

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the matter of:
Reuse - Ratemaking Treatment
and Service Territory.

.....
UNDOCKETED
.....

PROCEEDINGS: STAFF WORKSHOP

BEFORE: JOANN CHASE
ROSANNE GERVASI
MARTHA GOLDEN
CONNIE MCCASKILL
JAMES MCROY

DATE: Wednesday, July 29, 1999

TIME: Commenced at 9:59 a.m.
Concluded at 12:27 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL, RPR
Notary Public, State
of Florida at Large

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IN ATTENDANCE:

BOB CASEY, Public Service Commission,
Division of Water and Wastewater.

MARTY FRIEDMAN, Rose, Sundstrom & Bentley.

KENNETH HOFFMAN, Rutledge, Ecenia, Purnell
& Hoffman, for Florida Water Services Corporation.

TONY ISAACS, Florida Water Services
Corporation.

TODD MACKEY, United Water Florida.

PEPE MENENDEZ, Department of Health.

CAROLINE SILVERS, St. Johns River Water
Management District.

RAFAEL TERRERO, Florida Water Services
Corporation.

DAVID YORK, Department of Environmental
Protection.

I N D E X
MISCELLANEOUS

ITEM	PAGE
PRESENTATION BY MR. HOFFMAN	5
PRESENTATION BY MR. FRIEDMAN	25
PRESENTATION BY MR. MACKEY	73
PRESENTATION BY MR. MENENDEZ	50
PRESENTATION BY MS. SILVERS	43
PRESENTATION BY MR. TERRERO:	49
PRESENTATION BY DR. YORK	53
 CERTIFICATE OF REPORTER	 107

P R O C E E D I N G S

1
2 MS. GERVASI: We're going to go ahead and
3 get started. Pursuant to notice, this time and place
4 have been set for a Staff workshop on reuse of
5 reclaimed water. I'm Rosanne Gervasi. I'm here with
6 JoAnn Chase, as well as with Connie McCaskill. And
7 who else is here? James McRoy and Martha Golden.

8 MS. CHASE: Okay. I believe everybody has
9 received a copy of the report that we did and we
10 brought to the Commissioners entitled "Reuse -
11 Ratemaking Treatment and Service Territory." If you
12 have not, we have some extra copies. I believe
13 Mr. Casey --

14 MR. CASEY: They're on either side.

15 MS. CHASE: Okay. They're on either side.
16 We are here today -- this is the second
17 workshop. We're here today to get feedback on that
18 report.

19 Just as a little background, we did bring
20 it to the Commissioners at Internal Affairs, and they
21 basically approved the report, with the understanding
22 that we would be coming back to them with some
23 specific statutory language for this session, and they
24 did want us to bring it to the attention of all the
25 interested parties to get feedback and to get

1 suggestions that any of you all might have on some
2 statutory changes.

3 I'm not really going to go into the details
4 of the report at this time unless you really want me
5 to. I think we're just here to get your feedback.
6 And I'm assuming that most of you are going to have
7 feedback on what we would like to propose as statutory
8 changes, both to the definitions, used and useful
9 treatment, and maybe some changes to our current reuse
10 statute on reuse project plans. So we are just here
11 to listen to that.

12 I will say that we do have a court
13 reporter, so anybody that wants to speak, please come
14 to a microphone to make your comments, introduce
15 yourself first, and who you are representing so that
16 we'll have a complete record. And, of course, just
17 one at a time so the court reporter can get all the
18 comments.

19 okay. Who would like to start? Anybody?
20 Mr. Hoffman?

21 MR. HOFFMAN: Thank you. My name is Ken
22 Hoffman. I'm with the law firm of Rutledge, Ecenia,
23 Purnell & Hoffman in Tallahassee, Florida. I am here
24 this morning with Tony Isaacs and Ralph Terrero, all
25 on behalf of Florida Water Services Corporation.

1 And, JoAnn, what I would like to do is
2 provide the Staff and the interested parties with some
3 opening remarks basically giving you our positions
4 concerning the issues that are addressed in these
5 recommendations. And then what we would like to do is
6 go through your recommendations sort of section by
7 section and give you our comments.

8 MS. CHASE: That sounds good.

9 MR. HOFFMAN: Okay. Let me begin by saying
10 that Florida Water Services Corporation has a number
11 of major concerns with many of these recommendations.
12 And what I would like to do is, I would like to sort
13 of give you some background on the legislative history
14 of reuse in terms of the actions the Florida
15 Legislature has taken.

16 I begin with the 1989 Legislature, where
17 the Legislature passed Section 403.064(6), which
18 allowed the Commission to implement reuse projects.
19 It said the PSC shall allow entities which implement
20 reuse projects to recover the full costs of such
21 facilities through their rate structure.

22 Now, evidently, because there was some
23 question about the interpretation and application of
24 that statute, in 1994 the Legislature passed a very
25 comprehensive scheme of statutory intent and

1 regulation which made it clear that reuse facilities
2 and services were to be encouraged in this state. And
3 specifically I'm referring to Section 403.064(10),
4 which provides that there shall be full cost recovery
5 for reuse feasibility studies and facilities used for
6 reliability. And that's a DEP statute.

7 In the same year, in 1994, the Legislature
8 created section 367.0817, which is the reuse project
9 plan statute, which the Commission has had some
10 experience with since its passage. And there, of
11 course, basically what the Legislature said is that
12 utilities that are regulated by the PSC should be
13 allowed to recover their full costs for their reuse
14 project plans in their rates.

15 Thirdly, in 1994 the Legislature passed a
16 provision in section 373 -- in Chapter 373, excuse me,
17 which is the water management district statute, and
18 I'm referring to 373.250. Again, there the
19 legislative intent was to encourage the use of
20 reclaimed water.

21 After that time, the only other legislative
22 action of significance took place in 1995, where the
23 Legislature enacted another section of 403.064, and
24 I'm referring to section (14), which basically
25 provides a mandate for the construction of reuse

1 facilities if the reuse feasibility study indicates
2 that it is feasible. And there was an amendment to
3 the water management district statute as well, and
4 that was at 373.1961(2)(b), which provided legislative
5 intent for the Commission to develop rates which
6 provide meaningful progress toward the development and
7 implementation of alternative water supply systems,
8 including reclaimed water systems.

9 Now, I think I can summarize what the
10 Legislature has done in this area by saying that these
11 statutes establish that the reuse of reclaimed water
12 is a state objective and it should be encouraged as a
13 means of conserving limited sources of drinking water
14 supply and as a means of protecting the environment.

15 Reuse should be encouraged, that's the
16 thing. How is it to be encouraged? The Legislature
17 made it clear, in our judgment, that it should be
18 encouraged by providing financial incentives to
19 encourage reuse projects, facilities, and services.
20 How? By treating reuse facilities as 100% used and
21 useful. That was the intent of the 1994 law.

22 Now, as most of you are aware, we ran into
23 some problems with that at the Commission. Rather
24 than accepting the legislative mandate and the state
25 objective of promoting reuse, we believe that the

1 Commission essentially thwarted the encouragement of
2 reuse in three ways. And let me tell you what they
3 are.

4 First, the Commission took the position
5 that the words that the Legislature used in Chapter
6 403 and Chapter 367 -- I'm referring to the 1994
7 amendments -- were essentially meaningless and that
8 reuse facilities should be treated like any other
9 asset when it comes to used and useful determinations.

10 Secondly, at least in connection with
11 Florida water's most recent rate case, there was some
12 second-guessing by the Commission in terms of what
13 constitutes a reuse facility rather than accepting the
14 DEP's rules and interpretation as to what constitutes
15 a reuse facility.

16 Finally, third, I think best exemplified by
17 the Aloha case, the Commission has allowed reuse
18 project plan petitions to be expanded into, at least
19 in Aloha, what essentially amounted to a full-blown
20 rate case, with quality of service determinations,
21 protracted litigation, and substantial, significant
22 rate case expense that ultimately is borne by the
23 ratepayers.

24 In Florida water's view, none of these
25 actions have encouraged reuse.

1 Now, I mentioned the issue of the 100% used
2 and useful. As most of you know, what happened there
3 was, we had a 1995 rate case, and the Commission did
4 not treat the company's reuse facilities as 100% used
5 and useful. They treated these facilities like any
6 other wastewater asset. And Florida Water appealed
7 that, taking the position that the Legislature
8 intended 100% used and useful for reuse. And the
9 court agreed with Florida Water and vindicated Florida
10 Water's position.

11 So at least from this point forward, I
12 think it's clear that reuse facilities are to be
13 treated as 100% used and useful. Certainly that issue
14 should no longer be subject to debate.

15 Just some quick details on the Aloha reuse
16 project plan. And I'll bet Marty can probably help me
17 out with this in terms of the details, because I know
18 his firm represented that utility. But I talked about
19 how that case was expanded and protracted and became
20 something that I don't think anyone ever envisioned.
21 My notes show that the Aloha reuse project plan was
22 filed in June of 1995, and by the time that case was
23 over, I don't think the final order was entered in
24 that case until 1997 or 1998. And you could look to
25 the orders, and many of you wouldn't even need to look

1 to the orders to know the level of litigation that was
2 involved on everything from quality of service to
3 investments and expenses.

4 With respect to our concern that in the
5 past, the Commission has ignored the DEP and the DEP's
6 primacy in terms of jurisdiction in advising and
7 interpreting as to what constitutes a reuse facility,
8 I would just point out for the record the situation
9 involving Florida Water's Marco Island percolation
10 ponds in our last rate case. And in that situation,
11 the Commission disallowed full recovery for those perc
12 ponds, which were needed as backup disposal for the
13 reuse facility.

14 The staff recommendation was that the perc
15 ponds and injection wells should not be considered as
16 reuse components because they do not contribute to the
17 reduction of customer demand for water. And the
18 discussion in the staff recommendation we think shows
19 that the staff did not understand DEP's requirements
20 for backup disposal for reuse systems. And I notice
21 that Dr. York is here, and he may be available to
22 expand on that if you're interested.

23 I mentioned the failure to grant 100% used
24 and useful. Just very quickly, Florida Water had
25 eight reuse facilities in that last rate case, in the

1 1995 rate case. After the Commission applied non-used
2 and useful adjustments, the company recovered on
3 average 75% for those facilities. So on average, 75%
4 used and useful.

5 If you look at the average used and useful
6 for the wastewater facilities, it was 79% in that
7 case. So believe it or not, ironically, however you
8 would like to characterize it, reuse facilities were
9 treated worse than the average of all wastewater
10 facilities. And certainly that's not an incentive,
11 but a disincentive, and something that we believe is
12 in conflict with the state objectives.

13 That's my little piece on how we got to
14 where we're at. Let me now make some comments and a
15 general overview on the recommendations.

16 Florida water believes that the bulk of the
17 staff's ratemaking and certification proposals amount
18 to additional layers of unnecessary micromanagement,
19 bureaucracy, and regulation. They amount to
20 additional time, costs, and expenses for such things
21 as cost of service studies for reuse facilities, for
22 separate MFRs for reuse facilities, for what will, in
23 my experience, be an invitation for further hearings,
24 customer service hearings, in this what I would call
25 pre-construction approval process. And in light of

1 what is envisioned by these recommendations to be
2 Commission procedures and mandates, the result will be
3 additional expense borne by the customers of the
4 utility.

5 Very respectfully, I would say to Staff
6 that we sort of view this as having the potential to
7 circumvent the Legislature's intent, and the court
8 decision, through the MFR process that I mentioned,
9 through this pre-approval, which seems to be somewhat
10 akin to a Power Plant Citing Act need determination
11 process, and we view it as unnecessary at this point
12 in time.

13 Certainly the MFRs and the cost of service
14 studies will add to the time it takes to put together
15 a rate case application and the costs for putting
16 together a rate case application for a utility the
17 size of Florida water.

18 MS. CHASE: Can I ask you a question about
19 that?

20 MR. HOFFMAN: Certainly.

21 MS. CHASE: One of the reasons that we were
22 requiring the separate MFRs for the reuse facilities
23 is to identify up front in the rate case what are the
24 reuse facilities for this utility and not have them
25 embedded in the wastewater plant so that if they are

1 going to get -- well, they will be getting 100% used
2 and useful treatment, but they are identified. And
3 then if there's any dispute at all over that, it is
4 highlighted and identified up front and would cut down
5 on interrogatories and further discovery.

6 MR. HOFFMAN: Good point, JoAnn.

7 MS. CHASE: What would you suggest?

8 MR. HOFFMAN: We want to get there too.

9 It's to our advantage to have those facilities
10 separately identified. The Uniform System of Accounts
11 was changed at some point over the past couple of
12 years to require segregation of reuse facilities. So
13 we want them, and we are required to separate them.

14 A separate schedule or two, fine. But a
15 separate set of MFRs with separate cost of service
16 studies, too much, in our view.

17 MS. CHASE: Okay.

18 MR. HOFFMAN: We're not sure why the Staff
19 would impose these additional layers of regulation and
20 prudence review for a reuse facility. Why are the
21 reuse facilities different than conventional assets?

22 MS. CHASE: Okay. Let me try to explain
23 that. At the end of this, we are going to request
24 that those who do have concern over anything that we
25 have in here, that perhaps you might want to offer an

1 alternative to get us where we want to go, because we
2 are not here to add additional bureaucracy that's
3 unnecessary, but we do have some basic concerns about
4 that.

5 One of them is that if reuse is to be
6 treated 100% used and useful as opposed to the rest of
7 the wastewater treatment plant that perhaps is getting
8 a closer review, that that be separated out so that
9 it's not intermingled.

