2 MR. BUHR: -- (inaudible) -- it's not nearly as  
3 important as everything else we have been doing, so I  
4 certainly understand.

5 THE COURT: All right. Other than that, anything  
6 else that's still out here?

7 MS. HALE: Are we going to get a date from the  
8 Court as to when experts -- we should get disclosure of their  
9 experts?

10 THE COURT: Let's talk about this. I'd rather have  
11 you work on something that's agreeable to you all.

12 How quickly should we have a cutoff for disclosing  
13 experts? I mean, Mr. Buhr --

14 MR. BUHR: I was thinking we could just hold off  
15 long enough for Bill Moore to get involved in the case. I'm  
16 sure he'll work with Marion on it and Charles. I just hate  
17 to set dates that are going to be difficult for him to work  
18 with. He may want even quicker dates. I don't know. I  
19 just -- I feel uncomfortable, since we're going to have such  
20 a minor role in this thing, to be establishing dates he's  
21 going to have to live with in the future.

22 If we could just hold off a while, I think maybe  
23 they can file some sort of joint motion on this issue.

24 THE COURT: When are you filing your motion for  
25 rehearing?

1 MS. HALE: The research is supposed to come to me  
2 by the end of the week, so end of the week, early next week.

3 It's really very finite issues. We think if  
4 there's a taking, it has to end with our actual physical  
5 taking of the sewage, and so that's just a factual issue for  
6 you to resolve.

7 There are a couple of other small issues like that.  
8 Some, we're still looking at whether -- like can you get lost  
9 profits on an inverse condemnation? You cited the statute;  
10 we need to look at that question.

11 MR. BUHR: I can't hear anything that's being said  
12 there but --

13 THE COURT: She's --

14 MR. BUHR: -- I'm sure you can fill me in on that.

15 THE COURT: She's proposing -- I wanted to know  
16 when she was going to file her motion for rehearing, and she  
17 just outlined some of the areas. There's some small,  
18 specific areas that they want to address. She suggested that  
19 probably it will be filed next week.

20 MR. BUHR: Okay.

21 MR. SAMARKOS: Judge, when we're looking at these  
22 experts for this damage analysis, I want to make sure that --  
23 the order is pretty clear to me: There are no damages post  
24 February 11th of '92 under your order. Isn't that correct?

25 THE COURT: Well, except as some expert might

1 suggest a loss of fair market value of the utility as a  
2 result of the taking -- as of the date of the taking.

3 MR. SAMARKOS: So, you're talking about the day  
4 before and the day after the taking?

5 THE COURT: Yeah. It seems to me that they can --  
6 I'm not sure how their expert is going to propose it, to  
7 calculate the damages.

8 MR. SAMARKOS: Well, that's one of the concerns, is  
9 that we're going to have different --

10 THE COURT: Well --

11 MR. SAMARKOS: -- issues of damages that we're  
12 looking at.

13 THE COURT: Well, I would suggest -- I'm sure that  
14 their estimation of damages is going to be broader than yours  
15 but...

16 MR. BUHR: I have no doubt that once we present our  
17 damages, we'll be hearing from Mr. Samarkos on it because  
18 I -- if we try and predict today what an expert is going to  
19 do, I think it's -- (inaudible) -- is not going to accomplish  
20 anything.

21 THE COURT: All right. I think at the outside by  
22 September 19th both sides ought to be able to exchange the  
23 identity of their proposed experts on this matter.

24 MR. BUHR: Okay.

25 THE COURT: That gives you two and a half weeks,



1 roughly.

2 Frankly, I would hope that the parties can --  
3 counsel can work it out in terms of the date for exchanging  
4 the reports and scheduling the depositions.

5 If you can't, then somebody can file a short motion  
6 and I'll set a schedule on it; but I'd prefer to let you all  
7 do that yourselves.

8 MR. BUHR: I'm sure that we can work together on  
9 that.

10 THE COURT: All right.

11 MR. SAMARKOS: I'm assuming, Judge, that our --  
12 they will disclose their expert. He will prepare his  
13 opinion. I'll depose him. My expert will prepare his  
14 report. They will depose him.

