

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of	:	DOCKET NO. 971220-WS
Application for transfer of	:	
Certificates Nos. 592-W and	:	
509-S from Cypress Lakes	:	
Association, Ltd. to Cypress	:	
Lakes Utilities, Inc. in	:	
Polk County.	:	
	:	
	:	
	:	

PROCEEDINGS:	PREHEARING CONFERENCE
BEFORE:	COMMISSIONER SUSAN F. CLARK
DATE:	October 4, 1999
TIME:	Commenced at 1:30 p.m. Concluded at 2:15 p.m.
LOCATION:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR NOTARY PUBLIC IN AND FOR THE STATE OF FLORIDA AT LARGE

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On behalf of Cypress Lakes Utilities, Inc.

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On behalf of the Citizens of Florida.

JENNIFER S. BRUBAKER and STEPHANIE A. CROSSMAN,
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On behalf of the Commission Staff.

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P R O C E E D I N G S

1
2 COMMISSIONER CLARK: We will call the hearing to
3 order. Would you please read the notice.

4 MS. BRUBAKER: Pursuant to notice on September
5 15th, 1999, this time and place was set for a
6 prehearing conference in Docket Number 971220-WS,
7 application for transfer of Certificates Numbers 592-W
8 and 509-S, from Cypress Lakes Associates, Limited to
9 Cypress Lakes Utilities, Inc. in Polk County.

10 The purpose of this conference is set forth in
11 the notice.

12 COMMISSIONER CLARK: Thank you. We will take
13 appearances.

14 MR. GIRTMAN: My name is Ben Girtman, 1020 East
15 Lafayette Street, Suite 207, Tallahassee, Florida,
16 32301, representing the applicant, Cypress Lakes
17 Utilities, Inc.

18 MR. McLEAN: My name is Harold McLean of the
19 Office of Public Counsel. Our address is 111 West
20 Madison, Tallahassee, Florida, 32399, and I appear on
21 behalf of the citizens of the State of Florida.

22 MS. BRUBAKER: Stephanie Crossman and Jennifer
23 Brubaker on behalf of the Commission staff.

24 COMMISSIONER CLARK: Okay. Are there any
25 preliminary matters we need to take up?

1 MS. BRUBAKER: Yes, Commissioner, there are
2 several preliminary matters. First is a pending
3 motion to strike OPC's Issues 9 and 10, prehearing
4 statement Issues 9 and 10, filed on September 10th,
5 1999. There is also a request for official
6 recognition of prior Commission orders filed by the
7 utility on September 23rd, 1999. Furthermore,
8 pursuant to some discussions held in a
9 pre-preconference last week, there may be some
10 discussion about whether this matter should be set for
11 a 120.57(2) hearing.

12 COMMISSIONER CLARK: How are Issues 9 and 10 set
13 forth?

14 MS. BRUBAKER: They appear in Office of Public
15 Counsel's prehearing statement. Those issues were
16 dropped from the draft prehearing order pursuant to
17 the discussions held at the pre-pre. I will be happy
18 to provide you a copy of the prehearing statement if
19 you would like to see those issues.

20 MR. GIRTMAN: Commissioner, this may be moot. We
21 filed the motion -- as you may recall from the
22 Wedgefield case, similar motions -- or, excuse me,
23 similar issues were raised by OPC in that case. We
24 filed motions to strike. The staff had made a verbal
25 motion to strike at the prehearing conference with

1 Commissioner Garcia. He ruled that the --

2 COMMISSIONER CLARK: Let me just ask a question.
3 Why don't I have it in my prehearing order? Have they
4 been withdrawn or do you still want them in there?

5 MR. McLEAN: No. We pretty much agreed on those
6 eight issues. It doesn't offend my sensitivities that
7 they didn't survive the pre-prehearing conference.

