

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 021066-WS - Investigation into
proposed sale of Florida Water Services
Corporation.

COPY

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER RUDOLPH BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 5A

DATE: Tuesday, February 4, 2003

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
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PARTICIPANTS:

NANCY ARGENZIANO, Florida Senate.
 FRANK ATTKISSON, Florida House of Representatives.
 BRUCE CULPEPPER, Akerman, Senterfitt & Eidson, on behalf of Florida Water Services Authority, City of Gulf Breeze, and City of Milton.
 MIKE FASANO, Florida Senate.
 ED GRAY, Florida Water Services Authority.
 GAYLE HARRELL, Florida House of Representatives.
 KENNETH HOFFMAN, Rutledge, Ecenia, Purnell & Hoffman, on behalf of Florida Water Services Corporation.
 LONNIE GROOT, Stenstrom McIntosh, on behalf of City of Palm Coast.
 BUDDY JACOBS, on behalf of Amelia Island Property Owners Association.
 JOHN JENKINS, Rose, Sundstrom & Bentley, on behalf of City of Marco Island.
 MICHAEL MULLIN and WALTER GOSSETT, Nassau County.
 JOHN QUINONES, Florida House of Representatives.
 DAVID RUSSELL, Florida House of Representatives.
 JACK SHREVE, Public Counsel, on behalf of the citizens of the State of Florida.
 MICHAEL TWOMEY, on behalf of Sugarmill Woods Civic Association and Collier County.
 LORENA HOLLEY, PATTI DANIEL, ANDREW MAUREY and HAROLD MCLEAN, Florida Public Service Commission.

STAFF RECOMMENDATION

ISSUE 1: Should FWSC be required to file an application for approval of its proposed transfer, pursuant to Section 267.071(1), Florida Statutes, and Rule 25-30.037(2), Florida Administrative Code, prior to the proposed closing date of February 14, 2003?

RECOMMENDATION: Yes. FWSC should be required to file an application for approval of its proposed transfer, as required by Section 267.071(1), Florida Statutes, and Rule 25-30.037(2), Florida Administrative Code. The application should be filed no later than Friday, February 7, 2003.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending staff's investigation of the proposed sale.

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PROCEEDINGS

CHAIRMAN JABER: Okay. Commissioners, we'll go ahead and get started. We're on Item 5A.

Staff, do you have an introduction?

MS. HOLLEY: Thank you. Commissioners, Item 5A is staff's recommendation regarding the proposed sale of Florida Water Services Corporation. Staff is recommending that the company be required to file an application for approval of its proposed transfer by Friday, February 7th.

Staff would like to note that at the time we wrote our recommendation, we weren't aware of a contingency clause in the contract for sale. However, subsequent to the filing of the recommendation, Florida Water has informed staff of the existence of an apparent contingency clause in the contract, the effect of which may be an issue before you today.

There are a number of interested persons present today to address the Commission on this issue.

CHAIRMAN JABER: Thank you, Ms. Holley.

And, Mr. McLean, at one of the breaks I

1 asked you to address the participants to reach
2 some sort of consensus on the order of
3 presentation. I have what you've given me. You
4 all need to correct me if the list is wrong, but
5 this is the list I intend to follow, which is,
6 Mr. Twomey, you've asked to make a presentation
7 first, and I believe there are members of the
8 Legislature that you would introduce at that
9 time.

10 MR. TWOMEY: would you like me to do it at
11 that time or --

12 CHAIRMAN JABER: I'm asking what your
13 desire is.

14 MR. TWOMEY: well, if I may, I'll tell you
15 who's here now, Madam Chair and Commissioners.

16 We have today with us Senator Fasano,
17 Senator Argenziano, Representative Attkisson,
18 Representative Harrell, Representative Russell,
19 and Representative Quinones, and they will speak
20 after myself in that order.

21 CHAIRMAN JABER: Okay. And welcome to you
22 all.

23 And then next on my list, Florida water and
24 the Authority, and local governments. I'm not
25 sure who's here from the local governments,

1 Mr. McLean, but at that time they can introduce
2 themselves. And then finally, Mr. Shreve.

3 MR. MCLEAN: That's correct, Madam
4 Chairman.

5 CHAIRMAN JABER: Mr. Twomey, let's get
6 started.

7 MR. TWOMEY: Madam Chair and Commissioners,
8 I'm Mike Twomey. I'm appearing today on behalf
9 of Collier County and the Sugarmill Woods Civic
10 Association.

11 Additionally, former Commissioner John
12 Marks was unable to attend today. He asked that
13 I speak on behalf of his client, Charlotte
14 County, as well, so I'll be speaking on behalf
15 of those parties.

16 Commissioners, I have a little handout I
17 gave you and opposing counsel. I propose to
18 follow this outline. You may wish to follow
19 along.

20 The guiding principles, I think this is one
21 of the most important cases you may see in
22 years. You have to follow the law, obviously,
23 even if there may be apparent problems with the
24 law that might be changed within months.

25 Despite following the law, I would ask you

1 to not ignore reality here. There's certain
2 elements. Much of this is kind of like the
3 "Emperor's Clothes" story. There's lots of
4 folks, in our opinion, that are running around
5 at least semi-naked.

6 Try and maintain political accountability
7 in your decision today wherever possible. Avoid
8 the creation of irreversible damage. Okay?
9 Unlike Humpty Dumpty, if he falls down, in this
10 case, in our view, if the bonds get issued,
11 that's going to be irreversible. We're not
12 going to be able to put him back together.

13 Lastly, to accomplish all this, we're going
14 to suggest to you, maintain the status quo.
15 Keep things as they are until things can get
16 sorted out properly.

17 First the law. You've got to confront the
18 fact that you have an FGUA decision out there of
19 some many months ago based upon the same law,
20 the same type of interlocal authority. And the
21 short answer we give to you, Commissioners, is
22 that it was wrong on the issue of governmental
23 authority. That's okay, though, and it's
24 understandable, because in that case, the
25 Authority had gathered the assent of all the

1 affected parties. There was nobody before you
2 challenging whether or not they were a
3 governmental authority or not, as opposed to
4 this case, in which everyone that I'm aware of
5 that's on the customer side is in opposition to
6 this, and in which case there was no assent
7 obtained by this Authority. In fact, the facts
8 are, they went out and tried to do this without
9 making others aware of what they were doing.

10 So the FGUA order is not a precedent, in
11 our opinion. You don't have to follow it. Two
12 rights don't make a wrong.

13 Next, Chapter 367, it's your chapter. It's
14 your law. It's the one you're charged with
15 having expertise over, the one that you're
16 supposed to interpret it, not 163, not 373, and
17 so forth. Okay?

18 I would like you to visualize a path. And
19 the law says that for regulated utilities under
20 your jurisdiction, if they desire to sell
21 themselves to anyone, they have to take a
22 certain route, and there's a split in the path.
23 They have to get your approval, whether it's a
24 governmental authority or not. They have to
25 have your approval. In some cases, it's

1 automatic. In others, it's not. So imagine the
2 two different paths.

3 One of them -- I want to start with the
4 exception first, the exception that says that if
5 there's a governmental authority, you have to
6 give -- that is, the buyer, you have to give
7 approval as a matter of right. All governments
8 are not governmental authorities, and that's the
9 term. In fact, 367 in the front of the statute
10 or the chapter defines three different
11 creatures, governmental creatures or types of --
12 classes of creatures that can be governmental
13 authorities. And if you'll look, one is a
14 political subdivision as defined by section
15 1.01(8); two, a regional water supply authority
16 created pursuant to 373; and third, a nonprofit
17 corporation formed for the purpose of acting on
18 behalf of a political subdivision.

19 The Panhandle Authority, as I'm going to
20 refer to them, is not a nonprofit corporation.
21 It's going to make upwards of \$2 million a year
22 if this deal goes through.

23 Next, it's not a regional water supply
24 authority. Just pure and simple, it's not.

25 Next, and more difficult, involved in it

1 is, it is not, in our opinion, a 1.01(8)
2 political subdivision.

3 There are any number -- you'll see on the
4 next page, there are any number of political
5 subdivisions that qualify as a, quote, unquote,
6 governmental authority per Chapter 367. As you
7 can see there in the definition, they can be a
8 county. This is not a county. They can be a
9 city. This is not a city. It can be a town.
10 It's not a town, that is, the Panhandle
11 Authority. It's an interlocal authority. It's
12 not a special tax district. It's not a district
13 of any kind.

14 Now, the other side of this are going to
15 tell you, -- their lawyers are going to tell you
16 -- and they've got some real fine ones. They're
17 going to tell you that this interlocal authority
18 is comprised or was formed by cities; therefore,
19 they must be a city too. And that's not the
20 case. They are either a city, Commissioners, or
21 they are not. Milton is a city. Gulf Breeze is
22 a city. The Panhandle interlocal authority, it
23 is not a city. It has some of the attributes,
24 per Chapter 163, of a city, but it is not a
25 city.