10 One of the other concerns we have that has
11 to do with the up-front review, if that's the way we
12 go, is that oftentimes, if not most times, when
13 utilities are enlarging their plant and putting in
14 reuse facilities, that's not the only thing they're
15 doing. They're also increasing capacity of the
16 wastewater treatment, or they are putting in some
17 other required DEP requirements or improving some
18 other areas that might be subject to a used and useful
19 concern.

20 So that is why we were trying to -- there's
21 two ways of going about it. We can second-guess in a
22 rate case whether they put it in for reuse, is that
23 associated with reuse or is that associated with
24 growth for new customers or something else? Or we
25 could get involved early on in the process when it's

1 before DEP, and perhaps the water management district
2 review. We could look at it then as to what is this
3 all about and what is it that the utility needs to be
4 putting in for prudence to accomplish reuse as opposed
5 to accomplish something that's put in for growth that
6 may legitimately need a used and useful treatment.

7 So that's our goal. Now, perhaps we went
8 overboard in trying to do this, but that is what we're
9 trying to accomplish.

10 MR. HOFFMAN: And let me just respond very
11 briefly to that.

12 In my experience, JoAnn -- let's just take
13 the last rate case that Florida Water filed. I think
14 it was roughly \$100 million in new investments that
15 was included in that rate case. Not one issue raised
16 out of the 140 something issues concerned prudence.

17 So to some extent, I think we're getting a
18 little bit into the mountain out of a molehill. And I
19 see no reason why a separate process which leaves a
20 door open for hearings, customer service hearings, and
21 additional regulation is necessary at this point. If
22 we find through additional rate cases or other
23 proceedings that there are issues out there that need
24 to be addressed that aren't being addressed in terms
25 of prudence review, then maybe we address the

1 problem. But at this point, my judgment is that we're
2 guaranteeing additional costs through additional
3 regulation without really addressing a specific
4 problem.

5 MS. CHASE: Let me ask you one more
6 question. What would be wrong with the utility
7 providing as part of its MFRs in a rate case if
8 there's reuse involved documentation from both the DEP
9 and the water management district that they both agree
10 it is reuse that they're putting in, that it meets the
11 definition of reuse and should be recovered? That was
12 one of our options in here, that that would be part of
13 the up-front filing in a rate case, so that we know
14 right off the bat that the water management district
15 and the DEP have agreed that this is reuse.

16 MR. HOFFMAN: And now you're starting to
17 talk about something that, in my opinion, is more
18 reasonable in terms of accomplishing what the
19 Commission needs to accomplish and what the utilities
20 also would like to see accomplished in terms of
21 segregating reuse facilities and meeting their
22 obligation and their burden of proof in a rate case.

23 Now, I'll tell you that it is Florida
24 water's preference to have and to promote a statewide
25 definition and policy on what constitutes reuse

1 facilities, and we would look to the DEP in that
2 regard. And it is my understanding that there are
3 some inconsistencies possibly between the water
4 management districts in terms of what they view to be
5 a reuse facility.

6 So our belief is that the best approach, if
7 the goal is to encourage reuse, reuse certainly must
8 be as good and desirable in Jacksonville as it is in
9 Miami, as it is in Tampa, as it is in Pensacola, and
10 as it is in Tallahassee, that we have a statewide set
11 of definitions and that we defer to the primacy and
12 expertise of the DEP.

13 JoAnn, I really don't have much more in
14 terms of some opening remarks other than to very
15 briefly comment on the certification recommendations.

16 MS. GERVASI: Ken, before you do that, let
17 me just ask one other question. You mentioned that
18 you didn't think that it would be a good idea to
19 require that a utility come in -- I'm saying outside
20 of a rate case, for a facility that you want to get a
21 reuse rate for, you didn't think it was a good idea to
22 have the utility come in and get the Commission's
23 decision on how much of it is prudent before you
24 actually go forward with the construction. We viewed
25 that as being a safety net for the utility perhaps, as

1 well as more efficient in terms of -- for regulatory
2 purposes to get a prudency review up front.

3 MR. HOFFMAN: And I am respectful of that
4 Rosanne, but I respectfully disagree. And I envision,
5 in my experience at this Commission, a petition for
6 approval of a reuse facility which is PAA'd and
7 approved and is challenged, and letters are sent out,
8 publicity comes up and complaints come in, and about a
9 year and a half later, we may or may not be through
10 the case. Maybe three years later we will. And in
11 the meantime, there's about \$400,000 expended on
12 lawyers, consultants, and appeals.

13 Rather than have that potential looking at
14 us, which is in my view realistic, why not have the
15 utility meet its burden in a rate case by segregating
16 out its reuse facilities and addressing any issues
17 which may be raised by the staff, the Public Counsel,
18 or any other intervenor, concerning whether a facility
19 is a reuse facility?

20 I think before -- I'm sorry.

21 MR. MCROY: Ken, I guess since that's kind
22 of what we talked about in the last meeting, what we
23 considered was having your staff engineer meet with
24 the staff engineer of the Commission, discuss the
25 project, have input, along with DEP and the water

1 management district, prior to anything being docketed.
2 Since we can then have that kind of interaction, why
3 do you not feel that that's beneficial for the utility
4 to know where the Commission is on what your project
5 is about prior to it being docketed?

6 MR. HOFFMAN: Well, James, now what you're
7 talking about to me is an even reduced level of,
8 quote, regulation and communication. And I don't know
9 that we necessarily would have a problem with that.

10 My main point is that I have a problem with
11 the potential for taking a legislative mandate and
12 court position that reuse facilities are 100% used and
13 useful, presumably for a legitimate reason, to promote
14 reuse on a statewide basis, and turning that into a
15 treatment of reuse facilities on a much more
16 comprehensive and bureaucratic level and on a more
17 costly level for our customers. That's what I've got
18 a problem with.

19 MR. MCROY: And I can understand that. And
20 I think -- but what we're saying, since we determined
21 that reuse will be treated as 100% used and useful, we
22 have to make a determination at what point will it
23 stop being a wastewater treatment plant to where it
24 becomes a reuse facility management type operation.
25 And wouldn't you think that that would be better

1 achieved by having staff interact with the water
2 management district or DEP and your staff person to
3 come up with a reasonable point to say, okay, at this
4 point the project is now considered reuse and should
5 be applied 100% used and useful and have everybody
6 agree on that point, instead of having to come to a
7 rate case, a docketed case, and we argue and discuss
8 and fight over that particular point, when we could
9 have had it done eight months ago?

10 MR. HOFFMAN: You know, James, my -- we can
11 do that. And again, I still have the caveat of
12 treating these facilities differently. Why would we
13 not come in and talk to you about a hydropneumatic
14 tank or a distribution line before a rate case, before
15 we file a request to recover 80% used and useful?

16 But secondly -- and again, what I'm saying,
17 James, is that I still don't see a distinction there
18 just because we've gotten past this five-year battle
19 on used and useful on reuse.

20 But secondly, even if we meet and talk and
21 come up with some form of agreement as to what
22 everyone thinks this is -- and again, we believe the
23 Public Service Commission and the utility should defer
24 to and comply with the DEP's rules and interpretations
25 on what is reuse, and it's as simple as that. But

1 even if we did, there is nothing to prevent a
2 challenge and an issue raised in a rate case.

3 You may be familiar with, for example,
4 gains on sale. Florida water went through a series of
5 rate cases when I was a younger person with less kids,
6 and we had certain rulings on gain on sale. But the
7 issue under essentially the same facts and
8 circumstances was raised again in the next rate case,
9 and the result was essentially the same. It's very
10 difficult to prevent an intervenor from raising an
11 issue.

12 MR. MCROY: And I guess I agree with that,
13 but if we do this up front, wouldn't you think that
14 that may prohibit some intervenor from intervening if
15 that's already completed?

16 MR. HOFFMAN: Text book wise, I agree.
17 Realistically, I don't.

18 Certification. We think it's premature to
19 try to deal with that issue. We don't know that the
20 Commission has had enough experience to really lay out
21 some type of scheme of certification for separate
22 reuse territories. Until that time comes, we don't
23 want to add to our burden, JoAnn.

24 Right now, as a privately owned utility,
25 we're at a competitive disadvantage compared to

1 governmental utilities when it comes to securing new
2 territory. A county can pass an ordinance. Maybe it
3 wouldn't even have to pass an ordinance and just go
4 out and serve. A privately owned utility has to go
5 through a hearing, and if an objection is filed, a
6 long hearing. We don't want to add that and the
7 litigation costs that go with that to reuse. We don't
8 see the need to get into that at this time.

9 MS. CHASE: Let me ask you a question on
10 that. If the Commission -- right now the Commission
11 does not identify reuse territory per se. What is
12 Florida Water's position on what their reuse territory
13 would be, in other words, their territory that no one
14 else can go into? There are some out there that think
15 if you have a wastewater territory, then you have
16 first dibs on reuse in that area. Alafaya comes to
17 mind. Is that Florida Water's position?

18 MR. HOFFMAN: JoAnn, we haven't formulated
19 a concrete position on that. The position will
20 ultimately be that it's either our water territory or
21 our wastewater territory or both. But --

22 MS. CHASE: Well, let me tell you the
23 problem we're trying to address here. And we haven't
24 -- to be honest, we haven't seen it a lot, but we have
25 seen it in some of the areas, and we've heard about it

1 in others where the problem never really came to us.
2 And that is that a private utility may have a
3 wastewater territory mapped out where they provide
4 wastewater service, but either they don't have reuse
5 to offer to the reuse providers or they don't have
6 enough to offer to everyone who might want it in
7 there. And you have another provider, be it a
8 government or another private utility outside that
9 territory, that wants to come in and provide that.

10 We do not, and particularly the water
11 management districts do not want, and I don't think
12 DEP as well, would not want to see the private utility
13 say, "No, you cannot come in and provide reuse in my
14 wastewater territory," even though they can. And that
15 is the concern we have, and we thought -- and the
16 other thing would be that if a utility did define its
17 reuse territory, whatever that gives you on the
18 wastewater and water side as far as having identified
19 territory, it would also protect you on the reuse side
20 from the governments or whoever that might want to
21 infringe on your territory.

22 MR. HOFFMAN: And I think those are
23 legitimate concerns. At the same time, looking at the
24 other side of the equation, how do we deal with, for
25 example -- let's just assume for the moment that

1 Florida Water's reuse territory is the same as its
2 water territory, and let's assume there is nothing to
3 prohibit another utility, private or governmental,
4 from coming in and striking a deal with a couple of
5 golf courses for reuse, and all of a sudden the
6 estimated revenue in the last rate case used for the
7 establishment of rates is falling way short. How do
8 we deal with that? Are we triggering a rate case? So
9 that's another issue.

10 MS. CHASE: But that issue, the revenue
11 erosion issue is going to be there regardless of the
12 territory that you might identify or not identify. I
13 agree, that could be a legitimate concern if someone
14 comes in and takes away -- or even if your utility
15 comes in and provides reuse, it's going to be at a
16 lower rate than your water rates are, so you're going
17 to have revenue erosion anyway.

18 Marty, would you like to speak on that?

19 MR. FRIEDMAN: Well, on the service area --

20 MS. CHASE: Can you identify yourself just
21 for the record?

22 MR. FRIEDMAN: Yes. Marty Friedman, law
23 firm of Rose, Sundstrom & Bentley.

24 The Alafaya situation and the territory, it
25 seems to me that if you look at the tariff we had

1 approved even before this dispute with the City arose,
2 the tariff sheet said we provide reuse at X rate to
3 everybody within our service area. That was the
4 position that we took. And I know that the Commission
5 disagreed, but we took the position and still think
6 that by virtue of that, Alafaya has got the service --
7 reuse service area as defined in that tariff sheet.

8 Now, you raised the question of what if
9 they can't provide the service and somebody else can,
10 and, gee, we ought to let somebody else come in. How
11 is that any different than your wastewater territory
12 if there's a demand for service in the territory for
13 wastewater service or for water service that the
14 certificated utility cannot provide that service? The
15 Commission deals with it. They either zap it out of
16 their service area or let somebody serve it. Reuse is
17 no different. If we have the service area -- and we
18 believe we do in our wastewater certificate.

19 Now, there are some water -- non-potable
20 utilities, the two that are mentioned in here, both of
21 which were also clients of our firm. You know, that's
22 a different type of service. But when the reuse is a
23 by-product of the wastewater system and we've got a
24 tariff that says we can provide reuse at this rate
25 within our service area, we should have the right to

1 do that to the extent that we have the ability to do
2 it.

3 Now, obviously, if we don't have the
4 ability, we shouldn't be able to keep other people
5 out, no more so than water should be able to keep
6 somebody out if somebody needs water that we don't
7 have the ability to provide, or wastewater. I don't
8 see any difference in the territory issue, frankly.

9 MS. CHASE: So if someone wanted to provide
10 the reuse service and the utility can't, their
11 recourse would be what?

12 MR. FRIEDMAN: If we have a reuse tariff,
13 the recourse would be for them to try to get that out
14 of our service area so that they could serve it.

15 MS. CHASE: They would have to come to the
16 Commission.

17 MR. FRIEDMAN: Sure, just like they would
18 if they wanted to provide sewer service to some place
19 within a certificated area, or water service. Reuse
20 is no different. If we can't do it, there's a
21 procedure in the Commission to take that property or
22 that territory out of your certificate if somebody
23 else could serve it, be it another investor-owned
24 utility or a government utility. It's just a utility
25 service that we should be able to provide the people

1 within our certificated territory.

