

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 970657-WS

Application for certificates :  
to operate a water and :  
wastewater utility in :  
Charlotte and DeSoto Counties :  
by Lake Suzy Utilities, Inc. :

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

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PROCEEDINGS: PREHEARING CONFERENCE

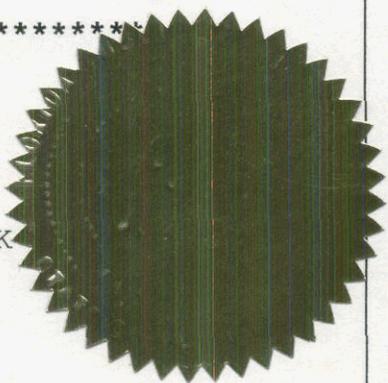
BEFORE: COMMISSIONER SUSAN F. CLARK  
Prehearing Officer

DATE: Monday, January 24, 2000

TIME: Commenced at 1:30 p.m.  
Concluded at 1:50 p.m.

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

REPORTED BY: JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting



DOCUMENT NUMBER-DATE  
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1 **APPEARANCES:**

2 **MARTIN S. FRIEDMAN**, Rose, Sundstrom &  
3 Bentley, 2548 Blairstone Pines Drive Tallahassee,  
4 Florida 32301, appearing on behalf of **Lake Suzy**  
5 **Utilities, Inc..**

6 **STEPHEN MENTON**, Rutledge, Ecenia,  
7 Underwood, Purnell & Hoffman, 215 South Monroe Street,  
8 Suite 420, Tallahassee, Florida 32301, appearing on  
9 behalf of **Florida Water Service Corporation.**

10 **JOHN R. MARKS, III**, Knowles, Marks &  
11 Randolph, P.A., 215 South Monroe Street, Suite 130,  
12 Tallahassee, Florida, 32301, appearing on behalf of  
13 **Charlotte County.**

14 **ANTHONY P. PIRES, JR.**, Woodward, Pires &  
15 Lombardo, P.A., 801 Laurel Oak Drive, Suite 710,  
16 Naples, Florida 34108. appearing on behalf of **DeSoto**  
17 **County.**

18 **TIM VACCARO** and **TYLER VAN LEAVEN**, Florida  
19 Public Service Commission, Division of Legal Services,  
20 2540 Shumard Oak Boulevard, Tallahassee, Florida  
21 32399-0870, appearing on behalf of the **Commission**  
22 **Staff.**

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## P R O C E E D I N G S

1  
2 COMMISSIONER CLARK: Call the prehearing  
3 to order. Will you please read the notice.

4 MR. VACCARO: Yes, Commissioner. Pursuant  
5 to notice, this time and place have been  
6 designated for a prehearing conference in the  
7 following dockets: Docket No. 970657-WS,  
8 application for certificates to operate a water  
9 and wastewater utility in Charlotte and DeSoto  
10 by Lake Suzy Utilities, Incorporated; and  
11 Docket No. 980261-WS, application for amendment  
12 of Certificates Numbers 570-W and 496-S to add  
13 territory in Charlotte County by Florida Water  
14 Services Corporation.

15 COMMISSIONER CLARK: We will take  
16 appearances starting with you, Mr. Friedman.

17 MR. FRIEDMAN: Martin Friedman of the law  
18 firm of Rose Sundstrom and Bentley, appearing  
19 on behalf of Lake Suzy Utilities, Inc.

20 MR. MENTON: Stephen Menton with the law  
21 firm of Rutledge, Ecenia, Purnell, and Hoffman,  
22 on behalf of Florida Water.

23 MR. MARKS: John Marks of the law firm of  
24 Knowles, Marks, and Randolph, 215 South Monroe  
25 Street, Tallahassee, Florida, on behalf of

1 Charlotte County and Charlotte County Utilities  
2 Department.

3 MR. PIRES: Anthony Pires of the law firm  
4 of Woodward, Pires, and Lombardo of Naples,  
5 Florida, representing DeSoto County.

