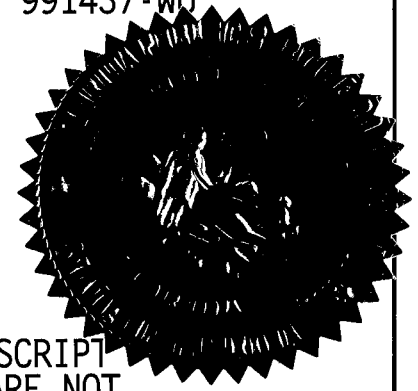


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991437-WJ

In the Matter of
APPLICATION FOR INCREASE IN
WATER RATES IN ORANGE COUNTY
BY WEDGEFIELD UTILITIES, INC.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER LILA A. JABER,
 Prehearing Officer

DATE: Monday, July 9, 2001

TIME: Commenced at 1:30 p.m.
 Concluded at 2:42 p.m.

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

REPORTED BY: JANE FAUROT, RPR
 Chief, Office of Hearing Report
 FPSC Division of Commission Clerk
 Administrative Services
 (850) 413-6732

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1 APPEARANCES:

2 BEN GIRTMAN, 1020 East Lafayette Street,
3 #207, Tallahassee, Florida 32301, appearing on
4 behalf of Wedgefield Utilities, Inc.

5 CHARLES J. BECK, and JACK SHREVE, Office
6 of the Public Counsel, Tallahassee, Florida 32399,
7 appearing on behalf of the Citizens of the State of
8 Florida.

9 PATRICIA CHRISTENSEN, FPSC DIVISION OF
10 LEGAL SERVICES, 2540 Shumard Oak Boulevard,
11 Tallahassee, Florida 32399-0850, appearing on behalf
12 of the Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER JABER: Let's go ahead and convene the
3 prehearing.

4 Counsel, read the notice.

5 MS. CHRISTENSEN: Pursuant to notice, this time and
6 place has been set for a prehearing in Docket 991437,
7 application for an increase in water rates in Orange County by
8 Wedgefield Utilities, Inc.

9 COMMISSIONER JABER: Let's take appearances.

10 Mr. Girtman.

11 MR. GIRTMAN: Ben E. Girtman, 1020 East Lafayette
12 Street, Suite 207, Tallahassee, Florida 32301, representing
13 Wedgefield Utilities, Inc.

14 COMMISSIONER JABER: Mr. Beck.

15 MR. BECK: Charlie Beck and Jack Shreve, Office of
16 the Public Counsel, appearing on behalf of Florida's citizens.

17 MS. CHRISTENSEN: Patty Christensen appearing on
18 behalf of staff.

19 COMMISSIONER JABER: All right. Ms. Christensen, are
20 there preliminary matters that we should discuss before we go
21 through the draft prehearing order?

22 MS. CHRISTENSEN: Yes, Commissioner, there are
23 several pending motions that staff would ask that we address at
24 this time.

25 First is Wedgefield's motion to allow substitution of

1 witnesses that was filed on June 25th, 2001. It is staff's
2 understanding that OPC and staff do not object to the
3 substitution of witness. Particularly this is referring to
4 Erin Nichols who will be substituted by Carl Wenz.

5 COMMISSIONER JABER: And, Mr. Beck, there is no
6 objection to the motion?

7 MR. BECK: No.

8 COMMISSIONER JABER: Now, let me get some
9 clarification. Mr. Girtman, do you propose that we handle the
10 substitution of Pages 1 and 2 of the prefiled testimony as an
11 exhibit at the hearing?

12 MR. GIRTMAN: Yes. I have prepared revised copies of
13 the testimony substituting those first two pages. In addition,
14 there is the need of interlining the exhibit numbers from ELN
15 to CJW. And, also, we found there was one reference to the
16 St. Johns Water Management District which was incorrectly
17 cited, and we corrected that.

18 COMMISSIONER JABER: Okay. I noted in the draft
19 prehearing order that staff has already taken care of renaming
20 the exhibit numbers.

21 MR. GIRTMAN: Yes.

22 COMMISSIONER JABER: But if you will be prepared at
23 the hearing to make Pages 1 and 2 as an exhibit when you put
24 Mr. Wenz on the stand and make sure that everyone has copies of
25 that exhibit.

1 MR. GIRTMAN: Would you prefer that I give completely
2 revised copies of the testimony? That would simplify, I think,
3 the handling of it. And we'll also already have the
4 interlineations of the changes of the reference numbers in
5 there, if you would prefer. Either way is fine.

6 COMMISSIONER JABER: Do you have any preference?
7 It really is for the convenience of the parties, so I
8 certainly -- staff?

9 MS. CHRISTENSEN: I don't see a problem with doing it
10 either way.

11 MR. GIRTMAN: Okay. I will just go ahead and make
12 copies of the revised ones and submit them.

13 COMMISSIONER JABER: Wonderful.

14 MR. GIRTMAN: With Mr. Wenz's name on it.

15 COMMISSIONER JABER: And then make sure, then,
16 that you have enough copies at the hearing for everyone,
17 including the court reporter, so there is no confusion, and
18 that will be the testimony that will be moved into the record.

19 All right. Show that motion is granted.

20 Ms. Christensen, what is next?

21 MS. CHRISTENSEN: We have several motions that are
22 to be addressed tomorrow. And I just want to note them for the
23 record, because they are listed in the draft prehearing order.
24 Wedgefield's renewal of a motion for summary final order that
25 was filed in June 25, 2001, that is scheduled for a decision on

1 July 10th. Wedgefield's renewal of motion to strike and
2 dismiss the Office of Public Counsel's Petition Requesting
3 Section 120.57 Hearing and Protest of Proposed Agency Action,
4 as amended, filed on June 25, 2001. That is scheduled for a
5 decision tomorrow, the 10th, as well as Wedgefield's motion to
6 strike portions of the direct testimony of OPC Witnesses Larkin
7 and Bidy which was filed on June 25th.

8 COMMISSIONER JABER: All right. All three of
9 those --

10 (Off the record. Problem with sound system.)

11 COMMISSIONER JABER: All right. Ms. Christensen,
12 then, the three motions that you just referenced will be taken
13 up tomorrow at the agenda conference.