2 MS. CHASE: Well, let me ask you this. If
3 a utility has a wastewater territory, but they want to
4 provide reuse to a golf course or a citrus grove or
5 something that's outside of their wastewater
6 territory, would the utility have to come to us to get
7 that included in their wastewater certificated
8 territory, and then don't they have some sort of
9 obligation to provide wastewater service there? That
10 was the other thing we were trying to --

11 MR. FRIEDMAN: Well, that would depend upon
12 what kind of service you were going to provide outside
13 your service area. I'm not as opposed to putting a
14 little R on the certificate that says you've got the
15 right to provide reuse to that area, and therefore
16 you've got a certificate, and particularly since you
17 all have taken the position that our wastewater
18 certificate does not give us any exclusivity to
19 provide reuse. And like I say, that was the Alafaya
20 order, and we disagreed with you all's interpretation,
21 but we didn't appeal it, because the end result was
22 what we wanted.

23 So I don't disagree with you all's position
24 on that, you know, establishing separate reuse service
25 areas. That doesn't offend us at all, although I

1 don't think it's necessary, because I think we already
2 have it. You all seem to disagree. Let the
3 Legislature straighten it out as far as I'm
4 concerned.

5 Back on some of the issues that Ken raised.
6 And I agree with a lot of what he said, particularly
7 about the pre-approval process.

8 It seems like with the regulatory scheme we
9 have now, you could deal with your reuse projects two
10 different ways. If you want to, you can come to the
11 Commission under the statute and get a reuse plan
12 approved, and we've done that. I think the only three
13 that have been filed were all clients of our firm. Or
14 you can do it the other way, which is the same way you
15 do everything else you do with your utility. You do
16 what you believe is prudent, and at some point in time
17 you may have to prove that prudence to the Commission.

18 And that seems to be the way the process is
19 now. You can do one or the other. You can either get
20 pre-approval if you want. You don't have to. Or you
21 can take your risk and do it yourself and hope that
22 when the time comes for a rate case that you get it
23 approved. Florida water has chosen one way to do it.
24 Some of my clients have chosen the other way, and some
25 of my clients have chosen the same way as Florida

1 water.

2 I think that's a good process. I don't
3 think you should force everybody to come in for
4 pre-approval. And like Ken points out, what's the
5 difference between that or if I'm going to do a plant
6 expansion, and I'm going to do a 500,000-gallon plant
7 expansion instead of 250? Is that prudent? We don't
8 come to the Commission Staff and discuss that
9 beforehand. Why should this be -- like Ken said, why
10 should this be any different?

11 MS. CHASE: I think the main reason that it
12 should be different is because we are going to have to
13 give 100% used and useful to reuse, and that's not
14 true with a plant expansion.

15 MR. FRIEDMAN: What if we disagree with
16 you? What if we go, and our engineer sits down with
17 James and they talk about this, here's what our reuse
18 is going to involve, and we've got to have backup, you
19 know, we've got to have some wet weather storage. And
20 James says, "Gee, that ought not to be in reuse," and
21 we say, "Yes it should."

22 If you get into a disagreement, you're
23 going to disagree whether it's at a staff meeting or
24 whether it's at a full rate case agenda. I mean, if
25 you can resolve it at one point, you can resolve it at

1 the other. I don't think that just because you sit
2 down informally and talk about it necessarily means
3 that the decision or result is going to be any
4 different than if you go through the whole blown-out
5 process.

6 MR. McROY: You do not agree that -- you're
7 thinking that because of the cumbersomeness of a
8 process, a rate case process would adhere -- well, not
9 be as easily bridged as two people looking at two
10 technical issues on a set of plans? I mean, science
11 is science, and engineering is engineering. If you
12 get two engineers together, we may not agree
13 initially, but I believe we're close enough that we
14 could bridge our disagreement at that point versus
15 having two litigants argue over that same point in a
16 rate case. I just don't see how that's not beneficial
17 for the utility to do that.

18 MR. FRIEDMAN: Well, let me make two points
19 on that, James.

20 First of all, I don't have the same
21 confidence that two engineers are necessarily going to
22 agree any more than two lawyers are necessarily going
23 to agree. And they can both be equally competent
24 people, but that's the nature of those kinds of
25 professions, is that equally competent people

1 sometimes disagree on what is right and what is wrong.
2 And it's not that, you know, one is right and one is
3 wrong. It's just that two different professionals
4 have opinions.

5 And we see that -- as lawyers, we see that
6 in court all the time, and you all see it in rate
7 cases where the OPC has an engineer and the utility
8 has an engineer, and sometimes your engineer
9 testifies. And these are all engineers. They've all
10 got P.E. after their name, and they all have
11 experience, and they all have different opinions.

12 So I don't think that sitting down one on
13 one is going to resolve it any better outside of a
14 rate case format than inside.

15 Secondly, I'm not sure that if outside the
16 rate case format you all sit and talk about it and
17 say, "Okay, informally we agree," and the rate case
18 comes up, and OPC or some customer jumps in this
19 thing, you know, your agreement with the engineer of
20 the utility that everything is okay just went out the
21 window. And all the meetings they had with you and
22 all the fun you had in discussing reuse was just a
23 waste of time.

24 The other point I wanted to make -- and Ken
25 touched on this -- is that we've got a problem -- and

1 this is really just in the reuse area. We have a
2 problem of differing interpretations between the
3 agencies. Now, we've run into this sometimes on
4 wastewater plant expansions that are mandated by the
5 government, you know, what the government mandates and
6 what the government doesn't mandate. And it's
7 particularly critical in reuse, since reuse is by
8 statute 100% used and useful.

9 And I think, as Ken said, we need -- the
10 Commission needs to defer to the agency with primacy
11 and expertise on reuse, and that's the DEP.

12 MS. CHASE: Well, then you would --

13 MR. FRIEDMAN: And I think if the DEP says
14 you've got to have this injection well for backup, for
15 your wet weather backup for your irrigation system,
16 and you all say, "I don't think so" -- I mean, we
17 can't be put in that position to have DEP tell us one
18 thing and then you all say, "well, we don't agree with
19 what DEP says." And that has happened before in
20 non-reuse issues, and I think it's wrong then, and I
21 think it would be exacerbated if it were continued in
22 dealing with reuse.

23 And I think the Commission has got to defer
24 to the agency with primacy and expertise in that area,
25 and in this case I think it's DEP, and not put the

1 utility in an untenable position of having one agency
2 tell them one thing and the other agency say, "Fine.
3 They told you to do that and go spend all that money,
4 but we're not going to let you earn a return on it."
5 That's not fair.

6 MS. CHASE: well, let me ask you this. Do
7 you see an advantage in the PSC Staff getting involved
8 in the DEP process?

9 MR. FRIEDMAN: Not particularly. Not
10 particularly. I think like Ken said, it just adds
11 another level of bureaucracy to something that is
12 already a difficult and time-consuming procedure.
13 That agency does -- we've got to get the reuse -- the
14 technical parts of the reuse project have to be
15 approved by DEP as a part of the permit. They can do
16 that. They've been doing it. They can do that all by
17 themselves.

18 MS. CHASE: I think what the project team
19 was thinking is that if the PSC Staff was involved in
20 that process, perhaps they would have a better
21 understanding of what -- you know, they would have
22 heard all that discussion, all the arguments, if there
23 were any, or disagreements that the utility and DEP
24 worked out, and so when it does come to the
25 Commission, it's not a new thing that we are starting

1 from square one and questioning everyone about it.

2 MR. FRIEDMAN: What that does is, that
3 means we don't only have to argue with DEP -- and I
4 mean argue in a nice sense. I mean, that goes on in
5 every permit that you get with every agency where
6 there's some level of discussion. You know, we won't
7 only have to deal with their expertise, but we'll end
8 up having to deal with the PSC interjecting their
9 thoughts into the process.

10 MS. CHASE: And that brings up a good
11 point, because one of the concerns -- and it's not
12 like the Commission really wants to go around and
13 second-guess or go against what DEP might have said,
14 but the Commission looks at it from the perspective of
15 the ratemaking and the impact on customers and rates.
16 DEP does not. They look at it as the impact on the
17 environment and to accomplish what it is that they
18 want the utility to accomplish.

19 I would think if they were involved in that
20 DEP process and just brought that subject up to a
21 degree, like, "Okay. You're going to require reuse.
22 Who are your customers going to be?" Because one of
23 the reuse project plans that you're familiar with had
24 no reuse customers. They just were told to do reuse,
25 and there wasn't anyone that they could identify that

1 was going to actually take it, but it was going to
2 cost a lot of money to do it.

3 So I would think we could interject that
4 sort of thing, "wait a minute. Okay. They need to go
5 to reuse. Who is going to be the customer? What are
6 the costs?" I know these economic feasibility studies
7 or whatever, reuse feasibility studies are supposed to
8 cover this, but --

9 MR. FRIEDMAN: You know, that's going to
10 really draw out that permitting process. I mean, DEP
11 is looking at it -- and I agree. I have lots of
12 arguments with DEP over the financial issues, because
13 they have the position, "You fix your plant to meet
14 our requirements and costs be damned." And I have
15 arguments with them all the time about that, and the
16 response is always, "This is the statute. It's for
17 protection of the environment, and if it costs \$50,000
18 to do that, we're sorry, but you've got to clean up or
19 fix or in the future change what you've been doing."
20 And as we know, the environmental laws, especially in
21 the wastewater section, have changed drastically over
22 the last dozen years to be more stringent.

23 And DEP tells us to do it, and you all
24 can't say, "Gee, just because it's going to cost the
25 customers an extra dollar and we think that makes

1 their rates too high" -- it doesn't make their rates
2 too high. Their rates are whatever the rates should
3 be to put a plant on line that meets the environmental
4 guidelines of the state and allows the utility an
5 opportunity to recover its costs and earn a return on
6 its investments.

7 And if DEP says you've got to do this, we
8 fight them a lot of times on issues like that, "No, we
9 don't have to do that." Private utilities spend a lot
10 of money in administrative proceedings against DEP
11 which we think ultimately have the benefit of lowering
12 the rate because we have to build less plant or build
13 different plant or something. But we lose those cases
14 sometimes, and we have to do what DEP says. And if
15 they tell us to do it, you all can't say, "Tough luck.
16 You're not going to be able to get the money back from
17 the ratepayers."

18 MS. CHASE: I agree that maybe we should be
19 bound by all of those decisions. That may be true.
20 But it seems to me that when DEP or whoever is making
21 these decisions, they might want that kind of input,
22 and it seems to me that the utilities might want us to
23 be there.

24 what I hear a lot is that this whole water
25 industry, wastewater industry is very fragmented.

1 You've got this agency doing this and this one doing
2 this and this one doing this. We're simply trying to
3 maybe find a way, not legislatively so much, but to
4 try to bring it together in some way so that, yes, you
5 know, we are interested that if they're going to do
6 reuse, there's going to be a customer out there that's
7 going to take it, and that's where we need the water
8 management districts to come into play.

9 I agree with you, just because they have to
10 do it and rates are going up doesn't make it too
11 expensive. But at what point does it become
12 unrealistic or too expensive, or whatever you want to
13 say? And it just seems like that piece of the
14 evaluation is being left out, and it's being done, and
15 then it comes to the Commission, and it falls on the
16 Commission to explain to the customers, "You've got to
17 pay for this, and the decision has already been made."

18 You know, the ratemaking process is just
19 not very conducive to telling -- because supposedly
20 there's all of these avenues for them to come in and
21 provide input. And what we're really saying to the
22 customers in these areas is, "You really don't have
23 any input. The utility had to do it, and DEP mandated
24 it, and you've got to pay for it, and no one can say
25 anything about it."

1 MR. FRIEDMAN: That's correct. That's the
2 way the process ought to work.

3 MS. CHASE: ought to work.

4 MR. FRIEDMAN: If they're concerned about
5 it --

6 MS. CHASE: And no financial analysis
7 done?

8 MR. FRIEDMAN: Listen, the utility does --
9 if DEP says go out and put a gold-plated sewer plant
10 out there, the utility is not going to say, "Okay.
11 Sure. We'll do it." I mean, it's our money. We
12 don't look at it like, "Oh, we don't care how much it
13 costs, because we're going to get it back from the
14 customers." Anybody that thinks that is very naive
15 about the way a business is run.

16 An investor-owned utility is a business.
17 we're not sitting out there because you all think we
18 have a monopoly that we all of a sudden start wasting
19 money. We fight DEP and other regulatory agencies all
20 the time because they want us to do something that we
21 think is too expensive. We don't just roll over with
22 DEP every time they want to do something and say,
23 "Pass it through to the customers. What the hell do
24 we care." That's not the way a business is run, and
25 this is a business. It's these people's money you're

1 talking about. And I think sometimes the Commission
2 doesn't understand how a business is run. They're not
3 out there to waste money intentionally.

4 MR. MCROY: Well, wouldn't you agree then,
5 Marty, that if you're sitting in a meeting with DEP
6 and expressing those issues on costs, that to have an
7 ally sitting there with you who's looking at in on the
8 cost --

9 MR. FRIEDMAN: If I thought it would do any
10 good, sure. And I may do that today. I mean,
11 tomorrow I may have a fight with them, and I may say,
12 "Gee, maybe I ought to ask the Commission. This is
13 going to really jack these rates up. Maybe I ought to
14 try to get some help from the Commission." I mean, I
15 might want to do that voluntarily.

16 I don't think that you all should interject
17 yourself into every reuse issue that comes up, because
18 I'm afraid if you do that, then all of a sudden you're
19 not only interjecting in the reuse issues -- why is
20 that -- as Ken keeps saying, why is reuse any
21 different? Just because it's 100% used and useful?
22 You've got the same thing. You can spend a lot of
23 money on a sewer plant or an expansion to a sewer
24 plant or an upgrade to a sewer plant, and it's going
25 to increase those rates a whole lot, as much as maybe

1 a reuse plan does. Where's the difference? I don't
2 want to interject any more --

3 MS. CHASE: Well, let me ask you --

4 MR. FRIEDMAN: All that does is, it runs up
5 the cost, runs up the time and the cost, and that's
6 what we're trying to avoid having to do.

