

1 **APPEARANCES:**

2
3 **F. MARSHALL F. DETERDING, Rose, Sundstrom &**
4 **Bentley, 2548 Blairstone Pines Drive Tallahassee,**
5 **Florida 32301, appearing on behalf of Mad Hatter**
6 **Utility, Inc.**

7 **MARION HALE and CHARLES SAMARKOS, Johnson,**
8 **Blakely, Pope, Bokor, Ruppel & Burns, P.A, 911**
9 **Chestnut Street, Clearwater, Florida, appearing on**
10 **behalf of Pasco County.**

11 **ROSANNE CAPELESS, Florida Public Service**
12 **Commission, Division of Legal Services, 2540 Shumard**
13 **Oak Boulevard, Tallahassee, Florida 32399-0870,**
14 **appearing on behalf of the Commission Staff.**

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I N D E X

MISCELLANEOUS

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ITEM

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Discovery Response

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Mad Hatter's Motion to Strike
Gallagher and Moses testimony

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Motion to Strike testimony of
Mr. Orsi and Mr. Hobby

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PROCEEDINGS
(Hearing convened at 1:30 p.m.)

COMMISSIONER KIESLING: This is a prehearing in Docket 960576-WS regarding the application for amendment for Mad Hatter Utilities.

Since everyone is here, I'm assuming we don't have to read the notice because we're all here.

Let me just say one thing before we go any further. Someone left a set of eyeglasses and an eyeglass case sitting outside on one of the benches. I just saw it when I walked in. I didn't know if any of you had laid something down. If so, you might want to go and retrieve your property.

I'll take appearances.

MR. DETERDING: F. Marshall Deterding of the law firm of Rose, Sundstrom and Bentley, here on behalf of Mad Hatter Utilities, Inc -- "Utility", excuse me.

MS. HALE: Marion Hale and Charles Samarkos from the law firm of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, on behalf of Pasco County.

COMMISSIONER KIESLING: Is Mr. --

MR. SAMARKOS: Samarkos. I'm attorney with the law firm.

COMMISSIONER KIESLING: Would you spell your

1 name, then, since I don't have it?

2 MR. SAMARKOS: Yes. S-A-M-A-R-K-O-S.

3 COMMISSIONER KIESLING: Okay. And Staff?

4 MS. CAPELESS: Rosanne Capeless, appearing
5 on behalf of the Commission Staff.

6 COMMISSIONER KIESLING: Are there any things
7 preliminary that we need to take up before we work our
8 way through the order?

9 MS. CAPELESS: One thing that I'd like to
10 mention is that I passed out an one-page list of
11 Commission Orders that Staff would like to have
12 officially recognized for the purposes of the hearing.

13 COMMISSIONER KIESLING: All right. The way
14 we usually handle this, since you probably don't
15 practice up here too often, is this will be marked as
16 an exhibit at the hearing and the Commission, through
17 its Chairman, will make a decision on taking official
18 notice. And if you don't have copies of these, you
19 can get them from Staff, but they won't be included in
20 the record, just this list will as an subject. So if
21 you have any objections you need to let Staff know and
22 let us know at the hearing.

23 MS. CAPELESS: Thank you.

24 COMMISSIONER KIESLING: We'll handle it the
25 same way we usually do. Okay. Anything else?

1 MS. CAPELESS: That's the only preliminary
2 matter. There are some motions pending. I thought
3 maybe we could get to that in sequence.

4 COMMISSIONER KIESLING: Yes, we'll get to
5 those at the back when we get there.

6 Anything else preliminary from you, Mr.
7 Deterding?

8 MR. DETERDING: No, Commissioner.

9 COMMISSIONER KIESLING: Ms. Hale?

10 MS. HALE: No.

11 COMMISSIONER KIESLING: Okay. Then we'll
12 start with the order, and I understand that the one I
13 have is -- I have had for about ten days now, I guess,
14 so have there been any changes or are we still all
15 working from the old draft?

16 MS. CAPELESS: We're still all working from
17 the old draft. That's the most recent one.

18 COMMISSIONER KIESLING: Okay. I'll start
19 just start working my way through it, and if anyone
20 has any additions, corrections, questions, comments on
21 any section, just stop me and tell me what it is.

22 Case background. No changes. Okay.

23 The order of witnesses.

24 MR. DETERDING: We would need to add the
25 rebuttal witnesses.

1 **COMMISSIONER KIESLING:** Okay.

2 **MR. DETERDING:** Larry DeLucenay; Edwin J.
3 Rogers, R-O-G-E-R-S; and Robert C. Nixon.

4 **COMMISSIONER KIESLING:** Edwin?

5 **MR. DETERDING:** Right. Correct. Edwin.

6 **COMMISSIONER KIESLING:** Edwin, what, H?

7 **MR. DETERDING:** J. Rogers.

8 **COMMISSIONER KIESLING:** Okay. And what's
9 Mr. Nixon's name?

10 **MR. DETERDING:** Robert C.

11 **COMMISSIONER KIESLING:** Robert C.

12 **MR. DETERDING:** We're not affiliated with
13 that Nixon.

14 **COMMISSIONER KIESLING:** I also note that you
15 don't have issues written in for -- or the county
16 doesn't, I'll get to them. Do you have issues that
17 you want to list under the rebuttal?

18 **MR. DETERDING:** I have not accumulated them,
19 Commissioner, but as we go through the issues I have
20 marked those as to who is going to testify on each of
21 those subjects so we can put that together pretty
22 simply after we go through that.

23 **COMMISSIONER KIESLING:** Okay. For the
24 county, any changes, additions, corrections to your
25 witness list, and what issues are they testifying

1 about?

2 MS. HALE: The second is easier, let me tell
3 you, John Gallagher is Issues 4, 8, 10, 11 and 13.

4 COMMISSIONER KIESLING: Okay.

5 MS. HALE: Doug Bramlett is 1 through 5, 7
6 through 12 and 13.

7 COMMISSIONER KIESLING: Can I just say 7
8 through 13?

9 MS. HALE: Yeah, that would make sense.

10 Orsi and Hobby are both 5 and 13. Joe
11 Squitieri and Tom O'Connor are both 12 and 13. Kratz
12 is 4 and 10 and Moses is 5, 6, 10, 12 and 13.

13 COMMISSIONER KIESLING: Okay.

14 MS. HALE: We have just learned on Friday
15 that Mr. DeLucenay, I understand, testified in his
16 deposition that he may want to hook up to Hillsborough
17 County for wastewater treatment service. That's the
18 first we've ever heard of this. Based on that, we may
19 want to consider having to call a witness from
20 Hillsborough County.

21 The information is so new that I really
22 can't give you a name, because we've only just learned
23 of this. But that is one thing that we may want to
24 revisit on some question. That is not in his prefiled
25 testimony nor was it in his first deposition. In his

1 second deposition he mentioned that, which was taken
2 Friday morning.

3 COMMISSIONER KIESLING: Is it in his
4 rebuttal testimony?

5 MR. DETERDING: I believe it is. I believe
6 he mentions that as a possibility in his rebuttal.

7 MS. HALE: If so, we only got the rebuttal
8 on Friday. I did not see it in there, but I'm not
9 sure one way or the other but he did mention it Friday
10 in his deposition. So that is an open issue we're
11 going to have to look at, and we'll look at it very
12 quickly.

13 COMMISSIONER KIESLING: All right. Does
14 anyone else have any comments or thoughts on adding a
15 witness at this point?

16 MR. DETERDING: Well, I would be opposed to
17 adding any witnesses at this point but -- you know, we
18 haven't even had it proposed yet so --

19 COMMISSIONER KIESLING: Right. I'm just
20 trying to head it off, you know, so that we at least
21 know how we're going to handle it so that --

22 MR. DETERDING: Well, he mentioned that he
23 had had discussions with Hillsborough County, and as I
24 said, I believe that is mentioned in his rebuttal
25 testimony as one possibility. And I believe that's

1 all that was said about that. And I would object to
2 them being given the opportunity to present what would
3 effectively be surrebuttal, so --

4 COMMISSIONER KIESLING: Ms. Capeless, any
5 thoughts you want to add to this?

6 MS. CAPELESS: Well, we wouldn't object to a
7 new witness being called on this particular issue
8 provided that it's prefiled. Since it was newly
9 identified in rebuttal, the County obviously didn't
10 have a chance to include it in its direct testimony.

11 COMMISSIONER KIESLING: Sure. And when is
12 the hearing in this?

13 MS. CAPELESS: May -- next Tuesday and
14 Wednesday.

15 COMMISSIONER KIESLING: A week from --
16 essentially a week?

17 MS. CAPELESS: Yes, ma'am.

18 COMMISSIONER KIESLING: When are you going
19 to be making this decision?

20 MS. HALE: We're going to have to get on the
21 phone with Hillsborough County and find out what the
22 story is and find out if, you know, the County has
23 agreed or not to take it.

24 COMMISSIONER KIESLING: I'm a little
25 confused. I did not understand that either his

1 deposition or his prefiled rebuttal said that he was
2 going to hook up or he'd reached an agreement. I
3 thought you indicated that all he said was he was
4 thinking about that as a possibility, so.

5 **MS. HALE:** I did not attend his deposition.
6 I think Mr. Samarkos can tell you better, but I guess
7 the question would be can the county accept it? Is
8 the County in a position to accept it? What is the
9 story there? We don't know the answers to those
10 questions yet since it just came up. So I would think
11 by the end of this week -- I mean, if we are going to
12 have prefiled testimony, I think we could have it by
13 is the end of the week. That would not be a problem.

14 **MR. DETERDING:** We were asked by the Staff
15 during that deposition to provide some correspondence
16 from the county to Mad Hatter that was I believe
17 sometime ago concerning an inquiry about that
18 potential, and we are to be providing that to the
19 Staff today. I do not have it with me today, but I
20 will gladly fax a copy to the County this afternoon
21 when I get it delivered over here to the Commission
22 Staff. And other than that, there's just the
23 statement in his testimony that he has discussed it
24 with them.

25 **COMMISSIONER KIESLING:** All right. Yeah,

1 obviously it's premature because you haven't
2 identified a witness, but it would seem to me that
3 having it at least prefiled before the day of the
4 hearing would be a reasonable request. And I would
5 just suggest to you that if you do decide to go that
6 route that you make sure that it does correspond to
7 whatever it was that he testified about so that if
8 he's, you know, if he says he's talked to them but
9 that was the end of it, then, obviously, he doesn't
10 have an agreement. And, you know, I just don't want
11 it to go beyond whatever is in his testimony to start
12 including speculation about what might happen in the
13 future. If there is, in fact, not an agreement at
14 this point, then that's all that we know is fact, and
15 so you understand my concern.