6 MR. VACCARO: Tim Vaccaro and Tyler Van  
7 Leuven on behalf of Commission staff. And if I  
8 can mention one other thing. We do have one  
9 other party in this docket, which is Haus  
10 Development, Charlotte Sopco, and Ms. Sopco did  
11 file a request to be excused from being  
12 present today.

13 COMMISSIONER CLARK: Let the record  
14 reflect she has been excused from this  
15 prehearing conference.

16 Mr. Vaccaro, how do you propose we  
17 proceed?

18 MR. VACCARO: I think that the first thing  
19 we should probably take up is a settlement  
20 agreement that has been brought to our  
21 attention, and I think it probably would be  
22 best to let Mr. Friedman start off and explain  
23 that.

24 COMMISSIONER CLARK: Okay.

25 MR. FRIEDMAN: Yes, Commissioner Clark.

1 Florida Water and Lake Suzy Utilities have  
2 entered into a stipulation agreement.

3 Primarily, if you recall this case involves two  
4 aspects of it, DeSoto County and Charlotte  
5 County. The DeSoto County property which Lake  
6 Suzy Utilities requested is comprised of two  
7 areas. One area is the area that it was  
8 granted by the Public Service Commission, and  
9 thus it is entitled to a certificate from  
10 DeSoto County to serve.

11 There is also some additional territory in  
12 DeSoto County over and above what the  
13 Commission had previously certificated to Lake  
14 Suzy, and then in Charlotte County there is the  
15 Link Subdivision. And if you recall it is that  
16 extra property in DeSoto County that DeSoto  
17 County has franchised to Florida Water.

18 So Florida Water and Lake Suzy have agreed  
19 that Lake Suzy will withdraw from its  
20 application that part of the DeSoto County  
21 property to which it is not entitled to a  
22 grandfather certificate from DeSoto County, and  
23 Florida Water has agreed that it will withdraw  
24 its application for water and wastewater  
25 certificates to the Links Subdivision in

1 Charlotte County.

2 And I have -- my clients have signed, I  
3 have a faxed copy of the signatures of my  
4 clients on this. I have been assured by  
5 Mr. Menton that either Mr. Cirello or  
6 Mr. Armstrong will sign this on behalf of  
7 Florida Water.

8 It is our position that the settlement  
9 agreement, while it is not joined in  
10 technically by the two counties, effectively  
11 disposes of their substantial interest, and  
12 that is this: DeSoto County, as you recall in  
13 its last intervention in this case, intervened  
14 on the basis that it had adopted an ordinance  
15 which franchised a portion of the property  
16 which Lake Suzy sought. They had franchised it  
17 to Florida Water. Once Lake Suzy gives up its  
18 request for that territory, that issue by  
19 DeSoto County becomes moot.

20 COMMISSIONER CLARK: Okay.

21 MR. FRIEDMAN: And in Charlotte County,  
22 Florida Water is withdrawing -- Charlotte  
23 County objected to the Florida Water  
24 application. Once Florida Water withdraws its  
25 application, which it has an absolute right to

1 do so voluntarily, then the interventions or  
2 objections by the three people that objected,  
3 one of which is Lake Suzy, Haus Development by  
4 Ms. Sopco, and Charlotte County just go away.  
5 So it is our position that this settlement  
6 agreement effectively terminates all aspects of  
7 this proceeding.

8 COMMISSIONER CLARK: Mr. Menton, do you  
9 want to comment?

10 MR. METTAN: Thank you, Commissioner. I  
11 would join with Mr. Friedman's summary of where  
12 we stand. I think he has correctly stated the  
13 position of the parties. He has been  
14 successful in getting his client to sign a  
15 facsimile of this settlement agreement.  
16 Logistics have prevented me at this point from  
17 doing so. But I have been in contact with the  
18 company, and the president and general counsel  
19 of the company have reviewed the settlement  
20 agreement and have agreed to it. We just need  
21 to get them the final version for them to sign.