8 MR. GIRTMAN: That's why I'm saying it may be
9 moot. The point was that we wanted to make sure what
10 issues we were going to have to address at the hearing
11 and in the brief. OPC's position is apparently that
12 they want to go with the eight staff issues, or that
13 are listed now, but wants to brief Issues 9 and 10.
14 In essence, brief Issues 9 and 10 without them being
15 issues. And I'm a little caught as to what we should
16 do. That's why we didn't withdraw the motion.

17 COMMISSIONER CLARK: Mr. McLean, let me know what
18 they are. Can somebody read 9 and 10 to me?

19 MR. BRUBAKER: Certainly. Issue 9 from OPC's
20 prehearing statement, does the Commission have any
21 rule which addresses the circumstances under which
22 negative acquisition should be imposed? OPC's
23 position on that is no.

24 Issue 10, may the Commission --

25 COMMISSIONER CLARK: I see them. Mr. McLean, you

1 don't object to those being taken out as issues?

2 MR. McLEAN: Correct.

3 COMMISSIONER CLARK: And I would assume you
4 intend to argue those points with respect to your
5 positions on other issues?

6 MR. McLEAN: That is exactly correct.

7 COMMISSIONER CLARK: What's wrong with that, Mr.
8 Girtman?

9 MR. GIRTMAN: That's fine if that's all we are
10 doing. What I'm interpreting is that our motion then
11 is moot.

12 COMMISSIONER CLARK: I believe it is.

13 MR. GIRTMAN: Okay.

14 COMMISSIONER CLARK: And we will let the
15 prehearing order reflect that. Okay.

16 Any other preliminary matters?

17 MS. BRUBAKER: There is also a request for
18 official recognition filed by the utility.

19 COMMISSIONER CLARK: Don't we take that up at the
20 beginning of the hearing?

21 MS. BRUBAKER: Yes, that is typically the time to
22 take it up.

23 COMMISSIONER CLARK: Okay. We will take it up at
24 that time.

25 MR. GIRTMAN: Okay.

1 COMMISSIONER CLARK: Anything else to take up?
2 Okay. Let's go to the prehearing order. Is
3 there any changes through Page 4?

4 MR. GIRTMAN: Excuse me, Commissioner, on that
5 last matter, there was some discussion at the
6 preliminary prehearing that we may be able to avoid a
7 hearing, so I didn't want to leave it unaddressed, the
8 request for official recognition. If we don't go to a
9 hearing, then we need to have some kind of
10 determination at some time.

11 COMMISSIONER CLARK: Okay. Well, let's go
12 through the prehearing order, get it resolved, and
13 then we will discuss the need for a hearing. And if
14 there is a conclusion that there is no need for the
15 hearing, then we will address official recognition of
16 Commission orders.

17 Are there any changes through Page 4?

18 MR. GIRTMAN: Commissioner, on the last line, the
19 post-hearing procedures, as you may recall in the
20 Wedgefield case which dealt with similar issues, we
21 had to file a motion to file documents in excess of
22 that allowed by the rule. The brief wound up being, I
23 think, 52 pages and the supplemental data analyzing
24 the prior decisions of the Commission at that time was
25 something like 37 or 38 pages. So we will probably

1 have to request permission to file in excess of the 40
2 currently allowed by the rule.

3 COMMISSIONER CLARK: Well, I'm not going to
4 change it at this time, and if you need that to be
5 ruled on, we will do so at that time. But I would
6 point out to you that I think when you get much beyond
7 40 pages you kind of lose your reader. And certainly
8 this is an area that we have looked at time and again.

9 MR. GIRTMAN: I understand.

10 MR. McLEAN: Commissioner, we won't object if
11 they do want to file for more than that, particularly
12 if it so that they lose the reader. Actually,
13 seriously we won't impose any objection to that.