16 MS. HALE: Yes.

17 COMMISSIONER KIESLING: Okay. Well, we'll
18 take that up at the hearing but leave that possibility
19 open. And if, in fact, it is going to occur, I would
20 want that prefiled testimony filed here, like in hand,
21 on Friday, and also to the parties.

22 MR. DETERDING: Commissioner, one more
23 thing. On this page, I was informed by Mr. Nixon late
24 last week that he is only available on the 13th. So
25 if we can accommodate taking him sometime on the 13th,

1 whatever is convenient.

2 COMMISSIONER KIESLING: Okay. Any objection

3 to that?

4 MS. HALE: No objection.

5 COMMISSIONER KIESLING: All right. If you

6 would just put an indication in here.

7 MS. CAPELESS: Yes, ma'am.

8 COMMISSIONER KIESLING: And other than that,

9 is the order of your witnesses correct, Ms. Hale?

10 Because you called out the issues in a different order

11 than that in which they are listed, so.

12 MS. HALE: The order we were anticipating,

13 understanding that Mr. Squitieri will be taken out of

14 order because of his availability problems were

15 Mr. Bramlett first, then Mr. Gallagher, then

16 Mr. Hobby, Mr. Orsi, Dr. Kratz and Mr. Moses.

17 MS. CAPELESS: And Mr. O'Connor.

18 MS. HALE: I'm sorry, I forgot about

19 O'Connor, with Mr. Moses at the end.

20 COMMISSIONER KIESLING: Okay. So the order

21 of witnesses, except for those four that are going to

22 be taken beginning at 1:00 on the 13th, will be

23 Mr. Bramlett is first; Gallagher is second; Hobby,

24 third; Orsi, fourth; Kratz, fifth; Moses, sixth;

25 O'Connor, seventh.

1 MS. HALE: Now, does the Staff anticipate
2 calling its witnesses -- I guess all of your witnesses
3 are 1:00 that afternoon.

4 MS. CAPELESS: Right. Being beginning at
5 1:00 and starting with Burghardt, followed by Martinez
6 and Screnock.

7 COMMISSIONER KIESLING: And Mr. Squitieri,
8 where is he going to fit in? Also beginning at 1:00?

9 MS. CAPELESS: Yes, ma'am.

10 COMMISSIONER KIESLING: Will he go first and
11 then the DEP witnesses?

12 MS. CAPELESS: I think that would be good.

13 MS. HALE: He is a DEP witness.

14 COMMISSIONER KIESLING: Oh, Mr. Squitieri
15 is, also? Okay.

16 MS. HALE: So is Mr. Squitieri first, then?

17 COMMISSIONER KIESLING: Sounds fine with me.
18 We'll just take them in the order that they are listed
19 down here at the bottom.

20 MS. HALE: We start at 10:00; is that
21 correct?

22 COMMISSIONER KIESLING: Uh-huh.

23 MS. HALE: So we can anticipate we would
24 start with Mr. Bramlett at 10:00, then?

25 COMMISSIONER KIESLING: Mr. DeLucenay goes

1 first.

2 MS. HALE: Okay. So we would do
3 Mr. DeLucenay and his witnesses and then --

4 COMMISSIONER KIESLING: No. Mr. DeLucenay's
5 direct.

6 MS. HALE: He has the only prefiled.

7 COMMISSIONER KIESLING: Right. And I guess
8 that is something that we do need to talk about,
9 though, because if we're going to start with
10 Mr. DeLucenay as 10:00, I don't know how much cross
11 there's going to be, but we could conceivably not be
12 through with Mr. DeLucenay by 1:00. And then by the
13 time we start all of these witnesses, Mr. Nixon may
14 not make it on.

15 MR. DETERDING: Right.

16 COMMISSIONER KIESLING: I mean --

17 MR. DETERDING: Well, if we could just plan
18 to take him at the tail end of that group.

19 COMMISSIONER KIESLING: No matter what time
20 it is.

21 MR. DETERDING: Yeah, whatever time it is.

22 COMMISSIONER KIESLING: Okay.

23 MR. DETERDING: He is rebuttal.

24 COMMISSIONER KIESLING: I know. So we'll
25 begin with Mr. DeLucenay. We will either finish him

1 or interrupt his testimony, take the other four
2 starting at 1:00, and then Mr. Nixon will come on and
3 testify on the 13th after those four. And if need be,
4 then we'll go back to Mr. DeLucenay.

5 MR. DETERDING: Okay. Sounds good to me.

6 MS. HALE: The second day, presuming we go
7 into the second day, the order would be Mr. Rogers
8 next as the other rebuttal witness?

9 COMMISSIONER KIESLING: No, we would go to
10 yours. Yeah, we do direct and then rebuttal.

11 MS. HALE: You would not presume we would
12 have a witness on other than Mr. Squitieri before
13 Wednesday?

14 COMMISSIONER KIESLING: I have no idea. I
15 mean, you know, if you all can end up stipulating to
16 some of the DEP witnesses without having to bring them
17 all there or something like that, I mean things
18 change. So you need to at least be sure that you have
19 somebody on call, you know, Mr. DeLucenay may only
20 take ten minutes and we may go straight to
21 Mr. Bramlett.

22 MS. HALE: I'll have them all there.

23 COMMISSIONER KIESLING: At least close
24 enough to where they can be called and get there.
25 Okay. And that will take us all the way

1 through.

2 Are we going to do Mr. DeLucenay's direct
3 and rebuttal together or --

4 MR. DETERDING: I would prefer to do them
5 separate.

6 COMMISSIONER KIESLING: Okay. Fine. I'm
7 not -- so the only rebuttal witness that we will take
8 on the 13th, unless we finish everyone else which is
9 not likely, will be Mr. Nixon.

10 MR. DETERDING: Correct.

11 COMMISSIONER KIESLING: Okay. And Staff,
12 there's no differences or changes in your witnesses?

13 MS. CAPELESS: Correct. We have none.

14 COMMISSIONER KIESLING: Okay. Under basic
15 positions, any change or additions, corrections to
16 yours, Mr. Deterding?

17 MR. DETERDING: No.

18 COMMISSIONER KIESLING: To the County's.

19 MS. HALE: I think on Issue 9.

20 COMMISSIONER KIESLING: No, I'm still at
21 basic positions on Page 6.

22 MS. HALE: No.

23 COMMISSIONER KIESLING: I haven't started
24 the issues yet.

25 MS. HALE: The same.

1 COMMISSIONER KIESLING: Okay. And Staff?
2

3 MS. CAPELESS: No changes.

4 COMMISSIONER KIESLING: No changes. All
5 right.

6 Issue 1. I'll just move through them. If
7 you have any questions or doubts about the wording of
8 the issue or the positions or you need to add or take
9 anything out, just let me know.

10 MR. DETERDING: Should we take this
11 opportunity to tell you the witnesses on each one?

12 COMMISSIONER KIESLING: That would probably
13 be good if you're adding some. So Issue 1.

14 MR. DETERDING: DeLucenay and Rogers as our
15 witnesses.

16 MS. CAPELESS: Staff has one change that
17 we'd like to make to our position on Issue 1.

18 COMMISSIONER KIESLING: Okay.

19 MS. CAPELESS: The second sentence of our
20 position, we would like --

21 COMMISSIONER KIESLING: Is that the one that
22 starts with "the following appear?"

23 MS. CAPELESS: Yes, ma'am. That sentence we
24 would like to delete and in its place we'd like to add
25 "these areas include:"

COMMISSIONER KIESLING: And the County, I'm

1 hoping that you have something new to your position
2 since we're a week away from hearing.

3 **MS. HALE:** We're still having a great deal
4 of trouble, and I've written Rosanne Capeless about
5 this, figuring out which areas Mad Hatter is serving
6 right now and which areas it is not serving right now,
7 and whether it has included in its amendment
8 application everything that it is serving outside of
9 its territory or not.

10 We got a list to --

11 **COMMISSIONER KIESLING:** Wait a minute. I'm
12 confused. Let me just try to see if I understand.

13 Currently they have an existing territory
14 that does have -- and they have been providing service
15 to some areas that are not included.

16 **MS. HALE:** Correct.

17 **COMMISSIONER KIESLING:** And their amendment
18 application is to include within their certified
19 territory those areas as well as some other areas
20 which they are not serving yet, either.

21 **MS. HALE:** Correct.

22 **COMMISSIONER KIESLING:** Okay. So you're
23 having trouble figuring out which territory they are
24 currently providing service to?

25 **MS. HALE:** We believe that there is no

1 service being provided to the C-6A, which the Staff
2 has included in Issue 1, which we believed there was
3 no service at all being provided. There's nothing
4 built there. And Ms. Capeless and I were trying to go
5 back and forth on this issue. We were trying to
6 stipulate as to this prior to Ms. Capeless going off
7 to New Mexico.

8 **COMMISSIONER KIESLING:** It was a conference
9 for regulatory attorneys.

10 **MS. HALE:** I knew she was working day and
11 night to the bone.

12 **COMMISSIONER KIESLING:** I even authorized my
13 aide to go, so it was a very serious and weighty set
14 of issues that they were looking at out there.

15 **MS. HALE:** I hope your aide kept in line and
16 Rosanne, too, to make sure she was --

17 **COMMISSIONER KIESLING:** I don't know. I got
18 a T-shirt out of the deal so -- (laughter)

19 **MS. HALE:** So, anyway, we were trying to
20 stipulate, but we did have that -- we don't believe 6A
21 -- C-6A is currently -- any service is being provided
22 to it, therefore, that's why we had that response on
23 Issue 1.

24 **COMMISSIONER KIESLING:** Okay. But your in
25 agreement that A-3, A-4, B-21, B-22, B-23, B-24, C-6,

1 C-7 and C-8 do have service to them?

2 MS. HALE: B-24 we do not believe has any
3 service, either.

4 COMMISSIONER KIESLING: Okay. Can we
5 restate your position that says that you agree with
6 the others but that you do not think that there is
7 service being provided to C-6A and B-24?

8 MS. HALE: Correct.

9 COMMISSIONER KIESLING: Okay. I just want
10 to make sure that the words that I put in here are the
11 words you want.

12 MS. HALE: Also, C-6A is not the Twin Lakes
13 subdivision. It is a parcel adjacent to the Twin
14 Lakes subdivision, but it is not part of the
15 subdivision.

16 COMMISSIONER KIESLING: Okay. Let me try it
17 this way: Will you make a stab at rewording your
18 position on this issue so that it reflects what you're
19 telling me? I don't want to be putting my words in
20 your mouth.

21 MS. HALE: I think we could say that, "The
22 County believes Mad Hatter --"

23 COMMISSIONER KIESLING: MHU.

24 MS. HALE: -- "has included in its amendment
25 application all of the uncertified -- uncertificated

1 territory to which it currently provides service,
2 which includes," and then it would be the same list
3 the Staff has, with the exception of no B-24 and no
4 C-6A.