14 MS. CHRISTENSEN: That is correct.

15 COMMISSIONER JABER: All right. What is next?

16 MS. CHRISTENSEN: The next motion that is pending is
17 OPC's motion to require production of documents within one
18 week.

19 (Off the record.)

20 MS. CHRISTENSEN: It is staff's understanding that
21 Wedgefield had no objection to producing the documents. I will
22 let the parties speak for themselves.

23 MR. GIRTMAN: Commissioner, we, in fact, do not have
24 any objection to producing the time records. We believe it is
25 quite appropriate for OPC to examine. Our only objection is

1 that we do not have the same privilege. I know our motion to
2 require the production of the same kind of documents and to
3 require OPC to keep time records in a case like this is not
4 favored at this Commission at the present time.

5 However, it significantly impairs my ability as an
6 attorney to represent my client in defending the rate case
7 expense that has had to be incurred in this case if I do not
8 have access to the same kind of records that OPC would produce
9 if they produced them.

10 COMMISSIONER JABER: Mr. Girtman, let me interrupt
11 you for a minute. We are going to talk about your motion. But
12 this is OPC's motion, so let me let them summarize their
13 motion, and I will allow you to respond.

14 MR. GIRTMAN: Okay. I have brought the documents
15 with me, we can make them today.

16 COMMISSIONER JABER: Thank you. Mr. Beck, on your
17 motion to require the production of documents in a week, it
18 sounds like Mr. Girtman has the information that you have asked
19 for.

20 MR. BECK: If he is going to produce the documents
21 today, I would think it moot. I think he wants to argue his
22 motion more than this. But if there is no dispute on our
23 motion, that should be adequate.

24 COMMISSIONER JABER: Mr. Girtman, is it your
25 representation that you have the information that OPC has asked

1 for?

2 MR. GIRTMAN: Yes. I have it here. And, Charlie, we
3 can go back and do it at my office or we can do it at your
4 office, either one; it doesn't make any difference.

5 COMMISSIONER JABER: All right. Well, then I'm not
6 going to rule on OPC's motion to produce the documents,
7 because Mr. Girtman has represented that he has them today.
8 Now, Mr. Girtman, if these are not the documents that Mr. Beck
9 has asked for, you should expect this issue to arise again.

10 MR. GIRTMAN: Sure. And if we have -- right after
11 the meeting today, Charlie can take a look and --

12 MR. BECK: And make copies.

13 MS. CHRISTENSEN: Staff would also ask that we be
14 provided with copies of the documents.

15 MR. GIRTMAN: Sure.

16 COMMISSIONER JABER: Let me do this, I am not going
17 to rule on the motion to require the PODs, Mr. Beck. And if
18 you will represent to staff counsel whether the motion is moot
19 or not at a later date that would be fine or at the beginning
20 of the hearing.

21 MR. BECK: Yes, Commissioner.

22 COMMISSIONER JABER: Now, Mr. Girtman, you have
23 filed a motion to require production of documents in one week
24 and a motion to compel, and that was filed July 3rd. Do you
25 want to go ahead and tell me about that?

1 MR. GIRTMAN: Yes, Commissioner. As I was saying, I
2 know that the motion is not generally favored here at the
3 Commission, but I did want to raise the point that as an
4 attorney representing a client, I am significantly impaired in
5 my ability to represent my client if I don't have similar types
6 of documents so I can defend their rate case expense.

7 I won't belabor the point. It puts me in the
8 position of feeling like two Roman gladiators put in the arena,
9 but you blindfold one of them. And I'm the blindfolded one.
10 So, I do want to make the motion. Anytime OPC challenges rate
11 case expense in a case that I am involved in, I will raise the
12 motion. Hopefully, eventually it will be granted. As I said,
13 I know it is not favored currently.

14 COMMISSIONER JABER: Okay. But what is it
15 specifically you are asking for?

16 MR. GIRTMAN: Any documents that show time or
17 actions taken by PSC -- excuse me, OPC attorneys, Mr. Beck, Mr.
18 Shreve, or any other attorneys who worked on the case and their
19 consultants just as we have provided Mr. Seidman's information
20 and the information relating to utility employees who have
21 worked on the case, and the attorneys.

22 COMMISSIONER JABER: Okay. And what issue would
23 that go to?

24 MR. GIRTMAN: Rate case expense.

25 COMMISSIONER JABER: The utility's rate case

1 expense?

2 MR. GIRTMAN: Yes.

3 COMMISSIONER JABER: All right. Mr. Beck, your
4 response?

5 MR. BECK: Commissioner, the information Mr. Girtman
6 has asked for is irrelevant to rate case expense. It is the
7 utility's expense that is at issue on rate case expense, not
8 the expense of our office.

9 COMMISSIONER JABER: Mr. Beck, what about the
10 request for Mr. Larkin's time records and Mr. Bidy's time
11 records?

12 MR. BECK: It is just not relevant to the issue of
13 rate case expense. Their expenses do not get charged through
14 to the customers, the utility's do. The utility is seeking to
15 recover rate case expense from customers. The expense our
16 office incurs representing customers is not passed through in
17 this rate case to the customers. It is simply not relevant to
18 any issue that is before the Commission.

19 COMMISSIONER JABER: Mr. Girtman, this is why I was
20 asking you which issue you intended to use the information on.

21 What is the standard for a motion to compel? Maybe
22 you can tell me that. But I am assuming that is what you're
23 asking for. You have asked for discovery from OPC.

24 MR. GIRTMAN: Right.

25 COMMISSIONER JABER: They have not provided it to

1 you because they don't believe it is relevant. You are asking
2 for me to compel them to provide you with certain information.
3 What is the standard I should use?

4 MR. GIRTMAN: The point is that we are not disputing
5 whether or not OPC's expenses are charged to the customer.
6 What we are saying is that the amount of utility expense is
7 charged to the customers, and the amount of that utility
8 expense is driven substantially by the actions that OPC takes
9 in a case. And because our rate case expense -- the rate case
10 expense in this case has more than doubled because of OPC's
11 participation.