15 MR. BUHR: I think the way it should work is we  
16 prepare the report, submit it. You submit your report and  
17 then we can submit a rebuttal. Then we go to depositions.

18 I think if we try to get out of that framework, you  
19 know, it's going to give them an incredible advantage over  
20 us.

21 THE COURT: Well, this is what I want you to try to  
22 work out. Exchange the names by the 19th, and then discuss  
23 how you're going to proceed on the matter in terms of the  
24 exchange of the reports and the depositions.

25 If you can't work it out, then let me know and I'll

1 issue an order. But I prefer to let you all work it out  
2 yourselves than me have to do it.

3 MR. BUHR: That's what we prefer as well.

4 THE COURT: All right.

5 MR. SAMARKOS: I prefer you rule on it. I lose...

6 MR. BUHR: (Inaudible.)

7 THE COURT: Okay. Anything else?

8 MR. BUHR: Nope.

9 MS. HALE: You anticipate ruling on the injunction  
10 issue prior to the trial, I presume?

11 THE COURT: I think what I am hearing Ms. Lister  
12 say is that they need that in order to determine the scope of  
13 their damages. If we have to do that, if that's necessary,  
14 yes, I'll do that.

15 Frankly, it's going to take the form, it seems to  
16 me, of something in the nature of what the county -- or what  
17 Mad Hatter proposed by its first proposal.

18 MR. SAMARKOS: Where the Court enters an injunction  
19 requiring us to treat --

20 THE COURT: Provide the treatment.

21 MR. SAMARKOS: Do we get to charge for that?

22 THE COURT: (Inaudible.)

23 MS. HALE: Well, we would not have damages --

24 THE COURT: It would operate the same way  
25 anticipated -- that it would have anticipated to have

1 occurred under the '92 agreement.

2 MS. HALE: But we would not be --

3 THE COURT: Alternatively, the -- you know, it will  
4 take the form something in the nature of what you all  
5 proposed but something more than that, because just, quite  
6 frankly, it just doesn't strike me, in light of the evidence  
7 I have heard up to this point -- I mean, you've got the guy  
8 that was the former head of the county commission saying he  
9 wants to put the company out of business. Just allowing for  
10 another notice and an opportunity to be heard doesn't strike  
11 me as being an adequate remedy.

12 MR. SAMARKOS: He's not on the commission anymore.

13 THE COURT: Oh, he's not?

14 MR. SAMARKOS: No.

15 MS. HALE: Who said he wanted to put them out of  
16 business?

17 THE COURT: Mister -- what was his name?

18 MR. SAMARKOS: I don't think he put -- I don't know  
19 if it was that term. It was Mike Wells.

20 THE COURT: He was saying he would like to see them  
21 out of business. But anyway --

22 MS. HALE: Well, you don't anticipate, if you  
23 required us to continue service, that we would be liable for  
24 damages during that time, do you?

25 MR. BUHR: I couldn't hear that.

1 THE COURT: If, in fact, the injunction involved  
2 something close to what you proposed in your first  
3 alternative, it would not be my thought that you could claim  
4 damages thereafter.

5 MR. BUHR: At this point I can't see how we could  
6 disagree with that; but until we see the actual order, it's  
7 kind of hard for us to say what the different areas are.

8 We're certainly not going to try and plug damages  
9 for after we receive service which is --

10 THE COURT: I tell you what --

11 MR. BUHR: -- (inaudible) -- but like I said --

12 THE COURT: -- we'll set a hearing sometime in  
13 December, prior to the trial, after -- we've got -- our last  
14 jury trial is calendared for December 8th, I believe.

15 Sometime after that we'll calendar the matter down  
16 for a hearing. It might be the very first -- excuse me --  
17 the very end of the year there, but we'll work with you all's  
18 calendar. We'll set something down so that we can resolve  
19 that issue.