14 COMMISSIONER CLARK: All right. Sounds good.
15 Any changes to Page 5?

16 MR. GIRTMAN: Commissioner, on the issue numbers
17 for direct testimony of Carl Wenz, we should add Issue
18 4.

19 COMMISSIONER CLARK: Okay.

20 MR. GIRTMAN: And in rebuttal, Carl Wenz' Issues
21 1 through 8 inclusive.

22 COMMISSIONER CLARK: Okay.

23 MR. GIRTMAN: And Frank Seidman, add Issue 4.

24 COMMISSIONER CLARK: Okay. We will make those
25 changes. Any changes to Page 6?

1 MR. GIRTMAN: Excuse me, Commissioner, I think
2 the OPC in the prehearing draft says Mr. McLean will
3 update as to the issues that Mr. Larkin is addressing.

4 COMMISSIONER CLARK: There is another update. It
5 indicates that Mr. Larkin will address Issues 3, 4, 5,
6 and 6.

7 MR. GIRTMAN: Thank you.

8 COMMISSIONER CLARK: Issue 6. I mean, Page 6.
9 No changes.

10 Page 7, any changes to the issues or the
11 positions?

12 MR. McLEAN: Commissioner, Issue 3, we say no
13 position at this time, one of our concerns is whether
14 the case is going to go to hearing or not, and I can't
15 think of a simple way to say this, but let me do the
16 best I can. We may differ from the staff and from the
17 utility on that issue, but our disagreement is not
18 important enough to go to hearing on. If we go to
19 hearing, we will put on some evidence on that issue.
20 We don't want that -- if we can work out a procedure
21 by which we don't need to go to hearing, Issue 3
22 doesn't need to be a deal breaker, if you follow me.

23 So, perhaps when the decision is made about
24 whether we are going to go to hearing, I can come back
25 and revisit that issue and simply agree with staff or

1 take no position. But if we are going to go to
2 hearing, I think we will probably introduce some
3 evidence on that issue.

4 COMMISSIONER CLARK: Okay. Well, let me ask you
5 with respect to Issue 1 and Issue 2, by the fact that
6 you have no position on those, do we, in fact, have no
7 issues?

8 MR. McLEAN: I don't think that is all that
9 farfetched. I mean, I think that we may be a few
10 dollars apart here and there, but I'm not sure that's
11 worth going to hearing on. The principal disagreement
12 which remains is the legal effect to be given to the
13 facts which are pretty much before us, although I'm
14 not sure in the record. The record as I understand at
15 this time has pleadings in it and that's about it.

16 COMMISSIONER CLARK: I guess I'm not -- if you
17 agree not to go to hearing, you are not taking -- it
18 is with the understanding that there would be no
19 testimony moved into the record?

20 MR. McLEAN: I'm not sure either way is
21 particularly critical to us. It seems to me to make
22 more sense to move the testimony into the record, but
23 I don't see that as a necessity. I can look to your
24 staff to give you a recommendation on that point.

25 MR. GIRTMAN: We would agree with OPC that it is

1 better to have the testimony and exhibits in the
2 record. Otherwise, what do you have upon which to
3 base a decision, what facts are there? I think we can
4 stipulate that the testimony and exhibits are what
5 they are. Of course, OPC is going to disagree with
6 our witness and we are going to disagree with their
7 witness, but we don't object to the introduction. I
8 don't think there is any objection to the introduction
9 of all of the testimony and exhibits that have been
10 filed to date.

11 COMMISSIONER CLARK: All right. Let's just --

12 MR. McLEAN: I think the legal effect of what Mr.
13 Girtman is suggesting, and I certainly concur with, is
14 we simply waive cross which doesn't say anything about
15 the accuracy of the testimony or anything like that.
16 But it seems to odd to me to argue off of a record
17 that is devoid of facts other than the pleadings.

18 COMMISSIONER CLARK: Okay. Go ahead.

19 MS. BRUBAKER: I was simply going to say that
20 unless we are willing to stipulate to the facts, it
21 seems to me that by entering testimony and exhibits
22 which are in contravention to each other on the face
23 that we do have disputed issues of material fact.

