

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of TOPEKA GROUP, ) DOCKET NO. 881501-WS  
 INC. to acquire control of DELTONA ) ORDER NO.: 21790  
 CORPORATION'S utility subsidiaries in ) ISSUED: 8-25-89  
 Citrus, Marion, St. Johns, Washington,) )  
 Collier, Volusia and Hernando Counties) )  
 \_\_\_\_\_ )

Pursuant to Notice, a Prehearing Conference was held on August 21, 1989, in Tallahassee, before Commissioner Thomas M. Beard, Prehearing Officer.

APPEARANCES: WAYNE L. SCHIEFELBEIN, Esquire, and B. KENNETH GATLIN, Esquire, Gatlin, Woods, Carlson & Cowdery, 1709-D Mahan Drive, Tallahassee, Florida 32308  
On behalf of Topeka Group, Inc.

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On behalf of Topeka Group, Inc.

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On behalf of Deltona Corporation

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On behalf of Deltona Corporation

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On behalf of St. Johns County

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On behalf of Volusia County

DOCUMENT NUMBER-DATE

08608 AUG 25 1989

FPSC-RECORDS/REPORTING

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Counsel to the Commissioners

#### PREHEARING ORDER

##### BACKGROUND

On November 18, 1988, the Topeka Group, Inc., filed an application to acquire control of the Deltona Corporation's utility subsidiaries in Citrus, Marion, St. Johns, Washington, Collier, Volusia, and Hernando Counties. The Topeka Group, Inc., is a Minnesota corporation and a wholly-owned subsidiary of Minnesota Power, located in Duluth, Minnesota. The Deltona Corporation's utility subsidiaries serve approximately 54,000 water customers and 23,000 sewer customers under this Commission's jurisdiction. The Topeka Group, Inc., exercised the warrants it purchased in 1985 to obtain 10,000 shares of common stock in each of the Deltona Corporation's utility subsidiaries in June, 1989. Therefore, the Topeka Group, Inc., currently is exercising majority organizational control of the Deltona Corporation's utility subsidiaries.

Pursuant to numerous objections filed by substantially-affected parties, this matter has been set for an administrative hearing at 10:00 AM, Wednesday, August 30, 1989, through Thursday, August 31, 1989, with an evening session at 6:00 PM, Wednesday, August 30, 1989. The hearing will be held at the Holiday Inn International Airport, Meeting Room - International C, 5750 T. G. Lee Boulevard, Orlando, Florida 32822.

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The scope of this proceeding shall be based upon the issues raised by the parties and Commission Staff during the Prehearing Conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and the rules and regulations of this Commission.

PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled, except for witnesses Deborah Swain, Rafael A. Terrero, Carl "Bud" Markel, and Thomas A. Cloud. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing.

Witnesses are reminded that on cross-examination responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues</u>
<u>Direct</u>		
Charles E. Woods	Topeka	Issues 1,2,3,4,5, 6,7,8,9,10
Jack R. McDonald	Topeka	Issues 1,2,3,4,5, 6,7,8,9,10
Earle D. Cortright, Jr.	Deltona Corporation	Issues 1,2,3,4,5, 6,8

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Sharon J. Hummerhielm	Deltona Corporation	Issue 5
Maritza Gomez Montiel	Deltona Corporation	Issues 3,4,5
Arsenio Milian	Deltona Corporation	Issues 1,2,3,4,5, 6,8,9,10
Deborah Swain	Deltona Corporation	Issues 1,2,3,4,5, 6,8,9,10
Rafael A. Terrero	Deltona Corporation	Issues 2,3,4,5
Carl "Bud" Markel	St. Johns County	Issues 6,7

Rebuttal

Charles E. Woods	Topeka	Issues 3,4,5,6
Thomas A. Cloud	Topeka	Issue 7

BASIC POSITIONS

TOPEKA: Applicant's basic position in the proceeding is that the transfer is in the public interest and that, accordingly, the Commission should approve it.