1 when I was trying to prepare my arguments,
2 I was thinking about a similar situation, and it
3 came to me that you have the childhood -- the
4 young child's wooden jigsaw puzzle deal that has
5 the different -- that they learn shapes by. And
6 a child may try and put a square into a pentagon
7 shape, and it won't fit. Okay? This is exactly
8 the same situation.

9 The Legislature took great care in giving
10 you three specific classes of governmental
11 authorities, well defined, and the interlocal
12 authority that's before you here today has to
13 fit in precisely, or they don't cut it. If they
14 don't cut it, which we say they don't, then
15 everybody else that doesn't have an exemption
16 and getting a matter-of-right approval has to do
17 the public interest test. It has to do with the
18 public interest test. It's what you would do
19 for everybody else.

20 And I want to point out very briefly that
21 it's our position that all of the classes, the
22 three classes that the Legislature said would be
23 entitled to a matter-of-right approval are all
24 agencies of governments that are politically
25 accountable at the local level. That may be

1 happenstance, but we don't think so. They're
2 politically accountable.

3 This interlocal authority is not. When you
4 look at the map over there and you look at the
5 map I've supplied on the fourth or fifth page of
6 the handout, Milton and Gulf Breeze are about as
7 close to Pensacola, Florida, as you can get.
8 Not a single customer of this utility resides
9 within their political boundaries. The nearest
10 customer is a full 100 miles to the east in
11 Sunny Hills, for those of you that recall the
12 last Florida water rate case. The next place is
13 fully another 200 miles away, whether you go
14 over to Amelia Island or you start back down
15 towards Citrus County. There is zero political
16 accountability for the actions of this
17 Authority and its members.

18 Now, we say then that you all are obliged
19 to go ahead and do the public interest
20 determination because they don't meet the
21 specific requirements that would entitle them to
22 a matter of right. The question then becomes,
23 can you make this approval retroactively, or
24 must you do it beforehand? And the short
25 answer, I think, Commissioners, is that you have

1 to look at, one, whether the contingency
2 provision that they've brought to you now -- and
3 the staff attorney mentioned they got it late --
4 whether that meets the contingency requirement
5 in the statute, and then even if it does,
6 whether it makes sense.

7 First let me say that the interlocal
8 authority in their first sales contract, if I'm
9 not mistaken, didn't have any contingency
10 contract whatsoever. That resolution approving
11 that contract on September 19th was done in the
12 virtual dead of night in a hearing for which
13 there was no notice given, effective notice, to
14 any of the customers. No one appeared. That
15 decision is under review right now in the
16 Circuit Court of Santa Rosa County. It's
17 challenged on any number of reasons, including
18 the constitutionality, lack of statutory
19 authority, insufficient evidence, and others.
20 So that particular contract, which didn't have a
21 contingency provision, is challenged.

22 This Authority tried to make that up and
23 cure the problems they had. Later in Orlando
24 they had a second hearing, at which they adopted
25 a new resolution which contained a contingency

1 clause. That particular resolution is also
2 under challenge in the Circuit Court of Orange
3 County. Neither one of those has been resolved
4 yet.

5 I have to say to you additionally,
6 Commissioners -- I don't have the language in
7 front of me. I apologize. But the contingency
8 clause that was adopted or attempted to be
9 adopted in the second contract is qualified.
10 And I think that qualification alone makes it
11 ineffective.

12 But more important than that is that we
13 think the statute envisioned -- when it said
14 you could do something after the fact, it
15 contemplated that 100% you could undo it. And
16 what we're saying here to you, Commissioners, is
17 that this Authority and this utility and this
18 utility's corporate parent is in a headlong rush
19 to issue in excess of \$550 million of bonds.

20 And so I would ask you to ask these
21 entities, if you decide to go ahead and do this
22 after the fact, if they think there's a
23 possibility in the world that they can undo the
24 issuance and the sale of \$550 million. We don't
25 think it's remotely possible. And if it's not

1 possible, then you shouldn't let them do it.
2 You should make them do it up front.

3 So it's not a matter of right. You should
4 do it up front. There should be a public
5 interest determination. There should be a
6 hearing, a first hearing with adequate notice to
7 customers and the opportunity -- a meaningful
8 opportunity for customers to appear and present
9 evidence and challenge the evidence presented by
10 the utility and the Authority. You should order
11 that. You should order the utility,
12 Commissioners, not to sell itself until such
13 time as it has made application and received
14 your approval.

15 We would suggest also that you should go to
16 Circuit Court, unless you're positive you can
17 force them not to sell themselves and merely
18 fine them afterwards -- and there's \$171 million
19 of free CIAC money at risk here. Unless you're
20 sure you can stop them from selling themselves
21 and only fine them later if they disobey you, I
22 would urge you, we would urge you to get an
23 injunction in Circuit Court.

24 Those are my comments. At the appropriate
25 time, I would be happy to answer any questions.

1 My comments having been concluded, I would like
2 to introduce Senator Fasano.

3 CHAIRMAN JABER: While the Senator comes
4 up, Mr. Twomey, let me make sure I understand
5 your position as it relates to the
6 recommendation in front of us. Is it your
7 position that staff's recommendation
8 accomplishes what you're suggesting we do?

9 And let me tell you why I'm asking.
10 Staff's recommendation suggests that we require
11 an application. The application in and of
12 itself doesn't get us into an evidentiary
13 process. Have you given that thought, and would
14 your position -- based on all your comments, how
15 do you envision our getting into an evidentiary
16 process?

17 MR. TWOMEY: That's an excellent question,
18 Madam Chair, and I think the short answer is
19 that as soon as an application is filed per your
20 order, if you issue it, then the concerned and
21 the substantially affected parties on the other
22 side, the customers, namely, would seek a
23 hearing.

24 CHAIRMAN JABER: Okay. So you're
25 suggesting we make our decision proposed agency

1 action?

2 MR. TWOMEY: Yes. Well, let me think about
3 that. The --

4 CHAIRMAN JABER: And you don't have to
5 answer it now if you don't want. And I'll ask
6 all the parties this question. It just occurred
7 to me that this is not a PAA vote.

8 MR. TWOMEY: What I'm thinking, Madam
9 Chair, and I'll think on it some more, is that I
10 think my clients would like to see you in an
11 unqualified manner issue an order for this
12 utility to file an application per the statute
13 seeking approval of the transfer, and that you
14 tell them that they have to do it before the
15 sale, not after the sale, in order to obtain the
16 protections we've asked you to get.

17 As soon as that's done, then the customers
18 will file intervention and request a hearing on
19 this so that they can be heard.

20 CHAIRMAN JABER: Thank you, Mr. Twomey.

21 COMMISSIONER DEASON: Madam Chairman, may I
22 ask a quick question of Mr. Twomey?

23 CHAIRMAN JABER: Commissioner Deason, yes.

24 COMMISSIONER DEASON: Mr. Twomey, your
25 Humpty Dumpty analogy and the fact that it's

1 your belief that a bond issuance could not be
2 undone in the real world, is it because of the
3 particular contingency clause which is in this
4 contract, or are you saying that anytime there's
5 any type of a transfer where there's a bond
6 issuance, there's a problem?

7 MR. TWOMEY: I'm saying the latter. I
8 think that anytime you issue bonds on a national
9 or -- I'm not sure what the scope of their
10 issuance would be. When you issue bonds,
11 especially in the amount that's projected here
12 or required here, \$550 million, I don't think
13 you can undo that.

14 Now, I think the statute -- if I may go on,
15 I think the statute, Commissioner Deason, in
16 having the retroactive provision contemplated
17 the typical mom and pop kind of thing that you
18 see with some frequency, where they come in,
19 they're going to turn over \$50,000, 100,000, or
20 whatever, and they make the sale contingent upon
21 Commission approval.

22 But I would urge -- I don't think, to
23 answer your question, that you can undo a half a
24 billion dollar bond deal. And I would urge you
25 to ask the Authority and the utility the same

1 question.

2 CHAIRMAN JABER: Commissioner Bradley.

3 COMMISSIONER BRADLEY: What are some of the
4 specific problems that might arise as a result
5 of the company trying to undo a bond deal?

6 MR. TWOMEY: Well, I'm not -- I don't
7 profess to have any expertise in that area,
8 Commissioner Bradley, but obviously, selling
9 half a billion dollars of bonds is a big deal.
10 And I don't think you can go out later and try
11 and buy them back. I just don't think you can
12 do that.

13 COMMISSIONER BRADLEY: I have a question of
14 the staff attorney.

15 CHAIRMAN JABER: Ms. Holley, Commissioner
16 Bradley has a question of you.

17 COMMISSIONER BRADLEY: It's a "what if"
18 question. What if the bonds are issued and this
19 body decides that the deal was inappropriate?
20 Who has the liability for the bonds that were
21 issued?

22 CHAIRMAN JABER: Commissioner Bradley, if I
23 could intervene here for a minute, I know you
24 asked it of staff counsel, but Andrew Maurey is
25 in our finance and cost of capital section.

1 would you like for him to address it?