22 COMMISSIONER CLARK: Okay. Mr. Marks.

23 MR. MARKS: We have reviewed the  
24 settlement agreement on behalf of Charlotte  
25 County, and we are satisfied that it does

1 exactly -- or it does what Mr. Friedman is  
2 indicating. We do have one concern, and at the  
3 risk of over-lawyering this whole thing, I'm  
4 going to raise it, I guess, with the  
5 stipulation that I am not on a factual basis  
6 too concerned with it, but on a legal basis it  
7 does give me some pause for concern with  
8 regards to the settlement agreement. And that  
9 is in paragraph -- well, it was in Paragraph  
10 11. No, you all changed it around on me.

11 MR. VACCARO: Mr. Marks, I think that is  
12 Paragraph 12.

13 MR. MARKS: Is that Paragraph 12 now?  
14 Yes, it is Paragraph 12. The way I interpret  
15 Paragraph 12 is that the signatories to this  
16 document could conceivably get together at some  
17 point in time and amend it without the  
18 knowledge of or -- I wouldn't say necessarily  
19 without the knowledge of, but could get  
20 together and amend this document. And  
21 conceivably they could get together and amend  
22 Paragraph 2, which is the most important  
23 paragraph to Charlotte County.

24 I'm not quite sure why we would even have  
25 a waiver provision in a settlement agreement in

1 the first place, since this is a settlement  
2 once and for all. This appears to give those  
3 parties the ability to come back in the future  
4 and do something else to this document, which  
5 frankly I don't think is something that they  
6 should be allowed to do.

7 And, again, I make those comments with the  
8 caveat that I may be over-lawyering a little  
9 bit. As a practical matter, I realize that  
10 Florida Water Services would have to apply to  
11 this Commission again to serve the Linkss  
12 territory, they would notice us, we would  
13 object to it, and we would have the ability to  
14 do that. But, you know, I guess my client  
15 would feel more comfortable if they didn't have  
16 the ability to come back at sometime in the  
17 future and modify this document through some  
18 waiver or something of that nature. And that  
19 is my comment on that.

20 COMMISSIONER CLARK: Mr. Friedman.

21 MR. FRIEDMAN: That is part of the  
22 boilerplate that we put in the agreement.  
23 Obviously, Lake Suzy has no intent to waive the  
24 primary substantive provision of the  
25 agreement, and we go on record now as saying

1 that.

2 COMMISSIONER CLARK: Let me ask a  
3 question. As a result of this settlement you  
4 are asking us to issue a certificate that gives  
5 you that property in DeSoto.

6 MR. FRIEDMAN: No. Well, gives us  
7 property -- we have already got --

8 COMMISSIONER CLARK: I'm sorry, in  
9 Charlotte.

10 MR. FRIEDMAN: That is correct.

11 COMMISSIONER CLARK: And with respect to  
12 DeSoto, that has already been taken care of  
13 because they have a franchise and you have  
14 yours.

15 MR. FRIEDMAN: No. This is an original  
16 certificate.

17 COMMISSIONER CLARK: For which one?

18 MR. FRIEDMAN: An original certificate to  
19 provide service in DeSoto and Charlotte  
20 Counties, which is what gives this Commission  
21 the jurisdiction over the system, which will  
22 take it out of the jurisdiction of DeSoto  
23 County.

24 He had originally filed this as an  
25 amendment way back when. And the Commission

1 staff decided, and rightfully so, that this is  
2 more properly an original certificate and that  
3 is what it is. The original certificate will  
4 be for some property in DeSoto and some  
5 property in Charlotte.

6 COMMISSIONER CLARK: For Lake Suzy.

7 MR. FRIEDMAN: That is correct.

8 COMMISSIONER CLARK: And the portion in  
9 DeSoto will be a portion you already have a  
10 certificate for?

11 MR. FRIEDMAN: That we have the right to  
12 a -- I don't think DeSoto County has actually  
13 acted upon our application. Tony, am I right?  
14 So they really haven't technically, but if you  
15 remember in Chapter 367 it says that when a  
16 county takes back jurisdiction that a utility  
17 shall have the absolute right to serve that  
18 property that was covered by its PSC  
19 certificate. So that is what -- the  
20 certificate we are asking for is the same  
21 property that we used to have when we were  
22 regulated by the PSC, plus this property in  
23 Charlotte County.

