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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates) DOCKET NO. 970657-WS
to operate a water and wastewater)
utility in Charlotte and DeSoto)
Counties by Lake Suzy Utilities,)
Inc.)

In re: Application for amendment) DOCKET NO. 980261-WS
of Certificates Nos. 570-W and)
496-S to add territory in Charlotte)
County by Florida Water Services)
Corporation.)

PROCEEDINGS: PREHEARING CONFERENCE
BEFORE: COMMISSIONER SUSAN F. CLARK
DATE: Monday, December 14, 1998
TIME: Commenced at 1:00 p.m.
PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: NANCY S. METZKE, RPR, CCR

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APPEARANCES:

BOBBIE L. REYES, ESQUIRE and CLEVELAND FERGUSON, III, ESQUIRE, Florida Public Service Commissioner, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

MARTIN S. FRIEDMAN, ESQUIRE, Rose, Sundstrom, Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, on behalf of Lake Suzy Utilities, Inc.

MATTHEW J. FEIL, ESQUIRE, Florida Water Services Corporation, Post Office Box 609520, Orlando, Florida 32860-9520.

JEREMY COHEN, ESQUIRE, Knowles, Marks & Randolph, 215 South Monroe Street, Suite 130, Tallahassee, Florida 32301, on behalf of Charlotte County.

P R O C E E D I N G S

1
2 COMMISSIONER CLARK: All right. Read the notice,
3 please.

4 MS. REYES: Today has been set for a prehearing
5 conference in Docket Number 970657-WS, application for
6 certificates to operate a water and wastewater utility in
7 Charlotte and DeSoto Counties by the Lake Suzy Utilities,
8 Inc. and Docket Number 980261-WS, application for amendment
9 to certificates numbers 570-W and 496-S to add territory in
10 Charlotte County by Florida Water Services Corporation.

11 COMMISSIONER CLARK: We'll take appearances.

12 MR. FEIL: Matthew Feil, Florida Water Services
13 Corporation. Address as stated on the draft prehearing
14 order.

15 MR. COHEN: Jeremy Cohen and John Marks on behalf
16 of Charlotte County.

17 MR. FRIEDMAN: And Marty Friedman of Rose,
18 Sundstrom and Bentley, LLP on behalf of Lake Suzy
19 Utilities.

20 MS. REYES: Bobbie L. Reyes and Cleveland
21 Ferguson, III on behalf of Commission staff.

22 COMMISSIONER CLARK: Okay. Are there any
23 preliminary matters we need to take up? Do you note in the
24 prehearing order that --

25 MS. REYES: Ms. Sopko.

1 COMMISSIONER CLARK: Ms. Sopko has -- Sop --
2 Pronounce it.

3 MS. REYES: Sopko, Sopko. I think it's Sopko.

4 COMMISSIONER CLARK: Has been excused from this
5 prehearing?

6 MS. REYES: Yes that's the only preliminary
7 matter that I have.

8 COMMISSIONER CLARK: Okay. Are there any changes
9 to the prehearing order up and to Page 6?

10 MS. REYES: Just on the list of appearances,
11 Mr. Ferguson's name will need to be added to the list of
12 appearances.

13 COMMISSIONER CLARK: Who is he with?

14 MS. REYES: He's sitting beside me. He's on
15 behalf of the Commission staff.

16 COMMISSIONER CLARK: Oh, I'm on the sixth page,
17 and I'm looking at the witnesses.

18 MS. REYES: I'm sorry. On the very first page
19 under the list of appearances, his name is not reflected as
20 appearing on behalf of Commission staff.

21 COMMISSIONER CLARK: I'm sorry, please add it.
22 Are there any changes through Page 6?

23 MR. FEIL: Well, Commissioner, we had mentioned
24 and the parties had discussed among themselves the prospect
25 of attaching a map to the prehearing order. A draft of

1 that map has been circulated to all the parties. We just
2 haven't settled on what should appear on the map.
3 Mr. Friedman mentioned one change to me. Hopefully we'll
4 have that all resolved by, say, Thursday of this week, and
5 I don't know whether or not -- Ms. Reyes mentioned the
6 prospect of changing some of the language in the
7 introductory portion to refer to the maps, and I don't know
8 whether or not she wanted to do that up to Page 6 or during
9 the exhibit portion.