2 COMMISSIONER BRADLEY: Yes, if that's the
3 appropriate person.

4 CHAIRMAN JABER: Mr. Maurey.

5 MR. MAUREY: Commissioner, we don't have an
6 answer to that question.

7 MR. TWOMEY: Madam Chair?

8 CHAIRMAN JABER: Because? The because is
9 important, Mr. Maurey. Continue.

10 MR. MAUREY: We've asked for this
11 information, but we've not received a response.

12 MS. DANIEL: Commissioner, is your question
13 as to who would assume the liability for
14 repaying the bonds if the --

15 COMMISSIONER BRADLEY: Yes.

16 MS. DANIEL: -- sale were not concluded?

17 COMMISSIONER BRADLEY: Yes.

18 MS. DANIEL: I think we would have to rely
19 on Florida water and the parties to speak to
20 that. We are told that there will be no
21 insurance on those bonds, so that does add a
22 layer of difficulty to it. But as to the
23 specifics, we haven't been privy to that
24 information as to the bond issuance itself.

25 COMMISSIONER DAVIDSON: Chairman.

1 CHAIRMAN JABER: Did that answer your
2 question?

3 COMMISSIONER BRADLEY: Yes. Let me think
4 through this scenario.

5 CHAIRMAN JABER: Okay. Commissioner
6 Davidson.

7 COMMISSIONER DAVIDSON: Thank you,
8 Chairman.

9 Mr. Maurey, just to clarify for the record,
10 you've asked the question of whom, and have not
11 received an answer from whom?

12 MR. MAUREY: We spoke with counsel for
13 Florida Water Services Corporation to gain
14 additional detail on the bond issuance. They've
15 been polite, but we've not been able to get in
16 contact with anyone who has specifics on this
17 bond transaction.

18 COMMISSIONER DAVIDSON: What -- Madam
19 Chair, thank you.

20 What was the time frame of your
21 questioning? When did this occur, roughly?

22 MR. MAUREY: Approximately two weeks ago.

23 CHAIRMAN JABER: Thank you, Commissioner.

24 Mr. Twomey, we may have additional
25 questions as we go, but I would like to continue

1 with the presentations.

2 Senator Fasano.

3 SENATOR FASANO: Good morning,
4 Commissioners and Madam Chairman. Thank you
5 very much. My name is Mike Fasano. I'm a State
6 Senator for the Florida State Senate.

7 You may notice on the map that Mr. Twomey
8 gave you the number 1 marked off. That is the
9 area that I represent. A large amount of the
10 customers that are in the Florida water
11 servicing area are in my district, and that's
12 why I'm here today.

13 Chairman and members of the Commission, I
14 come before you today as a State Senator who
15 represents constituents in three of the 26
16 counties that will be impacted by the sale of
17 Florida Water Services Corporation to the
18 Florida Water Services Authority. Thousands of
19 residents in Citrus, Hernando, and Pasco County
20 will be negatively impacted by this sale if it
21 is allowed to go forward without intervention by
22 you, the Commissioners.

23 I come before you today in support of your
24 staff's recommendation that Florida Water
25 Services Corporation should be required to file

1 an application for approval of its proposed
2 transfer of its utility services before it
3 closes its sale to the Florida Water Services
4 Authority.

5 As a lawmaker, I support and have signed on
6 as a co-chair or co-introducer of a piece of
7 legislation that, if passed, will control
8 actions such as those attempted by Florida Water
9 Services and Florida Water Services Authority
10 from happening. But a legislative remedy, Madam
11 Chairman and Commissioners, is many months away.
12 As you know, session has not even begun. But
13 the urgency of this issue is driven by the fact
14 that the expected closing date of this sale is
15 February 14th, a mere 10 days from now.

16 I urge the Commission to adopt the
17 well-written recommendation presented by staff.
18 It is well within the authority of this panel to
19 review the transfer of these utility services
20 between the two entities involved in the sale.

21 Members and Madam Chairman, as a legislator
22 chosen by the people of my district to represent
23 their interests, I am here today to be their
24 voice and to ask you to protect them from a move
25 that may, without your oversight, be

1 irreversible.

2 It was asked just briefly ago who would be
3 responsible for this \$550 million, this bond
4 issue. You know who is responsible. You know
5 who is going to pay for it. It's going to be
6 the customer. It's going to be -- the person
7 who is with Florida Water now is going to be
8 responsible for paying those bonds off and
9 paying the interest on those bonds. And without
10 some intervention by this Commission here, the
11 long-term effects of what is happening today
12 with the transfer of this utility will have
13 negative impacts on every customer in the
14 Florida water servicing area. There's no
15 question about it.

16 It's true -- you know how we were taught as
17 we were growing up, taxation with
18 representation? This is taxation without
19 representation. This is two entities hundreds
20 of miles away from any of the servicing area
21 that's going to have a major impact on customers
22 and how much they're going to pay for their
23 water and their sewerage. I will tell you that
24 it is my belief that the Public Service
25 Commission, or in some cases where counties

1 oversee the utility companies, they should have
2 the final say in any rate cases, regardless of
3 who owns that water service.

4 And in this case, when you think about it
5 or look at the history of all of what we read in
6 the newspaper, hearing from customers, they've
7 had little or no input on this whole situation,
8 but yet they're the ones that are going to pay
9 the price for it. They're the ones that are
10 going to have the major impact, negative impact,
11 if all of this is done.

12 As the officials chosen to protect the
13 utility customers of this great state, I know
14 you understand how great and important your
15 responsibility is today. I ask you to adopt
16 your staff's recommendation. Step in and take a
17 look at what Florida Water Services Corporation
18 is trying to do. You have the chance,
19 Commissioners, to right the wrong before it
20 happens and before the negative impact is hit on
21 each and every one of the customers throughout
22 the state.

23 Thanks for having me today. Appreciate you
24 allowing me to speak.

25 CHAIRMAN JABER: Thank you, Senator.

1 Mr. Twomey.

2 MR. TWOMEY: Senator Argenziano will be
3 next.

4 SENATOR ARGENZIANO: Good morning.

5 CHAIRMAN JABER: Good morning.

6 SENATOR ARGENZIANO: Good afternoon. First
7 let me say, Madam Chair, I appreciate you in
8 accommodating us, changing the time schedule
9 because the legislators could not make it here
10 due to committee meetings. So thank you,
11 Commissioners, very much for that.

12 CHAIRMAN JABER: You're welcome.

13 SENATOR ARGENZIANO: And I also have to
14 make a comment. Senator Cowin was actually on
15 the van with us and suddenly became very ill.
16 But let me tell you, she would not miss this if
17 she was not really ill. She would be here with
18 bells on. And she wanted me to let you know
19 that -- I think you all know how she feels about
20 this sweetheart deal, and we are asking you to
21 do something about it.

22 Representative Goodlette also wished me to
23 express his deep concern, as he represents Marco
24 Island and could not be here today, but wanted
25 you to know that he is counting on you to look

1 through all of these points that are brought
2 out.

3 And I'll just go on. I'm not going to go
4 through my whole presentation, because
5 Mr. Twomey made an excellent presentation, and
6 I'm only going to repeat many things that he has
7 said. But I do want to touch on certain things
8 very quickly and hope that you will take them
9 into consideration.

10 What I would first ask is that the
11 Commissioners maintain the status quo? As
12 you've heard several times today I think that's
13 the prudent thing to do, (1) by ordering Florida
14 Water to file an application for approval of the
15 sale; (2) to prohibit Florida Water from selling
16 itself until receiving your permission; (3)
17 obtain a Circuit Court injunction prohibiting
18 the sale until approval is given; and (4), which
19 I think is extremely important, hold a public
20 hearing to determine, in the language of the
21 statute, whether the sale is in the public
22 interest and that the buyer or transferee will
23 fulfill the commitments and obligations of the
24 utility and allow participation of all the
25 customers and their legal representations.

1 Excuse me. Representatives. I lost my place
2 there. To participate in other than the public
3 meetings that have been held by the Authority.
4 I think this is extremely important.

5 Also, rule on the side of maintaining the
6 status quo of politically accountable regulation
7 and protect the consumers from the loss of their
8 CIAC. I think that's extremely important. In
9 Sugarmill Woods alone in my community, I believe
10 -- let's see. It's about -- and, Mr. Twomey,
11 you may correct me if I'm wrong. I believe that
12 they have contributed and paid huge amounts into
13 the CIAC, which I'm told are equal to about 170
14 million or more. And I really don't think
15 Allete should be able to just walk away with
16 that money and take it to Minnesota.

17 And I really think you need to make a
18 decision on a public interest determination, a
19 public interest meeting on whether this is a
20 governmental authority. I don't believe this is
21 a governmental authority, not by any standards.
22 And I think that you need to do this before the
23 sale takes place. I think it's going to be too
24 late, as you've heard several times already, if
25 that sale takes place. What's the hurry?

1 what's wrong with having a public interest
2 hearing? I think that would be a prudent thing
3 to do and a wise thing to do, and provide
4 accountability.