12 And we should have a right to see, just as they have
13 a right to see, what actions were taken. Our rate case expense
14 is a direct result of OPC action, both legal action by the
15 attorneys and by their consultants. And while their rate case
16 expense is not charged to the utility customers, the excess
17 amount of the utility rate case expense that is driven by and
18 caused exclusively by OPC's action is charged to the customers.
19 So it is extremely relevant.

20 COMMISSIONER JABER: Staff, do you have a
21 recommendation or anything further to add on this issue?

22 MS. CHRISTENSEN: Staff believes that Wedgefield's
23 request is reasonably calculated to lead to admissible
24 evidence, which is the standard on a motion to compel for
25 discovery. Staff believes that the discovery is probative of

1 the amount of time that OPC has spent on this case versus the
2 amount of time Wedgefield has spent on this case. And,
3 therefore, with respect to that part of the motion, it should
4 be granted. And to the extent that those documents exist, we
5 would not recommend that OPC be required to create any
6 documents.

7 And as to the second portion of the motion, which
8 would be to compel OPC to, at a future -- and from this time
9 forward to keep such time records, we would recommend that that
10 be denied because we don't believe the Commission has the
11 authority at this point to do that.

12 COMMISSIONER JABER: Yes, I did not hear Mr.
13 Girtman say he was using it to illustrate or be probative of
14 what the utility spent on rate case expense, which is why I was
15 asking you what the standard is.

16 Mr. Girtman, I am going to deny your motion in its
17 entirety, and the rationale being -- Ms. Christensen, you can
18 put this in the ordering section -- is that I don't believe it
19 is reasonably calculated to lead to admissible evidence.

20 But the other crux of my decision is that it is the
21 utility's burden of proof in a rate case. And what I heard
22 Mr. Girtman say was that he intended to use it to show that OPC
23 was the cause of the increase in rate case expense. And,
24 staff, that is not what you said. So I am inclined to deny
25 that motion in its entirety.

1 What's next?

2 MS. CHRISTENSEN: We have some procedural matters.
3 First, staff would recommend that opening statements, if any,
4 by the parties be limited to ten minutes per side.

5 COMMISSIONER JABER: You all don't think you need
6 more than ten minutes, do you, Mr. Girtman?

7 MR. GIRTMAN: No.

8 COMMISSIONER JABER: All right. Ten minutes it is.

9 MS. CHRISTENSEN: Staff would also recommend, and I
10 think the parties have agreed, that direct and rebuttal
11 testimony of the witnesses be taken up at the same time.

12 COMMISSIONER JABER: Any objections? Okay. Direct
13 and rebuttal will be taken up at the same time.

14 MS. CHRISTENSEN: We have some proposed
15 stipulations that we would like to address now regarding the
16 testimony of Dwight T. Jenkins, that his prefiled testimony be
17 inserted into the record as though read and that he be excused
18 from attending the hearing and being subject to cross
19 examination.

20 COMMISSIONER JABER: That is a stipulation among all
21 the parties and staff?

22 MS. CHRISTENSEN: Yes.

23 COMMISSIONER JABER: All right. Show that reflected
24 in the draft prehearing order.

25 MS. CHRISTENSEN: Also as to Frances J. Lingo's

1 prefiled testimony, that that be inserted into the record as
2 though read and that she be excused from attending the hearing
3 and being subject to cross examination.

4 COMMISSIONER JABER: Show that reflected in the
5 draft prehearing order.

6 MS. CHRISTENSEN: Also --

7 COMMISSIONER JABER: Patty, you need to, at the right
8 time remember to ask that their testimonies be moved into the
9 record.

10 MS. CHRISTENSEN: We will note that.

11 COMMISSIONER JABER: All right.

12 MS. CHRISTENSEN: Also, we have a stipulated exhibit,
13 Wedgefield's responses to staff's third set of discovery,
14 including Interrogatories 13 through 18; and Request for
15 Production, Numbers 11 through 12, dated May 23rd, 2001; and
16 the supplemental responses to interrogatories, Numbers 13
17 through 18, dated May 29th, 2001; and the supplemental
18 responses to request for productions, Numbers 11 through 15,
19 dated May 29th, 2001, that those be -- those be entered -- or
20 marked for identification as a composite hearing exhibit and
21 stipulated that those be moved in at the appropriate time.

22 COMMISSIONER JABER: Right. I can acknowledge that
23 the parties have reached a stipulation on that. But at the
24 right time, Ms. Christensen, you will have to make sure that
25 the exhibit is identified and entered into the record.

1 MS. CHRISTENSEN: Certainly.

2 MR. GIRTMAN: Commissioner, for reference, I would
3 suggest that we use Exhibit Number CJW-6.

4 COMMISSIONER JABER: We won't need to do that,
5 Mr. Girtman.

6 MR. GIRTMAN: All right.

7 COMMISSIONER JABER: What I think we should do is
8 very similar to how we handle this in the telecommunications
9 industry, just prepare some stipulated exhibits that will take
10 care of it at the beginning of the hearing.

11 MR. GIRTMAN: Okay.

12 MS. CHRISTENSEN: With a cover sheet and do it that
13 way.

14 COMMISSIONER JABER: Is that acceptable?

15 MR. BECK: Yes.

16 MR. GIRTMAN: Okay. And, again, Commissioner, for
17 the record, just for information, the reason for this is that
18 the issue and the testimony of the two witnesses. And, also,
19 we need to add the testimony of Mr. Wenz to that stipulation.
20 You did Ms. Lingo and Mr. Jenkins. The reason for that, of
21 course, is that the utility favors conservation. They are
22 supportive of it. The only objection they have is that it is
23 an awfully big step. And the reason that they didn't want to
24 spend a great deal of time responding and preparing the studies
25 the staff wanted and the cost of that, they just didn't believe

1 the cost warranted it. If the Commission goes one way, that is
2 fine. If they go another way, we proposed a compromise, a
3 possible solution, but we don't want to spend a whole lot of
4 time and expense on it. It's just not worth the money.

