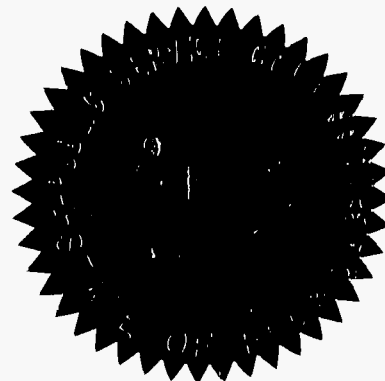


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080006-WS

In the Matter of:

WATER AND WASTEWATER INDUSTRY ANNUAL
REESTABLISHMENT OF AUTHORIZED RANGE
OF RETURN ON COMMON EQUITY FOR WATER
AND WASTEWATER UTILITIES PURSUANT TO
SECTION 367.081(4)(f), F.S.



PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER NANCY ARGENZIANO
PREHEARING OFFICER

DATE: Monday, October 13, 2008

TIME: Commenced at 1:30 p.m.
Concluded at 1:43 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 08057 OCT 16 8

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 CHARLIE BECK, ESQUIRE, Office of Public Counsel, c/o
3 The Florida Legislature, 111 W. Madison St., Room 812,
4 Tallahassee, Florida 32399-1400, appearing on behalf of the
5 Citizens of Florida.

6 MARTIN S. FRIEDMAN, ESQUIRE, Rose Law Firm, 2180 West
7 State Road S. R. 434, Suite 2118, Longwood, Florida 32779,
8 appearing on behalf of Utilities Inc.

9 JEAN HARTMAN, ESQUIRE, FPSC General Counsel's Office,
10 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
11 appearing on behalf 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 ARGENZIANO:** Let's call the prehearing
3 to order.

4 Good afternoon. It was a good morning. And if staff
5 would read the notice.

6 **MS. HARTMAN:** Pursuant to notice, this time and place
7 has been scheduled for the purpose of conducting a prehearing
8 conference in Docket Number 080006-WS. The purpose of the
9 prehearing conference is set forth more fully in the notice.

10 **COMMISSIONER ARGENZIANO:** Thank you. And we'll take
11 appearances.

12 Mr. Martin Friedman.

13 **MR. FRIEDMAN:** Martin Friedman of the law firm of
14 Rose, Sundstrom & Bentley representing Utilities Inc.

15 **MR. BECK:** Commissioner, my name is Charlie Beck with
16 the Office of Public Counsel, appearing on behalf of the
17 Citizens of Florida.

18 **COMMISSIONER ARGENZIANO:** Thank you.

19 **MS. HARTMAN:** Jean Hartman appearing on behalf of
20 Commission staff.

21 **MS. HELTON:** And Mary Anne Helton, advisor to the
22 Commission.

23 **COMMISSIONER ARGENZIANO:** All right. Let's move on
24 to preliminary matters.

25 Staff.

1 **MS. HARTMAN:** The first motion before you is the
2 motion for leave to file surrebuttal testimony. It is
3 unopposed, and we recommend that it be granted.

4 **COMMISSIONER ARGENZIANO:** Unopposed.

5 Any comments? Hearing none, the motion for leave to
6 file for surrebuttal testimony will be granted. And we will
7 move on to -- I guess, we have OPC's response.

8 **MS. HARTMAN:** The first motion is a motion by
9 Utilities Inc. to strike a portion of James Rothschild's
10 surrebuttal testimony and exhibit.

11 **COMMISSIONER ARGENZIANO:** Mr. Friedman.

12 **MR. FRIEDMAN:** Thank you, Commissioner.

13 One of the exhibits that Mr. Rothschild proposes to
14 present in his surrebuttal testimony, in Ms. Ahern's testimony,
15 she is the expert that is going appear on behalf of Utilities
16 Inc., in her testimony she references, as do professionals many
17 times, references works of other professionals in the same
18 discipline. And one of the references that she uses is a
19 gentleman named Doctor Morin. And she uses his treatise in her
20 testimony, and even quotes from it and attaches some of it as
21 an exhibit, which I'm sure you have seen in other cases.

22 In response to that, the surrebuttal testimony that
23 Mr. Rothschild has proposed, what he proposes is some testimony
24 which relates to an exhibit that he proposes, and that exhibit
25 is rebuttal testimony that he filed in response to testimony by

1 Doctor Morin in an electric power case in Nova Scotia, Canada.

2 Now, if he wants to challenge Doctor Morin's
3 theories, then he certainly can do that in the textual part of
4 his testimony. But by attaching -- and which he did not do in
5 any great depth. But this section of his testimony which is
6 even titled Doctor Morin, you know, he testifies that Doctor
7 Morin testified in this power case in Canada. I was the expert
8 on the other side, and here is my rebuttal testimony. He
9 doesn't put in Doctor Morin's regular testimony, he just puts
10 in his rebuttal, not even what his testimony was rebutting.
11 Not that it would have made it any more appropriate had he done
12 that.