5 And as you heard from my colleague, I think
6 taxation without representation really rings a
7 bell here. Transfer as a matter of right
8 doesn't apply here. I really don't believe
9 that's true. I think that clearly, the
10 Legislature intended that you only grant
11 transfers as a matter of right to governmental
12 authorities, and I don't see this as a
13 governmental authority by any means.

14 So I'm going to cut my presentation short,
15 because I think that you've heard from people
16 who can better articulate it than I can. I just
17 know that something stinks here, and my
18 constituents are going to be the ones who pay
19 for this.

20 And I think that you have an obligation to
21 look into everything you can do. The
22 Legislature certainly is going to do that. But
23 as you heard Senator Fasano say, it's going to
24 be several months away before we can actually do
25 anything. I do know that the Legislature never

1 intended anything like this to happen, and we'll
2 make sure it never does again.

3 And I'm counting on you to take into
4 consideration all the information that's brought
5 to you today and making sure that we protect the
6 monies of those people who have already
7 contributed millions into the CIAC. I mean,
8 what happens? I mean, if you look at the
9 numbers -- and I will read something else to
10 you, because I thought this was really
11 incredible, when you think about it. I've seen
12 figures from 230 to 250 million of regulated
13 rate base between the PSC and counties'
14 regulation. I know that the figure includes
15 deductions for CIAC or customer-supplied money,
16 which Florida law makes sure goes into rate
17 base. My constituents, especially those at
18 Sugarmill Woods, as I said before, have paid
19 about, I guess, 170 million or more.

20 I have read that Gulf Breeze and Milton
21 authority bonded indebtedness that must be
22 repaid through customer rates will be more than
23 550 million. Now, 550 million versus 250
24 million, and they aren't going to raise rates?
25 I don't think so. I think we need to get real.

1 I do not want to see Allete take that 170
2 million in CIAC and just run off to Minnesota
3 and leave our constituents holding the bag.

4 So with that, I hope you understand how
5 important this is to the people of the state of
6 Florida who would be affected, who live so far
7 away from those cities, who would not even be
8 able to look that person in the eye and say, "I
9 need to hold you accountable. You need to hear
10 my complaints." I think we need to take those
11 things into real consideration and let's not
12 rush this. And please, please, understand that
13 I do not, I do not personally see this as a
14 governmental authority, and we need a meeting to
15 determine the public interest.

16 And I thank you for your time.

17 CHAIRMAN JABER: Thank you, Senator.

18 While I have you here, because I know you
19 all need to get back to committee meetings, and
20 I'm not sure how long you'll stay, there is a
21 concern I've had that perhaps has come to the
22 forefront because of this situation, but it's a
23 bigger policy debate, and this is really the
24 only time we're able to discuss it, so if you
25 could just --

1 SENATOR ARGENZIANO: Sure.

2 CHAIRMAN JABER: -- bear with me here. As
3 it relates to the GUA, at the end of the day,
4 obviously, I don't know what the Commissioners
5 will do and what the result of the pending sale
6 of Florida water will be. But I would
7 respectfully ask the Legislature to think about
8 the impact sales to GUAs have in terms of the
9 framework of the water industry, period,
10 because when the first GUA came in front of us,
11 I was on staff, and it occurred to me that out
12 of control and out of hand, that would be
13 nothing short of piecemeal deregulation.

14 And that debate has got to occur, and I'm
15 not sure that the PSC is the right entity to
16 have that policy debate. In fact, as an arm of
17 the Legislature, we get our direction from the
18 Legislature, so it absolutely is a policy debate
19 that has to happen.

20 And regardless of what is the outcome of a
21 public hearing that we may or may not have, I
22 don't think that hearing will reach to that.
23 And it has a statewide effect, if I could just
24 talk out loud in terms of what this agency does
25 and what this agency does not do, and, frankly,

1 the resources we will have and the resources we
2 will not have, sort of putting it all out there
3 publicly.

4 And then finally, the thing that gives me
5 the most concern, I grew up, for lack of a
6 better word, at the PSC having an understanding
7 that either the state regulated through the
8 Public Service Commission, or counties using PSC
9 law as a guide regulated, and the theory was, I
10 thought, that consumers had a voice. Either the
11 consumer had a voice at the PSC or the consumer
12 could go in front of the County Commission and
13 have a voice, or at the end of the day, not
14 elect them or elect them. And again, the GUA --
15 perhaps what the Legislature intended was that
16 the counties where the facilities existed could
17 partake in a GUA. But again, that voice would
18 be heard.

19 But those are just thoughts.

20 SENATOR ARGENZIANO: And I hear them. I
21 hear them, and I have some of those concerns.
22 But I think what you're describing -- and you're
23 right. The Legislature has to -- we're going to
24 be doing a lot of work on this issue.

25 The big difference here with what I think

1 was the last part you just were explaining is
2 that the people in Sugarmill woods live about
3 400 miles away from the City of Milton and Gulf
4 Breeze. I think if it was left up to their
5 county and they went to their County
6 Commissioners, there's much more accountability
7 there. And the hearing notices that have been
8 in the past in Pensacola, my constituents down
9 in Sugarmill woods or in Marion County never had
10 the opportunity to have those. And I think with
11 the GUA, if it was in that county, with the
12 accountability of their Commissioners, they
13 would know what's going on.

14 But I understand your concerns, and believe
15 me, we have a lot of work to do. In the years
16 that I've been in the Legislature, I have not
17 been too happy with some of the legislation that
18 has passed. And some of that -- and we have a
19 lot of other Representatives and Senators who
20 are here to probably tell you their own concerns
21 about that. And some things did pass that
22 probably now we're questioning what the true
23 intent was.

24 I can tell you that my intent in any of
25 that legislation was never for it to wind up

1 where it is right today, and you're going to see
2 many bills -- and they're already filed -- just
3 to correct that. And we will -- I would love to
4 take direction from the Commissioners and any
5 suggestions that you have on future legislation,
6 and I hear you loud and clear. But I'm hoping
7 that you really take into consideration all of
8 the information and not just, you know, one
9 particular side, which I know you don't do.
10 Just consider the consumer and the
11 accountability that they have with this deal.

12 And, you know, I don't blame the City of
13 Milton and Gulf Breeze. It's a sweetheart deal
14 for them. But I'm just, I guess, really asking
15 you to consider the consumer again, number one.

16 CHAIRMAN JABER: Well, therein lies my
17 concern, and what voice the consumer has is
18 something I look forward to addressing.

19 SENATOR ARGENZIANO: Thank you.

20 CHAIRMAN JABER: Thank, Senator.

21 Mr. Twomey.

22 MR. TWOMEY: Representative Attkisson.

23 CHAIRMAN JABER: Oh, Commissioner
24 Davidson.

25 COMMISSIONER DAVIDSON: Representative.

1 CHAIRMAN JABER: I'm sorry. Senator
2 Argenziano, Commissioner Davidson had a
3 question.

4 COMMISSIONER DAVIDSON: Senator, thank you
5 for being here. I just wanted to echo all of
6 the Chair's comments. I personally believe that
7 there needs to be some type of oversight role
8 over GUAs, some type, whether its in this body
9 or another. And I hope the legislative staff
10 and members will look at that very critical
11 issue of where is that oversight going to rest
12 so that the consumers are protected. Right now
13 there's an argument that there could be a gap in
14 that oversight, and somewhere, somehow, the
15 entity needs to be accountable.

16 SENATOR ARGENZIANO: I agree. Thank you.

17 CHAIRMAN JABER: Mr. Twomey, I interrupted
18 you.

19 MR. TWOMEY: Yes, ma'am. Representative
20 Attkisson is next.

21 REPRESENTATIVE ATTKISSON: Thank you, Madam
22 Chairman, for allowing me to come and speak
23 today. I'm Representative Frank Attkisson from
24 the City of Kissimmee.

25 And I must share with you that in my

1 particular district, we don't have that many
2 facilities that are in fact covered by this
3 utility. But I've got 20 years in the utility
4 business from a variety of issues, from selling
5 equipment and lift stations and water plants and
6 wastewater plants, to eventually owning my own
7 small utility in the County of Okeechobee, which
8 in fact I sold to a governmental authority that
9 is serving citizens. And it was a small
10 program. Obviously, if I could have sold it for
11 550 million, not to be unkind, I wouldn't be in
12 front of you today.

13 On the other hand, I've also served as
14 mayor of the City of Kissimmee for four years,
15 where we acquired systems, and we were the
16 government that was responsible to the people.
17 so I think I'm probably, besides just being a
18 legislator, somebody who understands the utility
19 system and industry in Florida.

20 The issue before the PSC is limited to the
21 following, in my opinion: Is the so-called
22 Florida Water Services Authority legitimately
23 characterized as a governmental authority so
24 that the PSC can as a matter of right
25 ministerially approve the sale of over 150

1 utility systems all over Florida without first
2 making a public interest determination?