5 COMMISSIONER JABER: All right. What is next,
6 Ms. Christensen?

7 MS. CHRISTENSEN: As to Mr. Wenz, the parties have
8 agreed to stipulate that the prefiled testimony of Mr. Wenz on
9 the sole issue of the appropriate percentages of revenue
10 requirement to be recovered through base facility charge and
11 gallonage charge should be inserted into the record as if read,
12 and that he be excused from being subject to cross examination
13 solely on that issue.

14 COMMISSIONER JABER: All right.

15 MS. CHRISTENSEN: And we can also address that.

16 COMMISSIONER JABER: Well, what this means to me
17 is that when you put Mr. Wenz on the stand, Mr. Girtman, you
18 are going to ask that his entire testimony be inserted into the
19 record. And then the parties have acknowledged that they will
20 not cross-examine Mr. Wenz on this issue. All right?

21 MS. CHRISTENSEN: Okay.

22 COMMISSIONER JABER: So really there is nothing that
23 you will have to do.

24 MS. CHRISTENSEN: Okay. I believe that -- no, I'm
25 sorry. We have one more preliminary matter.

1 Mr. Girtman brought it to staff's attention that
2 Mr. Orr is not going to be available to testify at the hearing.
3 It is staff's understanding that since he is unavailable to
4 testify, the parties have agreed to depose Mr. Orr, and use
5 that deposition as a means of cross-examination of Mr. Orr.
6 And when it is appropriate to enter it into the record, insert
7 the deposition as cross-examination for Mr. Orr.

8 COMMISSIONER JABER: You mean the parties have
9 agreed to use the deposition in lieu of prefiled -- no, in
10 addition to prefiled testimony?

11 MS. CHRISTENSEN: In addition to the prefiled. The
12 prefiled and any rebuttal testimony I assume would also be
13 inserted into the record. This would be in lieu of -- since he
14 is unavailable and unable to be subject to cross at the
15 hearing, they would go ahead and basically use the deposition
16 to effectuate the cross-examination with staff's participation,
17 and that that would be also entered into the record.

18 COMMISSIONER JABER: All right. So what we have is
19 a stipulation that the prefiled direct and rebuttal of Mr. Orr
20 will be inserted into the record as though read at the
21 appropriate time, Mr. Girtman, and that you will prepare the
22 deposition transcript as an exhibit that we can move into the
23 record at the beginning of the hearing.

24 MR. GIRTMAN: Correct.

25 COMMISSIONER JABER: Is that all right?

1 MR. GIRTMAN: And I would like to express our
2 appreciation to Mr. Beck for accommodating us on this matter.
3 We are going to do it at 1:00 o'clock on Wednesday.

4 COMMISSIONER JABER: Okay. Ms. Christensen, do you
5 want to go to the beginning of the draft prehearing --

6 MS. CHRISTENSEN: Yes, Commissioner.

7 COMMISSIONER JABER: Are there any changes to the
8 case background?

9 MS. CHRISTENSEN: No, Commissioner.

10 COMMISSIONER JABER: Any changes to the
11 jurisdiction part?

12 MS. CHRISTENSEN: No, Commissioner.

13 COMMISSIONER JABER: As far as you know there isn't
14 a question with respect to confidentiality?

15 MS. CHRISTENSEN: No, Commissioner. I don't believe
16 we have any pending confidential matters.

17 COMMISSIONER JABER: All right. Then there are there
18 are no changes to Part 4?

19 MS. CHRISTENSEN: No.

20 COMMISSIONER JABER: Post-hearing procedures.

21 MS. CHRISTENSEN: Staff would ask -- we have some
22 rather lengthy position statements in the draft prehearing
23 order, and staff would like to note that in the post-hearing we
24 are limited to 50 words. And we have noted that we have gotten
25 some longer issues, and we wanted to bring that to the parties'

1 attention that we do need a position statement of 50 words.

2 COMMISSIONER JABER: Mr. Girtman, she is asking
3 you to cut down your position.

4 MR. GIRTMAN: Actually it's Mr. Beck.

5 COMMISSIONER JABER: I saw a couple of yours that
6 were long. All right. All parties then should just be aware
7 of the request to keep the positions to 50 words. Okay. The
8 page numbers. Forty pages is adequate, Patty?

9 MS. CHRISTENSEN: I would believe so at this point.
10 I guess if we run into a problem or something the parties can
11 bring it to our attention. But at this point --

12 MR. GIRTMAN: We would certainly try to do 40 pages
13 or less. And I think probably we would have to get into the
14 writing of the brief to determine that. I know in the last
15 case it was not an adequate number of pages, and we requested
16 and we were granted a right to file a little bit longer.

17 COMMISSIONER JABER: That's why I'm asking. You
18 can save everyone an order if you will just tell me how many
19 pages you need.

20 MR. GIRTMAN: Well, why don't we try and leave it as
21 40 and try to make 40. And if we don't, we can file a motion
22 and have it considered. Is that --

23 COMMISSIONER JABER: How about we make it at 50
24 with the understanding that there won't be a motion.

25 MR. GIRTMAN: Tie my hands.

1 COMMISSIONER JABER: All right. We are going to
2 change it to 50 pages.

3 MR. GIRTMAN: Okay.

4 COMMISSIONER JABER: Prefiled testimony and
5 exhibits. I note that all the testimony should have been
6 prefiled by now. Summaries of testimony limited to five
7 minutes. Any changes to that section? Order of witnesses.

8 MS. CHRISTENSEN: No, Commissioner.

9 We do note that we have Ms. Welch, who was listed as
10 a rebuttal witness, who has actually not filed any testimony,
11 prefiled testimony on this issue, and is not listed for any
12 issues.

13 COMMISSIONER JABER: Excuse me for just a minute,
14 Patty, let me back up. I know this is a nit, but for the sake
15 of the Commissioners on the panel, the prefiled testimony that
16 they have will be Erin Nicholas. So if you could list Erin
17 Nicholas as the witness, and then put an asterisk or a
18 parentheses that Carl Wenz will adopt.

19 MS. CHRISTENSEN: Okay. We can switch that?

20 COMMISSIONER JABER: Yes, switch it. It saves a
21 whole lot of confusion.

22 MS. CHRISTENSEN: Certainly.

23 COMMISSIONER JABER: And then on David Orr, if you
24 would just indicate that his testimony -- with an asterisk that
25 his testimony has been stipulated into the record. The same

1 thing is true for Mr. Jenkins and Ms. Lingo.