13 If he wants to comment on Doctor Morin, that's fair
14 game, but including as an exhibit rebuttal testimony he filed
15 in another case, it is an electric power case in Canada, we
16 don't think it is relevant and has any probative value, and,
17 therefore, we have requested that you strike it.

18 **COMMISSIONER ARGENZIANO:** Mr. Beck.

19 **MR. BECK:** Thank you, Commissioner.

20 Commissioner, the witness for Utilities Inc. has
21 three different places in her testimony where she references
22 Doctor Morin as a way to support and buttress her testimony.
23 Within those three references, there's two cites to his books,
24 and then in exhibits we have three separate exhibits on top of
25 it from Doctor Morin.

1 Now, counsel for Utilities Inc. just told you that
2 comment on Doctor Morin is fair game, had Mr. Rothschild
3 actually exposed directly on what he had said. Well, this is a
4 way of doing it. It may not be the way that Utilities Inc.
5 would have preferred, and it may have been better had he just
6 directly addressed the issues of Doctor Morin. We were on a
7 very tight time frame on filing surrebuttal, there was no place
8 that allowed us to, so we filed our surrebuttal testimony
9 11 days after receiving the testimony from the Utilities Inc.
10 witness. It's 37 pages of surrebuttal testimony, and in all
11 frankness there is only so much you can do in that 11-day
12 period.

13 So this is the way we chose to address Doctor Morin.
14 If the Utilities Inc. witness wishes to cite him in support of
15 her testimony, we think it's fair game to show that there are
16 items in dispute of the policies and the theories that Doctor
17 Morin espouses. So we believe it is fair game. Certainly the
18 Commission can give it the weight is due, but we think it
19 should stay in.

20 **MR. FRIEDMAN:** I don't think, because we didn't have
21 enough time to do it the right way is really a good defense to
22 doing it the right way, and that is to respond directly to the
23 rebuttal testimony that they purported to respond to. But just
24 taking some documents that you filed in some other case and,
25 saying, bam, here it is. We don't know what Doctor Morin said

1 in that case because we don't have his testimony, but here is
2 my position saying Doctor Morin doesn't know what he is talking
3 about. And I don't think that's relevant to present it when he
4 is purporting to rebut testimony that is not even in the
5 record.

6 **COMMISSIONER ARGENZIANO:** Mr. Beck.

7 **MR. BECK:** Just very briefly, I didn't say it wasn't
8 the right way. That's counsel's way of characterizing it. I
9 said it is a way. There may have been other ways to do it, but
10 certainly a way and an appropriate way.

11 **COMMISSIONER ARGENZIANO:** Any comments from staff?

12 **MS. HARTMAN:** Staff recommends that Utilities Inc.'s
13 motion to strike portions of James A. Rothschild's surrebuttal
14 and testimony exhibits be denied. We believe the Commission
15 should consider the testimony and exhibits and give them the
16 weight they deserve.

17 **COMMISSIONER ARGENZIANO:** I think -- do you have any
18 comment, Mr. Beck?

19 **MR. BECK:** We certainly agree, and that would make
20 our other motion moot.

21 **COMMISSIONER ARGENZIANO:** And, Mr. Friedman, any
22 comment?

23 **MR. FRIEDMAN:** Prentice Pruitt would be very proud.
24 I don't know if you're old enough to remember
25 Prentice, but --

1 **COMMISSIONER ARGENZIANO:** I'm old enough.

2 **MR. FRIEDMAN:** -- Prentice was one of those that --
3 he had that one case that said you can consider everything and
4 give it the weight you desire, and he used to say that for the
5 100 years that he was an advisor to the Commission. Bless his
6 soul.

7 **COMMISSIONER ARGENZIANO:** Well, I think that, you
8 know, having more information sometimes become filler for
9 whatever reasons, and other times it's important to have more
10 information. So how about I deny both motions to strike, and
11 we will move on to hearing and hear them all. So let's move
12 forward and proceed through the draft prehearing order.

13 Staff.

14 **MS. HARTMAN:** Let's see. We have nothing in case
15 background. We have no comments.

16 **COMMISSIONER ARGENZIANO:** I'm sorry, go ahead. And
17 conduct of proceedings.

18 **MS. HARTMAN:** There are no comments that I am aware
19 of.

20 **COMMISSIONER ARGENZIANO:** Jurisdiction.

21 **MS. HARTMAN:** None.

22 **COMMISSIONER ARGENZIANO:** Procedure for handling
23 confidential information.

24 **MR. FRIEDMAN:** There is none.

25 **MS. HARTMAN:** There is none in this case.

1 **COMMISSIONER ARGENZIANO:** Prefiled testimony and
2 exhibits. Witnesses. Order of witnesses? If anybody has
3 anything to say, please holler up.