3 To put it simply, the issue is about
4 credibility, the issue is about accountability,
5 the credibility and accountability of not only
6 the so-called Florida Water Services Authority,
7 which you've been hearing about, but I would
8 challenge you that the credibility and
9 accountability of the laws of Florida and of the
10 Florida Public Service Commission itself are at
11 stake today.

12 The Florida Water Services Authority is
13 purportedly created, as you've heard, by an
14 interlocal agreement pursuant to Chapter 163.
15 And it can only be characterized as, quote, a
16 separate legal entity. The Florida Water
17 Services Authority does not qualify as a
18 governmental authority under the applicable
19 statutory scheme, which would allow the PSC to
20 summarily approve the transfer of these 150
21 utility systems all over Florida without first
22 making a public interest determination. It's
23 about accountability.

24 The scrutiny of the public interest
25 determination process will reveal that Florida

1 Water Services Authority is not credible and has
2 no semblance of accountability to several
3 hundred thousand Florida citizens that they
4 choose to serve. The PSC, in my opinion, is
5 obligated to err on the side of caution and
6 review this matter and require that the Florida
7 Water Services Corporation submit their
8 proposed transaction for review and approval by
9 you, the Public Service Commission.

10 During such review, the PSC will find that
11 the actions of Florida Water Services Authority
12 are not only not in the public interest; they
13 are in fact in direct violation of Florida's
14 Constitution. Specifically, the PSC will find
15 that as a, quote, separate legal entity, the
16 Florida Water Services Authority may well have
17 the conditional approval to serve areas outside
18 of Gulf Breeze and Milton, but our Constitution
19 has the Transfer of Powers Act, and it's only
20 after each affected city or county has by
21 resolution first initiated such a transfer of
22 powers under Article VIII, Section 4.

23 If I may share with you, it's a two-prong
24 approach. The two-prong approach says, number
25 one, you must consent to have this transfer of

1 power of government go to another government;
2 and number two, you must be invited in to do
3 this. I can share with you that I know of no
4 government that has (a) invited Florida Water
5 Services Authority in to perform this task, nor
6 has there been any request for permission or
7 consent.

8 Let me also share with you the importance
9 of that. You as the PSC have rules and
10 regulations which you try to conform to and try
11 to make reasonable your process of rate
12 regulation. You pay attention, as you
13 mentioned, Ms. Chairman, to the rules and the
14 statutes set by the Florida Legislature as we go
15 through our process. But I would share with you
16 that that is in a republic form of government,
17 i.e., I have been elected by my people to come
18 up here and represent what I think are their
19 issues. The democratic form of government,
20 which is the citizen making the decision, chose
21 to tell us that regardless of how we deal with
22 local governments, the powers that we give a
23 county, the powers that we give, home rule
24 powers to city government, our citizens told us
25 in their State Constitution to always require

1 governments, when you transfer a power, to be
2 invited to do it and to concur to do it. And
3 short of that, we have to make sure all of our
4 governments do that. We have no choice.

5 I will share with you that this year I'm
6 going to be very involved in some of the
7 education issues, specifically the class size
8 amendment, as I'm Chairman of the Subcommittee
9 on Education Innovation in the House. The class
10 size amendment, I do not have an option to go
11 back to the citizens and say, "I couldn't do
12 parts of it." I have to comply with it. They
13 may disagree with my methodology, but I have to
14 comply with it.

15 We have to make sure this utility and this
16 process complies with our State Constitution, or
17 what is the purpose of having a Constitution?

18 I would share with you that if you look at
19 this system and if you allow this to go through
20 without any challenge, I would say, "Sit back
21 and think for a minute." What will be the
22 difference in these 500,000 Floridians and
23 citizens in Russia 20 years ago as they dealt
24 with their utility system? Russia's utility
25 systems were nationalized or statehood models 20

1 years ago. Save for military intervention,
2 fortunately, we won't have that, I'm sure. But
3 basically, they had governments that said, "You
4 will pay when you need to. These are our
5 policies. We don't have to listen to you. You
6 are too far removed." Americans don't like
7 that. Floridians do not like that. We love our
8 democracy. We like local government.

9 I shared with you, and just quickly,
10 Chairman, anecdotally, as I was mayor, one
11 evening preparing for my meeting, and one of the
12 folks came up and said, "Mayor, there's somebody
13 down that wants to come in here to the audience
14 that we've never seen in our community before,
15 but the police had an incident today on the park
16 bench."

17 And I said, "Well, that's fine." I said,
18 "As long as they don't have a gun or a knife,
19 they have the right to come before us."

20 And exactly, that's what it was. It was a
21 homeless person that was being pushed off
22 because they were sleeping on a park bench, and
23 they chose to come in front of their local
24 government so that they could complain.

25 Now, in all fairness, I'll say we

1 disagreed. I mean, I thought that was the
2 right of our local police officers to make sure
3 that the homeless don't sleep on our park bench,
4 but they had the right to do it. If this goes
5 through, there will be no right.

6 Do you realize, I'm a native Floridian, and
7 there will be no stronger push into a
8 socialistic approach than to allow this to go
9 through, where their government is 400 miles
10 away. That's wrong. And I think each one of us
11 here today want to stop that.

12 I will share with you, you've seen House
13 members and Senate members. Representative Doug
14 Wiles, who leads the minority in the House, has
15 confirmed to me numerous times in the halls,
16 "Frank, all of the Democrats are with whatever
17 you want. This is not a DR issue. This is
18 accountability. This is credibility for the
19 citizens of Florida."

20 I would share with you, you have a task,
21 and I would challenge you to step to the gate
22 and realize that the task that you need to
23 perform is to get this right, to make sure
24 citizens can be heard and understood in all of
25 their governmental activities in Florida. If

1 you don't, I would share with you that the
2 Legislature is ready to go with a swiftness that
3 you've probably never seen to make sure that
4 socialistic approach never enters into the
5 Florida system of government again.

6 With that I say thank you, Madam Chairman.

7 CHAIRMAN JABER: Thank you, Representative.

8 Mr. Twomey.

9 MR. TWOMEY: Yes, ma'am. Representative
10 Harrell will be next.

11 REPRESENTATIVE HARRELL: Thank you all so
12 very much for hearing us today. We certainly
13 appreciate your latitude in allowing us to speak
14 before you.

15 I am Gayle Harrell. I represent District
16 81 in the Florida House of Representatives, and
17 that is St. Lucie County and Martin County. And
18 we are only a very small part of this entire
19 problem. Only three areas in my district are
20 actually involved in this utility, and that is
21 Fisherman's Haven, Fox Run, and Leilani
22 Heights. But I can assure you, even though this
23 is a very small cog in the big wheel of the
24 problem, these citizens deserve to be
25 represented. And if this goes forward, if the

1 sale of this utility goes forward, those
2 citizens will indeed have no voice in what their
3 rates are. They will not be able to go and
4 complain in Milton, and they will have no
5 representation.

6 And I'm not going to spend a long time
7 discussing the various arguments. I think it
8 has been very well presented by the previous
9 speakers. So all I would ask you to do is to
10 make sure that the citizens of my district have
11 representation, and there is truly no taxation
12 without that representation.

13 Thank you.

14 CHAIRMAN JABER: Thank you, Representative.

15 MR. TWOMEY: Representative Russell will be
16 next.

17 REPRESENTATIVE RUSSELL: Chairman and
18 members, it's good to be here with you today.

19 Chairman, I was writing as you were
20 speaking in the back rows --

21 CHAIRMAN JABER: Uh-oh.

22 REPRESENTATIVE RUSSELL: -- there, and I
23 think we've crafted a pretty good piece of
24 legislation based on that.

25 CHAIRMAN JABER: Yes. That's the uh-oh.

1 REPRESENTATIVE RUSSELL: Chairman,
2 respectfully, I will be brief. Spring Hill is
3 the area most greatly impacted by this
4 proposal. That is the heart of my district.

5 And I would suggest that the proposed sale,
6 by every definition that I've heard here today,
7 is a remotely controlled monopoly. And I do
8 believe that's the very reason, one of the very
9 reasons that the Public Service Commission was
10 created. I would ask you to bring this back to
11 the people, as my colleagues have so well
12 articulated, and give them an opportunity to
13 speak, because they are ultimately the ones that
14 will be paying the price in the end.

15 I thank you.

16 CHAIRMAN JABER: Thank you, sir.

17 MR. TWOMEY: And Representative Quinones is
18 the last state level official to speak.

19 REPRESENTATIVE QUINONES: Good afternoon.
20 John Quinones. I represent District 49. And
21 there's not much else to say.

22 Our forefathers obviously poured tea into
23 Boston Harbor to make a point about lack of
24 representation. I don't think any of us brought
25 tea today here, but we have pretty much stated

1 our point. So I'm not going to say anything
2 more, except that in my community where I was
3 elected by the people, there's about 20,000
4 constituents that will be affected by this
5 transaction. And as their representative and
6 their voice here, I strongly oppose this lack
7 of representation and lack of political
8 accountability.