5
6 COMMISSIONER KIESLING: Okay. So except?

7 MS. HALE: B-24 and C-6A. C-6 is the Twin
8 Lakes subdivision.

9 COMMISSIONER KIESLING: Uh-huh.

10 MS. HALE: But C-6A is a separate parcel.

11 COMMISSIONER KIESLING: Do you want that to
12 be included? What I'm trying to do is not have you
13 tell me things that are not going to be included here.

14 MS. HALE: We'll agree to everything the
15 Staff has with the exception of B-24 and C-6A.

16 COMMISSIONER KIESLING: Okay. And you don't
17 feel a need to provide your explanation that C-6A is
18 not in the Twin Lakes subdivision?

19 MS. HALE: I think that will be clear at the
20 hearing.

21 COMMISSIONER KIESLING: Okay. Then would
22 those changes -- Staff you've made yours.

23 How about Issue 2, then? Any change,
24 Mr. Deterding?

25 MR. DETERDING: No, just the addition,
instead of "and rebuttal witnesses," Mr. Rogers is our

1 witness in addition to Mr. DeLucenay, of course.

2 **COMMISSIONER KIESLING:** Okay. Again,
3 County?

4 **MS. HALE:** We could stipulate to the list
5 provided by the Staff with the addition of B-24 and
6 C-6A.

7 **COMMISSIONER KIESLING:** Okay. You agree
8 with Staff, except add B-24 and C-6A.

9 **MS. HALE:** The other thing is that Mad
10 Hatter does not provide service to the majority of
11 C-8. C-8 listed there.

12 **COMMISSIONER KIESLING:** C-8 was up in the
13 first one.

14 **MS. HALE:** C-8 is property in which Mad
15 Hatter provides service right at the road and nowhere
16 else in the tract, and it's a large piece of property
17 is my understanding. So I think the County's position
18 on C-8 is that --

19 **COMMISSIONER KIESLING:** Where do you want
20 this? In the first issue or the second issue?

21 **MS. HALE:** I think the second issue we could
22 say that, "The majority of Tract C-8 is not served by
23 Mad Hatter."

24 **COMMISSIONER KIESLING:** Okay.
25 "Additionally, the majority of Tract C-8 is not served

1 by MHU." Okay?

2 MS. HALE: Okay.

3 COMMISSIONER KIESLING: And, Staff, anything
4 to change, add or correct on yours?

5 MS. CAPELESS: We have no changes. But just
6 so I'm sure, the County's new position is going to
7 replace what you have here, or is it to be added?

8 COMMISSIONER KIESLING: It's replacing it, I
9 think.

10 MS. CAPELESS: Okay.

11 MS. HALE: Replacing it.

12 COMMISSIONER KIESLING: All right. Issue 3.
13 Who is your witnesses?

14 MR. DETERDING: DeLucenay and Rogers.

15 COMMISSIONER KIESLING: Okay. And any
16 change in anyone else's position? Okay.

17 Issue 4. Any changes? Your witnesses?

18 MR. DETERDING: DeLucenay and Rogers.

19 COMMISSIONER KIESLING: Okay. Any change
20 for County or Staff?

21 MS. HALE: No.

22 MS. CAPELESS: No changes.

23 COMMISSIONER KIESLING: Okay. 5.

24 MR. DETERDING: DeLucenay, Rogers and Nixon.

25 COMMISSIONER KIESLING: Okay. And County?

1 Or Staff?

2 MS. CAPELESS: No changes.

3 COMMISSIONER KIESLING: 6.

4 MR. DETERDING: DeLucenay and Rogers.

5 MS. CAPELESS: Staff has a change to our
6 position on Issue 6.

7 COMMISSIONER KIESLING: Okay.

8 MS. CAPELESS: We'd like to change it to
9 read, "Yes, it appears that MHU owns the land or has
10 long-term lease to the land upon which its existing
11 facilities are located."

12 COMMISSIONER KIESLING: Okay.

13 MS. CAPELESS: "To the extent that the
14 proposed territory would not be served from those
15 plants, Staff has no position pending further
16 development of the record."

17 COMMISSIONER KIESLING: Do you need that
18 read back? Everybody has got it? Okay. Under the
19 County, any change to yours?

20 MS. HALE: We still do not have any
21 definitive plan for Mad Hatter to serve the sewage. I
22 think our position is as it stands because we still
23 don't have -- they have a lot of trial balloons up
24 there, but we have no specific plan at all, and none
25 of those plans involve any property owned or leased by

1 Mad Hatter, currently under lease.

2 COMMISSIONER KIESLING: Okay.

3 Issue 7.

4 MR. DETERDING: DeLucenay and Rogers are our
5 witnesses.

6 COMMISSIONER KIESLING: Any changes to
7 anyone else? Hearing none, Issue 8.

8 MR. DETERDING: DeLucenay and Rogers again.

9 MS. CAPELESS: Staff has no changes.

10 COMMISSIONER KIESLING: Okay. Any changes
11 for the County on 8?

12 MS. HALE: No.

13 COMMISSIONER KIESLING: 9.

14 MR. DETERDING: DeLucenay and Rogers.

15 COMMISSIONER KIESLING: Okay.

16 MS. CAPELESS: And since putting this draft
17 together I received correspondence from the County
18 which alters their position. I've got that written
19 down. Would you like me to read it or do you have
20 another version that you prefer?

21 MS. HALE: I have it right here. Our
22 position is "No. The County system is adequate to
23 meet the reasonable needs of the public. The County
24 is not unable, refusing or neglecting to provide
25 reasonably adequate service."

1 **COMMISSIONER KIESLING:** "Is not unable,
2 refusing --"

3 **MS. HALE:** "Neglecting, that's the language
4 from the issue, to provide reasonably adequate
5 service."

6 **COMMISSIONER KIESLING:** Okay. Issue 10.

7 **MR. DETERDING:** Commissioner, I have a
8 concern with Issue 10 that I raised at our
9 pre-prehearing conference.

10 Issue 10 deals with the consistency with the
11 local comprehensive plan. The County -- the
12 Commission is only required to consider that a lack of
13 inconsistency if alleged in a protest by the County.
14 The County did not allege that in their protest. They
15 have not presented evidence to demonstrate that there
16 is any conflict between the two, and, therefore, I do
17 not believe it is appropriate for consideration by the
18 Commission and should not be a part of this Prehearing
19 Order or the trial.

20 **COMMISSIONER KIESLING:** All right. County,
21 did you raise this?

22 **MS. HALE:** We did raise it in our objection
23 and we noted that Mad Hatter has had conflicting views
24 on this issue. It has spoken out of both sides of its
25 mouth on this very subject.

1 We did not provide any prefiled testimony
2 because Mr. DeLucenay did not address this issue in
3 his prefiled testimony, but it has been the subject of
4 interrogatories from the Staff to the County on the
5 issue, and we have provided in a response to a request
6 of production of documents the applicable portion of
7 the County Comprehensive Plan for which this would be
8 in conflict.

9 MR. DETERDING: Commissioner, the only
10 statement in the original protest by the County was
11 that our statement in our application was alleged to
12 be in conflict with what we stated in the federal
13 court.

14 COMMISSIONER KIESLING: Let me --

15 MR. DETERDING: Okay. I don't have that
16 with me, Commissioner, so I can't cite to the right
17 page of their protest.

18 MS. HALE: It's Paragraph 14.

19 COMMISSIONER KIESLING: I'm still trying to
20 find mine.

21 MS. HALE: It's only two sentences, I can
22 read it to you if you like.

23 COMMISSIONER KIESLING: Okay.

24 MS. HALE: It says "In it's application Mad
25 Hatter contends its extension of territory is in

1 compliance with the County's comprehensive plan. That
2 is directly contrary to Mad Hatter's allegations in
3 the litigation, which is earlier defined as the
4 federal court litigation between the parties."

5 COMMISSIONER KIESLING: That is all it says?

6 MS. HALE: That is all.

7 MR. DETERDING: And, Commissioners --

8 COMMISSIONER KIESLING: It doesn't seem
9 adequate to me. I mean, you know, whatever they
10 contended in that previous case isn't a part of the
11 record here and doesn't -- isn't dispositive of any
12 issues here. And, I mean, the statute essentially
13 places the burden on the County to tell -- put forth
14 the evidence of any inconsistencies with the
15 comprehensive plan and you haven't done that in your
16 prefiled.

17 MS. HALE: And we did not do it because it
18 was not addressed in their prefiled testimony that
19 they were in compliance and we believe --

20 MR. DETERDING: I disagree with that.

21 MS. HALE: -- they had an obligation to meet
22 all of the filing requirements. This issue is going
23 to come up again later on here because we believe
24 there are several issues they did not address which
25 they needed to address in their original petition,

1 that they did not address. And this is one of those
2 issues that was not addressed in that petition.

3 **COMMISSIONER KIESLING:** Well, then, we
4 probably need to start resolving them right now then.

5 The evidence that is in is the evidence
6 that's in, so if you have filed no prefiled
7 testimony -- the County has filed no prefiled
8 testimony to address the consistency of this amendment
9 application with the County's -- with the local
10 comprehensive plan, then there is no evidence in the
11 record to support that or to maintain your
12 disagreement with that.

13 **MS. HALE:** We have this issue with virtually
14 all of the filing requirements which were not met by
15 Mad Hatter in its petition and did not address a great
16 number of issues that the rule does require that they
17 address. This comes up in Issue 13 and maybe we
18 shouldn't jump ahead to that; whatever the Commission
19 likes.

20 And it's our view that Mad Hatter had an
21 obligation to -- as the moving party here, to have
22 alleged that it was in compliance with all of these
23 things and it did not do so.

24 **COMMISSIONER KIESLING:** All right. And the
25 form of the application and what is required in the

1 application is a subject for determination by this
2 Commission?

3 MS. HALE: Correct.

4 COMMISSIONER KIESLING: And by the fact that
5 this Commission has already taken a preliminary action
6 on this -- I mean, the Staff hasn't raised this.

7 MS. CAPELESS: And Commissioner, if I may,
8 with respect to Issue 13, the requirements of --
9 excuse me, Issue 11, the requirements of Rule
10 25-30.036 are the requirements that the Utility need
11 to meet that the Utility carries the burden. But
12 consistency with the local comprehensive plan isn't
13 one of those requirements under the rule. We agree
14 that that particular issue, Issue 10, is one that
15 since the County raised it, that the County would
16 carry the burden of at least going forward with the
17 evidence on it.

18 COMMISSIONER KIESLING: I agree with our
19 Staff counsel, that --

20 MR. SAMARKOS: I believe, Commissioner, in
21 Rule 3(d)--

22 COMMISSIONER KIESLING: Rule 3, what?

23 MR. SAMARKOS: Well, I'm sorry. Rule
24 25-30.036, Subsection 3(d). It says that Mad Hatter
25 has to file --

1 **COMMISSIONER KIESLING:** It says that Mad --
2 rule uses the word "Mad Hatter?"