DELTONA CORPORATION: The transfer of majority organizational control of United Florida Utilities Corporation and Deltona Utilities, Inc., can only be found to be in the public interest if the transferee is required by the Commission to honor the representations and fulfill the duties and obligations of those utilities to continue to provide water and sewer services on the same terms and conditions as those services have previously been provided.

ST. JOHNS COUNTY: It is the position of St. Johns County that Topeka Group's proposed acquisition of control of Deltona Corporation's utility subsidiaries, particularly of those utilities in St. Johns County, would be against the public interest. As part of its on-going relationship with the public in regards to the St. Augustine Shores development in St. Johns County, the Deltona utility subsidiary has made representations, termed "guarantees", to members of the public, and government entities operating on their behalf, relating to the level of utility service to be provided. Further, the

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Deltona Utility subsidiary has entered into a negotiated agreement providing for a procedure under which St. Johns County can acquire the utilities serving St. Augustine Shores.

The Topeka Group, Inc., has openly repudiated the commitments and agreements made by its predecessors. Topeka's repudiation of service commitments, upon which members of the public and their governmental representatives have relied, has a direct adverse impact upon the public interest. Additionally, the willingness of Topeka to ignore its obligations, coupled with the unauthorized manner in which it took control of the utilities and made this application, demonstrates an unresponsiveness to its obligations and a disdain for regulation that does not bode well for the public interest.

VOLUSIA COUNTY: Volusia currently is considering the acquisition of the Deltona Lakes water and sewer service facilities of Deltona Utilities, Inc. that is the subject of the Topeka Group, Inc. transfer of control application pending in this docket. At this point Volusia does not object to the proposed transfer. However, Volusia is concerned that in any transfer there be no increase in the cost requirements for the Citizens of Volusia County by the proposed acquisition and that the appropriate rate base be established when and if transfer is approved.

PUBLIC COUNSEL: Once an appropriate Court determines if a binding contract exists between Topeka Group, Inc. ("Topeka") and Deltona Corporation ("Deltona") and the terms of that contract if one exists, the normal issues associated with determining if the proposed sale is in the public interest will be ripe for consideration by the Commission.

If it is determined that a binding agreement exists and its terms are specified by the Court those terms must still be reviewed by the Commission to help determine whether this proposed sale is in the public interest. The Commission should not approve Topeka's purchase of all of the stock of Deltona's utility subsidiaries unless it can be clearly demonstrated that the purchase is in the public interest.

STAFF: Staff's basic position is that the acquisition of majority organizational control of the Deltona Corporation's utility subsidiaries by the Topeka Group, Inc., may be in the

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public interest, however, there are several aspects of this transfer that must be explored before this determination may be made.

#### ISSUES AND POSITIONS

1. ISSUE: Does the Topeka Group, Inc., have the technical and financial capability to operate the Deltona Corporation utility subsidiaries?

#### POSITIONS

TOPEKA: Yes. Combined monetary reserves, marginal debt capacity, invested equity availability and positive operating cash flows are considered more than adequate financial resources for the provision of superior water and wastewater services to all present and future utility customers in the affected service areas.

In the technical area (managerial, engineering, operations, maintenance, administrative and financial management), the Applicant has a demonstrated experience in providing necessary resources to ensure that customers do receive adequate service.

DELTONA CORPORATION: The Topeka Group, Inc., probably possesses the technical and financial capability to operate the Utilities; however, based on their past actions there is a real question whether they will in good faith operate those Utilities in the best public interest.

ST. JOHNS COUNTY: No position.

VOLUSIA COUNTY: No position.

PUBLIC COUNSEL: Due to its extensive involvement in utility operations throughout the United States the Topeka Group, Inc. probably possesses the technical and financial capabilities to operate the Deltona Corporation utility subsidiaries. However, the Citizens desire to question Topeka in more detail concerning Topeka's plan to manage and direct the operations of these particular utility operations.

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STAFF: Due to its very large size, the Topeka Group, Inc., probably has the financial and technical capability to operate the Deltona Corporation's utility subsidiaries. However, such financial and technical capability must be established by the record in this proceeding by the Topeka Group, Inc.