7 MS. CHASE: I do understand your concern
8 there.

9 MR. FRIEDMAN: Because most of the time
10 when we go through these permittings, you spend a lot
11 of money on them. And really, unless you're going
12 through a rate case real soon, you never get it back.
13 And how many rate cases are filed? Other than the one
14 Florida water has filed, real rate cases just don't
15 come along anymore, because people are scared to
16 death. And so all this money that they spend on these
17 permitting matters are really paid for by the
18 shareholders. They never get it back through rates.

19 MS. CHASE: Well, would you agree, though,
20 that in a rate case, since reuse has to be identified
21 separately for 100% used and useful treatment, no
22 second-guessing, that there is a need in the MFRs in
23 some fashion to have that plant that's going to be
24 subject to that treatment separately identified?

25 MR. FRIEDMAN: Ken said that that already

1 happens because of the designation --

2 MS. CHASE: No. I recognize --

3 MR. FRIEDMAN: -- in the NARUC chart of
4 accounts.

5 MS. CHASE: There is the NARUC subaccounts,
6 but that is not part of the MFRs. That would be for
7 the auditor to pick it up. What I'm talking about is
8 something in the MFRs that would simply pull that out
9 and separately identify it for purposes of -- when the
10 engineers do their analysis, that would be -- if
11 nothing else, that's a piece they don't analyze.

12 MR. FRIEDMAN: If that does not in fact
13 already occur under what exists, then I think
14 certainly as a part of any rate case, if you want to
15 say these assets should be treated differently for
16 used and useful purposes, there's a legitimate purpose
17 to pull that out. I don't disagree with that.

18 MS. CHASE: Okay. Maybe one thing we could
19 ask of the utilities that are here, if they have any
20 suggestions on how we could do that less than what
21 we're talking about here, because that's the goal that
22 we're trying to accomplish. And if we've gone
23 overboard, we didn't really intend to do that. So
24 perhaps that would be something that you all could
25 help us out with.

1 MR. FRIEDMAN: So the system of accounts
2 doesn't have a separate designation for reuse
3 facilities?

4 MS. CHASE: I think it does. What I've
5 been told is that there's a lot of judgment going into
6 it. But beyond the system of accounts, the MFRs do
7 not separately show it. And that's what we're looking
8 at, that there would be a schedule or two or whatever
9 when you actually file the MFRs that would identify
10 that reuse plant right up front.

11 MR. FRIEDMAN: I don't have any problem
12 with that, as long as it doesn't get too onerous.

13 MS. CHASE: Okay. Well, any suggestions on
14 that would be welcome.

15 Are there any other comments? And I don't
16 mean to cut any of you all off.

17 Yes, ma'am.

18 MS. SILVERS: Caroline Silvers with the
19 St. Johns River Water Management District.

20 I do understand, having worked with the
21 private utilities, the pains they're going through.
22 But I also just don't want to leave the perspective
23 that this is strictly a wastewater disposal issue. It
24 is very much a conservation or alternative water
25 supply issue.

1 It is very important that the districts
2 interact with the Public Service Commission. And we
3 have seen just incredible benefits in achieving what
4 we're trying to accomplish with DEP, because we have a
5 very strong coordination process.

6 There is a difference in reuse, the reuse
7 definition, where we have a large discrepancy, which
8 is not the utilities' fault. For instance, in
9 Jacksonville, to have percolation ponds, we get
10 absolutely no resource benefits or resource savings.
11 We need the ability to look at it on a case-by-case
12 basis, and that involves sometimes educating the
13 Public Service Commission and DEP as to the hydrologic
14 conditions or the groundwater supply scenario that may
15 exist in that specific area.

16 And to cut the water management districts
17 out of that negotiating process and educational
18 process, I know I can take a stance for the water
19 management districts that they would be vehemently
20 opposed to that. We find that it has been reasonably
21 -- we've become educated too as to the limitations
22 that DEP or the utilities have by communicating. And
23 I think our goal is to not further segregate and have
24 agencies opposed to each other, but to bring the
25 agencies together with a common decision that makes

1 the most sense for the resource and for the wastewater
2 disposal and the surface water discharges.

3 So that's the Water Management District's
4 position.

5 And also, if you don't mind, the other
6 issue as far as reuse service territories and that
7 being defined, I think the Water Management District
8 would say that in many instances, we have found it
9 very difficult to get reuse because of the PSC
10 limitations that utilities have been up against. So
11 there are a lot of instances -- we're trying now to
12 allow municipal or government utilities to come into
13 these areas. And there really isn't any guidance, but
14 we do try to get the utilities to meet and sign some
15 type of agreement.

16 But we certainly don't want to limit the
17 resource benefits by restricting -- you know, I'll
18 hear, and I have heard from some of these private
19 utilities here today that they want to so-called
20 preserve this area for future reuse, but they have no
21 plans to do it for 10 to 20 years, whereas I have
22 another municipal utility that is ready to go. And we
23 do not want to lose that ability to do what makes the
24 most sense for the resource now.

25 MS. CHASE: Let me ask you a question about

1 that.

2 MR. FRIEDMAN: Let me point out something.
3 That's almost exactly the situation we had in Alafaya,
4 where we believe we have the service area, and part of
5 that service area we can provide service to right
6 away, and part of that service area we cannot in a
7 financially feasible manner, and we've entered into an
8 agreement with the city of Oviedo to let them do that.

9 You know, we're not out there to keep
10 somebody out of providing a reuse service that we
11 don't have the ability to provide. To the extent that
12 we can provide it, then we want exclusivity. To the
13 extent we can't, we let somebody else do it. And
14 that's exactly what we did with the city of Oviedo.
15 We provide it where we can, and we've let them provide
16 the rest of the city.

17 MS. CHASE: I understand that, and it
18 seemed to work in Alafaya. What I want to hear is,
19 have you had areas where maybe the private utility
20 wasn't helpful in that regard, and did it actually
21 prohibit reuse being --

22 MS. SILVERS: Well, we have that issue
23 right now in the Florida water service area in the
24 Jacksonville area, Beacon Hills, with them wanting to
25 preserve that area, or they have not given JEA this

1 so-called agreement. That has been maybe a few years
2 ago. I don't know how much it has been pursued in
3 recent years. But the initial talks from their legal
4 staff were that they did not want to -- you know, they
5 had the fear that one day DEP may require them to do
6 reuse, and they would have nowhere to dispose of it or
7 to cease their surface water disposal.

8 And the Water Management District of
9 St. Johns took the position that, you know, if you
10 allow this other utility to come into your area -- and
11 we had DEP present there too. We would make -- you
12 know, there would be some leniency as to your reuse
13 requirements. But we couldn't give them the
14 guarantees, because, number one, we can't. We don't
15 regulate. We're not DEP. And their rules may change
16 in future years. But we were trying to help move it
17 along and facilitate it.

18 MS. CHASE: One of the things we were
19 trying to accomplish in setting the reuse territory
20 too is recognizing that we're not necessarily wanting
21 to grant just the area the utility is serving right
22 now, or customer by customer, or any of that, but to
23 try to look at the plans of this particular utility
24 and on some reasonable time frame that I don't think
25 we've identified, but at least five years, if not ten,

1 what is the utility's plan for providing reuse in that
2 area during that time frame, whatever time frame we
3 come up with, along with the water management -- you
4 know, what's reasonable, so that you can hold it for
5 some future reuse that you would envision needing down
6 the road, but not holding up progress.

7 And I recognize that maybe the utilities
8 that are here wouldn't do that, but we do hear from
9 time to time that there are other utilities out there
10 that won't. And we've actually heard from a couple of
11 utilities, and Lake Susie comes to mind, where they
12 wanted us to identify their reuse territory, because
13 they had a government that was wanting to come in and
14 provide it to a golf course or something. This was
15 several years ago. But they weren't ready then to
16 provide it, but they thought they would be, and they
17 wanted to preserve that, and they thought if they had
18 a reuse territory that that would help them do just
19 that.

20 So I think there is a problem out there,
21 and granted, we haven't had a lot of experience with
22 it, but we were trying to address it proactively and
23 not waiting for some problems to have happened and not
24 get resolved.

25 But we do hear this from the water

1 management districts, that by not identifying reuse
2 territories, it does keep out some other entities that
3 are respecting that wastewater territory and not
4 providing service when it could otherwise be
5 provided.

6 Yes, sir. Could you come to a mike and
7 identify yourself, please.

8 MR. TERRERO: Ralph Terrero with Florida
9 Water Services.

10 Listening to Caroline, one of the things
11 that comes up is that we've been negotiating with JEA
12 for some time about this territory we're talking
13 about, Beacon Hills. One thing that I would hate to
14 do is have a territory that's close to our service
15 territory or in our service territory and our plant
16 and give it away to another utility.

17 well, as you know, regulatory rules are
18 coming up, and like now we're coming up with TMDLs.
19 TMDLs are going to be heavy, and it may be the case
20 that we have to pull out of the river. So what's
21 going to happen? Let's say JEA takes over the
22 territory that we have. We will have to go some other
23 place where it's going to cost our customers a lot
24 more to find a disposal area. So that's one of the
25 concerns. You know, we have to talk about regulatory

1 constraints.

2 MS. CHASE: Unanticipated changes is what
3 you're talking about.

4 MR. TERRERO: Unanticipated. They have
5 been in the rules. They have not been enforced.
6 They're in the rules since '72. The Sierra Club sued
7 EPA, and now EPA is going to the states and pushing
8 them, the state of Florida. It's there. It's coming.
9 And it won't happen in two or three years, but it's
10 coming. So we want to reserve our rights of going
11 there and making it really inexpensive to our
12 customers.

13 MS. CHASE: That, though, I would envision
14 as a reason for holding onto the territory that the
15 utility could show as far as needing it for the reuse
16 territory.

17 Can you just -- for my edification, what is
18 a TMDL?

19 MR. TERRERO: Total maximum daily load, and
20 that is what you can put in -- what a stream can take
21 or a river can take.

22 MS. CHASE: Okay. Yes, sir.

23 MR. MENENDEZ: My name is Pepe Menendez
24 with the Florida Department of Health. I'm a newcomer
25 to these proceedings, but I think I maybe have

1 something of value to offer, just a description of how
2 our relationship with DEP is in the water reuse
3 program, and it may be of value to the Public Service
4 Commission.

5 We defer to DEP, of course, on anything to
6 do with the applicants and the permitting process and
7 so forth, but we have established a good relationship
8 with DEP, and we enjoy it. We have designated a
9 person in our department, which is me, to handle the
10 water reuse issues related to health, which there are
11 a lot. And the process is that the DEP folks, through
12 a process of education on both sides, are familiar
13 with anything in the environment that may have an
14 impact on health. And they consult with us, our
15 department, or the county health departments, on
16 anything related to health, and we offer our
17 assistance to them for anything they have with issues,
18 and then, of course, anything directly with the
19 applicant or the facility.

20 We are also similar, because we only deal
21 with one aspect of reuse ourselves. You may be only
22 dealing with the ratemaking process. In your case, it
23 may be different than ours, because you have to deal
24 also directly with the applicant at some point. We
25 don't -- normally we don't have to do that.

1 But maybe you can establish some
2 relationship similar to what we have with DEP, which
3 so far they have testified has been working excellent,
4 after a process of education and learning on both
5 sides, Health and DEP. And now we work, you know, and
6 through that process and our joint cooperation, we
7 have been able to eliminate a lot of public perception
8 issues that are always, you know, out there. You
9 know, every time you mention to the public wastewater,
10 we're going to be using wastewater, it's a health
11 issue. So that's -- you know, maybe something like
12 that can be established between the two agencies in
13 relation to what we're doing now with DEP.

14 MS. CHASE: Are you involved at all in the
15 DEP permitting process or just --

16 MR. MENENDEZ: Not directly, no.

17 MS. CHASE: At what point then do you work
18 with them?

19 MR. MENENDEZ: Well, when DEP is
20 processing a permit and there is some kind of a public
21 complaint or concern, sometimes they come to the
22 Health Department, or DEP consults with us up front
23 through the permit. But we don't directly relate to
24 the applicant.

25 MS. CHASE: Okay. Thank you very much.

1 MS. GERVASI: Sir, could you please spell
2 your name for the court reporter?

3 MR. MENENDEZ: (No response.)

4 MS. GERVASI: Sir, could you state your
5 name and spell it --

6 MR. MENENDEZ: Oh, I'm sorry.

7 MS. GERVASI: -- for the court reporter?
8 Thanks.

9 MR. MENENDEZ: Okay. Pepe, that's my first
10 name. That's the easy one, P-e-p-e. Menendez, like
11 the Menendez brothers, but not related to me, no
12 relation.

13 MR. HOFFMAN: He has P.E. before his name
14 rather than after.

15 MR. MENENDEZ: There's another Menendez
16 over here.

17 MS. CHASE: Yes, sir. Dr. York.

18 DR. YORK: Am I live on this thing?

19 MS. CHASE: Yes, sir.

20 DR. YORK: Good morning. My name is David
21 York. I'm Reuse Coordinator with the Florida
22 Department of Environmental Protection. And I really
23 had not intended to say anything today. I wanted to
24 listen to some of the discussions related to the
25 service areas. But I would like to offer a couple of

1 comments, because I think the discussion regarding
2 reuse definitions is terribly important, so I would
3 like to make a few comments with regard to that. I
4 also would like to provide a couple of clarifying
5 remarks with regards to DEP's permitting process.