10 MS. REYES: I think it --

11 MR. FRIEDMAN: I'm not sure we need to make the
12 map as an exhibit to the prehearing. I thought what we
13 were going to do is just get together and agree on a map
14 which would facilitate the commissioners being able to see
15 what we're really talking about. I wouldn't attach it to
16 the prehearing order myself.

17 COMMISSIONER CLARK: Yeah, I was thinking at the
18 beginning of the hearing that could be the first exhibit.

19 MR. FEIL: Okay. That's fine.

20 COMMISSIONER CLARK: And stipulate it into the
21 record.

22 MR. FEIL: That's fine.

23 COMMISSIONER CLARK: Are there --

24 MS. REYES: On Page 6 there are witnesses that
25 I've listed in this draft as subpoenaed witnesses, and they

1 were listed because Lake Suzy initially had them listed in
2 their prehearing statement. Subsequently, during
3 discussions between the parties, Lake Suzy and Florida
4 Water agreed that they would both proffer those witnesses;
5 however, those witnesses have not prefiled testimony as
6 required by the order establishing procedure. There has
7 been no request to file their prefiled, nor any showing
8 that they are adverse witnesses; and therefore, staff would
9 recommend that those witnesses be stricken from the
10 prehearing order.

11 COMMISSIONER CLARK: Mr. Feil and Mr. Friedman,
12 do you want to address that?

13 MR. FEIL: Mr. Friedman did list those witnesses
14 as witnesses he would like to call in his prehearing
15 statement. My statement -- or my reply to his listing was
16 I didn't have a problem with him calling those witnesses
17 for the hearing and have them testify live or possibly have
18 their depositions inserted into the record provided I would
19 have the ability to ask them whatever I wanted to ask them
20 without encountering any problems about asking something
21 outside the scope of direct.

22 MR. FRIEDMAN: I've got two comments: One is
23 that we went through a pre, prehearing, and nobody ever
24 raised an objection that, you know, this was -- that they
25 had any objection to the way we were going to do this. The

1 staff never said, well, gee, Marty, you should -- we're
2 going to object to that.

3 Secondly is that they are witnesses that are not
4 within our control, and we run into this problem all the
5 time. We ran into it in Alafaya. I don't remember if you
6 were on the Alafaya panel or not. We had one of the
7 developers in that area who was similarly situated,
8 somebody we couldn't send prefiled testimony to and say,
9 hey, gee, this is what we want you to say, and this is what
10 you are going to answer and have them respond to it. So
11 what we did in that case is we took their deposition, and
12 in that case all the parties decided just to use the
13 deposition in lieu of the live testimony. In this case we
14 can do it either way.

15 We needed to do that so that we could -- number
16 1, is in that other case you all also required that we
17 prefile his deposition so that everybody would have an idea
18 as to --

19 COMMISSIONER CLARK: Can we do that in this one?

20 MR. FRIEDMAN: Yeah, we've got him scheduled for
21 Friday.

22 COMMISSIONER CLARK: All right. Why don't we
23 just --

24 MS. REYES: Let me make a note that staff because
25 this issue was brought up -- it was brought up and

1 discussed at the pre, pre; and after we left that
2 discussion, we decided that this was probably information
3 that needed to be in the record. We contacted Mr. Concar
4 (phonetics) who is the county administrator for DeSoto
5 County. He has submitted to me that he would be amenable
6 to pre-filing testimony on behalf of the Commission staff in
7 order to get this information in the record, and we are now
8 in the process of getting that testimony and have prepared
9 a motion which we will file probably within the next day or
10 so to request leave to file supplemental testimony in this
11 matter, so this may be a moot issue as to the DeSoto County
12 representative.

13 COMMISSIONER CLARK: Who is that again?

14 MS. REYES: Mr. Robert Concar (phonetics), the
15 county administrator for DeSoto County.

16 COMMISSIONER CLARK: And it's your desire to have
17 him as the staff witness and file supplemental testimony
18 for him?