3 **MR. SAMARKOS:** No, it says that the
4 applicant has to comply certain subsections of that
5 rule. That rule requires a statement "to the best of
6 the applicant's knowledge the provision of service
7 will be consistent with the water and wastewater
8 sections of the local comprehensive plan at the time
9 the application is filed as provided by the Department
10 of Community Affairs, or, if not, a statement
11 demonstrating why granting the amendment would be in
12 the public interest."

13 That's an administrative rule that require
14 the applicant to make that affirmative showing.
15 That's why our response is they didn't make that
16 affirmative showing. It's Rule 20-30.036.

17 **COMMISSIONER KIESLING:** Well, since I don't
18 have a copy of it in front of me, let me just ask
19 Staff since you seem to have a copy of the rule, does
20 that just require that the applicant make an
21 affirmative statement? Doesn't require that they
22 prove it?

23 **MS. CAPELESS:** It's a requirement that the
24 statement be made and the Utility has indeed made a
25 statement to that effect in Exhibit LGD-2.

1 MR. DETERDING: Part of the original
2 application.

3 COMMISSIONER KIESLING: I've got the
4 original application.

5 COMMISSIONER KIESLING: LG -- I've got the
6 original application. Can somebody just tell me what
7 page?

8 MS. CAPELESS: Yes, ma'am. Page 4 of 136
9 pages.

10 COMMISSIONER KIESLING: Where are the page
11 numbers at? What I have here is the application,
12 doesn't have page numbers on it.

13 MR. DETERDING: It must be -- not be that as
14 prefiled with his testimony, then, Commissioner. You
15 must have the clerk's original.

16 COMMISSIONER KIESLING: That's what I have.
17 I mean, that's what I'm looking at is the original.

18 MR. DETERDING: It's in the pleading.

19 COMMISSIONER KIESLING: Can you give me a
20 hint as to where --

21 MR. DETERDING: I don't have it in front of
22 me. I can certainly find it for you.

23 COMMISSIONER KIESLING: Section what?

24 MS. CAPELESS: Section 7 on Page 4.

25 COMMISSIONER KIESLING: Thank you.

1 MR. DETERDING: That was sponsored by
2 Mr. DeLucenay in his direct testimony.

3 COMMISSIONER KIESLING: Okay. So MFR -- how
4 then is this at issue?

5 MS. HALE: Well, it's at issue by our
6 objection which pointed out the fact that it was in
7 conflict with their earlier position. And I don't
8 remember it being in Mr. DeLucenay's prefiled
9 testimony.

10 COMMISSIONER KIESLING: The application was
11 attached to prefiled testimony.

12 MS. HALE: That would be the only way it
13 would be. I don't believe it was in the actual
14 prefiled testimony.

15 COMMISSIONER KIESLING: Okay. Then I am
16 going to rule that Issue 10 is not at issue because it
17 has not been -- there's no evidence to support the
18 contrary.

19 Technically how do we do that, Ms. Capeless?
20 I mean, what do I need to put down on my copy here?

21 MS. CAPELESS: We can simply leave the issue
22 number in and put "issue stricken."

23 COMMISSIONER KIESLING: Okay. Then how
24 about 11.

25 MR. DETERDING: Witnesses Rogers and Nixon

1 for us, otherwise okay.

2 COMMISSIONER KIESLING: Okay. So it's all
3 of them: DeLucenay, Rogers and Nixon.

4 MR. DETERDING: Correct. Correct. I'm
5 sorry.

6 MS. CAPELESS: Staff has a change to our
7 position.

8 COMMISSIONER KIESLING: Let me deal with the
9 County's first.

10 MS. CAPELESS: Sure.

11 COMMISSIONER KIESLING: I assume that
12 somewhere in your testimony you've got something on
13 this one.

14 MS. HALE: I've lost track of which issue
15 we're on.

16 COMMISSIONER KIESLING: 11.

17 MS. HALE: This is the one we were just on.

18 COMMISSIONER KIESLING: No, we were on 10.

19 MR. DETERDING: We were on 10.

20 MR. SAMARKOS: We have additional -- we have
21 additional proposals that these subsections -- that
22 certain subsections haven't been complied by the
23 Utility.

24 MR. DETERDING: And there's no testimony on
25 that.

1 **COMMISSIONER KIESLING:** Wait a minute. Wait
2 a minute.

3 **MS. HALE:** I had Issue 10 as whether it was
4 in the public interest to grant.

5 **COMMISSIONER KIESLING:** No. Issue 10 is
6 whether it is consistent with the local comprehensive
7 plan.

8 **MS. HALE:** I don't have the latest version.

9 **MS. CAPELESS:** I thought you did.

10 **MS. HALE:** Now I'm on the same page, same
11 book.

12 **COMMISSIONER KIESLING:** Okay. So, now, what
13 does the County need to do on 11?

14 **MR. SAMARKOS:** The County's position on 11
15 is that there are certain subsections of the rule that
16 Mad Hatter has not met the requirements for.

17 **COMMISSIONER KIESLING:** Are you going to
18 tell us what they are?

19 **MR. SAMARKOS:** Yes. Those would be
20 Subsection 2(b)(1), both (1) and (2). And under (2)
21 it would be (a) through (c).

22 **COMMISSIONER KIESLING:** Wait a minute.
23 Since I don't have the rule in front of me, the
24 numbers mean nothing to me and I need to know the
25 substance of those. Okay. It's Rule

1 25-30.036(2)(b)(1) and (2).

2 **MR. SAMARKOS:** Correct. And that (b)(1) is
3 "requiring a written statement of an officer of the
4 Utility that, upon investigation, to the best of his
5 or her knowledge," and then it lists (1) and (2) and
6 what those contain, and I can read that if the
7 Commission would like.

8 **COMMISSIONER KIESLING:** And you're telling
9 me that there was no written statement in the original
10 application on those?

11 **MR. SAMARKOS:** Yes. After our prehearing
12 with Ms. Capeless, I sent her -- it's a three-page
13 letter outlining those provisions when we had this
14 discussion that the County believes were not complied
15 with.

16 **MS. CAPELESS:** We took some copies of that
17 letter. Perhaps it would be helpful to pass copies of
18 the letter out.

19 **COMMISSIONER KIESLING:** That would probably
20 help me.

21 **MS. CAPELESS:** Okay.

22 **COMMISSIONER KIESLING:** If you have a copy
23 of the rule, so that I can look at it, it would be
24 really helpful. Do you have an extra copy of the
25 rule?

1 Thank you. And as to the requirements of
2 (2)(b)(1) and (2).

3 **MR. DETERDING:** Commissioner, this is the
4 first I've heard of these allegations about failure to
5 comply with the requirements of the rule. I had not
6 seen this letter until just now. So I'm not in a
7 position to go back and give you the answers to them.

8 I will say that it's not something that's
9 been covered in testimony. It's not something to my
10 knowledge that was covered in the County's protest.
11 And the Utility's application has been in for quite
12 some time, and I'm just a little taken aback by the
13 allegations at this late hour about our alleged
14 failure to comply with the requirements of the rule.

15 So I cannot go through each item with you
16 right now and agree or disagree with what is alleged,
17 but I do note that this has been pending and that the
18 Commission has not treated it as failing to meet the
19 filing requirements.

20 **COMMISSIONER KIESLING:** Well, can you make
21 any sense of this for me, Ms. Capeless?

22 **MS. CAPELESS:** Well, I hope so.

23 **COMMISSIONER KIESLING:** Okay.

24 **MS. CAPELESS:** The issue was raised at a
25 pre-prehearing, so I think that everybody has been on

1 notice that this is an issue.

2 With respect to the County's response to the
3 issue, I think that the first page -- well, subsection
4 25-30-0362 is inapplicable.

5 COMMISSIONER KIESLING: Is inapplicable?

6 MS. CAPELESS: Inapplicable.

7 COMMISSIONER KIESLING: Okay.

8 MS. CAPELESS: Because the rule expressly
9 applies to amendment applications which have not been
10 protested. It's the quick take on the rule, so that
11 our position would be that those particular provisions
12 would be completely inapplicable. But then the County
13 goes on to state that their position on whether the
14 Utility has met the requirements of Subsection (3) --
15 that is applicable.

16 COMMISSIONER KIESLING: I'm having some
17 trouble figuring this out, too, because Subsection (3)
18 of the rule -- (pause). One of the reasons I have a
19 little problem is because I can't find the next part
20 of the rule. There it is. Thank you.

21 So let me see if I understand, essentially,
22 what you're saying, Ms. Capeless, and that is that the
23 application filed in this case was for both -- was to
24 extend its service area.

25 MS. CAPELESS: Correct.

1 **COMMISSIONER KIESLING:** And, therefore, the
2 application, which was filed, had to -- it had to
3 include (a), (d), (e), (i), (m), et cetera.

4 **MR. DETERDING:** No, I believe that's those
5 that are under Subsection (2). I believe what Staff
6 is saying that it would be not under Subsection (2)
7 but under Subsection (3).

8 **MS. CAPELESS:** Subsection (3), Commissioner,
9 lists all of the requirements that the Utility would
10 need to meet in order to show that it's in the public
11 interest for them to receive the amendment -- granting
12 of the amendment application.

13 During the pre-prehearing we suggested that
14 perhaps the next issue as to public interest, I
15 believe it's the next issue -- Issue 13, rather, the
16 public interest, that actually these kinds of -- we
17 generally go through this list and it can be dealt
18 with under the public interest issue, but the County
19 wanted to have a separate issue to identify
20 specifically. So it's the County's issue that we
21 included.

22 **COMMISSIONER KIESLING:** In 13.

23 **MS. CAPELESS:** In 11. Generally is subsumed
24 under 13 which is why you don't often see it.

25 **MR. SAMARKOS:** We don't have a problem with

1 putting it under 13, but at the pre-prehearing I
2 believe an issue was raised as to whether we were
3 putting them on notice of what these subsections were.
4 So we said, "That's fine. We'll include it then in a
5 separate issue." I mean, we don't have any objection
6 to moving it to 13, but these are the areas that we've
7 outlined that we don't believe have been met.

8 **MR. DETERDING:** And we haven't had any
9 opportunity until just now to know what the
10 allegations were about what subsections the Utility
11 apparently is alleged to have not complied with and
12 there's certainly no testimony in the record on either
13 side about these allegations.

14 **COMMISSIONER KIESLING:** And that's what my
15 concern is. The only piece of paper that I have that
16 cites which of the parts of this rule you think they
17 have not complied with is your letter, but it doesn't
18 show a copy to them.

19 **MS. HALE:** We discussed it at the
20 pre-prehearing, as Ms. Capeless mentioned to the
21 Commissioner.

22 **COMMISSIONER KIESLING:** And you cited the
23 exact rule provision?