24 COMMISSIONER CLARK: Well, I understand that, but
25 notwithstanding that we agree not to go to hearing

1 because cross is waived. And the only thing we have
2 to check with is whoever is assigned to this if they
3 are comfortable with the notion of waiving cross,
4 stipulating it into the record and simply let the
5 parties brief it.

6 MR. McLEAN: I think the majority of the
7 disagreement among our witnesses is the legal import
8 to be given to the facts. And, of course, the
9 witnesses testify extensively about the legal import,
10 but for me I think that is a matter for legal
11 resolution rather than disputed facts.

12 COMMISSIONER CLARK: Well, let's go through and
13 see if there are any changes to the prehearing and
14 then deal with what procedure we might follow.

15 Any changes to Page 8?

16 MR. McLEAN: Yes, ma'am. Issue 4, we find
17 ourselves agreeing with staff.

18 COMMISSIONER CLARK: Any changes on Page 9?
19 Page 10?

20 MR. GIRTMAN: Commissioner, as to Exhibit CW-2,
21 which is the application, I want to be sure that it is
22 reflected here that it includes the late-filed
23 exhibits. There were at least a revised Exhibit G and
24 an Exhibit H.

25 COMMISSIONER CLARK: Any objection, Mr. McLean?

1 MR. McLEAN: No, ma'am.

2 MR. GIRTMAN: I don't believe there were any
3 other late-filed exhibits. But if there are, I want
4 to be sure that's all of them.

5 COMMISSIONER CLARK: I'm sorry, when you say
6 late-filed, you mean a revision to the --

7 MR. GIRTMAN: Excuse me, there was a Late-filed
8 Exhibit G regarding the publication of notice, and a
9 page was left out. So we revised the exhibit.
10 Exhibit G also was filed as a late-filed exhibit to
11 correct that error.

12 COMMISSIONER CLARK: But Exhibit G is what, an
13 attachment to the application?

14 MR. GIRTMAN: It is required by the application.
15 It is an affidavit regarding the publication of notice
16 and the notice on the notice materials. And it is
17 filed as a late-filed exhibit. The Exhibit G that was
18 filed as a late-filed exhibit had an error because it
19 left out a page, and Mr. Wenz filed a revised Exhibit
20 G. So whether we take the revised Exhibit G or both
21 of them --

22 COMMISSIONER CLARK: You want whatever is
23 included in CW-2 to include the revised Exhibit G and
24 revised Exhibit H?

25 MR. GIRTMAN: No, it is not revised Exhibit H,

1 just Exhibit H. That is the articles of
2 incorporation. And I don't believe -- I looked
3 through the file this morning, and I don't believe
4 there were other late-filed exhibits. But if there
5 were, I want to be sure they are included.

6 COMMISSIONER CLARK: Well, we will show that
7 revised Exhibit G and Exhibit H are included. Please
8 let us know if there are any others. Yes.

9 MS. BRUBAKER: Commissioner, if I may revisit
10 Page 8, Issue 4. With regard to OPC's position of no
11 position, they would adopt a position of agreeing with
12 staff?

13 MR. McLEAN: Yes.

14 MS. BRUBAKER: Okay. It seems to me we have a
15 proposed stipulation.

16 COMMISSIONER CLARK: Well, I'm thinking there may
17 be stipulations in the other. If he doesn't take any
18 positions, then you don't have issues. So we will try
19 and deal with that at the end. Okay. You have taken
20 care of the motion to strike. So we have taken care
21 of the prehearing order.

22 MR. GIRTMAN: Commissioner, also just for
23 information, on Frank Seidman's Exhibit FS-1, that is
24 a document containing the list of prior cases of the
25 Commission dealing with acquisition adjustments

1 including those subsequent to the Wedgefield case. It
2 also includes a chart and some analysis in there. And
3 just for clarification, we are asking that the list of
4 exhibits be officially recognized and not his analysis
5 of it. That, of course, is just an exhibit for
6 argument and brief.