9 Thank you very much.

10 CHAIRMAN JABER: Thank you.

11 Mr. Twomey, thanks for facilitating that.

12 MR. TWOMEY: Ma'am?

13 CHAIRMAN JABER: I said thank you for
14 facilitating that.

15 MR. TWOMEY: Oh, yes, ma'am. You're
16 welcome.

17 CHAIRMAN JABER: And did you have anything
18 else to add?

19 I have Florida Water and the Authority.
20 Mr. Hoffman, are you speaking for both?

21 MR. HOFFMAN: No, ma'am, I'm speaking only
22 for Florida water.

23 CHAIRMAN JABER: Okay. Is there a member
24 of the Authority here to address us?

25 MR. HOFFMAN: Yes, ma'am.

1 CHAIRMAN JABER: And who is that?

2 MR. HOFFMAN: Bruce Culpepper.

3 CHAIRMAN JABER: Go ahead, Mr. Hoffman.

4 MR. HOFFMAN: Thank you, Madam Chairman.

5 My name is Ken Hoffman. With me today is Steve
6 Menton. We are here on behalf of Florida Water.
7 I would also like to enter an appearance on the
8 record for Barry Richard of the Greenberg
9 Traurig firm on behalf of Florida Water.

10 Commissioners, we, of course, oppose the
11 staff recommendation. Your staff is asking you
12 to take what we believe to be an unprecedented,
13 unlawful action that exceeds the authority that
14 has been delegated to you by statute by the
15 Legislature. And frankly, Chairman, in
16 reference to a comment that you made earlier, I
17 think that most of what you heard today is a
18 policy debate that, frankly, belongs in front of
19 the Legislature, in light of the limitations
20 under your statutes.

21 The docket that we are here today on was
22 opened in October of 2002 after an announcement
23 was made in September of 2002 that Florida Water
24 had entered into this contract to sell all of
25 its statewide utility assets to the Florida

1 Water Services Authority. That authority is a
2 governmental utility authority that was lawfully
3 created under Chapter 163 of the Florida
4 Statutes pursuant to an interlocal agreement
5 entered into between the cities of Gulf Breeze
6 and Milton. And the contract was amended in
7 December of 2002. And as you've heard,
8 extensive efforts have been undertaken to
9 finalize the transaction.

10 Commissioners, we are aware of no other
11 docket of this kind ever being opened by the
12 Commission in connection with a sale of
13 facilities to a governmental or a
14 non-governmental purchaser.

15 In this docket, the staff has asked for
16 comments on legal issues, but there have been no
17 issues identified as of yet in this docket, nor
18 have there been any formal actions taken in the
19 docket. So frankly, Chairman, we were quite
20 surprised, after the docket had been opened for
21 some three and a half months, to all of a sudden
22 see a staff recommendation issued recommending
23 the action that you take.

24 And what the staff has asked you to do is
25 to compel Florida water to file what has been

1 characterized as a public interest application
2 for approval before the closing of this
3 transaction.

4 Commissioners, respectfully, there is no
5 precedent for such a directive. Your staff is
6 asking you to take an unlawful action that
7 exceeds your statutory authority. But apart
8 from the fact that they're asking you to exceed
9 your statutory authority, the mere notion that
10 this utility should be required to file an
11 application in three days, which would easily
12 take weeks, if not months, to prepare, makes the
13 recommendation not only unlawful, but one with
14 which Florida water could not reasonably comply.

15 Commissioners, there's no basis --

16 CHAIRMAN JABER: Even with Ken Hoffman,
17 Steve Menton, and Barry Richard?

18 MR. HOFFMAN: Even with, Madam Chairman.

19 CHAIRMAN JABER: One of you should have
20 stayed behind, perhaps. Just another thought.

21 MR. HOFFMAN: Commissioners, there's no
22 basis for the Commission to order a utility to
23 file any sale application, transfer application
24 pre-closing. If you look at your statute -- and
25 I'm talking about subsection (1) of 367.071 --

1 that statute states that even in the case of a
2 sale to another investor-owned utility, that
3 application for approval may be filed after the
4 closing if the sale is made contingent upon
5 Commission approval. That applies across the
6 board.

7 But let's talk for a second about prior
8 Commission orders involving sales of assets to a
9 governmental authority such as the one before
10 you. The Commission has approved post-closing
11 applications irrespective of whether the
12 contract contains a condition that the sale is
13 contingent upon Commission approval.

14 So, for example -- and you've heard a
15 little bit about the prior order. About two
16 years ago, you considered the sale of assets by
17 Florida Cities and Poinciana to the Florida
18 Governmental Utility Authority. That
19 application was filed either the day of or the
20 day after the closing. It was a little unclear
21 from the order and the record. Even though the
22 contract did not include a contingency for PSC
23 approval, the Commission approved that sale to
24 the GUA as a matter of right, as it was required
25 to do under 367.071(4). That's the order that

1 was issued in December of the year 2000.

2 Even more recently, when United Water sold
3 its systemwide assets to the JEA, that
4 application was filed after the closing. And
5 again, the contract did not include a
6 contingency clause for PSC approval, and the
7 PSC also approved that sale as a matter of
8 right.

9 This precedent indicates that a provision
10 in the contract conditioning the sale on
11 Commission approval is not necessary where the
12 buyer is a governmental authority. Therefore,
13 we believe that the staff recommendation is not
14 only unprecedented, it's inconsistent with the
15 prior actions of the Commission.

16 We believe, and it's our position that our
17 contract with the Authority is entitled to the
18 same treatment before the Commission that was
19 afforded to the sale to the FGUA and the sale to
20 JEA.

21 Commissioners, remember that you are acting
22 here in your quasi-judicial capacity. And like
23 a judicial tribunal, the Commission must respect
24 and adhere to its prior decisions as applicable
25 stare decisis. This Commission has already

1 determined that an interlocal utility authority
2 that is established under Section 163.01(7)(g)1
3 is to be created as a governmental authority
4 under your transfer statute, 367.071(4)(a).
5 This recommendation before you does not cite any
6 legal authority for treating this transaction
7 any differently. And that's because there's no
8 basis in the statutes or the rules for the
9 Commission to treat Florida Water's contract
10 with the Florida Water Services Authority any
11 differently.

12 CHAIRMAN JABER: Mr. Hoffman, I want to
13 understand that point, and I'll let you continue
14 your presentation. You said earlier that
15 there's no precedent for the Commission
16 requiring an application and doing any sort of
17 review with respect to transfers to a
18 governmental authority. In your preparing for
19 this case, did you all discount the transfer of
20 Gulf Utility to the GES? I think it was Gulf
21 Environmental something.

22 MR. HOFFMAN: I know which one you're
23 talking about, Chairman.

24 CHAIRMAN JABER: Yes. It seems to me that
25 the Commission did have an application, and the

1 Commission -- as a matter of fact, there was a
2 debate between the company and the Commission
3 for a period of time as to whether that
4 qualified as a GUA.

5 MR. HOFFMAN: Well, Commissioners, we
6 relied on the one precedent that in our judgment
7 is on all fours when it comes to --

8 CHAIRMAN JABER: Okay. Well, let's talk
9 about that one. Are you referring to the
10 Poinciana case?

11 MR. HOFFMAN: Yes, ma'am.

12 CHAIRMAN JABER: Did that not -- this must
13 have been done as an administrative order. That
14 was not brought to the Commission for a vote in
15 a public setting.

16 MR. HOFFMAN: No, ma'am. The order
17 approving the transfer of facilities from
18 Florida Cities Water Company and Poinciana
19 Utilities to the Florida Governmental Utility
20 Authority is reflected in Order No. PSC-00-2351,
21 which was issued December 7, 2000.

22 CHAIRMAN JABER: Yes. And I'm looking at a
23 copy of that order. And frankly, it doesn't
24 have the names of the Commissioners, and that
25 leads me to believe this was done in an

1 administrative fashion, which -- we've delegated
2 that authority to our staff, but this was issued
3 as an administrative order.

4 MR. HOFFMAN: Okay.

5 CHAIRMAN JABER: would you agree with that?

6 MR. MCLEAN: No, ma'am.

7 CHAIRMAN JABER: Oh. So this was just --
8 does the order contain a mistake?

9 MR. MCLEAN: Certainly not, Madam
10 Chairman. Even though it issued two days
11 after --

12 CHAIRMAN JABER: Because that would be the
13 second today.

14 MR. MCLEAN: Even though it issued two days
15 after I began my tenure here. No. It was not
16 decided administratively for some reasons really
17 pretty much unassociated with the contested
18 issues before you today. But it was in fact
19 presented to the Commission. It was my
20 understanding the staff recommendation which
21 gave rise to the order explains the process by
22 which staff decided to present it to the
23 Commission. So that order --

24 CHAIRMAN JABER: Okay. Let me make sure I
25 understand what you're saying. This order that

1 I'm looking at addressing Poinciana and the GUA
2 was voted on at agenda?

3 MR. MCLEAN: That's correct, Commissioner.

4 CHAIRMAN JABER: Okay.

5 MR. MCLEAN: That's my understanding. My
6 memory is a little hazy, but that was -- the
7 staff recommendation was that that's what should
8 happen. And I've not gone back to look and see
9 if the vote sheets reflect that, but I have
10 every reason to believe that the Commission sat
11 in judgment and issued that order.