2. ISSUE: Do United Florida Utilities Corporation and Deltona Utilities, Inc., own all of the utility plant sites presently necessary to provide utility service?

POSITIONS

TOPEKA: Applicant does not separately own Deltona utility subsidiary property. Applicant owns the stock in those subsidiaries.

DELTONA CORPORATION: No, the Utilities do not own all of the utility sites upon which they currently operate utility facilities.

ST. JOHNS COUNTY: No. Certain properties required for the St. Augustine Shores system are owned by The Deltona Corporation, The St. Augustine Shores Service Corporation, St. Johns County or others. The power of eminent domain is not available to The Topeka Group or Utilities against St. Johns County as to properties owned by the County.

VOLUSIA COUNTY: No position.

PUBLIC COUNSEL: This is a factual determination that should be made by the Commission before determining whether this proposed transfer is in the public interest.

STAFF: No position.

3. ISSUE: Do United Florida Utilities Corporation and Deltona Utilities, Inc.'s current service availability policies require developers to donate lines or do they require the utilities to invest in line extensions and recover the appropriate portions of their investments through main extension charges?

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### POSITIONS

TOPEKA: A typical example, as detailed in the First Revised Sheet No. 10.0, entitled "Deltona Utilities, a Division of the Deltona Corporation" states, "6.0 Extensions. The Company will make such extensions to its existing facilities as may required by one or more Consumers provided the revenues to be derived therefrom shall be sufficient to afford a fair and reasonable return on the cost of providing and rendering the water service. Otherwise, the Company will require from the Consumer Pre-payments, cash advances, minimum guarantees, service guarantees, contribution in aid of construction, or other arrangement with the Consumer, whereby the Company will be enabled to earn a fair and reasonable return on the cost of providing and rendering the required water service. Required pre-payments, cash advances, other guarantees or contributions in aid of construction will be approved by the Florida Public Service Commission." (Emphasis added.) This would indicate that if the extension produces revenues which were adequate to pay the costs of service plus provide a "fair and reasonable" return, no contribution of capital or other similar arrangement would be necessary. If not, some other arrangement which must be approved by the Commission (and thus Applicant assumes must conform to Commission rules, guidelines, etc.) must be developed in an agreement form, submitted to the Commission for its review, modification as appropriate, and approval. The utility would only invest in such lines when and if they did provide for a fair and reasonable return on the total investment required to provide for the service needs. As a practical matter, there would be few if any situations where that would occur, considering the cost of extending service and the rates in place. With developers, it would be Applicant's expectation that a donation of the lines in conformity with Rule 25-30.585, Florida Administrative Code, and other applicable rules of the Commission would be required.

DELTONA CORPORATION: The Utilities' filed service availability policies allow the Utilities to require developers to donate lines or allow the Utilities to invest in line extensions and recover the appropriate portions of their investment through their Commission approved rates and charges. The service availability



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policy followed by the Utilities, consistent with their filed service availability policies and in accordance with representations, obligations, and commitments made by the Utilities to The Deltona Corporation, the regulators of The Deltona Corporation (e.g., Division of Florida Land Sales, Condominiums and Mobile Homes) customers of Deltona (future customers of the Utility), and others, requires that the Utilities invest in line extensions made within their original certificated service areas and recover that investment through their FPSC approved rates and charges.

ST. JOHNS COUNTY: As a part of the Planned Unit Development application the utility committed to provide utility services to all of the St. Augustine Shores certificated area. As a part of land sales commitments to citizens of St. Augustine Shores representations were made that extensions would be financed through the rates. St. Johns County takes no position on other areas of the State.

VOLUSIA COUNTY: No position.

PUBLIC COUNSEL: The approved service availability policies allow latitude for either the developer donating lines or the utility investing in lines dependent upon the availability of an existing main and the anticipated revenues to be derived from such line extension.

STAFF: The approved service availability policies allow latitude for either the developer donating lines or the utility investing in lines dependent upon the availability of an existing main and the anticipated revenues to be derived from such line extension.