24 COMMISSIONER CLARK: And you are asking us  
25 to issue that certificate --

1 MR. FRIEDMAN: That is correct.

2 COMMISSIONER CLARK: -- for both --

3 MR. FRIEDMAN: Water and sewer.

4 COMMISSIONER CLARK: And it will affect  
5 both DeSoto and Charlotte County.

6 MR. FRIEDMAN: Affect the county? It is  
7 in both counties.

8 COMMISSIONER CLARK: Yes, that is what I  
9 mean, affect the county. So to make any change  
10 once that certificate is issued, you would have  
11 to either go back to -- come back to us or go  
12 to DeSoto.

13 MR. FRIEDMAN: Well, we would have to come  
14 to you all, right.

15 COMMISSIONER CLARK: And the same would  
16 be true -- well, I guess it wouldn't be true  
17 for Florida Water because they have given up  
18 any application to Charlotte, so it's not  
19 anything we would be concerned with.

20 MR. FRIEDMAN: Yes. If they wanted to try  
21 to reserve those Links Subdivisions, they would  
22 have to file an application with the  
23 Commission. What they do in DeSoto County I  
24 don't think matters to Charlotte County.

25 COMMISSIONER CLARK: Now, I understand

1 that your clients might be more comfortable  
2 with not having it in there, but they would  
3 have no right to serve unless we found whoever  
4 had the certificate was not capable of serving  
5 and it needed to go to somebody else. And what  
6 I'm suggesting is it cannot be self-executing;  
7 they would have to still come to us.

8 MR. MARKS: Commissioner, I totally agree.

9 COMMISSIONER CLARK: Your comment is noted  
10 and it is part of the record. And, therefore,  
11 I would urge you not to contest this  
12 stipulation on that basis.

13 MR. MARKS: Gum up the works. The other  
14 part is let's make sure that it is understood  
15 that in Charlotte County Lake Suzy is only  
16 going to be providing water services to the  
17 Links Subdivision.

18 COMMISSIONER CLARK: Okay. That is  
19 understood.

20 MR. MARKS: Okay.

21 COMMISSIONER CLARK: What about DeSoto  
22 County?

23 MR. PIRES: Commissioner, we have had the  
24 opportunity to have input into some of the  
25 language in there. And just two minor

1           comments, and I have briefly discussed these  
2           with Mr. Menton and I think Mr. Friedman.  
3           There is a reference on Page 2 in the -- and  
4           this is hypertechnical, also. I think I'm  
5           trying to one-up Mr. Marks.

6                        On Paragraph 5, the fifth whereas, I  
7           believe the execution date of the agreement  
8           whereby all of the stock of Lake Suzy was  
9           purchased by Aquasource, was June of 1999. I  
10          think that is something that can be verified by  
11          Mr. Friedman.

12                       COMMISSIONER CLARK: So that needs to be  
13          changed to scrivener's error?

14                       MR. PIRES: Yes.

15                       COMMISSIONER CLARK: Is that acceptable?

16                       MR. FRIEDMAN: I guess. I'm not sure. I  
17          guess if Tony says it is the right date, it's  
18          the right date. It seems to be something of  
19          immaterial aspect, so --

20                       COMMISSIONER CLARK: Well, I would urge  
21          you to get it correct so there is no confusion  
22          later on.

23                       MR. PIRES: One other point, if I may,  
24          Commissioner. On Paragraph 5, on Page 3, in  
25          the fourth line of Paragraph 5, just from the

1 standpoint of consistency, the last sentence in  
2 the second to the last line says Lazy Suzy will  
3 withdraw without leave to refile. I think  
4 throughout it, it is indicated that the parties  
5 who are withdrawing their applications are  
6 withdrawing with prejudice and without leave to  
7 refile.