6 DEP wears Chapter 403 blinders. We review
7 permit applications when they come in the door on
8 their technical merits and their ability to meet the
9 statutory and rule requirements related to domestic
10 wastewater systems. We do that largely independent of
11 any consideration with regards to cost.

12 Our rules, as well as our statutes, are
13 structured towards the protection of environmental
14 quality and public health, and we integrate those
15 concerns into rule development. We will also
16 integrate financial concerns into that rule
17 development process. But once those rules are
18 established, that provides the framework for utilities
19 to operate under, and in essence, they represent the
20 constraints by which you must design and operate your
21 wastewater disposal and/or reuse system.

22 And what we're looking at is, does the
23 application provide a case for reasonable assurance
24 that you can comply with the applicable rules and
25 statutory requirements. And there really is not a

1 mechanism for other agencies to enter into our
2 permitting process at this point. If you desire to do
3 so, it would require statutory authority. There would
4 have to be change within 403 to open that avenue.

5 We do maintain I think very good
6 coordination with our partners in the program, and
7 certainly Pepe and I have developed an excellent
8 working relationship. And we certainly have tried to
9 partner, and I think very effectively, with the water
10 management districts, and certainly St. Johns has been
11 at the top of the list in terms of coordinating with
12 DEP, because certainly to make reuse happen, you must
13 do some matchmaking. We're trying to get the
14 generators of reclaimed water, the domestic wastewater
15 facilities, which DEP regulates by the permits,
16 together with potential users of reclaimed water,
17 which are the customers of the water management
18 districts.

19 Having said that, I would like to offer
20 some comments with regards to definitions. And I fear
21 I'm going to be perceived as being argumentative, and
22 I guess to some extent I am. That is not done out of
23 disrespect to any of the agencies involved. But as I
24 say, I think this is terribly important, and I think
25 it's very important that all of our agencies, the

1 water management districts, Public Service Commission,
2 and DEP come together on this issue.

3 We've been having discussions with regards
4 to the definitions of reuse and reuse related
5 activities for I guess about 12 years now. We
6 originally adopted definitions of reuse and other
7 related terms in the water policy, Chapter 62-40, back
8 in the 1988 time frame. Statutory language was added
9 shortly thereafter, as Mr. Hoffman indicated earlier
10 this morning. But the definition structure largely
11 dates back to about 1988, and we've made some
12 refinements to it since that time, and some fairly
13 significant refinements. But they've been
14 refinements. The basic framework has remained
15 static.

16 It was back in about 1992, 1993, that what
17 was known as the Reuse Coordinating Committee
18 published reuse conventions. The Reuse Coordinating
19 Committee consisted at that time of the five water
20 management districts, the Public Service Commission,
21 and DEP, and subsequent to that time it has grown to
22 include the Department of Health, the Department of
23 Agriculture and Consumer Services, and the Department
24 of Community Affairs. I hope I haven't left anyone
25 out of that list. But this is a committee that's

1 basically charged with promoting and opening
2 communication and coordination amongst those various
3 agencies.

4 With the Reuse Conventions Report, we
5 addressed a wide range of issues related to reuse in
6 the state of Florida, and one of the issues raised was
7 this issue of definitions. And the discussion in the
8 Conventions Report clearly recognizes differences
9 between largely the St. Johns River Water Management
10 District and DEP over definitions structure.

11 The recommendation growing out of the
12 conventions report was, okay, let's take the
13 disagreement with regards to definitions and go to our
14 rulemaking process, which was envisioned as being
15 opened about that time, and examine the definition
16 within our rule, at which point we're going to come
17 together and we're going to live with it.

18 And at the same time, we have existing
19 statutory language in 403.064 which clearly indicates
20 that reuse is defined by the Department of
21 Environmental Protection. Similar language exists in
22 Chapter 373, which is the water management district
23 statute, and it says clearly reuse as defined by the
24 Department of Environmental Protection. We have a
25 definition in Chapter 62-610, which is our reuse rule,

1 and also definitions that parallel it within other
2 domestic wastewater rules.

3 We recently completed a rather elaborate,
4 very time-consuming, rather interesting, two-phased,
5 five-year rulemaking activity. As part of that
6 rulemaking activity, in Phase 1, we did indeed take
7 the recommendation of the Reuse Conventions Report to
8 heart and opened the discussion of reuse definitions.
9 The reuse definition was tweaked at that point. It
10 was refined, but it did not change substantially. We
11 then finished up the Phase 2 revisions, and as I
12 recall, we did a little bit of further refinement
13 within that definition structure, but nothing of
14 significance.

15 Those are the definitions of reuse at this
16 point, or the definition of reuse at this point, and
17 it is indeed the definition that needs to be used by
18 all the parties involved, and that includes the Public
19 Service Commission, as well as the various water
20 management districts. And recognizing that there may
21 be differences, that may be good, but it certainly is
22 time for these parties to come together if we're
23 really going to be effective in making reuse work.
24 There are things within our reuse rules that I
25 personally may not totally 100% agree with, but it's

1 in our rule, and it's the law of the land at this
2 point, and I, as well as our department, and all the
3 other parties involved get to live within those
4 constraints at this point. So I hope that we can do
5 that.

6 our definition is rather broad, and our
7 definition is contained in 62-610, Section 200. But
8 more importantly, we have a classification system
9 that's contained in Rule 62-610.810, which very
10 clearly outlines what is reuse and what is not reuse.
11 And it was structured in a very straightforward, cut
12 and dried fashion to enable virtually anyone within
13 our district office that's reviewing a permit
14 application to readily make a determination as to
15 whether this portion of a project is categorized as
16 reuse versus effluent disposal.

17 And further, we take those classifications
18 and write them on the cover sheet of all the permits
19 that are issued by our department so that up front,
20 the permittee sees that this portion of the project is
21 identified as being reuse, and this portion of the
22 project is identified as being effluent disposal.

23 I guess that's really the thrust of my
24 comments.

25 I noted within your issue paper that there

1 was potential for possibly revising your statutory
2 definition of reuse. The definition that was proposed
3 is relatively consistent with the DEP definition,
4 but's not identical to it. And as a result, it has
5 the potential for causing concern. Our suggestion, my
6 strong suggestion would be that if you indeed have a
7 definition at the present time that speaks in terms of
8 effluent reuse or something else that looks like it's
9 hopelessly out of date, then it probably needs to be
10 offloaded. But our suggestion would clearly be to
11 include the definition or language along the lines of
12 "as defined by the Department of Environmental
13 Protection" to ensure consistency on a statewide base.

14 Thank you. I'll be happy to answer any
15 questions.

16 MS. CHASE: What you're suggesting is that
17 rather than putting a definition in, just simply
18 referencing "as defined by," like the water management
19 districts do.

20 DR. YORK: Yes.

21 MS. CHASE: Put in "reuse as defined by" --

22 DR. YORK: Indeed, even if your definition
23 is close to ours, but not completely consistent, it
24 opens an inconsistency. And particularly when
25 statutory language has a preference or prevalence over

1 rule language, that has some concerns to us.

2 MS. CHASE: Okay. Our intent was to track
3 the rule exactly, and perhaps they did change and we
4 didn't get the latest version. That was our intent.
5 But maybe a better way of doing it would be simply to
6 defer to your rule.

7 DR. YORK: That would certainly be my
8 preference.

9 MS. CHASE: Okay. Let me ask you --

10 MR. HOFFMAN: JoAnn, if I -- I'm sorry.

11 MS. CHASE: Just one more thing. You
12 mentioned that you have a rule that gives
13 classification criteria?

14 DR. YORK: Uh-huh.

15 MS. CHASE: 62-610, and what was the rest
16 of it?

17 DR. YORK: .810.

18 MS. CHASE: .810. Thank you.

19 MR. HOFFMAN: And I was going to say that
20 our preference would also be that the Commission cite
21 both 62-610.200 and 62-610.810 just so everyone
22 understands what it is that we're talking about under
23 the DEP rules.

24 And just a quick follow-up for the record
25 on Dr. York's comments. His reference to the

1 Legislature's statement that it is DEP that provides
2 the definition of reuse is found in 373.250(1) and
3 403.064(1). The language is identical. It states
4 that the encouragement and promotion of water
5 conservation and reuse of reclaimed water as defined
6 by the Department, referring to the DEP, are State
7 objectives and considered to be in the public
8 interest.

9 MS. SILVERS: Caroline Silvers with the
10 water management district. I just want to reiterate
11 that we do have a close working relationship with DEP,
12 and the resource issues cannot be put aside, since
13 that is one of the major goals of reuse. And when a
14 DEP definition or the criteria lend itself to disposal
15 and have absolutely no critical water supply benefits,
16 the district will not support that.

17 MS. CHASE: Are you using the current DEP
18 rules to draw that conclusion?

19 MS. SILVERS: I can speak for the St. Johns
20 River Water Management District. They're still not
21 agreeing on some aspects of that rule and that
22 criteria, and whether or not their involvement in the
23 workshops was a multiagency, multi -- you know, it's
24 an issue where their input did not get accepted into
25 the DEP rules. And it was a judicious process. I'm

1 just stating that we get absolutely no resource
2 benefits. How do you call it reuse when that's one of
3 the primary objectives?

4 But for the most part, working with staff
5 in the northeast office, we're able to use our
6 intelligence and make those decisions together as to
7 whether or not we are going to get to see any benefit.

8 MS. CHASE: Is your concern primarily with
9 the reuse definition or with the classification?

10 MS. SILVERS: Probably the classification
11 criteria, more that. And in most cases it's not a
12 problem, but there have been areas where it has been a
13 problem, quite a few in northeast Florida, because
14 hydrologically it's very different than the rest of
15 the state. And I guess it's hard to make those
16 criteria fit for the entire state.

17 DR. YORK: If you will, some of those
18 differences probably relate to basic groundwater
19 classification in the state of Florida. Whereas most
20 groundwater is classified as G2, G2 is by definition
21 within DEP rules a potable or potentially potable
22 groundwater resource.

23 MS. CHASE: Is this whether a perc pond is
24 reuse or not?

25 DR. YORK: That's essentially what it was.

1 MS. CHASE: All right.

2 DR. YORK: So in essence, the question is,
3 if you get water back into a potentially potable
4 reuse, does that have value or not?

5 MS. SILVERS: And the problem is that most
6 of the aquifers do not have the yield ability to
7 provide any substantial supply to customers, and most
8 people are relying on the deeper Floridan aquifer, to
9 which there's no recharge from these perc ponds.

10 MS. CHASE: David, do you have any thoughts
11 or any preference on the certification area, whether
12 or not there should be a reuse territory? Do you have
13 any concern with that after hearing the discussion?

14 DR. YORK: Frankly, JoAnn, I don't know
15 enough about the concept. All I can say is that I
16 basically serve as "problem central" in the state of
17 Florida. If someone has a complaint or concern, a
18 gripe, a moan of whatever variety related to reuse,
19 somehow they find their way to my telephone or E-mail
20 system. And frankly, I'm not seeing complaints coming
21 across my desk or across my telephone line that relate
22 to service area considerations. That's not to say
23 that it's not a potential problem in the future, and
24 that's not to say that it's not a real problem at the
25 present time, but I'm not personally plugged into it.

1 And as I say, I'm plugged into an awful lot of the
2 problems that exist out there.

3 MS. CHASE: Okay.

4 MR. MENENDEZ: And I can certify to that,
5 because I've sent him a few.

6 DR. YORK: Yes, he does. He litters my
7 in-box.

8 MS. GERVASI: Dr. York, you mentioned that
9 financial concerns are integrated into your process
10 when you review reuse project plans, when DEP does.
11 Do you envision that it would be helpful to have PSC
12 input into that portion of the process up front?

13 DR. YORK: I hope my testimony was that we
14 are really not involved in the financial review
15 process. We review a permit application on its
16 ability to meet applicable rule and statutory
17 requirements. If it indeed meets those rule and
18 statutory requirements, we move towards issuing a
19 permit, regardless of what the cost is or the
20 financial impact on the potential users. In essence,
21 we integrate financial considerations largely during
22 our rulemaking process.

23 Certainly when we say we want you to do
24 this, this, or this, since it's part of a reuse
25 project, and the utility starts screaming at us saying

1 we can't do this, this, and this, because it's going
2 to drive the cost up by whatever percentage, at that
3 point we start talking about what is truly needed to
4 protect public health and environmental quality under
5 those constraints and how much of this is superfluous,
6 unneeded, and would indeed unnecessarily drive the
7 cost up. So those economic considerations are really
8 integrated within our rulemaking process rather than
9 our permit review process.

10 MS. GERVASI: Okay. Thank you.

11 MS. CHASE: I think you did say too that
12 there's really no mechanism currently in your review
13 process, your permit review process, for other
14 agencies to be involved. How is it that you work with
15 the water management districts on these? Is that not
16 in the permit process?

17 DR. YORK: well, largely what we're doing
18 with the water management districts -- and it varies
19 from one district to another. But in the case of our
20 Central Florida District in Orlando and our Northeast
21 Florida District office, our permitting staffs are
22 meeting with representatives of the permitting folks
23 from the water management districts on something on
24 the order of a quarterly, every-three-month,
25 every-four-month basis. I'm not sure what the actual

1 frequency is, but it's largely to compare notes and to
2 identify systems that are potential sources of
3 reclaimed water and users that are potential users and
4 see if we can't start talking about where we might be
5 able to do some matchmaking as we both pursue our
6 independent permitting programs.