12 CHAIRMAN JABER: Okay. I'm going to take
13 your word for it, Mr. McLean. The only reason I
14 even picked up on it is because of the format of
15 the order, which traditionally is for an
16 administrative order. So perhaps someone could
17 verify that.

18 Mr. Hoffman, but it brings me back to my
19 main point, which is the GES case. You're not
20 commenting on that, and I'm trying to understand
21 if you're discounting and differentiating those
22 circumstances and the one we have before. Or
23 are you selecting the result that you like?

24 MR. HOFFMAN: Well, I think that I am
25 justifiably relying, Chairman, on the precedent

1 that's on point in this case. The one cited in
2 the staff recommendation, in our judgment, is
3 not applicable. The precedent that is
4 applicable is the only precedent before the
5 Commission where there was a sale by a regulated
6 utility to a Chapter 163 entity, and that's why
7 I have chosen to discuss that order, the sale to
8 the Florida Governmental Utility Authority.

9 CHAIRMAN JABER: And are you saying the GES
10 was not a 163 entity? Is that the distinction
11 you're making?

12 MR. HOFFMAN: I don't believe that it was.
13 I'm not sure.

14 CHAIRMAN JABER: Okay. well, let me let
15 you continue.

16 MR. HOFFMAN: Okay.

17 COMMISSIONER DEASON: Since he's
18 interrupted, may I ask a question at this
19 point?

20 CHAIRMAN JABER: Commissioner Deason, yes,
21 you can go on.

22 COMMISSIONER DEASON: Mr. Hoffman, if the
23 sale involves a Chapter 163 entity, what is the
24 requirement for that entity to notify the
25 Commission? what is the requirement to have or

1 not have a contingency clause? Is an
2 application required at some point, and if so,
3 when? Explain to me in your interpretation what
4 is required. Just ignore precedent. In your
5 interpretation of the law, what is required
6 when?

7 MR. HOFFMAN: Commissioner Deason, first --
8 and I'll ignore precedent after I make this
9 first comment. Under your precedent, I believe
10 that we would be justified in filing an
11 application after the closing without having a
12 provision in the contract that makes the
13 transaction contingent on PSC approval. And I
14 only say that because there are prior orders of
15 the Commission that have treated sales to
16 governmental authorities in that manner.

17 And having said that, Commissioner, I think
18 that the basic way that your statutes work for a
19 sale to a governmental utility authority is that
20 if the sale -- if the provision in the contract
21 is contingent on Commission approval, and again,
22 apart from the precedent that I have discussed,
23 then the utility, the regulated utility would
24 then file an application with the Commission for
25 an acknowledgment of the sale. And that is how

1 the Commission's application forms read. And
2 that could be performed after the closing. And
3 under the statutes, and that's paragraph (4)(a),
4 the sale to the governmental authority must be
5 approved as a matter of right.

6 Now, Commissioner, there is some additional
7 information --

8 COMMISSIONER BRADLEY: I have a question
9 on that.

10 CHAIRMAN JABER: Commissioner Bradley.

11 COMMISSIONER BRADLEY: Okay. That goes to
12 my question earlier. One statement that has
13 been made is that if that happens that this will
14 be irreversible because of how the sale is being
15 structured, through the bond process, that is.
16 And this is a "what if" question. What if the
17 sale occurs and the Commission decides that the
18 sale is not appropriate, but it has occurred?
19 why would or why wouldn't it be reversible? why
20 would it or why wouldn't it be reversible?

21 MR. HOFFMAN: Commissioner Bradley, let me
22 temper my remarks to that with the caveat that
23 I'm not a bond lawyer, but I will tell you this.
24 First of all, that particular issue was not
25 noticed in the staff recommendation as one that

1 would be discussed today, so we did not come
2 prepared to address that particular issue.

3 Secondly, to go that route we believe would
4 be to take the Commission well outside its
5 statutory authority, if you create that kind of
6 mechanism, because we think that we are
7 completely justified under the statute to come
8 in with an application after the closing.

9 Having said that, it is my understanding
10 that there are methods, there are legal methods
11 in the Circuit Courts for defeasing bonds that
12 have been issued.

13 COMMISSIONER BRADLEY: But still, you are
14 assuming that the Commission is going to approve
15 the sale. What if the Commission does not
16 approve the sale?

17 MR. HOFFMAN: Well, that's my point,
18 Commissioner Bradley. It's my understanding
19 that if the Commission were to exceed its
20 authority and treat this as a public interest
21 application, and those bonds had been issued,
22 and the Commission were to then deny the
23 application, it's my general understanding --
24 and again, I want to caveat with my earlier
25 statement -- that there are methods to defease

1 those bonds.

2 COMMISSIONER BRADLEY: Is there a bond
3 expert in the house? ..

4 CHAIRMAN JABER: Mr. Hoffman, one of those
5 three attorneys?

6 MR. HOFFMAN: I'm sorry?

7 CHAIRMAN JABER: Do you have anyone that
8 could address the questions related to the
9 bonds?

10 COMMISSIONER DAVIDSON: Chairman.

11 CHAIRMAN JABER: Commissioner Davidson.

12 COMMISSIONER DAVIDSON: I thought I would
13 be the fifth and make the interruption unanimous
14 here. I wanted to follow up to Commissioner
15 Deason's --

16 CHAIRMAN JABER: Hang on one second,
17 Commissioner Davidson, and let's make sure that
18 the Commissioner gets an answer to his
19 question.

20 MR. CULPEPPER: My name is Bruce Culpepper,
21 and I represent --

22 CHAIRMAN JABER: Mr. Culpepper, go ahead.

23 MR. CULPEPPER: -- the Florida Water
24 Services Authority. I also am not a bond
25 attorney. You don't have those before you

1 today. But I will assure the Commission that
2 from my understanding, that the risk with
3 regards to the bonds is on the bondholders and
4 not the consumers.

5 The operation of this water system is not
6 going change. It will continue to be with the
7 personnel that are currently operating the
8 system. So the risk, if that is to be unwound
9 in some respect or there is a mandate that it be
10 unwound, it would not be upon the consumers, but
11 upon the actual bondholders, who know that when
12 that investment is made.

13 And I would like to make this caveat. That
14 assumes that the Commission would have within
15 its jurisdiction and power the right, or within
16 the law the right to deny or to not approve the
17 transaction. And, of course, that's one of the
18 initial issues before you, whereas we believe
19 that the statute specifically says as a matter
20 of right that you will approve it because it is
21 a governmental authority.

22 And we can speak more to that later, but
23 we believe, Commissioner Bradley, that the
24 Commission will approve it as a matter of right
25 under the law as it now exists, so that that

1 issue may come up, but it would be from the
2 order of a court. And as you know, there are
3 numerous pieces of litigation out there that
4 have raised many of the issues that you are
5 hearing here today and will continue -- and will
6 make decisions on those issues raised to you
7 today, constitutional issues, transfer of power
8 issues, public purpose issues. But our position
9 with that is that the Commission, because of the
10 existing law, would approve the sale as a matter
11 of right.

12 CHAIRMAN JABER: Thank you, Mr. Culpepper.
13 Commissioner Davidson has a question.

14 COMMISSIONER DEASON: Well, can I follow up
15 on my own question, if I may, please?

16 CHAIRMAN JABER: Yes. Commissioner Deason.

17 COMMISSIONER DEASON: No objection? Okay.

18 So, Mr. Hoffman, back to my question. It's
19 your position that statutorily, if there is a
20 contingency provision within the contract, that
21 the regulated utility which is selling its
22 assets would file an application for
23 acknowledgment as a matter right, and that that
24 could and probably would be done after closing?

25 MR. HOFFMAN: Yes, sir.

1 COMMISSIONER DEASON: Okay. And it is your
2 position that there is a contingency clause
3 within this contract; is that correct?

4 MR. HOFFMAN: Yes, sir.

5 COMMISSIONER DEASON: So there's going to
6 have to be an application filed at some point.

7 MR. HOFFMAN: Without question.

8 COMMISSIONER DEASON: What's the harm in
9 filing it now?

10 MR. HOFFMAN: Commissioners, we are trying
11 to take all reasonable steps to close this
12 transaction. There is pending litigation out
13 there that could potentially affect the
14 transaction. We are waiting to see how some of
15 that litigation resolves.

16 But I would say this, Commissioner.
17 There's really no benefit that we see in filing
18 this application, even if one could be put
19 together now. And that's because, as the
20 Chairman was alluding to later, due process
21 rights are always made available before the
22 Commission. We would then have to have a
23 hearing process. And I simply don't see how
24 that could possibly be accomplished, in view
25 of what I understand to be the company's

1 anticipated closing date for this transaction.

2 CHAIRMAN JABER: What is the anticipated
3 closing date? You mentioned the litigation.
4 Has that moved your closing date?