2 MS. CHRISTENSEN: Maybe I can use the same number
3 of asterisks.

4 COMMISSIONER JABER: Beth Keating starts to use
5 crosses and Xs at this point. All right. Kathy Welch.

6 MS. CHRISTENSEN: Staff notes there was no actual
7 prefiled rebuttal testimony for Ms. Welch, and there is no
8 issues identified. I know there has been some -- staff has
9 some objection to Ms. Welch being called as an adverse witness.
10 You know, although Mr. Girtman has stated that she is
11 an adverse witness, staff was never contacted prior to
12 requiring the prefiled rebuttal testimony and it was not, you
13 know, we had no discussion, no opportunity to determine how or
14 whether or not we would object to having her submit any
15 testimony on behalf of the utility.

16 COMMISSIONER JABER: Would you object to having
17 her submit testimony on behalf of the utility?

18 MS. CHRISTENSEN: To the extent that Ms. Welch can
19 establish, you know, or verify the four audits that were
20 previously conducted, and her testimony in the prior hearing,
21 staff has no objection to it. Staff does not believe that that
22 is necessary in this case. We do have the transfer order, and
23 we don't believe that rate base has actually been protested in
24 this, and that the rate base from the transfer as of December
25 1st of, I believe it was 1995?

1 MR. GIRTMAN: Right.

2 MS. CHRISTENSEN: -- was established in that order.
3 So the actual necessity of Ms. Welch testifying is also
4 something that staff would question at this point.

5 COMMISSIONER JABER: But that notwithstanding, you
6 don't have any objection to making her available?

7 MR. GIRTMAN: Commissioner, I think I have --

8 COMMISSIONER JABER: Hang on, Mr. Girtman.

9 MS. CHRISTENSEN: No. Not making her available, no.

10 COMMISSIONER JABER: Mr. Girtman, it doesn't sound
11 like she is an adverse witness. Not that I have anything in
12 front of me that even asks me to consider testimony of Kathy
13 Welch live.

14 MR. GIRTMAN: All right. I could respond to that,
15 then. This case is somewhat unique in the paths that we have
16 taken to get here in relation to the utility's position that
17 issues are being relitigated. And I won't go into all of that.
18 But the problem that we face -- and I think there is a very
19 simple solution to addressing the concerns. Going back to this
20 utility's case in the PPW Utilities that I did not handle
21 myself, but I came in after the case was over and was involved
22 to some extent that at the last minute an issue came up
23 relating to rate base.

24 The staff witness was not available to confirm that
25 those audits were the Commission audits and therefore that the

1 rate base was set at zero. And that is what we are trying to
2 avoid is that kind of consequence. Now, we would certainly
3 like to avoid having to have Ms. Welch come from Miami up to
4 this hearing, and I think there is a solution to that. One of
5 two possible approaches. Either we just adopt the testimony
6 from her testimony and the exhibits from the prior case and put
7 them in this case. Perhaps the Commission can take official
8 notice of those documents and her testimony. They are all
9 official records of this Commission.

10 COMMISSIONER JABER: From which case?

11 MR. GIRTMAN: The transfer case. That is Docket
12 960235-WS and 960283-WS. The simplest thing, I think, is just
13 to take official notice of those things. My personal
14 preference would be to actually have the documents in the file.
15 But if there is a problem with that, we can certainly address
16 it the other way.

17 Now, if the argument is made that, you know, rate
18 base is not at issue, Mr. Bidy comes up with an analysis
19 called an original cost study which alleges that the rate base
20 is something like a million dollars less than it was. Well, if
21 that doesn't put rate base at issue, I don't know what does.

22 And what we want to do is show in this case, in
23 evidence in this case that, number one, that those audits are
24 what they are, there were four of them prior to the December
25 31, 1995 date, to include her testimony, and it's not that

1 long, in relation to those audits. And essentially that's it.
2 There was an audit for the purpose of this rate proceeding, and
3 I incorrectly stated in this first draft that I had put
4 together the utility did not object to any of those audit
5 findings except I think the land, used and useful. And so that
6 seems to be the simplest solution to do that. But if we are
7 not allowed to have her to introduce those documents, then we
8 wind up in the same position as the PPW case.

9 COMMISSIONER JABER: All right. So what you offer as
10 a compromise or a stipulation is that you identify Kathy
11 Welch's audits, the testimony, and other all exhibits from the
12 prior transfer case into this case.

13 MR. GIRTMAN: No, ma'am. Just the audits and just
14 her testimony. That shortens it down considerably. Because
15 there was a whole stack of exhibits in there.

16 COMMISSIONER JABER: All right. The audits and the
17 testimony from the prior transfer case.

18 Mr. Beck, what is your reaction to all of this?

19 MR. BECK: A number of items, Commissioner. First of
20 all, this is an odd procedural position to be in because there
21 has been no filing, no motion, no nothing from the utility
22 asking to do what is being proposed. And really the only thing
23 I have seen in writing is what appears before you in the draft
24 prehearing statement. There is nothing else to respond to.
25 The first problem is there is an order on procedure out that

1 you have issued that sets forth a process for people to file
2 testimony, and there is a designated time for filing direct
3 testimony and rebuttal testimony.

4 We have been in a similar position to Mr. Girtman
5 with the need to file testimony by a staff witness, and
6 specifically I refer you to Docket 990362, which is the Verizon
7 slamming case. In that case our office filed testimony by a
8 staff witness, and we did it on the date that was required to
9 by the prehearing order. It's not a big deal, you simply get
10 together and talk and prefile the testimony.

11 There has been no attempt to do that in this case.
12 There has been nothing filed by the utility on the dates
13 required for testimony. There is simply no prefiled testimony
14 by Ms. Welch. The utility has met no burden to show a need why
15 they should be excused from the procedural order, because they
16 simply violated it.

17 And that is really the issue here, should the utility
18 be able to violate the procedural order and not even have to
19 file a motion. We are opposed to the calling of Kathy Welch.