7 COMMISSIONER CLARK: Well, I guess it's six of
8 one, half a dozen of the other if we just move
9 everything into the record.

10 MR. GIRTMAN: Right.

11 MR. McLEAN: This is a list of orders?

12 MR. GIRTMAN: Yes.

13 COMMISSIONER CLARK: And his analysis of the
14 order, as I understand it.

15 MR. GIRTMAN: That's what I gave you at the
16 preliminary prehearing. Yes, that's the one.

17 MR. McLEAN: I'm a little confused. You are
18 moving those in as an exhibit. Those are Mr.
19 Seidman's analysis of the legal import of the orders?

20 MR. GIRTMAN: No, no. It is a factual statement
21 of what they do. How many cases were positive
22 acquisition adjustments, how many were negative, what
23 were the dollars. It's straight numbers.

24 MR. McLEAN: No objection to that.

25 COMMISSIONER CLARK: Okay. Now, we have -- all

1 of the issues, as I see it, are potentially stipulated
2 except for the negative acquisition adjustment, would
3 that be correct?

4 MR. McLEAN: 5, 6 and 8, Madam Chairman.

5 COMMISSIONER CLARK: 5, 6, and 8. Okay. 6 is a
6 fallout of 5.

7 MR. McLEAN: Correct.

8 COMMISSIONER CLARK: Okay. Well, let me suggest
9 this as a procedure. That we leave the prehearing
10 order as it is showing the positions on the issues and
11 not attempt to indicate which ones are stipulated and
12 which ones are simply no positions, but leave them as
13 stated at this point and then indicate the parties
14 have agreed to stipulating the testimony and the
15 exhibits into the record, and the waiving of cross
16 examination. And the parties will brief the legal
17 issues, and those legal issues can be based on the
18 testimony that has been provided and stipulated into
19 the record. And that that being the case, there is no
20 need for a hearing, an actual hearing, and we can
21 simply have the briefing. Is that fair? Is that what
22 you want to do?

23 MR. McLEAN: Fair and acceptable.

24 MR. GIRTMAN: I think it is satisfactory, yes.

25 MR. McLEAN: Commissioner, you voiced a concern

1 that some of the other panel needed to be advised.

2 COMMISSIONER CLARK: Yes. I want to make sure
3 that they don't have a desire to question the
4 witnesses.

5 MS. GERVASI: Commissioner, this is very similar
6 to what we did in the Florida Cities EPA case. But if
7 you recall, we actually did convene the hearing in
8 order to have all of the testimony and exhibits
9 entered. So you actually would probably have to
10 convene a hearing for that purpose. It will be short
11 because there won't be any need for cross examination,
12 but it doesn't obviate the 120.57(1) hearing in its
13 entirety.

14 COMMISSIONER CLARK: I see your point. That if
15 we were doing it to strictly -- if we were going to
16 the extent of categorizing it as a (1) or a (2), and
17 if we characterized it as a (2), then we could just do
18 it in a paper way.

19 MS. GERVASI: Right.

20 COMMISSIONER CLARK: In this instance, you think
21 since we are not going to go to the extent of trying
22 to categorize it, and perhaps losing a stipulation on
23 not having a hearing, we should convene the hearing,
24 stipulate it into the record, and then have the
25 parties agree that they will brief the issues, but

1 will rely on the evidence as filed.

2 MS. GERVASI: Right.

3 COMMISSIONER CLARK: Okay. When is the hearing?

4 MS. GERVASI: October 20.

5 COMMISSIONER CLARK: Where is it?

6 MS. GERVASI: Lakeland.

7 MR. GIRTMAN: Is it possible to do that here,
8 Commissioners?

9 COMMISSIONER CLARK: That's right. That's what I
10 need to know. Can we do this here?

11 MS. GERVASI: Well, we did do it here the last
12 time we did a hearing like this.

13 MR. McLEAN: But the hearing was scheduled for
14 here in that case.

15 MS. GERVASI: Was it, I don't recall. We would
16 have to check into that. I don't know offhand.

17 MR. McLEAN: Yes. We went to a couple of
18 technical hearings or service hearings in the service
19 area and then we did the technical ones back here. It
20 seems very cumbersome to me to go down there, too.