4. ISSUE: Within what period of time are the utility subsidiaries obligated to extend service to customers?

POSITIONS

TOPEKA: The utility subsidiaries are obligated to extend service to customers in accordance with Section 367.111, Florida Statutes and their current, Commission-approved tariffs, service availability contracts and policies.

DELTONA CORPORATION: Consistent with the service availability policies filed with the Commission, the Utilities are to extend water and sewer service upon sixty (60) and one hundred eighty (180) days, respectively, from

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notice of the commencement of construction on the property of one of their customers. The utilities' policy is to finance the costs of such extensions of service and recover the costs through their rates and charges.

ST. JOHNS COUNTY: Water upon 60 days notice; sewer upon 180 days notice, respectively, from notice of commencement.

VOLUSIA COUNTY: No position.

PUBLIC COUNSEL: Service must be provided within a reasonable length of time as required by Florida law.

STAFF: The utility subsidiaries must provide service in accordance with Section 367.111, Florida Statutes, Commission Rule 25-30.530, Florida Administrative Code, and its current tariffs and service availability policies.

5. ISSUE: What commitments have been made by United Florida Utilities Corporation and Deltona Utilities, Inc. regarding service availability that are not stated in their approved service availability policies and the Commission's Rules?

POSITIONS

TOPEKA: Applicant does not know what commitments have been made by the Utilities when they were under the direction and control of the Deltona Corporation which were outside of the approved service availability policies of the Utilities, their filed rates and the Commission rules.

DELTONA CORPORATION: Because Utility policy was as described in Deltona's positions on issues 3 and 4, the Utilities made representations to regulators, customers, The Deltona Corporation, and others that service would be extended as an investment of the Utilities and that service would be provided within sixty (60) and one hundred eighty (180) days for water and sewer, respectively.

ST. JOHNS COUNTY: As a part of the Planned Unit Development application the utility committed to provide utility services to all of the St. Augustine Shores certificated area. As a part of land sales commitments to

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citizens of St. Augustine Shores representations were made that extensions would be financed through the rates. St. Johns County takes no position on other areas of the State.

VOLUSIA COUNTY: No position.

PUBLIC COUNSEL: The Citizens are not aware of all of the commitments which have been previously made by the Delton utility subsidiaries which might be outside of the approved service availability policies of the utilities, their tariffs and Commission's rules.

STAFF: No position.

6. ISSUE: What consideration should the Commission give to the Topeka Group, Inc.'s intent to honor or not to honor those commitments?

POSITIONS

TOPEKA: Applicant intends to conform to the Commission's rules and its approved tariffs, rates, charges and policies.

DELTONA CORPORATION: The Commission should find it not in the public interest to approve the transfer of these utilities to an entity which apparently does not intend to honor commitments, representations, and obligations made to others by those Utilities.

ST. JOHNS COUNTY: St. Johns County submits that Topeka is fully bound to fulfill these commitments.

VOLUSIA COUNTY: The Commission should determine what prior commitments were made, and that the transfer does not relieve Topeka of these commitments.

PUBLIC COUNSEL: Topeka Group, Inc.'s intent to honor or fail to honor commitments made by the utility subsidiaries to the Citizens and local governments should be a factor in determining whether this transfer is in the public interest.

STAFF: If commitments have been made which are outside

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the utilities' approved service availability policies and the Commission's rules and Topeka does not honor such commitments, resolution and any sanctions regarding this issue would be outside the jurisdiction of this Commission.

7. ISSUE: Will the proposed transfer affect the possible acquisition of certain of United Florida Utilities Corporation and Deltona Utilities, Inc.'s properties by intervening local governmental entities?

POSITIONS

TOPEKA: This "issue" is irrelevant and beyond the scope of this proceeding.

DELTONA CORPORATION: No position pending evidence to be presented or elicited by Volusia County and St. Johns County at the hearing.

ST. JOHNS COUNTY: Yes. St. Johns County has reason to believe that The Deltona Corporation would honor prior commitments to sell the St. Augustine Shores system either through negotiation or through arbitration. The Topeka Group has indicated that it will not honor that commitment and it takes the position that the commitment is null and void and that the only avenue of acquisition available to St. Johns County is through eminent domain. Additionally, acquisition by The Topeka Group may affect the underlying valuation of the system.