20 MR. GIRTMAN: Well, there is certainly --

21 COMMISSIONER JABER: Mr. Girtman, the whole idea of
22 the PSC accepting prefiled testimony is -- there are many
23 reasons for doing it. One is administrative efficiency, of
24 course, and to avoid delay and regulatory lag and that sort of
25 thing. But the other reason is to avoid surprises to the

1 parties and to staff.

2 Saying all of that, we have in the past, it is my
3 understanding, allowed live testimony when it was shown that
4 the witness was an adverse witness. And that is why I was
5 asking staff if they would be willing to provide Ms. Welch,
6 make her available to you so that you can at least depose her.
7 So before I make a ruling on this issue at all, let me throw
8 out a suggestion.

9 And recognize, Mr. Girtman, that the order on
10 procedure is very clear and very specific that testimony should
11 be prefiled. But saying all of that, is there an agreement,
12 can there be an agreement on deposing Ms. Welch where all
13 parties are able to ask her questions and we move her
14 deposition into the record? Is that acceptable? And we can
15 even take a few minutes and allow you all think to about it.

16 MR. BECK: It would be helpful if the utility would
17 make an offer of what they expect her testimony to be as a
18 beginning point, rather than just being surprised.

19 COMMISSIONER JABER: Yes. Mr. Girtman, what is the
20 scope of what you are trying to -- if you had to prefile
21 testimony you would know the scope of her testimony, you would
22 you know what issue she was going to testify to.

23 MR. GIRTMAN: The problem we are facing is that we
24 have an order from the transfer proceeding. It says very
25 clearly what the rate base is. That should be accepted. We

1 accepted it. Under our understanding of finality of the orders
2 of Commission, it is final, it is acceptable, it is done. But
3 we are in a very unusual procedure here where that order
4 essentially is being -- parts of it are being relitigated.

5 Now, we are trying to raise the res judicata and
6 other legal principles that apply to this thing. And so our
7 problem is this procedure that is being followed, we are having
8 to follow in this case is like none other in any case I have
9 ever seen. And so it makes it difficult for us to know really
10 what we are going to need to do. But we know very clearly in
11 that PPW case what happened.

12 COMMISSIONER JABER: Ms. Girtman, what does any
13 of that have to do with what Ms. Welch will testify to?

14 MR. GIRTMAN: We want to be sure that there is
15 evidence in this record, just as there was evidence in the
16 transfer record, as to what those audits found, and what she,
17 as the Commission auditor, had to say about it. And that is
18 why we suggested the very simplest thing is just adopt her
19 testimony and those exhibits from the prior transfer case or
20 simply take official notice of it.

21 COMMISSIONER JABER: But I think the part that you
22 are missing is that you are not in a position to offer -- you
23 are not in a position to offer anything. You are the one that
24 didn't prefile testimony. So with that as a foundation, what
25 would the scope of her -- if I were inclined to have staff make

1 her available for a deposition, what questions would you be
2 asking her?

3 MR. GIRTMAN: Very similar to what was in the prior
4 case. That's why we are willing to accept the testimony that
5 was in that case, essentially the same thing.

6 COMMISSIONER JABER: And why isn't the order in the
7 prior case sufficient for you?

8 MR. GIRTMAN: That is our question. Why isn't the
9 order in the prior case sufficient to resolve the issue? That
10 is essentially it, Commissioner. And I don't want --

11 COMMISSIONER JABER: If that is your position, Mr.
12 Girtman, then the order speaks for itself and I don't need to
13 rule on Kathy Welch at all.

14 MR. GIRTMAN: Well, if that were true, then Mr.
15 Bidy's testimony would be stricken.

16 See, that is the problem we are facing, Commissioner.
17 It's a real dilemma for us.

18 COMMISSIONER JABER: Here is what we are going to
19 do. I am going to revisit this at the very end. I want the
20 parties to get together and talk about a deposition in lieu of
21 testimony.

22 Mr. Girtman, I have to tell you, if I rule on this I
23 am inclined to actually quash your subpoena because you did not
24 comply with the terms of the order on procedure. But saying
25 all of that, I will reserve ruling until the very end and ask

1 that you and Mr. Beck sit down and talk about the possibility
2 of a deposition.

3 And, Ms. Christensen, I would expect that you do the
4 same. And that to the degree the parties reach an agreement
5 with respect to deposition in lieu of testimony, that you make
6 Ms. Welch available.

7 Mr. Girtman, I am also thinking about the
8 Commissioners and being prepared adequately. And there is a
9 reason we don't do live testimony.

10 All right. We'll come back to that. Any changes to
11 basic positions? Any changes to Issue 1? Any changes to Issue
12 2? Issue 3? Any changes to Issue 4?

13 MS. CHRISTENSEN: No, not from staff.

14 COMMISSIONER JABER: Any changes to Issue 5?

15 MS. CHRISTENSEN: No for staff.

16 COMMISSIONER JABER: Issue 6. Issue 7. Issue 8.
17 Issue 9.

18 MS. CHRISTENSEN: Yes, staff has a change in
19 position. Staff would like to change their position to no
20 position pending further development of the record.

21 COMMISSIONER JABER: Pending further development
22 of the record?

23 MS. CHRISTENSEN: Correct.

24 COMMISSIONER JABER: All right. So noted in the
25 prehearing order. Issue 10.

1 MS. CHRISTENSEN: Staff takes the position -- staff
2 would like to propose that Issue 10 be stricken. It is staff's
3 position that this issue is covered under Issue 8, and that
4 this is duplicative. The parties have taken the position that
5 this is basically a fallout issue, and as such that would
6 duplicate Issue 8, and is unnecessary.

7 COMMISSIONER JABER: Issue 8 begins with what
8 adjustments are appropriate to reflect non-used and useful
9 plant. That doesn't sound like a fallout issue.

10 MS. CHRISTENSEN: Issue 8 -- what I'm suggesting is
11 Issue 8 is a fuller issue and encompasses all of the fallout
12 issues. Issue 10 is just a more specific issue that is
13 encompassed within Issue 8. And since both of them -- since
14 Issue 8 is covering Issue 10, Issue 10 is unnecessary.