7 And as I say, independent permitting
8 programs, they're not really totally independent at
9 this point, and there is a linkage from our permitting
10 process to the water management districts' process.
11 In essence, there's statutory language in 403.064 that
12 says within designated Water Resource Caution Areas,
13 which is much of the state, and all of the St. Johns
14 River Water Management District, that if the water
15 management district has included requirements for
16 reuse in a consumptive use permit, so Utility A is
17 being told by the water management district that
18 here's your water allocation, but as part of that
19 water allocation, you must implement a public access
20 type of reuse system of such and such capacity by such
21 and such a date, when we review the permit
22 application, we're bound by that statutory limitation
23 to ensure that what is being proposed by the domestic
24 wastewater facility is consistent with that reuse
25 requirement contained in the consumptive use permit.

1 And that's also addressed within our rule structure
2 within Chapter 62-610 at this point.

3 MS. SILVERS: And let me add that -- and I
4 can only speak for the Northeast Florida District,
5 that we do continuously -- they review a lot of our
6 applications, and we review all wastewater treatment
7 applications and provide comments. Whether it's
8 informal, we do it on a routine basis. And we have
9 joint meetings with applicants, especially or
10 primarily when we're on the same page and they're
11 reviewing an application at the same time for
12 wastewater as we are for a consumptive use permit.

13 DR. YORK: And those coordination efforts
14 have been remarkably successful, and certainly most of
15 the success stories have occurred in the Jacksonville
16 area of northern Ohio where the water management
17 district and DEP work together. They --

18 MS. SILVERS: It helps if you're next
19 door.

20 DR. YORK: But a lot of that credit goes to
21 the water management district. Henry Dean has been
22 remarkably successful in aiding that process along.
23 And certainly an awful lot of credit goes to the
24 agency.

25 MR. HOFFMAN: JoAnn, following up on

1 Dr. York's comments again, the reuse feasibility
2 studies that he mentioned, the statute addresses that
3 in 403.064(2). And if you look at that statute,
4 you'll see that the studies are required to be
5 prepared in accordance with the Department's
6 guidelines. They have to be adopted by rule. And
7 those guidelines include evaluation of monetary costs
8 and benefits, evaluation of water savings if reuse is
9 implemented, evaluation of rates and fees necessary to
10 implement reuse, and a number of other guidelines.

11 MS. CHASE: So what you're saying is that
12 that is taken into consideration when the reuse
13 feasibility study is done by the utility?

14 MR. HOFFMAN: Pursuant to the Department's
15 guidelines on these factors.

16 MS. CHASE: But who actually does the
17 study? The reuse feasibility study, who actually
18 performs that?

19 MR. HOFFMAN: The utility.

20 DR. YORK: The applicant. And it also
21 needs to be said that the reuse feasibility study is
22 largely designed to look at reuse versus disposal
23 options and looking at the overall feasibility of
24 implementing a reuse system. It is a prerequisite for
25 our permitting process, but it is not intended

1 necessarily to be a financial review of a proposed
2 project per se, if that makes sense. Or am I talking
3 in circles?

4 MS. CHASE: Is it more of a comparative
5 review, comparative financial review?

6 DR. YORK: Yes. It's really a step in
7 terms of justifying whether they're going to move
8 towards reuse, which, of course, is a state objective,
9 or whether they're going to stay as a disposal type
10 system.

11 MS. CHASE: Okay. Does it still have in
12 there that the applicant's decision is final or
13 something like that?

14 DR. YORK: It does.

15 MS. SILVERS: For DEP.

16 MS. CHASE: Not for the water management
17 districts.

18 MS. SILVERS: Absolutely not.

19 MS. CHASE: And you require reuse
20 feasibility studies?

21 MS. SILVERS: We do, and we do like having
22 the support of the Public Service Commission in
23 helping with those reviews just because of our
24 shortage of economists. We do the best we can with
25 them. We certainly would like to keep our memorandum

1 of understanding to have access to the Public Service
2 Commission Staff if needed, because our rules are very
3 -- I mean, everything is based on the economic,
4 technological and environmental feasibility, and
5 that's pretty broad. So that comes down to when a
6 utility is presenting us with -- it always comes down
7 to what their rate increase is going to be, and that's
8 where there's no way the districts can make that
9 determination without some assistance from the Public
10 Service Commission.

11 MS. CHASE: Are you looking at it more from
12 the vantage point of what the end user is going to
13 have to pay, the consumptive use permit applicant?

14 MS. SILVERS: I mean, there's many things
15 we have to look at. Number one, I think the bottom
16 line is that the districts aren't there to try to put
17 anyone out of business.

18 I think one of the things there has been a
19 large oversight on is the long-term resource benefits
20 that may come into play from a water supply
21 perspective, and that is deferring or defraying costs
22 for wellfield expansions, because when you have 50% to
23 60% of a customer's use being outdoor use and there's
24 someone getting reclaimed water, that's a great
25 savings on -- or that certainly provides time on a

1 wellfield or expansion of a wellfield, and possibly
2 water treatment plant facilities, and the costs of
3 lead and copper and everything that goes along with
4 it. And that's something that it's hard to put a
5 price on, because nobody can predict the future.

6 But right now we definitely know which
7 areas we've got resource concerns with that are very
8 strong, and we know where there's a lot of growth
9 projected, and yet we're having a very hard time
10 getting reuse accomplished with a lot of these private
11 utilities. And it's very much a limitation, because
12 obviously they don't want to come for another rate
13 case. I can speak for United Water.

14 Yet it seems that every time -- you know,
15 we've got a lot of their permits in-house, and we want
16 to accomplish some reuse, because we've got a huge
17 area with absolutely no long-term water supply -- we
18 cannot see any long-term water supply reliability in
19 the St. Johns County area. And how are we going to
20 effectively accomplish reuse without knowing that
21 those rates can be passed on either amongst the end
22 users or the wastewater customers? How far can they
23 spread those rates in order to accomplish this and
24 allow growth to occur?

25 So it is a big issue, and we do need to

1 come together and have some guidance on that, because
2 we understand that they don't want to go through this
3 long process, but we also know that the resource
4 concerns need to come into play. And that should be
5 both the DEP and the water management districts,
6 because the DEP has no idea as to where we're having
7 really large problems if they're not in communication
8 with the water management districts.

9 MR. MENENDEZ: I just would like to add to
10 what she said about cost. I predict that probably
11 you're going to see more drinking water utilities
12 coming to you for rate increases because of the
13 upcoming new regulations from the EPA, surface water
14 treatment rules, and all those rules are going to
15 drive the cost of drinking water treatment quite high.

16 MS. CHASE: Thanks for the heads up.
17 Does anybody else have any comments they
18 would like to make at this time?

19 MR. MACKEY: Good morning. Todd Mackey
20 with United Water Florida.

21 I think basically I would just like to
22 reiterate what the other private utilities have been
23 saying this morning.

24 One quick little difference. I am an
25 engineer by trade. With James, I think we could agree

1 to disagree. There is an agreement there. The
2 lawyers may not.

3 Just a couple of items. Starting with the
4 reuse plans, I would caution this group not to add
5 another layer to the permitting process. As an
6 engineer, we have no problems talking amongst each
7 other and trying to get it approved or to iron out
8 particular details, technical type details. However,
9 I've been in other states where they had processes
10 like this, and we went through the process, and
11 basically when it came time for a rate case, it didn't
12 matter. We even have a letter from the Commission
13 saying, hey, we saw your plans, great, and so on. And
14 when it came time for the rate case, the Staff changed
15 their story and so on, and it didn't hold up.

16 MS. GERVASI: Which state was that?

17 MR. MACKEY: Maine.

18 MS. GERVASI: Okay. Thanks.

19 MR. MACKEY: On the service territory, I
20 would agree that I believe that either a water or
21 wastewater certificate should be the reuse territory.

22 I think the one item that was left out so
23 far was competition. If we're in competition with
24 public utilities, we're at an unfair disadvantage.
25 And it's kind of a bad word to use. You know,

1 competition is usually a good thing. But kind of
2 given our circumstances, being regulated, it goes
3 against the grain.

4 Those were the couple of comments I just
5 wanted to make quickly while I was sitting there.

6 MS. CHASE: What is your disadvantage?

7 MR. MACKEY: Well, the obvious one, of
8 course, is that we pay taxes as part of our rate
9 structure. Municipalities do not include that in
10 their rate structure.

11 In our particular case, we have seen a
12 public utility subsidize that reuse rate. They just
13 dropped the bottom right out of it, and they have a
14 real small reuse rate, where when we would create ours
15 and include all the proper plant and expenses
16 associated with that, it's much higher. So it really
17 puts us at a disadvantage.

18 MS. CHASE: So United Water would be
19 against having a specified reuse territory?

20 MR. MACKEY: No, no. I'm sorry. Just the
21 opposite. We would like a specified reuse territory.
22 I'm saying I believe it should be the wastewater
23 territory we already have, with the understanding, I
24 guess, like the others have mentioned before, that if
25 someone comes in at the fringe of our territory and we

1 cannot serve them in an economical fashion, we would
2 be willing to consider letting someone else serve that
3 area. But I think we should have that first right,
4 and to protect that, we should have a certificated
5 area.

6 MS. CHASE: Okay. Thank you.

7 MS. SILVERS: Caroline Silvers. I'm
8 talkative today.

9 One of the things that one of our staff
10 brought up, and I thought this might be a good time to
11 mention it, is that because rates -- there have been a
12 couple of instances where rate cases that happened in
13 1996 that the district was not consulted on and rates
14 were lowered, and in order to keep, I guess, with PSC
15 guidelines, but they did not take into account trying
16 to accomplish water conservation rate structures.

17 The district or some of the staff of the
18 district maybe needed a better explanation as to why
19 not maybe allowing these utilities to increase their
20 water and sewer rates -- you know, these may be
21 utilities that are not doing reuse -- and allow them
22 to escrow some of that excess into some type of
23 account for water conservation or reuse or
24 accomplishing some of these alternative water supply
25 benefits, because they feel that they want to

1 accomplish a lot of these things, and they want to be
2 good stewards, but they still have a business to
3 operate, but their rates are continuously cut back.
4 And it's nice for the customers, but they don't have
5 anything to make the capital investments to achieve
6 some of this or to reserve any for these future reuse
7 projects or conservation projects.

8 MS. CHASE: Right. We are sympathetic to
9 that, particularly with the smaller utilities where
10 cash flow is really a main concern. And I think we
11 have done that with a couple of utilities, and we're
12 looking at that. I think that is a good point.

13 MR. CASEY: We have done that with
14 Sanlando. They were found to be overearning a few
15 years ago. And rather than reduce their rates because
16 they were, a conservation fund was --

17 MS. SILVERS: Oh, okay.

18 MR. FRIEDMAN: They haven't yet been found
19 to be overearning. They're allegedly overearning.

20 MS. CHASE: That's an open docket.

21 MR. FRIEDMAN: Yes.

22 MR. CASEY: That was many years ago, just a
23 little.

24 MS. CHASE: We won't be talking about that.

25 MR. CASEY: We're not going to talk about

1 the existing docket.

2 MS. CHASE: Okay. Any other comments?

3 MR. HOFFMAN: JoAnn, what I would like to
4 do if it works for everyone else would be to maybe
5 take a five-minute break for the court reporter as
6 well, and we would like to go through the report sort
7 of section by section --

8 MS. CHASE: Okay.

9 MR. HOFFMAN: -- and give you some
10 additional comments and maybe raise a few issues for
11 further discussion. In terms of planning out a lunch
12 break and so forth, I don't anticipate that we've got
13 more than a half hour or so, but I'll leave that to
14 staff in terms of how you want to go from here.

15 MS. CHASE: Okay. Let's take a five-minute
16 break, and we'll talk about it.

17 (Short recess.)

18 MS. CHASE: We're not going to break for
19 lunch. We want to go on through if it's just a half
20 hour, and hopefully be completed at that time.

21 Ken, are you ready?

22 MR. HOFFMAN: Yes. Let me ask you first to
23 turn to page 6 of your report. This is under the
24 heading of "Ratemaking Treatment of Reuse Plant,"
25 which begins toward the bottom of page 5. And in the

1 second full paragraph on page 6, there's some
2 discussion in there about the scenario where the
3 utility comes in and provides I guess what would be
4 post-construction documentation concerning reuse, and
5 that the facility is a reuse facility.

6 Could you tell us a little bit more what
7 the staff envisioned in that process?

8 MS. CHASE: Right. What we envisioned
9 there would be that when a utility comes to us in any
10 kind of a rate proceeding where reuse plant is
11 involved, that they would provide us some
12 documentation -- exactly what we don't know; I suppose
13 that would be done in rulemaking -- from both the
14 water management district and the DEP that attests
15 that, number one, this is reuse pursuant to how they
16 are perceiving it, and what the beneficial purpose
17 is.

18 And there's two reasons for that. Number
19 one, it would close the loop where we are not
20 interpreting DEP's statute anymore; they are. They're
21 telling us, yes, we have agreed that this is reuse,
22 and it's something in the record and all that right up
23 front.

24 The other thing is that the beneficial use
25 piece, which is what we would get mostly, I suppose,

1 from the water management district, would help us
2 answer the question of who should pay for the reuse,
3 because right now we do have the authority, the
4 ability, we believe, to pass it along to water
5 customers, wastewater customers, or reuse end users.
6 And it would help us be able to spread those, you
7 know, with the logic of should the water customers pay
8 for any of it. Right now wastewater customers pay for
9 most. Reuse customers pay for a little bitty piece of
10 it. And there's been very few times that we've spread
11 it over to the water customers. But if the beneficial
12 purpose is to preserve the water resource for water
13 users, that would help us in that argument of how
14 much, if any, to spread to the water customers.
15 That's our intent.