21 MS. GERVASI: Do we have service hearings
22 scheduled in this case, I don't know. If there is no
23 scheduled service hearings, there was no intent to
24 have customer testimony entered in.

25 COMMISSIONER CLARK: When did the notice go out?

1 MS. BRUBAKER: It has not yet gone out.

2 COMMISSIONER CLARK: All right. Then can we
3 indicate that we have moved it here?

4 MS. BRUBAKER: I'm sorry, I misspoke. There has
5 been an FAW notice that has issued. I suppose we
6 could revise that. We couldn't do it timely for the
7 October 20th date, however. Staff has not issued its
8 notice, nor has the utility noticed the customers yet,
9 but the FAW notice has gone out.

10 COMMISSIONER CLARK: Well, why don't you find out
11 if we can change the location of the hearing?

12 MR. GIRTMAN: If we have to change the hearing
13 date it would seem to be no difficulty except getting
14 the panel.

15 COMMISSIONER CLARK: Yes, we could do that before
16 an agenda. If we have to change the hearing date in
17 order to accomplish that, why don't we do it and set
18 it for five minutes before an agenda and deal with it
19 then. Why don't I leave it to you all to figure out a
20 way so that we can have the hearing up here, and we
21 simply convene it to move the testimony into the
22 record, and then adjourn it and leave it to briefing.

23 Is that satisfactory?

24 MR. GIRTMAN: That's fine.

25 MR. McLEAN: I don't want to blindsides anyone, we

1 will probably not participate in a decision to move
2 the hearing, but we will not object to it.

3 COMMISSIONER CLARK: Okay.

4 MR. McLEAN: Does that make sense?

5 COMMISSIONER CLARK: Yes. Is there anything else
6 we need to take up?

7 MR. McLEAN: Briefing schedule if it is going to
8 change. It is kind of a shame to have everything
9 before us now and not be able to --

10 COMMISSIONER CLARK: Speed up the briefing
11 schedule?

12 MR. McLEAN: No. Goodness, we would want to do
13 that.

14 MR. GIRTMAN: We have no objection with keeping
15 the same briefing schedule, we will just have the
16 hearing whenever it is convenient, because we know
17 what the evidence is going to be, unless the other two
18 Commissioners want to have a full hearing.

19 COMMISSIONER CLARK: Before we change the
20 hearing, I think you had better ask the other
21 Commissioners if they are comfortable with simply
22 stipulating it into the record and moving the hearing
23 up here. Let them know that no customer testimony was
24 provided for, and OPC has no objection to moving the
25 hearing, although they do not request it be moved.

1 And tell them we need to hear back from them if they
2 object to that procedure.

3 MR. GIRTMAN: In fact, Commissioner, the seller
4 whose name -- his attorney's name was on the service
5 list, has filed a letter recently asking that they be
6 taken off the service list. And I think OPC had
7 indicated there was an attorney representing a
8 customer down there, and they had asked to be taken
9 off the service list. Is that correct?

10 MR. McLEAN: That is correct.

11 COMMISSIONER CLARK: Okay. Are you clear on the
12 procedure we are going to follow?

13 MS. BRUBAKER: I believe so.

14 COMMISSIONER CLARK: Okay. Anything else to come
15 up?

16 MR. GIRTMAN: Is it possible to communicate with
17 those other two Commissioners before we leave today?

18 COMMISSIONER CLARK: I'm not going to stay around
19 here to hear from them. I think by close of business
20 today we certainly could hear from them. Who are the
21 other two Commissioners assigned to this?

22 MS. BRUBAKER: That would be Commissioner Deason
23 and Johnson. I assume at some point that case would
24 be reassigned to one of the other Commissioners.