15 COMMISSIONER JABER: I see what you're saying. Is
16 there any objection to that?

17 MR. BECK: No.

18 COMMISSIONER JABER: All right. With the
19 understanding that Issue 8 will cover all adjustments that are
20 necessary to reflect non-used -- the effect of non-used and
21 useful plant, then we will strike Issue 10.

22 Changes to Issue 11. Issue 12. Issue 13. 14.
23 Changes to Issue 15.

24 MR. GIRTMAN: Yes, Commissioner. We are proposing a
25 clarification of the wording. I have a copy for you.

1 COMMISSIONER JABER: Okay.

2 MR. GIRTMAN: I have distributed copies to the other
3 parties. It essentially changes the reference to both prior
4 Exhibit Number 2 and the updated Exhibit Number 5.

5 COMMISSIONER JABER: All right. Staff, do you have a
6 copy of the changes so that you can incorporate them in the
7 draft prehearing order?

8 MS. CHRISTENSEN: I believe they are already added in
9 there, Commissioner. I think Mr. Girtman had faxed it to us
10 shortly before the prehearing, and I think we were able to make
11 that change in the draft prehearing.

12 COMMISSIONER JABER: You're right. Again, Patty, all
13 the places you have got Wenz, just make clear who the original
14 witness was so that there isn't any confusion on the part of
15 the Commissioners' offices on the testimony.

16 MS. CHRISTENSEN: Can we place both names in there?
17 Because I believe in this case, particularly, he did file
18 supplemental exhibits, and that might --

19 COMMISSIONER JABER: I think that's a good idea.

20 MS. CHRISTENSEN: Just put both names. And I will
21 put Ms. Nichols first and then Mr. Wenz, and that way they will
22 know which testimonies to look at.

23 COMMISSIONER JABER: And I will give my copy to the
24 court reporter of the changes from Mr. Girtman.

25 Changes to Issue 16. Issue 17.

1 MS. CHRISTENSEN: Commissioner, could we go back to
2 Issue 16, I'm sorry. Issue 16 is also an issue that staff
3 believes is encompassed in Issue 8 and, therefore, duplicative.
4 And we would ask at this point that that be stricken. That can
5 be covered in Issue 8.

6 COMMISSIONER JABER: Any objection?

7 MR. BECK: No.

8 MR. GIRTMAN: As long as the understanding is they
9 are all included, that's fine.

10 MS. CHRISTENSEN: Yes, that is staff's position.

11 COMMISSIONER JABER: Okay. We will strike Issue 16.
12 Issue 17. Issue 18. 19 or 20. Now, you have stipulated the
13 testimony in of Ms. Lingo and Mr. Jenkins, but you don't have a
14 stipulation on Issues 19 and 20?

15 MS. CHRISTENSEN: Commissioner, it is my
16 understanding that although we stipulated to the testimony
17 being entered into the record, that Wedgefield still is wishing
18 to go forward with their issue and pursue it, we are just not
19 going to have live testimony regarding that issue.

20 COMMISSIONER JABER: All right.

21 MR. GIRTMAN: Commissioner, all we ask is that the
22 Commission consider our proposed compromise.

23 COMMISSIONER JABER: All right. Issue 21 or
24 Issue 22.

25 MR. GIRTMAN: On 22 we would like to change

1 Wedgefield's position to none.

2 MS. CHRISTENSEN: I believe that is already reflected
3 in the draft prehearing order that we handed out prior to the
4 hearing.

5 MR. GIRTMAN: Yes.

6 COMMISSIONER JABER: Yes. Mr. Girtman, you and I are
7 working from an earlier draft, I think.

8 All right. Any changes to the exhibit list on Page
9 22? Page 23.

10 Mr. Beck, Page 24 or 25?

11 MR. BECK: No.

12 COMMISSIONER JABER: Any changes to Page 26 or
13 Page 27? Now, Ms. Christensen, you will take out the Kathy
14 Welch reference unless the parties reach a stipulation during
15 the break we are about to take?

16 MS. CHRISTENSEN: Yes, Commissioner.

17 COMMISSIONER JABER: Under proposed stipulations, I
18 think you can delete the reference to category one
19 stipulations. This is just the general stipulation section.

20 MR. GIRTMAN: Excuse me just a moment. I believe
21 that it has already been covered, this stipulation regarding
22 the introduction into evidence of the utility's three responses
23 to the staff's discovery on the issue of allocation between
24 base-facility charge and gallonage charge, so that has already
25 been done.

1 COMMISSIONER JABER: Right. That is your responses
2 to staff's third set of discovery, including interrogatory
3 Numbers 13 through 18?

4 MR. GIRTMAN: Yes, ma'am.

5 COMMISSIONER JABER: Yes. We reflected that as a
6 stipulation in the prehearing order, and this is where I told
7 you to just make sure that you prepare it as a composite
8 exhibit to be addressed at the beginning of the hearing.

9 MS. CHRISTENSEN: Correct.

10 COMMISSIONER JABER: All right. I think this is a
11 good time to time a ten-minute break and let you all talk about
12 how to handle Ms. Welch being subpoenaed.

13 Mr. Beck, I do ask that you also consider the
14 possibility of making her audits and the testimony from the
15 previous case an exhibit as a way of a compromise. I think
16 there is plenty of room here to compromise, so please take ten
17 minutes and talk about it. Thank you.

18 (Recess.)

19 COMMISSIONER JABER: Let's go back on the record.
20 The parties have had an opportunity to talk about Ms. Welch and
21 any testimony that she may provide.

22 Ms. Christensen, why don't you summarize for me.

23 MS. CHRISTENSEN: The parties have agreed to depose
24 Ms. Welch. We are going to try on Friday to depose Ms. Welch
25 and to stipulate into the record the four audits along with her

1 prior testimony and get that through -- are we doing that
2 through the deposition?

3 MR. BECK: As I understood Mr. Girtman, what he hopes
4 is that she will just adopt her testimony from the prior case
5 and go from there.

6 MR. GIRTMAN: And as I understand it, what we will do
7 is we will just have copies of the audits and the prior
8 testimony at the hearing and they will be available. Her
9 deposition, it will be entered just like Mr. Orr, which is
10 another issue we need to talk about in a minute. That seems to
11 be acceptable for everyone.