4 **MS. HARTMAN:** For order of witnesses, I believe that
5 the Office of Public Counsel has requested that their witnesses
6 be taken up separately.

7 **COMMISSIONER ARGENZIANO:** Mr. Beck.

8 **MR. BECK:** Yes. It's not clear to me. I think it
9 has James Rothschild listed as both rebuttal and surrebuttal
10 and it is just surrebuttal. But the order I agree with.

11 **COMMISSIONER ARGENZIANO:** Separately, okay. Staff.

12 **MS. HARTMAN:** We agree with that.

13 **COMMISSIONER ARGENZIANO:** Okay. Make it so.

14 **MS. HARTMAN:** Can we go back to Section V?

15 **COMMISSIONER ARGENZIANO:** Section V, yes, go right
16 ahead.

17 **MS. HARTMAN:** We would ask that the parties be
18 willing to shorten or dispense with witness summaries of
19 testimony. I believe five minutes is typically provided.

20 **COMMISSIONER ARGENZIANO:** How does that sound to Mr.
21 Friedman and Mr. Beck?

22 **MR. BECK:** To allow summaries, or --

23 **MR. FRIEDMAN:** Yes, to allow them to summarize for
24 five minutes their testimony?

25 **COMMISSIONER ARGENZIANO:** Yes.

1 **MR. BECK:** Yes.

2 **MR. FRIEDMAN:** That's fine.

3 **MR. BECK:** That's fine with us.

4 **MR. FRIEDMAN:** We don't want it to be longer than the
5 testimony, as we have seen many times.

6 **COMMISSIONER ARGENZIANO:** Okay.

7 **MS. HARTMAN:** Thank you.

8 **COMMISSIONER ARGENZIANO:** And we were back on -- did
9 we finish with order of witnesses and move on to basic
10 positions, issues and positions. Exhibit list.

11 **MS. HARTMAN:** Staff would note for the record that we
12 will prepare a Comprehensive Exhibit List consisting of all
13 prefiled exhibits for the purpose of numbering and identifying
14 the exhibits at hearing, and we will provide an exhibit list to
15 parties as soon as possible.

16 **COMMISSIONER ARGENZIANO:** Okay. Proposed
17 stipulations.

18 **MS. HARTMAN:** We all stipulate to whether to close
19 the docket, which is Issue 4.

20 **COMMISSIONER ARGENZIANO:** Issue 4, right. And
21 pending motions, we have already dealt with the preliminary
22 motion. Anything else, Staff?

23 **MS. HARTMAN:** No.

24 **COMMISSIONER ARGENZIANO:** Okay. Pending
25 confidentiality motions.

1 **MR. FRIEDMAN:** None.

2 **COMMISSIONER ARGENZIANO:** Post-hearing procedures.
3 Rulings, let's see. We're okay with the five minutes.

4 Any other matters?

5 **MR. FRIEDMAN:** Will the attorneys have an opening
6 statement?

7 **MS. HARTMAN:** That is a matter that would be
8 appropriate to discuss, whether to allow opening statements,
9 and if so, how long they should be.

10 **COMMISSIONER ARGENZIANO:** Yes. We will, of course,
11 allow opening statements. Does staff have a recommendation on
12 the time?

13 **MS. HARTMAN:** I think typically no longer than ten
14 minutes. I think in this case Office of Public Counsel has
15 asked for five minutes.

16 **MR. BECK:** I'll go ten, if you like. Five or ten,
17 both are fine.

18 **MR. FRIEDMAN:** I certainly could do mine in five
19 minutes.

20 **MR. BECK:** Five minutes is fine.

21 **COMMISSIONER ARGENZIANO:** Okay. Five minutes.
22 Staff, go ahead.

23 **MS. HARTMAN:** And also staff will request that to the
24 extent parties' positions change due to discussion at the
25 prehearing conference, that they provide any other changes to

1 staff by the close of business Friday, October 17th.

2 **COMMISSIONER ARGENZIANO:** That would be most
3 appreciated.

4 **MR. FRIEDMAN:** (Inaudible. Microphone off.)

5 **COMMISSIONER ARGENZIANO:** I heard something, but I
6 couldn't figure out what it was.

7 All right. Then we're okay with that, letting our
8 staff know if there are any changes, please, by the date staff
9 recommended. And anything else, Staff?

10 **MS. HARTMAN:** No.

11 **COMMISSIONER ARGENZIANO:** Anything else, Mr. Beck,
12 Mr. Friedman?

13 **MR. FRIEDMAN:** Nothing from me. Thank you.

14 **COMMISSIONER ARGENZIANO:** Okay. We're adjourned.
15 Thank you.

16 (The prehearing concluded at 1:43 p.m.)
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STATE OF FLORIDA)

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COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard 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 constitutes a true transcription of my notes of said proceedings.

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

DATED THIS 16th day of October, 2008.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
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