25 COMMISSIONER CLARK: It may not be reassigned; it

1 may be left to the two Commissioners. I guess you
2 will have to find that out from the Chairman. And
3 find out -- it occurs to me that maybe that they will
4 reassign someone.

5 MR. GIRTMAN: Jennifer, would you repeat the
6 Commissioners' names.

7 MS. BRUBAKER: Currently, it is slated for
8 Commissioners Deason, Clark, and Johnson. An
9 additional concern, Commissioner. The brief -- or,
10 excuse me, the staff recommendation is currently
11 scheduled for January 6th of 2000, with briefs being
12 due November 17th. In light of the holiday season, I
13 would like to see if it would be permissible to move
14 those dates up.

15 COMMISSIONER CLARK: I don't think we have a --
16 we are not having an agenda on that day anyway. I
17 think Chairman Garcia indicated that the Governor's
18 Office has requested we not have an agenda on that
19 day, I think.

20 MS. BRUBAKER: So it would be permissible to
21 schedule that so we are not in the middle of a
22 holiday.

23 COMMISSIONER CLARK: Well, you can bump it one
24 agenda. I mean, that is my recommendation, but, of
25 course, the Chairman controls those things.

1 MR. GIRTMAN: We have no objection if the staff
2 wants to do that.

3 COMMISSIONER CLARK: Yes. I'm pretty sure that
4 -- is that the first agenda after the holidays? I
5 think it is. Yes, and I think we have been requested
6 not to have that agenda.

7 MS. BRUBAKER: The calendar indicates a special
8 agenda on the 11th.

9 COMMISSIONER CLARK: Nothing on the 6th?

10 MS. BRUBAKER: And an agenda on the 18th. The
11 6th would be the due date for the recommendation.

12 COMMISSIONER CLARK: I see. Okay. And you want
13 an extension?

14 MS. BRUBAKER: Well, actually an extension would
15 be allowable or possibly see if we could move it up
16 prior to the Christmas season. Or file the briefs
17 just a little early.

18 MR. McLEAN: If it makes -- we can start some
19 briefs now. I mean, unless something drastic happens.

20 COMMISSIONER CLARK: Would you like to move the
21 briefs up and move the agenda date up, too?

22 MS. BRUBAKER: If that is permissible. The
23 recommendation date.

24 COMMISSIONER CLARK: You know, I guess -- why
25 don't you leave the recommendation where it is and

1 just move the briefs up? That will give you some
2 flexibility.

3 MS. BRUBAKER: That's fine. Thank you.

4 COMMISSIONER CLARK: Is there an objection to
5 that, moving the briefing date up?

6 MR. GIRTMAN: No. What date would you suggest?

7 MR. McLEAN: How much?

8 MS. BRUBAKER: If we could move it up by two
9 weeks.

10 MR. GIRTMAN: To which date?

11 MS. BRUBAKER: Ten working days. That would make
12 the briefs due on November 3rd.

13 MR. GIRTMAN: I think that's fine with us.

14 COMMISSIONER CLARK: Isn't it just a matter of
15 changing the names in some existing briefs?

16 MR. GIRTMAN: Yes, Commissioner. That's why I
17 was asking for 55 pages. My brief is already written,
18 most of it.

19 COMMISSIONER CLARK: Well, maybe our
20 recommendation is, too. I'm just jesting, of course.

21 MR. McLEAN: Not to mention the order.

22 COMMISSIONER CLARK: Then why don't we do that.
23 Why don't we move it up and that will give you some
24 flexibility. If you can get it done earlier or if you
25 need -- it will just give you a window of opportunity

1 to work on it.

2 MS. BRUBAKER: Thank you.

3 COMMISSIONER CLARK: All right.

4 MR. McLEAN: If we need to go to hearing then --
5 if we do need to go to hearing for some reason, we are
6 going back to the original briefing schedules and so
7 forth?