16 MR. HOFFMAN: Okay. That was just a
17 question. I think that we've stated our position in
18 opposition to these processes. Certainly the
19 pre-approval is more onerous from our standpoint.

20 MS. CHASE: Right.

21 MR. HOFFMAN: And again, we believe that
22 there should be deference only to the DEP to give a
23 consistent set of rulemaking guidelines statewide in
24 terms of what is reuse.

25 MS. CHASE: Would you have a concern if it

1 required something from the DEP only?

2 MR. HOFFMAN: Probably so, JoAnn, but I
3 need to think about that a little bit more, because I
4 sort of remain with the basic position that these
5 facilities should be treated no differently than other
6 facilities in terms of the ratemaking review, just
7 because we've now reached a consensus, thanks to the
8 court, that they're 100% used and useful. So adding
9 additional requirements specific to reuse I don't know
10 that I can agree with today.

11 But again, the things that Staff envisions
12 through the post-construction approval are not nearly
13 as onerous, because at a minimum, they're part of a
14 rate case, whereas before, the other process is a
15 separate case.

16 Moving along, under reuse project plans, on
17 page 7, the second paragraph there where we're talking
18 about the reuse project plan proceedings, again, let
19 me just reiterate a comment that we would hope that at
20 least in the future -- and I suspect Mr. Friedman
21 would echo this comment -- that these reuse project
22 plan cases do not turn into what are effectively file
23 and suspend rate cases. We don't think anyone
24 benefits from that, and those costs are ultimately
25 borne by the customers, and it does not encourage

1 utilities to come in and make reuse proposals to the
2 Commission.

3 MS. CHASE: Before you leave that, can I
4 ask you specifically -- we've had three filings under
5 that. Is it the utilities' contention that these have
6 turned into full-blown rate cases? Because honestly,
7 we -- let me just address Aloha I, the first one.
8 Aloha was a projected reuse plan that -- I realize it
9 did take a long time, but under the way the statute
10 is, they go out PAA within five months of filing.

11 Now, we don't have a rule on reuse project
12 plans, which was the problem, what are the filing
13 requirements. So we understand that. We've mentioned
14 it here. We do need to have a rule on what the filing
15 requirements are.

16 But that aside, we also believe that
17 anytime you are affecting customer's rates or
18 potentially affecting the rates, you need to have a
19 customer meeting, so we had the customer meeting.
20 That was where the quality of service came up. It had
21 nothing to do with reuse. It had to do with water.
22 So it did blossom into a much bigger thing, but I
23 don't know how we could have avoided that, and I don't
24 know how if we did it today we would be able to avoid
25 that.

1 So I understand your concern, but I don't
2 know what -- I don't know how that turned into -- we
3 didn't look at anything to do with the utility other
4 than the cost of that reuse project.

5 MR. FRIEDMAN: You don't want to hear my
6 thoughts on how that case got out of hand.

7 MR. HOFFMAN: Perhaps "blossom" wasn't the
8 correct characterization of how that case moved along.

9 MR. FRIEDMAN: But there is that potential
10 problem, and we all understand that, and that's why
11 some utilities, including some of my clients, have
12 chosen, notwithstanding the Aloha catastrophe, have
13 chosen to go forward with a reuse plan under the
14 statute, and some clients, as Mr. Hoffman's, have
15 decided we'll build the reuse, and when we file the
16 rate case, we'll convince the Commission that in fact
17 this is all reuse and we needed it and it's 100%.
18 That's just two different philosophies. Do you want
19 to get pre-approval or don't you?

20 MS. CHASE: Right.

21 MR. FRIEDMAN: And I think it ought to
22 remain discretionary. I don't think you should force
23 everybody to come in and get pre-approval.

24 MS. CHASE: Well, perhaps when we go
25 through the rulemaking and actually get the filing

1 requirements and the noticing requirements and all of
2 that, a lot of these things will be resolved.

3 MS. GERVASI: And I think that your point
4 that it should be a business decision as to whether to
5 come up front or make it part of a rate case is a
6 point that's well taken and one that we will take into
7 consideration.

8 MR. HOFFMAN: Okay. Moving along, on page
9 7 there's some discussion on the part of staff
10 concerning a reuse availability fee. And we would
11 simply say that we think there needs to be some
12 flexibility preserved in how such a fee may be applied
13 in the future. It's really going to be a case-by-case
14 situation, depending on to whom the reuse is
15 available. And we could foresee situations in which a
16 reuse availability fee may apply to water customers
17 only, to sewer customers, or both, and we just wanted
18 to make you aware of that position. I think in
19 Alafaya, it was sewer only.

20 MS. CHASE: Right. They're a sewer only
21 utility.

22 MR. HOFFMAN: Right. Okay.

23 MR. FRIEDMAN: Well, no, this availability
24 fee is not -- what we did in Alafaya was, we increased
25 the wastewater service availability charge to cover

1 some of the cost. And then the customers who have a
2 reuse line in front of their house, that's what this
3 fee is. It's not service availability.

4 MS. CHASE: It's not service availability.

5 MR. FRIEDMAN: It's not really service
6 availability in the service availability concept.
7 It's just that every month you're going to pay \$5 if
8 there's a line in front of your house whether you use
9 it or not. And I think this is mainly to say we did
10 that in Alafaya, you know, we think we've got the
11 statutory authority to do it, but let's make sure
12 we've got the statutory authority to do it.

13 And obviously we support this, because I
14 think it gives us another option in how to spread the
15 cost of this reuse project among people. And if we
16 want to encourage people to use it, what you do is,
17 you charge them for it if it's there, you charge them
18 for it whether they use it or not, and they're going
19 to be encouraged to use it. And I would think that
20 would probably be something that the water management
21 districts would support, because you want people to
22 use that reuse.

23 MS. GERVASI: And we agree, and we think
24 that the Commission has the statutory authority to do
25 it now, or we wouldn't have recommended that it be

1 approved for Alafaya. But we're just seeking more
2 specific --

3 MR. FRIEDMAN: No, I agree. I agree that
4 if there's any doubt, we ought to go ahead and get the
5 statutory authority for it, sure.

6 Sorry.

7 MR. HOFFMAN: That's okay. Again, I guess
8 for clarification, as Marty pointed out, we're talking
9 about a rate.

10 MS. CHASE: Right. This is revenue.

11 MR. HOFFMAN: This is a rate. This is not
12 -- let's not confuse it with some form of service
13 availability charge.

14 Moving now to page 8, the discussion
15 concerning the separate reuse revenue requirement,
16 which we adamantly oppose. And I think I've probably
17 said enough about that. We adamantly oppose
18 preparation of segregated cost studies addressing a
19 reuse rate. We remain willing to put together a
20 schedule, so to speak, which segregates our reuse
21 costs in connection with a rate case, but not MFRs.

22 We did have a few questions that are
23 directed to this discussion. First, we're curious as
24 to how many utilities that the Commission regulates
25 indeed have reuse, if the staff knows.

1 MS. CHASE: I don't think we have a good
2 handle on that. That's one of the things we're trying
3 to go through our utility annual reports and so forth
4 and get.

5 MR. FRIEDMAN: It depends upon how you
6 define reuse.

7 MR. HOFFMAN: By DEP.

8 So the staff wouldn't know how many of the
9 utilities that the Commission regulates have Class 1
10 reliability reuse either?

11 MS. CHASE: That's true.

12 MR. HOFFMAN: Okay. Does the Staff
13 envision this type of cost of service study, which
14 again we oppose, to be for utilities that provide
15 Class 1 reliability reuse or all reuse? Was I clear
16 on that? Do you want me to restate that?

17 MS. CHASE: You're clear on that. I don't
18 know that we've really had that discussion. I don't
19 know.

20 MR. HOFFMAN: Okay. I'm moving now to page
21 10. Under the much maligned minimum filing
22 requirements proposal, a question under paragraph 2,
23 JoAnn, concerning the true-up. We just wondered what
24 Staff envisioned there. So far as we know, there's no
25 experience with this.

1 MS. CHASE: That's exactly right. It is
2 something that's in the statute, and we have not used
3 it at all, and we felt like we need to clarify or
4 identify. We've had questions, you know, when would
5 we use this, and we don't really have an answer for
6 that.

7 MR. HOFFMAN: And in light of that, it
8 would seem as though that in and of itself makes this
9 concept premature for any type of statutory or
10 rulemaking adoption.

11 MS. CHASE: Well, the other concern with
12 that is that we are going to rulemaking on the
13 statute, 367.0817, for the filing requirements and
14 noticing and so forth. I don't think we want to not
15 address some other aspect of the statute in there. I
16 believe that we need to. But before we can do that,
17 we need to understand what it's all about and what
18 it's for. So we were going to try to clarify that to
19 make it how and when would a true-up be appropriate to
20 be used. Now, it may not be a statutory need so much
21 as a rulemaking need, but I don't know that we can
22 just ignore it in the rulemaking that we do.

23 MR. HOFFMAN: Or, JoAnn, it may be a
24 rulemaking need versus a workshop or versus wait and
25 let's see how things are sort of fleshed out through

1 the regulatory process over the next couple of years.

2 clearly, within the scope of a reuse
3 rulemaking, that's different than whether there needs
4 to be a rule on it at this time.

5 MS. CHASE: Do you have a comment, Marty?

6 MR. FRIEDMAN: No. I was turning mine off.

7 MR. HOFFMAN: I'm moving now to the
8 discussion on page 11 concerning the service
9 availability policy. This is another concept, JoAnn,
10 that Florida Water adamantly opposes. Florida Water's
11 experience thus far with reuse and making reuse
12 available is that it is -- it has been a function of
13 negotiation and contract. To require a service
14 availability policy, in effect, a "one size fits all"
15 for a company the size of Florida Water is not a good
16 idea, and we would oppose moving forward with that
17 concept.

18 MS. CHASE: This concept did come up in
19 Alafaya, frankly, and I think what we were thinking of
20 more than anything was residential reuse, one
21 residential area that may have reuse lines versus
22 another that doesn't. We could rethink that, but
23 perhaps it's more for residential reuse that we're
24 looking at this. I don't know.

25 But your point is well taken. I understand

1 with the golf courses and so forth, they are pretty
2 much done by contract.

3 MR. HOFFMAN: And there may be --

4 MS. CHASE: And, of course, those contracts
5 are filed with the Commission; right?

6 MR. HOFFMAN: Yes. And there may be
7 perhaps with Alafaya -- and frankly, I don't know,
8 Marty, how large of a utility Alafaya is, but
9 certainly not as large as Florida Water. And when you
10 get a utility the size of Florida Water, the potential
11 for varying circumstances, even in the case of
12 residential reuse, is much higher, so there needs to
13 be a certain amount of flexibility that the utility
14 would have to promote and bring reuse to residential
15 subdivisions.

16 JoAnn, I'm moving now to the reuse
17 territory discussion which begins on page 14.

18 Let me go back to something. I have a
19 series of questions that I would like to pose to Staff
20 just to get Staff's feedback, if any, at this point on
21 these topics.

22 Let me go back to something that I
23 mentioned earlier on in the workshop, which is the
24 potential for another utility coming in and
25 deteriorating the revenue requirement of the water

1 operations of the utility. Has the Staff envisioned
2 how the utility will be kept whole in the event that
3 there's a revenue deterioration, who is going to pay
4 the utility?

5 MS. CHASE: I don't think we have, but I
6 think the answer to that would have to be a filing by
7 the utility showing that, limited proceedings or
8 something. Obviously, if there's a revenue
9 deficiency, it would have to be the customers, the
10 water or wastewater customers that would have to take
11 up that slack.

12 MR. HOFFMAN: And let's just go along with
13 that assumption for the moment. In a proceeding of
14 that nature, would you agree that -- well, I don't
15 want to say that. You're not on the stand.

16 Do you think that it would be appropriate
17 to impose a non-used and useful adjustment where the
18 utility's water capacity and water service has been
19 displaced by a separate utility coming in with
20 non-potable reuse water?

21 MS. CHASE: This is a personal opinion,
22 because the Commission has not spoken to it. No, I
23 don't think so, especially if we are going to promote
24 reuse. To me, that's one of the things that you would
25 have to take into consideration. To the degree that a

1 utility now has excess used and useful, or whatever
2 you want to call it, excess plant that they didn't
3 have before, you can't go back and punish them. It's
4 the same with conservation, any form of conservation.
5 But that is just my personal opinion.

6 MR. HOFFMAN: Okay. And we've talked a
7 little bit about another utility, whether it's a
8 municipality or otherwise, coming into the water or
9 wastewater certificated territory of a PSC-regulated
10 utility. Does staff envision that this would sort of
11 be a reciprocal type of arrangement if you had reuse
12 territories, so that, for example, a Florida water
13 could come and bring reuse into the territory of a
14 county, so to speak?

15 MS. CHASE: Yes, certainly. Of course, you
16 know, limited jurisdiction. We couldn't force a
17 county or a city to allow you to do that. But that is
18 what we envision. And I would think that's maybe
19 where the other agencies could come into play, because
20 they do have some jurisdiction.

21 MR. CASEY: We did have that situation in
22 Sanlando, where they wanted to serve a golf course.
23 They were able to serve a golf course outside their
24 territory. The water management district wanted them
25 to serve it, but it is in somebody else's territory.

1 well, how are they going to get protected? You know,
2 that's one of the reasons for a certificated area.

3 MR. HOFFMAN: Can you explain -- I'm not
4 that familiar with that case, Bob. That's a situation
5 there where Sanlando has ventured outside of its
6 certificated water or wastewater territory?

7 MS. CHASE: Wants to.

8 MR. CASEY: Wants to. The water management
9 district would like them to serve this golf course,
10 because they are ready, willing, and able to do so.