19 MS. REYES: Yes.

20 COMMISSIONER CLARK: Is there an objection to
21 that?

22 MR. FRIEDMAN: No, not at all.

23 MR. FEIL: As long as we can get the deposition
24 in too as well, no, because he is going to be deposed on
25 Friday.

1 MR. FRIEDMAN: Well, we're not sure he's going to
2 be deposed on Friday, depending upon what -- We set him
3 for deposition, but if the prefiled testimony, assuming it
4 says --

5 COMMISSIONER CLARK: Ms. Reyes, when is the
6 prefiled testimony going to be filed?

7 MS. REYES: I'm waiting to get the answers to the
8 questions from Mr. Concar (phonetics). He indicated to me
9 on Friday that he thought he could have those to me
10 sometime today, so I'm hoping that probably tomorrow, the
11 next day at the latest, that I would be able to file that
12 motion and the testimony.

13 COMMISSIONER CLARK: And do we know who the Water
14 Supply Authority representative would be?

15 MR. FRIEDMAN: Patrick Lehman who is also
16 scheduled for deposition Friday, and we don't know --
17 depending upon what Mr. Concar (phonetics) says, we may not
18 need that witness because DeSoto County gets all of its
19 water from the Peace River/Manasota Regional Water Supply
20 Authority, and we're just not sure that Mr. Concar
21 (phonetics) can answer all the questions we have about
22 that, and so we set Mr. Lehman as kind of a backup.

23 COMMISSIONER CLARK: Okay.

24 MR. FRIEDMAN: And assuming that everything goes
25 fine with Mr. Concar (phonetics), we may not need the

1 second witness.

2 COMMISSIONER CLARK: Why don't we do this, when
3 you get the testimony from Mr. Concar (phonetics), you'll
4 get it to Mr. Friedman, Mr. Feil and Mr. Cohen as soon as
5 you can so you can decide if you need to go forward with
6 the depositions on Friday. If it's determined that the
7 prefiled testimony of Mr. Concar (phonetics) is sufficient,
8 that's what we'll show on the prehearing order, that he --
9 that we allowed staff to file the supplemental testimony,
10 and then Mr. Feil, Mr. Cohen and Mr. Friedman, will have
11 the opportunity to cross examine him at the hearing. If,
12 however, you determine that you still have to depose both
13 Mr. Concar (phonetics) or Mr. Lehman, or one or the other,
14 then I will expect that their depositions will be the
15 prefiled testimony; is that all right?

16 MR. FRIEDMAN: Well, certainly with Mr. Lehman.
17 I don't know how we would do Mr. Concar (phonetics)'s as
18 being prefiled testimony if, in fact, the staff is already
19 going to file prefiled for him.

20 COMMISSIONER CLARK: All right.

21 MR. FRIEDMAN: It seems to me that would be more
22 in the nature if Mr. Feil, which he has got scheduled to
23 take my client's deposition, it would be the same as if he
24 takes my client's deposition; we're not going to put that
25 in the record, I don't think.

1 COMMISSIONER CLARK: Okay. Then why don't we --
2 You let me know how we should resolve it either after today
3 or after Friday.

4 MS. REYES: Okay.

5 COMMISSIONER CLARK: And it would be my
6 preference if Mr. Lehman is called as a witness that we
7 prefile his deposition so the commissioners have some idea
8 what he is going to say.

9 MR. FRIEDMAN: Absolutely.

10 COMMISSIONER CLARK: Okay. When and where is
11 this hearing?

12 MS. REYES: It's going to be in Charlotte County.
13 I think we were looking at Punta Gorda. Right now I think
14 records is having some problems getting a hearing location
15 for the two days it's scheduled for, which are January 13th
16 and 14th, so I can't tell you the exact location, but
17 somewhere in Charlotte County and somewhere close to this
18 service area.

19 COMMISSIONER CLARK: Okay. All righty. Any
20 changes to the basic positions?

21 (NO RESPONSE)

22 COMMISSIONER CLARK: Any changes to Issue 1?

23 (NO RESPONSE)

24 COMMISSIONER CLARK: Issue 2?

25 MR. FEIL: On Florida Waters' position, I would

1 prefer if we take out the "No comma" and just begin with
2 Lake Suzy.