8 MS. BRUBAKER: Yes.

9 COMMISSIONER CLARK: And we should know by the
10 end of today. I guess the thing you need to do is
11 alert the Chairman's office that this can be a short
12 hearing, just stipulating the evidence into the record
13 and that we can -- although it is scheduled for down
14 there, we think we can move it up here, but we need to
15 know about who he wants to assign to it.

16 If he wants to leave it a two-member panel, alert
17 him to the fact who is on the two-member panel, and
18 indicate it may be wise to put a third person on
19 otherwise he may be hearing it himself, I guess, to be
20 candid. All right.

21 MR. GIRTMAN: Commissioner, the reason I asked if
22 we could find out this afternoon, we have two days to
23 get the notice out, October 6th.

24 COMMISSIONER CLARK: I understand. And I'm
25 pretty sure we can find something out today. Although

1 I would ask staff to look into whether or not -- I
2 know it has been our practice to convene the hearings,
3 but where we have an agreement to stipulate it into
4 the record, I'm not sure there is a necessity for
5 holding that.

6 MR. McLEAN: Neither am I. And if there is we
7 waive our part of it. That seems very cumbersome --

8 MR. GIRTMAN: As do we.

9 MR. McLEAN: And I think Rosanne is probably
10 right. But if you find a way in which we can do it,
11 we won't object.

12 COMMISSIONER CLARK: Okay. Just something else
13 to put in the list of to do when you can get to them.
14 Okay.

15 MR. GIRTMAN: Commissioner, going back to the
16 question, one of the last items I have left on here
17 was talking about the number of pages in the brief,
18 and I concur. When you go beyond a certain level the
19 attention span of any reader drops off somewhat. My
20 concern is that when we did the Wedgefield brief we
21 had to go into a lot of background and detail, and I
22 was thinking about just adopting the Wedgefield brief,
23 but that is really not going to work. Or adopting
24 parts of it. And I don't think that really is the
25 best practice to do, so I'm stuck with having to redo

1 the arguments that I have done before.

2 COMMISSIONER CLARK: That's fine. All you have
3 to do is indicate that you cannot -- you need that. I
4 would still urge you to cut it down to the extent you
5 can.

6 MR. GIRTMAN: I will do my best. We had a very
7 detailed table of contents, so it broke it down very
8 easily to follow. And I have already been thinking
9 about what parts I'm going to leave out, but the
10 problem is that this is a stand-alone case. I mean,
11 it's not the Wedgefield case, although --

12 COMMISSIONER CLARK: I appreciate that.

13 MR. GIRTMAN: -- it is practically identical.
14 And so I've got to make the arguments again. I will
15 do my best, and if I find -- I know I'm going to need
16 more pages than 40, because we are having to analyze
17 all those prior cases, or at least provide a short
18 summary of some of them. So I know there is going to
19 be a motion and I will just go ahead and file the
20 motion and when I get down to find out the number of
21 pages.

22 COMMISSIONER CLARK: All right.

23 MR. GIRTMAN: Thank you.

24 COMMISSIONER CLARK: We will still hold out the
25 hope that that may not be necessary. But if it, is we

1 will handle it.

2 MR. McLEAN: Or we could stipulate that the
3 Commission has a non-rule policy on the issue. Maybe
4 that will save Mr. Seidman all the trouble.

5 COMMISSIONER CLARK: Is there anything else that
6 we need to handle in this prehearing conference?

7 MS. BRUBAKER: Staff has nothing.

8 COMMISSIONER CLARK: Hearing none, we will
9 adjourn.

10 MR. McLEAN: Thank you, Commissioner.

11 MR. GIRTMAN: Thank you.

12 (The prehearing conference concluded
13 at 2:15 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 28 are a true and correct record of the proceedings.

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

DATED THIS 15th day of October, 1999.



JANE FAUROT, RPR
ACCURATE STENOGRAPHY REPORTERS
100 Salem Court
Tallahassee, Florida

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