12 COMMISSIONER JABER: Okay. So let me make sure I
13 understand the agreement you all have reached. You will depose
14 Ms. Welch this Friday?

15 MS. CHRISTENSEN: Subject to her availability, but we
16 are checking on that.

17 COMMISSIONER JABER: All right. Subject to Ms.
18 Welch's availability, you will depose her this Friday. Her
19 deposition and the four audits that you hope she will adopt at
20 the deposition and her previous testimony from the transfer
21 case will be made as an exhibit and moved into the record at
22 the beginning of the hearing, is that what you all are thinking
23 about? In other words, Ms. Welch will not be at the hearing?

24 MR. GIRTMAN: Correct.

25 COMMISSIONER JABER: This is in lieu of any live

1 testimony?

2 MR. BECK: Yes.

3 COMMISSIONER JABER: Staff, that is acceptable?

4 MS. CHRISTENSEN: Yes.

5 COMMISSIONER JABER: Mr. Beck?

6 MR. BECK: Yes.

7 COMMISSIONER JABER: All right. Let that be
8 reflected in the prehearing order as a stipulation, Ms.
9 Christensen. And I want to thank all the parties and staff for
10 accommodating.

11 MS. CHRISTENSEN: However, we have come up with a
12 new glitch.

13 COMMISSIONER JABER: Okay.

14 MS. CHRISTENSEN: Leave us alone long enough.
15 Mr. Orr's testimony tentatively was scheduled to take a
16 deposition on Wednesday, and we are finding out from staff --
17 because this all just came up today, that we will not have
18 anybody available from staff to assist us with questions for
19 that. So we need to work on a different time or day --
20 actually more like a different day. We understand that
21 Mr. Orr's last day is on Wednesday. We believe that we could
22 subpoena him for deposition, even though --

23 COMMISSIONER JABER: You don't have a technical
24 staff person available Wednesday for the depo or is it a legal
25 staff?

1 MS. CHRISTENSEN: Mr. Orr is a very technical
2 witness, he is the plant operations expert, and we would need
3 our engineer and a supervisor. And they are in customer
4 meetings and unavailable. And since it came up at the last
5 minute, we haven't had a whole lot of time to check with
6 anybody, unfortunately.

7 And so Wednesday -- we just need to work with the
8 parties to try and work something to accommodate our schedule
9 as well as their schedule. We can't do it any sooner because
10 that really would not allow any staff time to prepare. And I
11 know Mr. Beck would also have a problem. We're pushing it as
12 it is.

13 COMMISSIONER JABER: What time is the deposition,
14 Mr. Girtman?

15 MR. GIRTMAN: 1:00 o'clock on Wednesday. One of the
16 problems that we are trying to work around, one of the
17 constraints is that the company's policy is that once a person
18 is gone, they're gone. Now as was stated, that wouldn't
19 prevent the Commission from subpoenaing him for perhaps a
20 Friday deposition along with the other two. I'm not suggesting
21 that, but I note the possibility.

22 MS. CHRISTENSEN: I could note that Mr. Girtman could
23 note that to his clients, that we could subpoena him if we
24 needed to.

25 MR. GIRTMAN: Why don't I note that to my client and

1 we will see what it produces.

2 COMMISSIONER JABER: Try to work it out. Staff, you
3 may not be able to do something in time for the hearing, so I
4 would ask that you think about that. I would also ask that you
5 think about participation by telephone. So evaluate all of
6 your options and work with the parties and let me know what the
7 outcome is, but nothing needs to change for purposes of the
8 prehearing order. Just let me know.

9 MS. CHRISTENSEN: I don't believe that would actually
10 change the stipulation, it just came up as a problem. And
11 since we have a stipulation based on this deposition, we wanted
12 to let you know about that. The other issue now that we have
13 an agreement as to Ms. Welch's testimony, we would ask Mr.
14 Girtman if he could withdraw his subpoena because we don't
15 believe that would be necessary any longer.

16 MR. GIRTMAN: Consider it withdrawn.

17 MS. CHRISTENSEN: Thank you.

18 COMMISSIONER JABER: Thank you, Mr. Girtman.
19 Anything else that needs to come up, Ms. Christensen, before we
20 adjourn?

21 MS. CHRISTENSEN: No, I believe we have addressed all
22 the issues.

23 COMMISSIONER JABER: Mr. Girtman?

24 MR. GIRTMAN: I don't think of any. Just as a note,
25 as a reminder for everyone, there are going to be people in

1 different places for depositions and things. And what we will
2 do is we will have a notary at the location of the witness to
3 swear the witness.

4 MS. CHRISTENSEN: Okay.

5 MR. GIRTMAN: What I would like to ask, to the extent
6 possible, those of us in Tallahassee be in the same room when
7 we are deposing by telephone. It would just make it easier for
8 me to operate that way, if there is no objection to that. And
9 we can do it anywhere. I don't mind going to OPC's office for
10 it.

11 MR. BECK: We can work out the details.

12 COMMISSIONER JABER: Anything else, Mr. Beck?

13 MR. BECK: No. Nothing, Commissioner. Thank you.

14 COMMISSIONER JABER: Thank you. This prehearing is
15 adjourned.

16 MR. GIRTMAN: Thank you.

17 (The prehearing concluded at 2:42 p.m.)

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2 STATE OF FLORIDA)
3 : CERTIFICATE OF REPORTER
4 COUNTY OF LEON)

5
6 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter
7 Services, FPSC Division of Commission Clerk and Administrative
8 Services, do hereby certify that the foregoing proceeding was
9 heard at the time and place herein stated.

10 IT IS FURTHER CERTIFIED that I stenographically
11 reported the said proceedings; that the same has been
12 transcribed under my direct supervision; and that this
13 transcript constitutes a true transcription of my notes of said
14 proceedings.

15 I FURTHER CERTIFY that I am not a relative, employee,
16 attorney or counsel of any of the parties, nor am I a relative
17 or employee of any of the parties' attorney or counsel
18 connected with the action, nor am I financially interested in
19 the action.

20 DATED THIS 11th day of July, 2001.

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23
24
25


JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732