3 COMMISSIONER CLARK: Okay. Issue 3.

4 MR. FEIL: Florida Waters' position, I don't
5 think, was clear. I think I was supposed to get back with
6 Ms. Reyes about this because I didn't address the capacity
7 issue. But our position as to Lake Suzy's capacity is that
8 Lake Suzy does not have adequate plant capacity to serve
9 the entire requested territory or words to that effect.

10 COMMISSIONER CLARK: Well, Mr. Feil, let's -- why
11 don't you give us what you want us to put in there.

12 MR. FEIL: Okay. "Lake Suzy does not have
13 adequate water and wastewater capacity available to serve
14 its entire requested territory," and that's in addition to
15 what the currently stated position is.

16 MS. REYES: What about a position on Florida
17 Waters' capacity?

18 MR. FEIL: After the word "technical ability"
19 there in the last sentence, say "technical ability and
20 water and wastewater capacity."

21 MR. FRIEDMAN: And I think to be technically
22 correct we probably need to, like Matt did, when we asked
23 these questions in the joint -- both of them, our answer
24 probably shouldn't start with yes.

25 COMMISSIONER CLARK: Okay.

1 MR. FRIEDMAN: That would probably also be true
2 of Haus Development.

3 COMMISSIONER CLARK: And staff, I suppose.
4 Issue Number 4.

5 (NO RESPONSE)

6 COMMISSIONER CLARK: Issue 5.

7 (NO RESPONSE)

8 COMMISSIONER CLARK: Issue Number 6.

9 (NO RESPONSE)

10 COMMISSIONER CLARK: Issue Number 7.

11 (NO RESPONSE)

12 MS. REYES: As to Issue 7, I believe with
13 Mr. Friedman's concurrence, that Issue 7 can be stricken
14 now. Lake Suzy has proposed a stipulation to that issue
15 which staff believes is reasonable and should be accepted
16 by the Commission.

17 COMMISSIONER CLARK: Okay. And we'll move that
18 to the stipulation section then?

19 MR. FRIEDMAN: Correct.

20 MS. REYES: And I have the exact wording of that
21 stipulation if you would like a copy of that.

22 COMMISSIONER CLARK: Okay. Just read it into the
23 record if you would. Is it long?

24 MS. REYES: It's a couple of sentences.

25 COMMISSIONER CLARK: Go ahead and read it.

1 MS. REYES: "If the Commission approves Lake
2 Suzy's application, regulatory assessment fees would be due
3 from the effective date of the Commission's order approving
4 Lake Suzy's application provided that Lake Suzy refunds all
5 revenues collected from Lot 18 of the Link Subdivision
6 within 30 days of the effective date of the Commission's
7 order. The utility shall provide proof of the refund
8 within 30 days after the refund is completed. In the event
9 Lake Suzy does not refund all revenues collected from Lot
10 18 pursuant to rule 25-30.120, Florida Administrative Code,
11 regulatory assessment fees would be due from Lake Suzy from
12 the date the utility began providing service in Charlotte
13 County."

14 COMMISSIONER CLARK: Okay. Issue Number 8.

15 (NO RESPONSE)

16 COMMISSIONER CLARK: Any changes to the exhibit
17 list? Should we list -- do you want to go ahead and list
18 the map first on the prehearing? We'll just take care of
19 that at the hearing.

20 Who are the commissioners on this?

21 MS. REYES: It's the full Commission.

22 COMMISSIONER CLARK: Oh, okay.

23 MS. REYES: The only thing -- The question I
24 have is on the DeSoto County representative, there were two
25 exhibits, I think, that Lake Suzy intended to sponsor with

1 those two subpoenaed witnesses, and I'm not sure how we
2 want to handle those, assuming we get that prefiled
3 testimony without objection from the parties.

4 COMMISSIONER CLARK: Mr. Friedman, did you have
5 two exhibits?

6 MR. FRIEDMAN: I don't know what exhibits he's
7 going to bring. There's certainly one exhibit. What I
8 would suggest is to make his a composite exhibit, and if
9 he's got -- if he puts in both -- If there are two or
10 more agreements, then he could just put them both in under
11 his sponsorship. I just don't know how many agreements
12 he's going to bring because I don't know how many there
13 are.