8 COMMISSIONER CLARK: Right.

9 MR. PIRES: So "without prejudice and"  
10 could be added.

11 COMMISSIONER CLARK: It should be with  
12 prejudice, right?

13 MR. PIRES: With prejudice, that's  
14 correct. And without leave to refile.

15 COMMISSIONER CLARK: Mr. Friedman.

16 MR. FRIEDMAN: You know, we have got the  
17 agreement, it says what it says, and we know  
18 what it means. You know, I just don't want to  
19 go through the ordeal of having to get my  
20 clients to resign everything again.

21 COMMISSIONER CLARK: Well, I guess what I  
22 would be concerned about is that it says what  
23 we want it to say. Let's see.

24 MR. FRIEDMAN: I think when you withdraw  
25 something without leave to refile, how was that

1 -- it seems like you are going to be redundant  
2 if you put we will withdraw with prejudice and  
3 not refile. I mean, that is redundant. That  
4 is what not refiling means is with prejudice.  
5 You don't need both.

6 COMMISSIONER CLARK: I just note that you  
7 have stated it that way in the paragraph  
8 before, and somebody may suggest it means  
9 something different since it is stated  
10 differently.

11 MR. METTAN: Commissioner, if I could. I  
12 plead guilty to being the primary drafter of  
13 this, and it was just an oversight on my part.  
14 So I will go on record as saying there was no  
15 nefarious intent, or that the two would be  
16 treated any differently. Having said that, I  
17 don't have any problem with going back and  
18 adding those changes. I don't think it is  
19 going to change the signature pages, so I don't  
20 think Mr. Friedman will have to go through the  
21 logistical problems of trying to get his client  
22 to resign as long as he is comfortable with me  
23 doing it that way.

24 MR. FRIEDMAN: Well, that is the intent. I  
25 mean, I'm not saying that is not the intent.

1           COMMISSIONER CLARK: So the language in  
2 Paragraph 5 that says Lake Suzy will withdraw  
3 without leave to refile that portion is  
4 intended to mean that Lake Suzy will dismiss  
5 with prejudice and without leave to refile that  
6 portion, that was your intent?

7           MR. FRIEDMAN: Absolutely.

8           COMMISSIONER CLARK: All right. It's on  
9 the record.

10          MR. PIRES: Thank you, Commissioner. And  
11 from the other perspective of DeSoto County, we  
12 are having a County Commission meeting  
13 tomorrow. And as I indicated, we have had the  
14 opportunity to make comments, Mr. Friedman's  
15 firm as well as Mr. Menton and Florida Water  
16 have allowed us to do that and bring this  
17 before the County Commission tomorrow and  
18 report to all the parties.

19          COMMISSIONER CLARK: Okay. Mr. Vaccaro,  
20 what is the process now that we have a  
21 settlement before us?

22          MR. VACCARO: Well, Commissioner, either  
23 at your discretion we can simply end the  
24 proceedings now and go forward with a  
25 recommendation on the settlement at the

1 earliest possible agenda conference, or if  
2 there is any concern about this not going  
3 through, we can look at the draft prehearing  
4 order and that is at your discretion.

5 COMMISSIONER CLARK: Here is what I would  
6 like to do. We will continue this prehearing  
7 at this time. And we will -- provided we hear  
8 from DeSoto County tomorrow that they have  
9 approved -- what would they do, approve the  
10 settlement, or what action are you  
11 anticipating?

12 MR. PIRES: We are not a signatory to the  
13 agreement, but to the extent that the county  
14 commission would indicate its acknowledgment,  
15 acceptance, and confirmation of it, that it  
16 does what they want it to do.

17 COMMISSIONER CLARK: Mr. Friedman, would  
18 it be your position they no longer have a  
19 substantial interest?

20 MR. FRIEDMAN: That is correct.

21 COMMISSIONER CLARK: Okay. I'm inclined  
22 to agree with that, that if this goes forward  
23 you no longer have a substantial interest. So  
24 in that sense we probably don't need  
25 concurrence with this stipulation.