24 **MS. HALE:** We went over it extensively at
25 the pre-prehearing.

1 **COMMISSIONER KIESLING:** So you said 2-B(1),
2 2-B(2), 3-(a) et cetera?

3 **MS. HALE:** Correct.

4 **MR. DETERDING:** I do not recall them having
5 done that. But in any case, it was beyond the time in
6 which we could have done anything about it as far as
7 testimony and certainly beyond the time they could
8 have provided any testimony on that issue.

9 **COMMISSIONER KIESLING:** I mean that's my
10 concern, too, is that -- I mean, as I understand this
11 rule it sets forth what needs to be in the
12 application.

13 **MR. SAMARKOS:** That's correct.

14 **COMMISSIONER KIESLING:** And at some point
15 prior to the week before the hearing or the week
16 before the prehearing, it's incumbent on the parties
17 to make clear what the infirmities are and to file
18 prefiled testimony on those.

19 **MR. SAMARKOS:** These don't exist,
20 Commissioner. For example, if you look at
21 Subsection (f).

22 **COMMISSIONER KIESLING:** Let me try asking it
23 this way: Which of your witnesses testified that Mad
24 Hatter's application fails to comply with these
25 specific provisions of the rule?

1 MS. HALE: None. Because we believe that
2 it's Mad Hatter's duty to comply with the rule, not
3 our duty; that the burden is not shifted to us to
4 prove Mad Hatter didn't comply with the rule but that
5 Mad Hatter has an affirmative duty to comply. So the
6 answer to your question is none.

7 MR. SAMARKOS: In other words, in the
8 Utility's testimony there's no testimony that these
9 things exist.

10 COMMISSIONER KIESLING: Maybe I'm not making
11 myself clear. So instead of you trying to figure out
12 who's got the burden of proof here, I'm trying to look
13 at notice. And I'm trying to find out where, either
14 in your protest or some other document that was
15 provided sooner than last week when testimony was
16 already filed and -- all of the testimony was filed,
17 did you identify what you think is lacking about their
18 application?

19 MS. HALE: That discussion was not a week
20 before the prehearing. The letter may not have been
21 written immediately thereafter, but Ms. Capeless did
22 enlighten us as to when this conversation was.

23 COMMISSIONER KIESLING: Just answer my
24 question. It doesn't matter whether it was a week or
25 two weeks. Where in any of your pleadings, in your

1 protest, in your prefiled testimony, in your
2 prehearing statement, where did you tell Mad Hatter
3 what specifically it was that you thought they had not
4 done?

5 MS. HALE: Well, we mentioned it on Page 3.

6 COMMISSIONER KIESLING: Of?

7 MS. HALE: Of our prehearing statement which
8 was filed on the 20th day of March. We say "Mad
9 Hatter has not" --

10 COMMISSIONER KIESLING: I've got it. Let me
11 get it out here. Page 3. Okay.

12 MS. HALE: And that is on the first full
13 paragraph, "Mad Hatter has not complied with the
14 requirements of Rule 20-30.036."

15 COMMISSIONER KIESLING: But you didn't
16 identify which sections there.

17 MS. HALE: No, but he we did cite the rule
18 and cited they were on notice as of March 20 that we
19 believe they had not met the requirements, again --
20 it's on the top of Page 5.

21 COMMISSIONER KIESLING: Okay. My question
22 to you was where did you put them on notice as to what
23 parts of that rule you think they had failed to comply
24 with or had failed to include within their
25 application?

1 MS. HALE: I'll have to check the
2 objections, but it's certainly -- they are on notice
3 as to the lack of compliance with the rule in two
4 places of the prehearing statement.

5 MR. SAMARKOS: Also on Page 6 under (f).

6 COMMISSIONER KIESLING: I feel like I'm
7 talking past you. And I think I'm starting to get a
8 little frustrated about it.

9 Mad Hatter has carried its burden of going
10 forward by including a copy of its application as an
11 exhibit to its prefiled testimony. At some point both
12 the onus of notice and the burden of going forward
13 shifts so that you have to tell Mad Hatter what you
14 think they haven't done and you have to provide some
15 testimony to back that up. And I'm trying to
16 understand where it is, and at what point in time you
17 provided notice to Mad Hatter about what parts of this
18 rule you think they had failed to comply with, and
19 where you addressed that in your prefiled testimony.
20 And those seem like straightforward questions, so
21 maybe if you could try to tell me the answers to that.

22 Was the first time that you actually listed
23 or broke out the exact provisions of the rule that you
24 think that their application doesn't address, was that
25 in this letter?

1 **MS. HALE:** No, it was at the pre-prehearing,
2 which we had on the telephone, which was prior to the
3 letter. That was the first time we broke out the
4 subsections. We had mentioned in our prehearing
5 statement lack of compliance with the rule. We have
6 no prefiled testimony on the subject because it is our
7 belief that it is Mad Hatter's burden to comply with
8 the rule.

9 **COMMISSIONER KIESLING:** Okay. When was the
10 pre-pre?

11 **MS. CAPELESS:** I don't have the exact date
12 with me. A couple weeks ago.

13 **COMMISSIONER KIESLING:** And since we also
14 don't have any kind of a transcript of anything of
15 that -- or I don't -- what does your recollection or
16 your notes reflect as to what was made specific at
17 that pre-pre about this rule?

18 **MS. CAPELESS:** As I recall, Commissioner,
19 there was a discussion that the County didn't believe
20 that certain of the subsections of the rule were
21 complied with by the Utility. I don't recall
22 specifically which ones were identified during the
23 pre-prehearing, but we left off by stating that the
24 County would follow up in writing giving a breakdown
25 of which ones they believed the Utility didn't comply

1 with and the letter resulted from that.

2 **COMMISSIONER KIESLING:** And since I don't
3 have the CSAR in front of me, what was the cutoff date
4 for filing testimony?

5 **MR. SAMARKOS:** I believe it was the 29th of
6 April.

7 **MR. DETERDING:** That was for our rebuttal.

8 **COMMISSIONER KIESLING:** For their rebuttal.

9 **MS. CAPELESS:** Intervening testimony was due
10 on the 18th of March.

11 **COMMISSIONER KIESLING:** That's right, and we
12 had changed that.

13 Staff, do you have any advice on this
14 because it troubles me.

15 **MS. CAPELESS:** I think that if we drop Issue
16 11 that certainly it will still be addressed as part
17 of the public interest. After all of the evidence is
18 in and including cross examination, we'll check to see
19 whether or not the Utility has complied with all of
20 the provisions of the rule. And then the County could
21 still brief it as part of the public interest issue,
22 rather than trying to specify what provisions of the
23 rule they have or haven't complied with at this point
24 in time. Sometimes we get more documents in on cross
25 examination, so -- and then Staff, for your

1 information, has looked at -- after looking at the
2 County's letter, we went back and checked to see what
3 we believe is already in what the Utility has already
4 complied with in terms of the rule and we found a
5 couple of provisions that we don't believe that the
6 Utility has fully complied with but the majority of
7 them we believe that they have. I can tell you
8 exactly which ones we don't believe they have, if you
9 like.

10 **COMMISSIONER KIESLING:** Yeah. That's
11 getting into the evidence which is not my concern at
12 this point. My concern is that it just seems that it
13 was awfully late in the process for the County to
14 finally get specific about what it's claiming after
15 the testimony was all filed except for the rebuttal.
16 But, you know, assuming for the moment, since it's the
17 best I have in front of me, that the letter that was
18 received by the Commission on April 28th which sets
19 forth the exact provisions that they were concerned
20 about, first of all doesn't show a copy to the
21 Utility, and doesn't -- wasn't received at least by
22 the Commission until the 28th, which was the day
23 before the cutoff for prefiled rebuttal. So it seems
24 to me that the Utility has been hampered and,
25 essentially, prevented from responding to this or

1 putting any evidence in the record to deal with it
2 since there was no direct testimony filed by the
3 County that addressed it.

4 So the first time they had notice about this
5 of any written form and specificity was the day before
6 rebuttal. And I'm deeply troubled by the idea of just
7 leaving these in when there's no testimony in the
8 record to deal with them.

9 I mean, certainly, cross examination is
10 limited to the scope of the direct and if it's not
11 mentioned in the direct, there's nothing to cross
12 examine, so they can't get the evidence in that way.

13 I'm at a loss as to how we got to this point
14 and what the possible mechanisms for remedying this
15 are.

16 **MS. CAPELESS:** I agree that it certainly
17 would have been a lot more clearer had the County
18 taken issue with this in its direct testimony.

19 My thought was perhaps on cross examination
20 they could ask Mr. DeLucenay or one of the other
21 utility witnesses where in their prefiling have they
22 met the requirements of such and such a subsection.
23 Certainly, that's not as clear or straightforward.

24 **COMMISSIONER KIESLING:** Well, I mean this,
25 you know, has just come up on 10 and I struck that

1 issue, but it seems to me now a continuing theme. So
2 striking the issues is not necessarily the best way to
3 deal with it because if that were the case, I'd end of
4 striking a lot more issues and that's not going to
5 necessarily be the right solution.

6 Would it be possible for us to take maybe a
7 ten or 15-minute break and let Staff talk about it,
8 and talk about it with, you know, the parties if need
9 be and see if we can come up with what will be the
10 best way to deal with this now that we're here and
11 we're this far before hearing and suddenly have some
12 specific issues that don't look they've been
13 addressed?

14 **MS. CAPELESS:** Yes, ma'am. We'd be glad to
15 do that.

16 **COMMISSIONER KIESLING:** That's acceptable to
17 everybody else and see if we can come to something
18 that makes sense?

19 **MR. SAMARKOS:** Yes.

20 **COMMISSIONER KIESLING:** Okay. I've got 20
21 minutes to 3, so I'll be back at 5 until 3.

22 (Brief recess.)

23 - - - - -

24 **COMMISSIONER KIESLING:** So what have we come
25 to?

1 **MS. CAPELESS:** Commissioner, I believe the
2 parties have agreed to go ahead and drop Issue 11, and
3 then after the record closes and briefs are due, the
4 parties are always free to brief legal issues as to
5 whether or not rules have been complied with and
6 generally that would be done under the public interest
7 issue.

8 **COMMISSIONER KIESLING:** Okay. So 10 is
9 stricken still and 11 is withdrawn.

10 **MS. CAPELESS:** Yes, ma'am.

11 **COMMISSIONER KIESLING:** Okay. 12. Any
12 changes?

13 **MR. DETERDING:** Utility witnesses DeLucenay
14 and Nixon.

15 **COMMISSIONER KIESLING:** Okay.

16 **MS. CAPELESS:** We have no changes.

17 **COMMISSIONER KIESLING:** And the County has
18 nothing more to add?

19 **MS. HALE:** We still don't have any.