20 By then, your experts will have all their opinions  
21 in and we'll be able to make some kind of --

22 MS. LISTER: My only question is, are we to include  
23 this in our expert's report? Because our expert report will  
24 be due sometime before that. Are those reports just going to  
25 the valuation on the taking?



1 THE COURT: I was thinking about it in terms of the  
2 taking, but I mean the -- I think if you're going to  
3 introduce testimony with regards to the matter of your  
4 damages for the procedural due process claim, the county has  
5 got a right to take depositions on that.

6 MS. LISTER: Okay. But that doesn't need to be  
7 included in the report? I'm just trying to --

8 THE COURT: I think if it's part of an expert  
9 opinion that you -- yes, I think it does.

10 MS. LISTER: Okay.

11 THE COURT: And I don't know that this --

12 MS. LISTER: I think if we talk about the scope of  
13 the taking again -- or the scope of the injunction again  
14 until after, our expert report will probably be due --

15 THE COURT: Right, and I don't think that --

16 MS. LISTER: We'll just assume that you're probably  
17 going with the first alternative and calculate our damages in  
18 that fashion.

19 THE COURT: It seems to me that I have said from  
20 day one that the remedy there appears to me to be intended to  
21 be equitable; and it would seem to me that after the point in  
22 time that you get equitable relief, you should not be  
23 authorized to make a claim for damages, so...

24 MS. LISTER: Okay. We'll move forward with that in  
25 mind and assume that you're not going to order Mad Hatter to

1 build a treatment plant out there. We'll go forward with  
2 that in mind. And if something changes, then we'll have to  
3 regroup, I guess.

4 MR. SAMARKOS: I don't know that we would agree  
5 that he's not going to say you don't have to build a  
6 treatment plant.

7 MR. BUHR: That was alternative one.

8 MS. LISTER: Then that's our predicament. We  
9 can't --

10 MR. BUHR: There's a big difference.

11 MS. LISTER: Experts are very expensive, and we  
12 don't want to put somebody through an exercise they don't  
13 need to go through.

14 But if our expert reports are due in mid-November,  
15 then we're going to have to -- and the county is still taking  
16 the position that they -- apparently that we might have to  
17 build a plant, then we're going to have to go through the  
18 whole exercise.

19 THE COURT: I think you should anticipate the  
20 former remedy as being the one that the Court would likely  
21 adopt, if it adopts your thoughts on the matter.

22 MS. LISTER: All right. We will do that.

23 THE COURT: Okay.

24 MS. HALE: One thing the Court ought to be aware of  
25 is that Sunfield Homes, which is not present today, has

1 repeatedly said that if the Court enters an injunction, that  
2 they are going to take it up right away. I just want the  
3 Court to be aware of that. That issue, then, will be up on  
4 appeal as we're dealing with the collateral issue of damages,  
5 and I don't know that --

6 THE COURT: Maybe not.

7 MS. HALE: Pardon?

8 THE COURT: Maybe not. My injunction may not -- we  
9 may have some hearings on the matter where I may set the  
10 scope of damages, but I'm not so sure that my injunction is  
11 going to come out until everything -- until the final  
12 judgment comes out and then you ultimately take everything  
13 up; okay? I want to get the case over with in toto.

14 So, I think what we probably should do is have some  
15 hearing -- I anticipate we're going to have some pleading  
16 filed by one side or the other. The fact that the other side  
17 -- (inaudible) -- the last time anyway, so I'm just telling  
18 you we'll do that at the end of December, because I don't  
19 know that I'm going to enter an injunction prior to that  
20 point. I want this going up one time.

21 MS. HALE: So do we.

22 THE COURT: Okay. Anything else?

23 MR. BUHR: That's it.

24 THE COURT: All right. Thank you all. Have a nice

25 day.

(Thereupon, the proceedings in this case for this date were concluded at this time.)

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CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

*Sam M. ...*  
 \_\_\_\_\_  
 Official Court Reporter

*9/4/97*  
 \_\_\_\_\_  
 Date