11 MR. HOFFMAN: And the municipality is not
12 prepared to provide reuse in that situation?

13 MR. CASEY: That's correct.

14 MR. HOFFMAN: And what has happened?

15 MR. CASEY: An Orange County --

16 MS. CHASE: It's still pending.

17 MR. CASEY: It's still pending, but Orange
18 County I imagine is going to get into it.

19 MR. FRIEDMAN: They just wrote a letter
20 objecting to it. We're revising the whole reuse plan
21 anyway. So I'm not sure whether that's still -- I
22 don't remember if that's one of the golf courses we're
23 still going to serve. I don't think so.

24 MR. CASEY: But the situation will come up
25 in future cases, or something similar.

1 MS. CHASE: That situation will come up.
2 We envision a reuse territory approved by the
3 Commission to carry the same weight that your water
4 certificated territory or wastewater certificated
5 territory would, in the sense that you could then go
6 to court or do whatever. It's a protection for the
7 utility in some ways, certainly in those ways.

8 MR. FRIEDMAN: The only difference would be
9 if in this situation, like Sanlondo, if we want to
10 serve this golf course, then would we have to amend
11 our wastewater certificate to serve them? I mean,
12 that's the concept that -- you know, by tying it to
13 one or the other, it seems like you've got to either
14 have your reuse territory the same as your water or
15 the same as your wastewater, but you can't have it all
16 by itself.

17 MR. CASEY: But in this case, the golf
18 course already has water and wastewater service, so
19 you wouldn't be providing either water or wastewater.

20 MR. FRIEDMAN: Yes. I mean, how would you
21 deal with that from a certificate standpoint? We
22 wouldn't have a certificate to serve that area.

23 MS. CHASE: You would have the reuse
24 certificate. That's our point, that we would identify
25 the --

1 MR. FRIEDMAN: And so the reuse service
2 area on the tariff page that deals with service areas
3 would have water and would have reuse?

4 MS. CHASE: Exactly.

5 MR. FRIEDMAN: And they could very well be
6 different?

7 MR. McROY: And the reuse territory would
8 only be that golf course itself.

9 MR. CHASE: Or whoever --

10 MR. McROY: Or whatever you were trying to
11 serve.

12 MR. HOFFMAN: But let's say you have a
13 situation where you have a PSC-regulated water and
14 wastewater utility, and it has ten square miles of
15 territory. And then, as I understand what you're
16 proposing here, what could happen is, you could -- and
17 that was Utility A that I just mentioned. Now
18 PSC-regulated Utility B applies for and is granted a
19 reuse certificate which encroaches into that ten
20 square miles of wastewater service territory and water
21 service territory of Utility A, begins providing
22 reuse, and jeopardizes the ability of Utility A to
23 dispose of its wastewater, the treated effluent. How
24 do we deal with that?

25 MS. CHASE: Well, first of all, for

1 Utility B to come in and get a reuse certificate, they
2 would have to go through the same noticing that
3 everyone else does for certification, including
4 noticing Utility A, who could come to the Commission
5 and say why that's a bad thing, why we need that
6 territory. But what Utility A would have to show is
7 that they are either willing and able now to provide
8 the reuse or at some reasonable time in the future
9 they have plans to.

10 That's what we envision. It's the same
11 kind of process. It would take the same kind of
12 noticing that has to be done now in certification.
13 That's where those battles would be fought out, is in
14 granting either the additional territory or in being
15 certificated.

16 MR. HOFFMAN: What happens if -- let's just
17 use the same scenario so I don't have to repeat it.

18 MS. CHASE: Okay.

19 MR. HOFFMAN: Utility B comes in, and they
20 have secured a reuse certificate from the PSC, but
21 they are offering reuse under a tariff under terms and
22 conditions that are not acceptable to the customers of
23 Utility A. What happens then? Who protects the
24 customers of the traditional, longstanding utility
25 provider, and who's going to take the heat? Do you

1 see where I'm going with this?

2 MS. CHASE: I do. And I think in those
3 conditions, they would be captive customers just like
4 your water and wastewater are if you have that
5 territory.

6 MR. MCROY: If you've got the category,
7 that's what they have got to live by. I don't see
8 this being any different than a wastewater or water
9 certificated area. And I'm sure there are some
10 customers in your certificated water and certificated
11 sewer area that would like to maybe have somebody else
12 serve them as well.

13 MR. HOFFMAN: That would come as a complete
14 surprise to me.

15 MS. CHASE: But also keep in mind, when
16 they came in for that certificate or the amendment to
17 get that additional territory, that is one of the
18 issues in certificate cases, who can provide it, and
19 who can provide it at what cost or whatever. That is
20 one of the areas that's looked at.

21 MR. HOFFMAN: And again, let me just
22 reiterate. I'm about through with this subject. I do
23 want to reiterate that one of the concerns that we
24 have is that from the perspective of a privately owned
25 utility, we are at a competitive disadvantage in terms

1 of expanding our certificate, the areas in which we
2 have the right to provide service. And by codifying
3 in some form a reuse territory, it appears to us that
4 it just increases that burden and competitive
5 disadvantage.

6 MR. McROY: Ken, are you saying you prefer
7 not to have a reuse certificated area at all?

8 MR. HOFFMAN: Correct. Our position at
9 this point is evolving somewhat, James, but I can say
10 this much. At a minimum, we do oppose a change in the
11 statute which would require reuse territory
12 certification. And secondly, we are formulating a
13 position as to whether the obligation, the right and
14 obligation to provide reuse by a utility regulated by
15 the PSC should be consistent with the water and/or the
16 wastewater territory. We haven't quite finalized our
17 position on that. We're thinking that one through.

18 MS. CHASE: If it isn't consistent with the
19 water and the wastewater, then -- I'm just kind of
20 puzzled by the utility's position on that, because
21 this whole idea was as much to protect the private
22 facility as anything, in the sense that it's giving
23 them some identified -- and on a long-term basis, not
24 even just current customers, because we recognize we
25 have to look at this over some planning horizon so

1 that the utility doesn't find itself going to reuse
2 and not having adequate customers because someone else
3 has come in and taken them.

4 So we are looking at identifying this reuse
5 territory over some longer planning horizon to give
6 the utility that added assurance that they will be
7 able to dispose of it, but on the other hand, not
8 keeping out someone who could come in and provide it.
9 So it's a two-edged thing.

10 MR. HOFFMAN: And I'm very mindful of that,
11 JoAnn.

12 MS. CHASE: Well, any suggestions you might
13 have.

14 MR. HOFFMAN: And that is an issue that,
15 you know, we will continue to think through and
16 provide you with any additional recommendations or
17 suggestions that we have.

18 You know, as we continue to think it
19 through, right now I sort of come back to the fact
20 that even with the comments that Ms. Silvers has made,
21 there doesn't appear to be much of a problem out there
22 that we're trying to address, certainly through
23 something as significant as a statutory change. And
24 if we were to, for example, begin taking the utilities
25 that this Commission regulates and start putting them

1 through a certification process, are we going to now
2 start creating a whole host of issues that we're not
3 having to deal with right now?

4 MS. CHASE: Perhaps, and we need to think
5 of that. But I think I heard just the opposite. I
6 think Ms. Silvers was saying there is a concern over
7 reuse territory.

8 MR. HOFFMAN: I think she did too, but I
9 don't think she cited more than an example or two.

10 MS. SILVERS: That's true. And it has been
11 Florida water that brought up that issue. Most of the
12 utilities we've talked to want the ability to work out
13 their own working man's agreement between the other
14 utilities. And that works fine with us. We don't
15 have any problems. Our problem is that we've now got
16 a willing purveyor of reclaimed water that wants to
17 dispose within Florida Water Services' service area,
18 water and wastewater certificated area, in order to
19 make their project feasible. And without them as a
20 customer, it highly limits the economic feasibility
21 for them to build as far as distribution system. So
22 hopefully they can work it out between themselves.

23 MS. CHASE: Well, let me just say, we, of
24 course, would -- if utilities could work out
25 agreements on who serves what, that certainly would be

1 something that we would then certificate. You know, I
2 don't believe we would be second-guessing that. Where
3 we think the territory is needed is in cases where
4 that's not going to be possible, for whatever reason.

5 MR. MCROY: Let me give you a case in
6 point. We've seen a small utility, Class C. They're
7 not required to provide reuse yet. However, within
8 the next five years, they will be. So they're not
9 there now, but they will be within the next five
10 years. They came to us and said, "well, look, we
11 can't provide reuse yet, but XYZ city is about to come
12 and take a big reuse customer that we have the
13 potential to provide. What do we do?" I think this
14 was what we were trying to address in this portion of
15 our Staff proposal.

16 MR. HOFFMAN: And again, James, I'm mindful
17 of that, and I think that has some merit. At the same
18 time, I'll come back to the point that unless and
19 until there is a pervasive problem out there, are we
20 going to initiate a process for reuse certificates
21 where you have a number of proceedings where
22 significant rights are at stake, potential revenue,
23 the need for the disposal of treated effluent over the
24 next 10 to 20 years, whatever it may be, which would
25 be at stake in the future in this type of

1 certification proceeding? And right now, things,
2 apart from a few exceptions, seem to be humming along
3 fairly quietly.

4 So I think we just need to think through
5 those things before we move further along with this.
6 You may find, for example, you have an application
7 from the existing utility. Let's just sort of think
8 this thing through for a second. Florida water files
9 an application under a scenario here for a reuse
10 certificate throughout its service areas on a
11 statewide basis.

12 Let the record reflect she's smiling, but
13 she won't be during the hearing process, because are
14 we going to then be dealing with combating local
15 governments that are in the water and sewer business
16 and Florida water for the right to provide reuse on an
17 unlimited, indefinite basis, for the reasons I
18 mentioned, revenue and disposal of treated effluent?

19 So I just wanted to bring that out.

20 MR. FRIEDMAN: That is one of the few
21 points that Mr. Hoffman and I do disagree on. Having
22 been involved in that type of dispute with a
23 non-PSC-regulated utility, I believe that we need to
24 have that statutory authority, since you all don't
25 think you do, but I thought you did anyway, to

1 designate that so that we can have the same rights we
2 have under the J.J.'s Mobile Homes judicial decisions
3 for a reuse area for our wastewater and water. And,
4 of course, we in fact were involved in litigation with
5 the City of Oviedo over that exact thing to enjoin
6 them from providing reuse in our area.

7 So I think it would be helpful in the
8 future to do that, for all the reasons that Ken said.
9 I mean, we had the same problem. If we couldn't
10 dispose of that effluent within our service area, we
11 were going to have to build lines and send it
12 somewhere else to the expense of our customers, and
13 that didn't make sense. So we support some sort of
14 reasonable certification of reuse service areas.

15 MR. HOFFMAN: The only other thing that I
16 would add I guess is a question, and that's this. How
17 does Staff distinguish between the alleged need to
18 secure a reuse certificate from the Commission to
19 provide reuse in a specific area of the state versus
20 the exemption from regulation that's provided to a
21 utility that provides non-potable water?

22 MS. CHASE: I think its says provide only
23 non-potable water, doesn't it?

24 MR. HOFFMAN: Correct. Well, let me
25 restate the question and clarify it to say, would a

1 certificate be required for a utility that provided
2 only reuse?

3 MS. CHASE: I think we do have a little
4 footnote or something in here that we recognize that
5 those are exempt.

6 MR. HOFFMAN: Oh, I'm sorry. So you've
7 said that.

8 MS. CHASE: A certificate for non-potable
9 only is exempt. It's on page 16 at the bottom.

10 MR. HOFFMAN: Okay.

11 MS. CHASE: And it's mentioned up at the
12 top of the page, that sentence with footnote 17. They
13 would be exempt.

14 MR. HOFFMAN: If I may have just a moment.
15 That's all I had, JoAnn.

16 MS. CHASE: Okay. Very good. Does anybody
17 else have anything else they want to mention or add
18 based on his comments?

19 Okay. Let me tell you where we're going
20 from here. We have to have a statutory package for
21 the agency to our deputy director by September 13th.
22 And therefore, at some time prior to that, we're going
23 to have to get something together and actually sit
24 down and go through some specific language and so
25 forth and get it through all the powers that be. So

1 if you have any comments or any specific statutory
2 language that you would like us to consider, we would
3 like that in two weeks so that we have time to digest
4 that and we can work through it.

5 When it goes to our executive director,
6 I'll just tell you this, it will be before the
7 Commissioners at an Internal Affairs, any specific
8 language. So you will at that point also have an
9 opportunity to address any language that we do have
10 and address the Commissioners on the need for it or
11 any changes you want to make to it.

12 Do you have a question, Marty?

13 MR. FRIEDMAN: I was just going to say, I
14 think one of the most important is the one that Ken
15 mentioned, which is that when you go to define reuse,
16 why not use the same language that's in 403 and the
17 water management district statute? Instead of trying
18 to define reuse yourself, adopt that exact same
19 language, because the same public purpose applies to
20 the PSC that it does. And I think that would make it
21 a lot more consistent so that we've got the same
22 definition of reuse. As DEP may tweak their
23 definition of reuse to meet some change in technology
24 or some other thing, then it would automatically flow
25 through to you all in addition to the water management

1 districts.

2 MS. CHASE: I think that's a good
3 suggestion.

4 Okay. Well, thank you very much for your
5 input. It has been very helpful.

6 (Proceedings concluded at 12:27 p.m.)

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, MARY ALLEN NEEL, RPR,

DO HEREBY CERTIFY that the workshop in the foregoing matter was heard by the staff 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 107 pages, constitutes a true transcription of my notes of said proceedings.

DATED this 3rd day of August, 1999.

Mary Allen Neel

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