20 **COMMISSIONER KIESLING:** Okay. 13. Any
21 changes?

22 **MR. DETERDING:** DeLucenay, Rogers and Nixon
23 as our witnesses.

24 **MS. CAPELESS:** We have no changes.

25 **COMMISSIONER KIESLING:** That's all the

1 issues, then.

2 In terms of exhibits, anything to add for
3 the Mad Hatter witnesses? Were there any rebuttal --

4 MR. DETERDING: Yes. At the end the
5 rebuttal witness -- I apologize, Commissioner, I don't
6 have them here. But they have been filed. There were
7 approximately four under LGD for DeLucenay, I believe
8 like 3 through 7, but I'll have to give the Staff that
9 information.

10 Rogers was EJR-1 and 2, one being his resume
11 and 2 --

12 COMMISSIONER KIESLING: LGD is like 1
13 through 4, which would make --

14 MR. DETERDING: I think through it's 3
15 through 7.

16 COMMISSIONER KIESLING: Make it 4.

17 MR. DETERDING: Because his direct had 1 and
18 2.

19 COMMISSIONER KIESLING: It doesn't have 3?

20 MS. CAPELESS: Well, the direct has 1, 2 and
21 3. And as I recall, the rebuttal exhibit numbers are
22 3 -- again which would be a duplicate of 3, 4 and then
23 6, and for some reason I think you skipped 5.

24 MR. DETERDING: That's probably why we added
25 3 again. We'll get that straightened out.

1 **COMMISSIONER KIESLING:** I you would, clarify
2 then and make them 4, 5 and 6, since we have a skipped
3 number.

4 **MR. DETERDING:** Absolutely.

5 **MS. CAPELESS:** Thank you.

6 **MR. DETERDING:** And then Rogers, EJR-1, and
7 EJR-2. And then Nixon doesn't have a rebuttal exhibit
8 per se. He usually includes his resume of experience
9 on testimony paper, so however you want to handle
10 that. It's not actually done.

11 **COMMISSIONER KIESLING:** I don't suppose you
12 could ever get him to change.

13 **MR. DETERDING:** I should talk to him about
14 that; I just never have. He always seems to put it on
15 testimony paper, and it really doesn't belong there.

16 **COMMISSIONER KIESLING:** Okay. Well.

17 **MR. DETERDING:** However you want to handle
18 it. We can call it RCN-1, if you want, and just pull
19 it from there as RCN-1.

20 **COMMISSIONER KIESLING:** Or we can include it
21 as part of the testimony, which is how it's been done
22 before.

23 **MR. DETERDING:** I think most of the time
24 that's correct, yes, it is.

25 **COMMISSIONER KIESLING:** Okay. And then any

1 additional exhibits for Mr. Bramlett, Mr. Hobby. Oh,
2 we should probably rearrange these so that they go in
3 the order of the witnesses, too.

4 MS. CAPELESS: I'll do that.

5 COMMISSIONER KIESLING: Okay. Mr. Moses.
6 Then I'm kind of at a loss on the next two pages of
7 question mark ones. Generally the exhibits that we
8 list here are those that are attached to prefiled
9 testimony.

10 MS. HALE: I think that Rosanne picked that
11 up from an earlier pleading that we had had. We did
12 not anticipate using these.

13 COMMISSIONER KIESLING: Okay.

14 MS. CAPELESS: So just go ahead and cross
15 out all of the ones that begin with a question mark
16 for the witness's name?

17 MS. HALE: Yes. Although, we may use some
18 excerpts from the transcript at the trial.

19 COMMISSIONER KIESLING: You can number them,
20 though, because you'll be using them, I'm assuming, as
21 cross examination.

22 MS. HALE: Yes.

23 COMMISSIONER KIESLING: Okay. Again, just
24 so that we're clear, I recognize that you all don't
25 practice here very often, so has anybody talked to you

1 about tendering your witnesses and having their
2 prefiled testimony inserted as though read and all of
3 the kind of technical stuff of how we do this?

4 MS. HALE: Rosanne and I briefly we went
5 over it and she and I can confer again on that.

6 COMMISSIONER KIESLING: Okay. I just don't
7 want you to end up in a kind of "gotcha" situation
8 just because you don't know how we usually do it.
9 I'll trust you to inform them.

10 And then, Staff, you have one exhibit from
11 Mr. Burghardt.

12 MS. CAPELESS: That's correct.

13 COMMISSIONER KIESLING: Okay. There's no
14 stipulations. Doesn't sound like there's much chance
15 of ever reaching any, so I won't pressure you all to
16 do it.

17 I've got several motions here beyond what is
18 listed. I have Mad Hatter's motion to expedite
19 discovery response, as well as Pasco's response to
20 that motion.

21 MR. DETERDING: And then two motions to
22 strike testimony.

23 COMMISSIONER KIESLING: Okay. Let me see if
24 I understand how this expedited discovery request came
25 about.

1 First of all, did that go through the
2 Prehearing Officer? I don't recall it, requesting
3 that we shorten the time that -- beyond what is in the
4 rules?

5 MR. DETERDING: No, Commissioner, this is
6 what was filed at the time the discovery was
7 propounded to the County.

8 Maybe I can shorten this, I don't know, as
9 to that motion. We at the same time provided a public
10 records request on these same documents. We were
11 pretty quickly provided with a list, several pages, I
12 believe 18 or something, of documents that complied
13 with that public records request. We have yet to go
14 look at those but are hopeful to do so this week when
15 we are deposing some other witnesses. If the County
16 is agreeable to us looking at the documents at that
17 time, then this -- we'll withdraw this motion and the
18 interrogatories and request for production themselves.

19 COMMISSIONER KIESLING: Okay. Let me try to
20 clarify a couple of things.

21 I believe that we have in the past had past
22 conversations about the need for -- in discovery
23 motions, motions relating to discovery that the
24 parties indicate whether or not they've consulted with
25 the other side and been able to resolve anything. One

1 of the things that concerned me was that yours doesn't
2 contain that. And I believe that I had Ms. Capeless
3 call you and tell you that it didn't contain that more
4 than about two weeks ago.

5 **MS. CAPELESS:** Yes, ma'am. We had that
6 conversation.

7 **COMMISSIONER KIESLING:** I'm at a point where
8 if it doesn't contain it, I'm not going to rule on it
9 or I'm going to deny it, because somehow I've got to
10 get this lesson across that it's a waste of my time
11 and my staff's to deal with motions on discovery that
12 could be resolved if the parties would just call each
13 other up and, "Can we work something out?"

14 **MR. DETERDING:** I understand.

15 **COMMISSIONER KIESLING:** I really don't need
16 to hear anymore because I'm going to deny your motion
17 to expedite discovery for that reason as well as that
18 you didn't -- you don't file your discovery and then
19 ask us to expedite it. I mean, if you want expedited
20 discovery, that's something you need to ask our
21 permission on, not just make up a date and put it in
22 your request.

23 So, you know, this was not filed until, I
24 guess, April 15th.

25 **MR. DETERDING:** Correct.

1 **COMMISSIONER KIESLING:** I mean there's no
2 way or provision for expediting it on just because you
3 say to. So it's denied. I hope you can get it some
4 other way.

5 **MR. DETERDING:** I believe we can,
6 Commissioner. Thank you.

7 **COMMISSIONER KIESLING:** That will be good.
8 Then I have two motions to strike prefiled
9 testimony.

10 **MR. DETERDING:** Correct.

11 **COMMISSIONER KIESLING:** And, again, you
12 know, not wanting to be critical, but maybe you could
13 call them first motion, second motion, something, so
14 that when our docket, you know, shows that these
15 motions were filed there's some way to distinguish
16 which one it is.

17 **MR. DETERDING:** I apologize for that.

18 **COMMISSIONER KIESLING:** Which is why I also
19 -- the prehearing says something about a Motion to
20 Strike which is filed April 17th.

21 **MR. DETERDING:** That is the -- yes, the
22 first one, which was four witnesses, Gallagher and
23 Moses -- testimony of Gallagher and Moses in the third
24 line of the text.

25 **COMMISSIONER KIESLING:** Okay. Well, the

1 reason I was questioning the 17th is because it's date
2 stamped in here on the 21st. So do you have something
3 that shows it was filed on the 17th?

4 MR. DETERDING: I have mine date stamped by
5 Records and Reporting on the 17th.

6 COMMISSIONER KIESLING: Okay. I don't know
7 what fell through there, but all I have is then one
8 that was dated four days later or received four dates
9 later. Then on the other one, when was it filed?

10 MR. DETERDING: It was filed on the 25th.

11 COMMISSIONER KIESLING: Okay. I've got that
12 down in the corner here. See, I don't have any kind
13 of a docket number stamped on mine or anything.

14 MR. DETERDING: Mine does. It has the
15 Records and Reporting signature and Records and
16 Reporting stamp from the 17th on both of them.

17 COMMISSIONER KIESLING: Okay.

18 MS. CAPELESS: Mine does too, and it may be
19 that I gave you a courtesy copy that was sent to me,
20 but the first one I've got stamped in Records and
21 Reporting on the 17th of April and the second one on
22 the 25th.

23 COMMISSIONER KIESLING: Okay. That would
24 have at least given me some way to distinguish them
25 which is why I was trying to get that clarified.

1 MR. DETERDING: I believe we filed 15 copies
2 with Records and Reporting, so I don't know what the
3 mix-up was.

4 COMMISSIONER KIESLING: Okay. I'll take up
5 the Gallagher and Moses one first and it's your
6 motion. I do have the county's response, so.

7 MR. DETERDING: Very briefly, Commissioner,
8 as to Mr. Gallagher, his testimony is, in my reading,
9 basically identical to portions of that of
10 Mr. Bramlett. He's Mr. Bramlett's immediate
11 supervisor, I believe, at the County, and his was just
12 requested to be stricken because it's redundant.

13 Mr. Moses is a little more meaningful reason
14 other than just being redundant. That is that
15 Mr. Moses' testimony is solely on the question of the
16 value of this utility and the time of his
17 determination or at least the time of the information
18 he has and utilizes in determining value in 1991. And
19 I don't see that that has any relevance whatsoever to
20 an extension case to the extent that the -- as the
21 County alleges, that it has something to do with
22 financial ability. He only makes one statement in the
23 very end of his testimony about financial ability and
24 the remainder is about value at a time that's totally
25 irrelevant to this extension application.

1 **COMMISSIONER KIESLING:** All right. Let me
2 take them up one at a time.

3 **MR. DEFERDING:** Okay.

4 **COMMISSIONER KIESLING:** On Mr. Gallagher, I
5 mean, our rules do provide that repetitive and
6 cumulative testimony is not to be included.

7 **MS. HALE:** He is not repetitive. There's a
8 1992 agreement, signed in February of 1992, between
9 the parties.