14 COMMISSIONER CLARK: All right. Who are we
15 talking about?

16 MS. REYES: I assume we are talking about
17 Mr. Concar (phonetics).

18 MR. FRIEDMAN: Yes.

19 MS. REYES: I think -- yeah, I hadn't discussed
20 exhibits with him, but I could do that.

21 MR. FRIEDMAN: Yeah, and if you wanted to number
22 them differently -- If he tells you now how many he has
23 got, it would certainly be better to be as specific as we
24 can.

25 COMMISSIONER CLARK: Well, won't we want that to

1 be part of his prefiled testimony?

2 MS. REYES: Well, as I said, that wasn't
3 something I originally contemplated when I discussed with
4 him the testimony.

5 COMMISSIONER CLARK: Okay.

6 MS. REYES: Because I really hadn't identified a
7 need for any exhibits to be attached to his testimony. But
8 like I said, I know that Mr. Friedman, I think, wanted this
9 one exhibit into the record, which is the DeSoto County
10 agreement for water allocation from the Peace River Water
11 Supply Authority.

12 COMMISSIONER CLARK: Okay. Mr. Feil or
13 Mr. Cohen, are you going to object to those?

14 MR. FEIL: We've already stipulated them in on
15 the next page, so I don't have a problem.

16 COMMISSIONER CLARK: All right. Then there's
17 nothing to worry about if you've stipulated them in.

18 MS. REYES: I don't see that you stipulated to
19 the Peace River. I know that we had a stipulation as to
20 RK-1 -- exhibit which has been identified RK-1.

21 MR. FEIL: Well, I think I understand what RK-1
22 is. Perhaps I don't understand what the PRWSA-1 is.

23 MR. FRIEDMAN: Yeah, I'm not sure exactly what it
24 is either, Matt. I mean that's, there's --

25 MR. FEIL: Well, I'm not stipulating to it then.

1 MR. FRIEDMAN: There is an agreement -- and you
2 may know more about this than me -- there's an agreement
3 among the members of the Peace River/Manasota Regional
4 Water Supply Authority, I'm sure, that allocates or
5 determines how they are going to allocate the capacity out
6 of the Peace River.

7 MR. FEIL: I'm not familiar with it. I'd have to
8 look at it. If you want to have it as an exhibit, we'll
9 look at it, and we can stipulate it in later.

10 MS. REYES: Yeah, we could stipulate that at
11 hearing as well into the record.

12 COMMISSIONER CLARK: Okay. Anything else? No
13 pending motions? Do you think it's going to take two days?

14 MR. FRIEDMAN: I don't think it's going to take
15 two days. We've only got one witness and depending upon
16 cross examination, I would expect one day to -- a good day.
17 I don't -- If we start at ten o'clock or so, it may not;
18 but if we start, you know, at nine or so in the morning, I
19 think we can certainly get it done in one day.

20 COMMISSIONER CLARK: Well, it's probably
21 scheduled for ten o'clock, isn't it?

22 MS. REYES: I believe so.

23 MR. FRIEDMAN: Is it?

24 MS. REYES: We haven't sent out the notice yet
25 though.

1 COMMISSIONER CLARK: I imagine we won't want to
2 start before ten because that -- if you start it at ten,
3 you could still fly into Tampa and drive down. If you
4 started at nine, it's not --

5 MR. FRIEDMAN: Well, I'll be there the day
6 before, so obviously that doesn't concern me.

7 COMMISSIONER CLARK: Okay. Well, it's scheduled
8 for two days. I don't -- And if we need them, we'll use
9 them. Anything else we need to take up?

10 MS. REYES: That's all that I'm aware of.

11 COMMISSIONER CLARK: Okay. Thank you all very
12 much.

13 (WHEREUPON, THE PREHEARING WAS ADJOURNED)

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CERTIFICATE

STATE OF FLORIDA)
COUNTY OF LEON)

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 16th day of December, 1998.



NANCY S. METZKE, CCR, RPR