1           MR. FRIEDMAN: I would think that once we  
2 get the signature pages from Florida Water that  
3 at that point it is a done deal and we all  
4 expect that to happen. So, like you say, maybe  
5 we ought to just continue this until I would  
6 guess sometime later today, somebody will sign  
7 and --

8           MR. METTAN: Hopefully this afternoon. We  
9 were hoping to get it this morning, we just --

10          COMMISSIONER CLARK: What I would like to  
11 do is I'm willing to act on that representation  
12 and we will cancel the remainder of the  
13 prehearing conference, also request that the  
14 Chairman cancel the hearings dates, and that we  
15 will place the settlement on the first  
16 available agenda. Okay? Is that all I need to  
17 do?

18          MR. VACCARO: Yes.

19          COMMISSIONER CLARK: Mr. Marks.

20          MR. MARKS: The only thing, we would  
21 anticipate that the Commission obviously would  
22 issue an order and that order would grant them  
23 authority to provide service to those  
24 territories. And that order would, in essence,  
25 ratify this particular agreement? Or ratify

1 may not be the appropriate word that I want to  
2 use, but that order would do what?

3 COMMISSIONER CLARK: I think an order  
4 would issue granting the certificates as  
5 required, or as consistent with the  
6 stipulation.

7 Mr. Vaccaro, would that be correct?

8 MR. VACCARO: I haven't had time to  
9 consult with staff on that, but my guess would  
10 be that that is correct, that it would  
11 encompass everything.

12 COMMISSIONER CLARK: Okay. So we would  
13 accept the stipulation. And based on that, we  
14 would direct staff to issue orders amending or  
15 granting the certificates consistent with the  
16 stipulation.

17 MR. MARKS: Would that order, per chance,  
18 kind of delineate some of the over-lawyering we  
19 have done?

20 COMMISSIONER CLARK: The background?

21 MR. MARKS: The over-lawyering we have  
22 done this afternoon.

23 COMMISSIONER CLARK: I think it is  
24 entirely appropriate to do that. That the  
25 order would memorialize the conversations with

1 respect to the language in the stipulation that  
2 we have had today. Is that okay?

3 MR. VACCARO: Just one question. I  
4 understand the concern regarding Mr. Marks'  
5 comments regarding Paragraph 12, and we can  
6 certainly reflect that, but I would imagine  
7 that if the other comments made today regarding  
8 corrections to the scrivener's errors that we  
9 would not need to --

10 COMMISSIONER CLARK: With regard to  
11 changing the May to June, I'm not -- I don't  
12 see why you shouldn't put it in there. You  
13 know, note it in the order and then to the  
14 extent it is changed in the stipulation, it  
15 will be noted.

16 MR. VACCARO: Okay.

17 COMMISSIONER CLARK: That way you don't  
18 have to search the transcripts for the  
19 information on this, and that is probably a  
20 more efficient way to do it. Not now, but  
21 certainly later on.

22 MR. VACCARO: Very good.

23 COMMISSIONER CLARK: Anything else to come  
24 before the Commission?

25 MR. FRIEDMAN: Nothing.

1                   COMMISSIONER CLARK: Thank you all very  
2 much, and the prehearing is adjourned. Or  
3 canceled, I suppose.

4                   (Hearing concluded at 1:50 p.m.)  
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1 STATE OF FLORIDA)  
2 :  
3 COUNTY OF LEON )

CERTIFICATE OF REPORTER

3 I, JANE FAUROT, RPR, Chief, FPSC Bureau of  
4 Reporting FPSC Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing  
6 Conference in Docket Nos. 970657-WS and 980261-WS was  
7 heard by the Florida Public Service Commission at the  
8 time and place herein stated; it is further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed by me; and that this transcript,  
12 consisting of 22 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 31st DAY OF JANUARY, 2000.



15 JANE FAUROT, RPR  
16 FPSC Division of Records & Reporting  
17 Chief's Bureau of Reporting  
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