VOLUSIA COUNTY: No position.

PUBLIC COUNSEL: We do not know at this time how the proposed transfer might affect the possible governmental acquisitions of certain of Deltona's utility subsidiaries.

STAFF: No position.

8. ISSUE: Is the Topeka Group Inc.'s acquisition of majority organizational control of the Deltona Corporation's utility subsidiaries in the public interest and should the application be approved?

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POSITIONS

TOPEKA: Yes. The Topeka Group can more fully meet the obligations of a public utility, will more faithfully comply with the Commission rules, will not have conflicts between development and utility customer needs and thus will be better able to serve in the "public interest."

DELTONA CORPORATION: The transfer is only in the public interest if the transferee is required by the Commission to honor the representations and fulfill the duties and obligations of those utilities to continue to provide water and sewer services on the same terms and conditions as those services have previously been provided.

ST. JOHNS COUNTY: No. Direct harm comes from reliance on the repudiated commitments made with the public and its officials by the predecessors to the utility, and more broadly, the public interest is disserved by this cavalier attitude towards responsibility.

VOLUSIA COUNTY: No position.

PUBLIC COUNSEL: The Commission should not approve the transfer of certificates until the Federal Court case between Deltona Corporation and Topeka Group, Inc. has been concluded. However, since the Commission has elected to entertain this application filed inappropriately by the buyer against the wishes of an unwilling seller, the Commission at minimum should forewarn the buyer that in subsequent proceedings to establish just and compensatory rates Topeka will be permitted to receive a return on no more than its funds actually invested in the utilities.

STAFF: No position.

9. ISSUE: Was the Deltona Corporation and the Topeka Group, Inc.'s transfer of majority organizational control of the Deltona Corporation's utility subsidiaries in accordance with the requirements of Chapter 367, Florida Statutes, and the Commission's Rules?

POSITIONS

TOPEKA: Yes.

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DELTONA CORPORATION: No. The transfer took place without prior Commission approval. Moreover, the Application for approval was filed by the wrong party.

ST. JOHNS COUNTY: St. Johns County submits that Topeka's application is a nullity and acquisition cannot be approved; additionally, St. Johns County notes that as of the date of the adoption of a Resolution by the Board of County Commissioners of St. Johns County making Chapter 367, Florida Statutes, applicable to St. Johns County, the authorized utility operating the St. Augustine Shores system was Deltona Utilities, Inc. The application filed in this Docket reflects that the applicant proposes to acquire majority organizational control of the St. Augustine Shores system operated by United Florida. Upon the assumption of regulatory authority, the utility that should have been certificated for the St. Augustine Shores system was Deltona Utilities, Inc., absent compliance with Florida Statutes 367.071.

VOLUSIA COUNTY: No position. :

PUBLIC COUNSEL: No, the application for approval of the transfer should have been filed by the seller, Deltona Corporation, and the sale should not have been consummated until the Commission had deemed the sale was in the public interest.

STAFF: This transfer of majority organizational control was not accomplished in accordance with the requirements of Chapter 367, Florida Statutes, and the Commission's Rules at least to the extent it was effected prior to receiving Commission approval. There may also be other problems that have not yet been identified.

10. ISSUE: If the Commission determines that the transfer of majority organizational control of the Deltona Corporation's utility subsidiaries was not in accordance with the requirements of Chapter 367, Florida Statutes, and the Commission's Rules, what action should the Commission take against the Deltona Corporation and/or the Topeka Group, Inc.?

POSITIONS

TOPEKA: Agrees with alternative staff position. Such

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position faithfully reflects current Commission policy. See, for example, Order No. 21631, issued on August 2, 1989 in re: application for approval of the transfer of water and sewer certificates from Twin County Utility Company to Southern States Utilities, Inc.