10 Mad Hatter is claiming we need to take
11 additional sewage from them and treat the sewage they
12 would like to treat that they want to collect from
13 this territory they want to extend their certificate
14 to.

15 It is our position, and Mr. Gallagher
16 testified in his prefiled testimony, that they have
17 never made such a request; and that request is
18 required under the contract to be made only to
19 Mr. Gallagher and to nobody else. And that's why we
20 have included him in there, because anybody else
21 saying that they hadn't made the request to
22 Mr. Gallagher would, you know -- might hear your
23 objections as to hearsay, that kind of thing. That's
24 why we included Mr. Gallagher.

25 **COMMISSIONER KIESLING:** Okay. And just so

1 that I'm clear about the relevance of that testimony,
2 what issue in this proceeding does any contract
3 dispute that you all have go to?

4 MS. HALE: It goes to the issue of whether
5 they have the ability to treat the sewage. And, see,
6 our contract with them has a cap on the amount of
7 sewage that we will treat. And it also has a map
8 attached to it that we do not have to treat any sewage
9 that is not detailed on the map attached to the
10 contract.

11 So what they're saying is we need to take
12 additional sewage. And we're saying twofold, you have
13 exceeded the cap in the contract, which is 350,000
14 gallons a day. And, secondly the area that you are
15 seeking a certificate for is not contained on the map
16 attached to the contract, and we are limited to treat
17 the sewage on that map.

18 MR. DETERDING: Well, Commissioner, we never
19 alleged to my knowledge -- certainly not in our direct
20 testimony or in our application to which this
21 testimony was filed that they had to take it. I mean,
22 I believe that in our rebuttal we've stated a
23 disagreement with the interpretation of that contract
24 with them. But we've never alleged as part of our
25 case in this proceeding that they had to take

1 additional sewage. We've stated that as one of the
2 options available to us for the treating of
3 wastewater.

4 **COMMISSIONER KIESLING:** See if you can work
5 out a contract?

6 **MR. DETERDING:** Either through them or
7 through other alternatives or the construction of
8 additional treatment facilities. Several different
9 options.

10 **COMMISSIONER KIESLING:** Okay. What part of
11 their application or, I guess, their prefiled direct
12 are you looking at as this being in response to?

13 **MS. HALE:** We now treat all of their sewage
14 with the exception of this tiny little facility they
15 have called Linda Lakes. I'd have to look through
16 Mr. DeLucenay's prefiled, but he has testified that
17 one of his options, and it's in his answers to
18 interrogatories, is for the County to accept more
19 sewage, and it's certainly in his rebuttal testimony
20 also.

21 It's our position that we don't have to take
22 any more sewage from him. That we've capped out on
23 amount, and we have capped out on the territory. And
24 he's never requested for us any relief regarding the
25 contract. The contract says at one point, and this is

1 going to come up at the hearing, that if we have
2 capacity beyond a certain amount it's in our
3 discretion as to whether to take more sewage or not.
4 So this goes to that issue as to whether we have to
5 take any more sewage from him. And I can't point to
6 you --

7 **COMMISSIONER KIESLING:** Okay. Let me try to
8 understand. You keep saying whether you have to. And
9 if I understand what you're saying, he only testified
10 that you're one of the options that he would be
11 looking at.

12 **MS. HALE:** Correct.

13 **COMMISSIONER KIESLING:** Not that you have to
14 or he can't serve the service area.

15 **MS. HALE:** He's provided no other way to
16 serve the service area other than us that is specific.
17 Everything else is, "I might build a plant some day,"
18 something like that. Nothing specific other than the
19 County accepting more sewage.

20 **COMMISSIONER KIESLING:** Okay. I mean, I can
21 understand your point to some degree, Mr. Deterding,
22 on Mr. Gallagher's testimony, but it does seem to go
23 to one of the options that he did discuss, and for
24 that reason I'm not going to strike his testimony.

25 What about Mr. Moses? What issue does his

1 testimony about the value in 1991 go to?

2 MR. SAMARKOS: Well, first of all, that was
3 the background of how he came about to do the analysis
4 to determine a value. But he studied their financial
5 documents going through 1995. And what that relates
6 to is he says that he has seen no further financial
7 information that demonstrates the value of the assets
8 exceed the debt. The problem is that they claim that
9 they can get financing for this. Our testimony is
10 that all of the assets are currently secure by debt
11 that exceeds the value; therefore, there's nothing to
12 pledge. And, second of all, that there are numerous
13 factors that go into the financial viability of the
14 Utility which would demonstrate an inability to obtain
15 borrowed funds.

16 In the testimony that's been provided,
17 Mr. DeLucenay as indicated there will be no further
18 capital infusement by way of investors and that they
19 plan on borrowing.

20 Mr. Moses is a certified public accountant
21 that is intimately familiar with the financial records
22 of the Utility as he has studied them and provided
23 expert testimony on those documents in a federal court
24 case.

25 COMMISSIONER KIESLING: Okay. I don't know

1 when this federal court case was, but based on your
2 representation that his testimony included a statement
3 that he's looked at their financial information up
4 through 1995, and I'm going to accept that that's what
5 it says since you represented that to me, then it does
6 seem that there may be some relevance to an issue, and
7 that this goes to the weight to be given and not to
8 the admissibility.

9 So I'm going to deny the Motion to Strike
10 Mr. Moses testimony, also.

11 And then the second Motion to Strike as it
12 related to Mr. Orsi and Mr. Hobby.

13 MR. DETERDING: Mr. Orsi is the, I think,
14 roughly the developer of a parcel of land known as Oak
15 Grove. Mr. Hobby is his attorney.

16 COMMISSIONER KIESLING: Which parcel is Oak
17 Grove?

18 MR. DETERDING: It is in the southeast
19 corner of the existing service territory.

20 COMMISSIONER KIESLING: You don't know the
21 number?

22 MR. DETERDING: Yes, ma'am, I have it right
23 here. It is C-4.

24 COMMISSIONER KIESLING: Okay. Thank you.

25 MR. DETERDING: And I guess also relevant to

1 that issue is C-4A which is the Denim Oaks School
2 site, elementary school site.

3 These two gentlemen provide testimony on why
4 they decided to go to the County for service to a
5 parcel within the existing service territory of Mad
6 Hatter as opposed to anything to do with an extension
7 of service territory to -- which Mad Hatter's
8 requested in this application.

9 As we noted in our motion, if they had a
10 problem with the requirements for service, which is
11 what they allege in their testimony, they had the
12 opportunity under the Commission rules to file a
13 complaint as to those concerns, did not do so and this
14 testimony is simply to try and argue concerning why
15 they did not go to Mad Hatter for service as opposed
16 to why -- anything to do with this extension
17 application.

18 **COMMISSIONER KIESLING:** Okay. And let me
19 see if I understand. Not in this proceeding but
20 there's the potential for Mad Hatter to file a
21 complaint saying that their service territory has been
22 violated.

23 **MR. DETERDING:** We have gone to federal
24 court on that issue, and that is still in litigation,
25 though there has been a determination that the due

1 process rights of Mad Hatter were violated in that
2 invasion by the County.

3 COMMISSIONER KIESLING: I guess that wasn't
4 quite my -- Mad Hatter has not filed a complaint with
5 this agency asking us to enforce our territorial
6 agreement.

7 MR. DETERDING: I don't think that this
8 Commission has ever taken the position that it would
9 enforce our territory against County government
10 invasion of that territory. It was always my
11 understanding of the Commission's position as to
12 certificated service territory, that that was a matter
13 for circuit courts, which is where it has been heard
14 in the cases such as JJ's Mobile Homes versus the City
15 of Mount Dora. It's a circuit court matter or federal
16 court as in this case. The Commission has not
17 enforced a PSC certificated service territory against
18 any governmental entity to my knowledge. Certainly
19 not in the water and sewer utility field. I wish they
20 would. I would be happy to file such a complaint and
21 would have done so in this case.

22 COMMISSIONER KIESLING: Okay. So this --
23 what you called an invasion into your certificated
24 territory is the subject of some other litigation
25 that's going on, not here.

1 MR. DETERDING: That is correct.

2 COMMISSIONER KIESLING: Okay. And what
3 issue is it the opinion of the County that this
4 testimony goes to?

5 MS. HALE: This goes to several issues. It
6 goes to the public interest, it goes to the financial
7 ability to serve and it also goes to whether Mad
8 Hatter has both water -- sufficient water and sewer
9 service available to provide service to the extended
10 territory when it cannot provide service to its own
11 territory right now.

12 Specifically, this was raised by
13 Mr. DeLucenay in his direct testimony in which he
14 accused the County of invading his certificated
15 territory to treat the sewage from the school.

16 I should tell you, I realize --

17 COMMISSIONER KIESLING: I wanted to know
18 what issue.

19 MS. HALE: Those three issues, financial
20 ability, technical ability, and the ability to provide
21 the service.

22 Mr. Orsi testified that Mr. DeLucenay told
23 him, "You have to give me \$100,000, and then I will
24 drill wells for water on your property." Mr. Orsi
25 said, "If I'm paying \$100,000 to you, I'll drill my

1 own wells. I'm not interested in having you come on
2 to my property to drill the wells."

3 So that goes to water service availability.
4 It also goes to financial ability to perform. Also,
5 the issues go to the public interest because this goes
6 into the fact that Mad Hatter stopped a school from
7 opening and didn't allow any water and sewer service
8 into the school. The school had to go -- another
9 school had to go on double session, so the new school
10 could not open. There were about 1,500 to 1,800
11 students in that school and there was a huge uproar on
12 the subject.

13 It also goes to the issue of sewer service
14 availability because Mad Hatter had the opportunity to
15 serve the school and declined the opportunity because
16 it has exceeded its cap with the County and has no way
17 to treat sewage other than the County, so it goes to
18 that issue.

19 It also goes to the issue that Mr. DeLucenay
20 raised in his direct testimony in which he accused us
21 of unfairly invading his territory and explains how
22 that event occurred.

23 And Mr. Hobby testified in his prefiled
24 direct that he told his client not to sign the
25 contract with Mad Hatter because the contract required

1 his client to pay \$93,000 up-front as not CIAC but as
2 a loan which could be cancelled at the discretion,
3 sole discretion of Mad Hatter, and would not guarantee
4 service. And so it goes to the issue of can they
5 provide service in the extended territory when they
6 cannot even provide it in their own territory?

7 So all of those issues are wrapped up in Mr.
8 Orsi and Mr. Hobby's testimony.

9 COMMISSIONER KIESLING: All right. Any
10 response, Mr. Deterding?

11 MR. DETERDING: I believe this is solely
12 related to a piece of territory that was invaded that
13 is the subject of federal litigation and that it
14 doesn't have anything to do with their ability to
15 provide service, financial or technical; certainly not
16 financial. It's merely an allegation that the Utility
17 proposed a loan and as part of the initial draft
18 contract sent to the developer. And there's not been
19 any allegation that that somehow renders us unable to
20 provide the service. It's simply a statement by them
21 that those were the -- that, and an allegation that we
22 would not, quote, "guarantee" service as being the
23 reasons why they then went to the County for service.
24 That is the sum and substance of this testimony.