DELTONA CORPORATION: The Commission has a wide range of sanctions available against the Utilities for noncompliance with the Florida Statutes and the Commission's rules. Any transfer made prior to Commission approval could be voided by the Commission. The fact that the application was filed by an entity not within the jurisdiction of the Florida Public Service Commission makes the application a nullity and it should be dismissed for lack of jurisdiction.

ST. JOHNS COUNTY: The application should be denied.

VOLUSIA COUNTY: No position.

PUBLIC COUNSEL: Depending upon what way the requirements of Chapter 367, Florida Statutes, and Commission rules are not met the Commission has a wide range of alternatives available to it. Any transfer made prior to Commission approval could be voided. Any application improperly submitted could be required to be resubmitted. Any transfer ultimately determined to not be in the public interest should be disallowed.

STAFF: Entities acting in violation of Chapter 367, Florida Statutes, and the Commission's Rules should, at minimum, be penalized.

ALTERNATIVE STAFF POSITION: No action should be taken against either Deltona Corporation or Topeka Group, Inc. This acquisition is only a part of a much larger business transaction involving non-regulated business entities that has taken place over a number of years. The Commission has been aware of the transaction for several years and has been advised of the progress of the negotiations all along. This application was filed seven months before the exercise of the warrants, which would normally have been a reasonable time for this type of stock transfer case to be processed by the Commission.

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STIPULATIONS

The parties and staff have reached the following proposed stipulations:

1. The proper capital structure, the proper level of rate base and expenditures of Deltona Utilities, Inc. and United Florida Utilities Corporation will not be determined in this docket. To the extent these issues are addressed for ratemaking purposes, they will be determined in subsequent rate cases.
2. Pursuant to Rule 25-9.044, Florida Administrative Code, an entity acquiring majority organizational control of a utility must continue to use the utility's currently-approved rates, charges and service availability policy.

EXHIBITS

<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
Charles E. Woods	Topeka	1	Exhibit W-1 - Statement of Qualifications of Charles E. Woods
Charles E. Woods	Topeka	2	Exhibit W-2 - Letter dated June 7, 1989 to Charles Sweat from Charles Hill acknowledging a meeting regarding notice of exercise of the warrants.
Charles E. Woods	Topeka	3	Exhibit W-3 - Organization Chart of Topeka



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				Group, Inc.
Jack R. McDonald	Topeka	4		Composite Exhibit Mc-1 - Warrants to purchase common stock of Deltona Utilities, Inc., Pelican Utility Company and United Florida Utilities Corporation
Jack R. McDonald	Topeka	5		Exhibit Mc-2 - December 31, 1987 and December 31, 1988, Consolidated Financial Statements of Topeka Group, Inc.
Sharon J. Hummerhielm	Deltona Corporation	6		Exhibit H-1 - Examples of Utilities' commitment letters to provide water and sewer service
Sharon J. Hummerhielm	Deltona Corporation	7		Exhibit H-2 - Public Offering Statement
Sharon J. Hummerhielm	Deltona Corporation	8		Exhibit H-3 - Public Offering Statement
Carl "Bud" Markel	St. Johns Co.	9		Exhibit C-1 - St. Johns County

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Ordinance 71-1,  
original  
franchise for  
utility in St.  
Augustine Shores

Carl "Bud" Markel St. Johns Co. 10

Exhibit C-2 -  
St. Johns  
County  
Ordinance 74-5,  
amendment  
extending  
franchise under  
71-1

All parties and staff reserve the right to introduce exhibits for the purpose of cross-examination, including all exhibits identified and introduced by all other parties.

RULINGS

The Prehearing Officer issued an Order Denying Motion for Continuance on August 15, 1989, in regard to the Motion for Continuance filed by Deltona on August 4, 1989. The Motion to Compel Production of Documents and for Sanctions filed on August 11, 1989, was withdrawn by Deltona Corporation.

Based upon the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth below unless modified by the Commission.

By ORDER of Commissioner Thomas M. Beard as Prehearing Officer, this 25th day of August, 1989.

  
THOMAS M. BEARD, Commissioner  
and Prehearing Officer

( S E A L )

SFS