25 COMMISSIONER KIESLING: Okay. I'm going to

1 deny the Motion to Strike. I think that it does go to
2 public interest, and I'm going to permit it to remain
3 in.

4 Is there anything else that needs to be
5 taken up?

6 MS. CAPELESS: We have nothing further.

7 COMMISSIONER KIESLING: Well, I have one.
8 Do we think that the time that is allotted to this
9 case is adequate to hear it or are we going to run out
10 of time and have to find a third day somewhere?

11 MR. DETERDING: I'm hopeful that it will be
12 adequate, but I'm always hopeful.

13 COMMISSIONER KIESLING: I know and that's
14 why we seem to end up going back and having to have a
15 third day pretty often.

16 MR. DETERDING: Commissioner, I don't know
17 what to really to expect. It's a certificate case and
18 you really -- they are harder to predict than rate
19 cases are as far as the time it will take, I think.
20 But as I said I'm fairly hopeful that we can finish in
21 two full days.

22 MR. SAMARKOS: Commissioner, our jury trial
23 took three weeks in federal court.

24 COMMISSIONER KIESLING: But this is not
25 federal court, and it's not jury trial.

1 MR. SAMARKOS: It went longer than we
2 anticipated.

3 MS. HALE: About a week longer.

4 MR. SAMARKOS: About a week longer than was
5 allocated.

6 COMMISSIONER KIESLING: Well, let me try it
7 from this direction: How much cross examination do
8 you anticipate having for Mr. DeLucenay?

9 MS. HALE: A considerable amount. I would
10 think it would run two to four hours. I'm guessing.

11 MR. DETERDING: We only have the three
12 witnesses, Mr. Rogers, Mr. DeLucenay, and Mr. Nixon,
13 and the scope of the testimony of Mr. Nixon and
14 Mr. Rogers is fairly limited.

15 COMMISSIONER KIESLING: Okay.

16 MR. DETERDING: I can tell you that I
17 anticipate substantial cross examination of several of
18 their witnesses, though.

19 COMMISSIONER KIESLING: And by substantial
20 -- let me just work through the witnesses. How about
21 that?

22 MR. DETERDING: Okay.

23 COMMISSIONER KIESLING: So Mr. DeLucenay
24 will have five minutes to get his prefiled in and up
25 to four hours for cross.

1 **MS. HALE:** I think that's realistic. It may
2 be shorter, and we'll try to make it as short as
3 possible.

4 **COMMISSIONER KIESLING:** Okay. How about for
5 Mr. Gallagher, how much time do you anticipate for his
6 cross?

7 **MR. DETERDING:** Less than a hour.

8 **COMMISSIONER KIESLING:** How much less than a
9 hour?

10 **MR. DETERDING:** Half an hour. Again, that's
11 a guess.

12 **COMMISSIONER KIESLING:** Yeah. But I am
13 taking these down, and I intend to make sure that, you
14 know, the parties don't abuse this.

15 **MR. DETERDING:** Well, then I'd better be
16 fairly conservative. I would say --

17 **COMMISSIONER KIESLING:** Do that or write out
18 your questions real precisely.

19 **MR. DETERDING:** I can try that, too.
20 Gallagher, probably 30 minutes to 45 minutes.

21 **COMMISSIONER KIESLING:** I'm going to give
22 him 45.

23 Mr. Orsi, realizing this is not the order
24 they're going in, but it's the order they are listed
25 in right now.

1 MR. DETERDING: 30 to 45 minutes.

2 COMMISSIONER KIESLING: Okay. I'm going to
3 give him 45 minutes.

4 Mr. Hobby.

5 MR. DETERDING: 30 minutes.

6 COMMISSIONER KIESLING: Mr. Branlett?

7 MR. DETERDING: Probably in excess of two
8 hours.

9 COMMISSIONER KIESLING: How much in excess
10 of two hours?

11 MR. DETERDING: I'm guessing two hours.

12 COMMISSIONER KIESLING: Okay. Two hours.

13 Mr. Moses.

14 MR. DETERDING: 45 minutes.

15 COMMISSIONER KIESLING: Mr. Sequitieri?

16 MR. DETERDING: 20 minutes.

17 COMMISSIONER KIESLING: I'm doing these in
18 .75.

19 MR. DETERDING: Okay. I'll try 15. Be very
20 conservative on that one.

21 COMMISSIONER KIESLING: Okay. Mr. O'Connor.

22 MR. DETERDING: Probably 45 minutes.

23 COMMISSIONER KIESLING: Okay.

24 COMMISSIONER CLARK: Dr. Kratz.

25 MR. DETERDING: 15 minutes.

1 COMMISSIONER KIESLING: Mr. Burghardt?

2 MR. DETERDING: From me?

3 COMMISSIONER KIESLING: Uh-huh.

4 MR. DETERDING: 30 minutes.

5 COMMISSIONER KIESLING: How about for you?

6 MS. HALE: Same.

7 COMMISSIONER KIESLING: So an hour, total?

8 Mr. Martinez?

9 MR. DETERDING: Probably 15 minutes.

10 COMMISSIONER KIESLING: How about for the
11 County.

12 MS. CAPELESS: 15.

13 MR. DETERDING: And 15 for Screnock.

14 COMMISSIONER KIESLING: Same.

15 MS. HALE: That's fine.

16 COMMISSIONER KIESLING: And then how about
17 rebuttal for Mr. DeLucenay, how, much cross or did you
18 include that in your four hours?

19 MS. HALE: I did and as I recall, when we
20 talked earlier, I think -- didn't we talk about having
21 Mr. DeLucenay do his rebuttal at the same time?

22 MR. DETERDING: No.

23 COMMISSIONER KIESLING: No, we didn't. We
24 said we were going keep them separate, so --

25 MS. HALE: Well, I would think at least a

1 hour. I mean --

2
3 **COMMISSIONER KIESLING:** In addition to the
4 four?

5 **MS. HALE:** If we're not including the
6 rebuttal in the original, I'd like to take some of
7 that time -- I mean, his really substantive testimony
8 is in the rebuttal; it's not in the original.

9 **COMMISSIONER KIESLING:** So a total of four
10 for both?

11 **MS. HALE:** Yes, divided in some fashion.

12 **COMMISSIONER KIESLING:** All right. And how
13 about for Rogers?

14 **MR. SAMARKOS:** One hour for Mr. Rogers and
15 one hour for Mr. Nixon.

16 **COMMISSIONER KIESLING:** All. Let me add
17 this up. (Pause) I come up with 14 hours. We can do
18 that in two days then.

19 **MR. DETERDING:** Are we going into the
20 evening on Day One or not?

21 **MS. CAPELESS:** Let me just interject that
22 that Staff will need some time, also, to cross
23 examine.

24 **COMMISSIONER KIESLING:** I wasn't totally
25 ignoring you.

MS. CAPELESS: Thank you.

1 **COMMISSIONER KIESLING:** Do you have an
2 estimate of kind of like total time or do you want to
3 do it witness by witness, also?

4 **MS. CAPELESS:** I don't need to do it witness
5 by witness, but I think we probably need a couple of
6 hours for Mr. DeLucenay, and maybe a couple of hours
7 for all of the County witnesses combined. But, of
8 course, that depends on how many of our questions have
9 already been asked previously on cross, so --

10 **COMMISSIONER KIESLING:** So a total maximum
11 of four hours.

12 **MS. CAPELESS:** Yes, ma'an.

13 **COMMISSIONER KIESLING:** That gives us two
14 nine-hour days or one very long day and one not so
15 long day.

16 **MR. DETERDING:** We are going into the
17 evening on the --

18 **MS. CAPELESS:** What we have is customer
19 testimony noticed for the beginning of the hearing on
20 the first day, so.

21 **COMMISSIONER KIESLING:** But only the
22 beginning.

23 **MS. CAPELESS:** Only the beginning of the
24 first day.

25 **COMMISSIONER KIESLING:** We're not doing an

1 evening session.

2 MS. CAPELESS: Correct. We don't have any
3 evening sessions noticed.

4 COMMISSIONER KIESLING: Okay. Is there any
5 problem with the room in terms of staying there into
6 the evening?

7 MS. CAPELESS: I'm not aware of any. We can
8 find out.

9 COMMISSIONER KIESLING: Well, then, I would
10 suggest that that's probably what we are going to need
11 to do is to go late on the first day and just then
12 stay until we're done on the second day, and so that
13 will help you understand what you need to do with your
14 witnesses, too.

15 MS. HALE: Thank you.

16 COMMISSIONER KIESLING: Because, I mean, I
17 know that Mr. Deterding knows what our calendar looks
18 like right now, but you probably don't, and it could
19 be months before we could find another day. It's that
20 bad like in and out.

21 MS. HALE: We prefer to get it done.

22 COMMISSIONER KIESLING: So do we. So as
23 long as everybody is on notice that we're probably
24 going to be going late and not taking much in the way
25 of breaks, you know, like there won't be any hour

1 lunches and hour dinners, we'll get it done then.

2 And I'll also put the burden on you,
3 Ms. Capeless, of making sure that the other
4 Commissioners know the kind of time pressure we'll be
5 under so that we're able to finish it in two days.

6 **MS. CAPELESS:** Yes, ma'am. Thank you.

7 **COMMISSIONER KIESLING:** Okay. And then
8 other than that is there anything else we need to talk
9 about?

10 **MR. DETERDING:** Nothing.

11 **MS. CAPELESS:** We have nothing further.

12 **COMMISSIONER KIESLING:** Okay. Then we'll
13 get this out -- probably it's not going to get out
14 until Friday, because I don't know how much time
15 you're going to need, but I leave on Wednesday to go
16 to NRI board meeting and won't be back until like
17 afternoon on Friday.

18 **MS. CAPELESS:** I'll try to get it to you on
19 Wednesday.

20 **COMMISSIONER KIESLING:** Okay. I want to
21 make sure we do get it out in enough time for people
22 to be able to use it for the hearing. Okay. Then if
23 there's nothing further the prehearing is adjourned.

24 (Thereupon, the hearing concluded at
25 3:36 p.m.)

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1 STATE OF FLORIDA)
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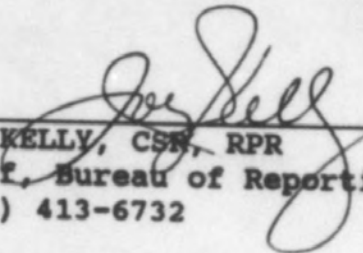
CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 960576-WS was heard by the
7 Prehearing Officer at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 79 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 8th day of May, 1997.

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