5 MR. HOFFMAN: Chairman, it's my
6 understanding -- and I'm not the transactional
7 lawyer, but it's my understanding that the
8 company -- the buyer and the seller are taking
9 all steps necessary to close this transaction at
10 some point in mid-February.

11 CHAIRMAN JABER: Commissioner Deason, do
12 you have other questions?

13 COMMISSIONER DEASON: No.

14 CHAIRMAN JABER: Commissioner Davidson.

15 COMMISSIONER DAVIDSON: No follow-up. I
16 have some questions after Mr. Hoffman's
17 presentation, but Commissioner Deason covered my
18 follow-up.

19 CHAIRMAN JABER: Okay. Thank you. Let's
20 continue on with --

21 COMMISSIONER BRADLEY: I have a question.

22 CHAIRMAN JABER: Commissioner Bradley.

23 COMMISSIONER BRADLEY: Yes. What is the
24 benefit of closing the sale before the court
25 makes a ruling?

1 MR. HOFFMAN: Commissioner, did you ask
2 what is the benefit of closing before the court
3 makes a ruling?

4 CHAIRMAN JABER: Uh-huh.

5 MR. HOFFMAN: What I was referring to,
6 Commissioner, is, I understand that the way that
7 this could work is that the closing would take
8 place after a court ruling, not before one. In
9 other words, certain issues have been raised in
10 Circuit Court, Commissioner, concerning the
11 validity of this particular buyer as a 163
12 entity, concerning things like notice, those
13 types of things that are not before the
14 Commission, that are not within the Commission's
15 jurisdiction. It is my understanding that a
16 ruling on that particular piece of litigation is
17 expected by mid-February. And that's the ruling
18 that I was referring to.

19 But I think I should also point out to you,
20 Commissioner, that some of the arguments made by
21 Mr. Twomey where he is asking the Commission to
22 inject itself into that litigation, we hope that
23 you will resist any effort to do that, because I
24 think that what he is asking you to do is, he is
25 asking you to go out and attempt to secure an

1 injunction, which is an extraordinary writ, when
2 we believe that it's clear that in making such a
3 request, that you would be exceeding your
4 statutory authority.

5 And frankly, Commissioners, if those folks,
6 whoever they may be, who oppose this transaction
7 would like to seek an injunction, then they can
8 seek that injunction, but your doing so would
9 potentially alleviate any requirement on those
10 parties of complying with the requirement that a
11 bond be posted in the unlikely event that an
12 injunction was issued.

13 So the long and the short of it is, and the
14 answer to your question is, we have been waiting
15 for a ruling by a court on some key issues that
16 are not within the Commission's jurisdiction.
17 And we would hope that you would stay out of any
18 attempt to inject the Commission into trying to
19 secure an injunction concerning the transaction.

20 CHAIRMAN JABER: You think the Commission
21 exceeds its jurisdiction by seeking an
22 injunction?

23 MR. HOFFMAN: No, Chairman, but I think
24 that if the Commission goes in and argues before
25 a Circuit Court that it is lawful to compel the

1 company to file this so-called public interest
2 application pre-closing, then it is exceeding
3 its jurisdiction.

4 COMMISSIONER BAEZ: I'm sorry. You
5 mentioned issues before courts. Are any of the
6 issues included in that statement, to your
7 knowledge, whether Florida Water Services
8 Authority is a governmental authority or not?

9 MR. CULPEPPER: Yes, Commissioner. All of
10 the issues that you heard this morning have been
11 raised and are raised and being considered in a
12 number of pieces of litigation.

13 I will say -- to elaborate on Commissioner
14 Bradley's statement, all of the litigation
15 certainly would not be completed at the time of
16 sale. That's impossible. It will be here next
17 year, I'm sure, as it wends its way up through
18 ultimately, perhaps with some of these issues,
19 the Florida Supreme Court.

20 There are no injunctions as of this morning
21 that I'm aware of that have been entered by any
22 court. There is some question about one stay as
23 a consequence of the court rule when a writ, one
24 of the extraordinary writs is entered with an
25 order to show cause by one court, which has

1 occurred. And that, of course, is being argued,
2 and an order from that court is pending.

3 So that would be the only constraint, if a
4 constraint at all, to any closing at this point.

5 COMMISSIONER BAEZ: I have another
6 question.

7 CHAIRMAN JABER: Commissioner Baez.

8 COMMISSIONER BAEZ: The issue of whether
9 the Water Services Authority is a governmental
10 authority or not, since it's before a court,
11 would you agree that the answer to that question
12 is what lets us perform our duties one way or
13 the other?

14 MR. CULPEPPER: It certainly would affect
15 it, Commissioner. If the Water Services
16 Authority is a governmental authority, as that
17 term is defined in your statute, 367, then
18 clearly, as a matter right, they would be
19 entitled to approval of the transaction. And so
20 clearly, that's a preliminary step.

21 COMMISSIONER BAEZ: And if it isn't?

22 MR. CULPEPPER: And if it is not, then --

23 COMMISSIONER BAEZ: I mean if the question
24 is still before the court at the end --

25 MR. CULPEPPER: -- you run down the third

1 path that Mr. Twomey was referring to, which is
2 public purpose. And, of course, that's an issue
3 before the courts also. And we believe that we
4 do meet a public purpose, the communities, the
5 municipalities meet a public purpose that is
6 being met inside and outside of its
7 jurisdictional boundaries.

8 COMMISSIONER BAEZ: If the answer to the
9 governmental authority question, whenever it
10 happens, is in the negative, and it undoes the
11 creation of the Water Services Authority and it
12 undoes, in essence, the sale of the utility, are
13 you suggesting that if the sale of the utility
14 were to be pursued yet again, then it would
15 properly be before this Commission for a public
16 -- under a public interest application?

17 MR. CULPEPPER: If it were determined under
18 your statute, 367, and the definition therein
19 that it is not a governmental authority, then it
20 would be again before this Commission.

21 However, I will say that by definition, I
22 believe that -- we believe that we are a
23 governmental authority and are proceeding in
24 that manner, which is part of the reason, as I
25 understand it, that the application has not yet

1 been filed, because we, one, have looked at the
2 statute that indicates when it should be filed,
3 and it can be after the closing.

4 And then we looked at the requirement by
5 the statute as to what the Commission must do
6 with that application. And knowing that we meet
7 the definition of governmental authority, we
8 anticipate the response will be approval as a
9 matter of right. That has been our premise from
10 the start.

11 CHAIRMAN JABER: Mr. Culpepper, on that
12 point, you said something that -- you said that
13 you realistically don't expect all of the court
14 proceedings to be concluded in a year.

15 MR. CULPEPPER: I wish they would, but I
16 think that they will take a while, no doubt.

17 CHAIRMAN JABER: And saying all of that,
18 going back to Commissioner Baez's point about an
19 application, what is the real problem with
20 having an application travel here that
21 realistically will be done well in advance of a
22 year?

23 MR. CULPEPPER: Well, we can close with the
24 litigation pending. Don't misunderstand me.
25 Litigation can be pending, and the closing can

1 occur so long as there is not an injunction or
2 some court order that would restrain the
3 closing.

4 CHAIRMAN JABER: And do you intend --

5 MR. CULPEPPER: And that -- yes. Go ahead.

6 CHAIRMAN JABER: So you do intend to close
7 regardless of the litigation. Does money
8 exchange hands regardless of the litigation?

9 MR. CULPEPPER: Oh, yes, I would expect
10 so. Without an injunction, as I understand it,
11 the closing can occur. If there is some court
12 order that would stop it, then that, of course,
13 would have to be dealt with.

14 CHAIRMAN JABER: Will the operation of the
15 utility change while the litigation is pending?

16 MR. CULPEPPER: So far as I know -- and we
17 have people who can speak to the operation. My
18 understanding is that it will not, that the
19 personnel that are involved with all of the
20 engineering and all of the other activities
21 involved with the current water services
22 corporation will transfer over and be part of
23 the infrastructure of the new authority.

24 CHAIRMAN JABER: And what does that mean?
25 That employees of Gulf Breeze and Milton will be

1 operating the utility?

2 MR. CULPEPPER: That has been my
3 understanding, and I believe that that's
4 correct.

5 CHAIRMAN JABER: Commissioner Baez.

6 MR. CULPEPPER: So in terms of the
7 operation, it will continue. The consumer will
8 not be affected.

9 CHAIRMAN JABER: Then I'm confused.

10 MR. HOFFMAN: Madam Chairman, if I could
11 just interject, it's my understanding that under
12 this transaction, the current employees of
13 Florida water would seamlessly continue the
14 operations of this utility as employees of the
15 Authority. That's sort of one point of
16 clarification.

17 Secondly, in response to Commissioner
18 Baez's series of questions, which Mr. Culpepper
19 very fully responded to, concerning the issues
20 in Circuit Court, I just want to emphasize to
21 you that none of those issues have any bearing
22 on the right of Florida water to file a
23 post-closing application under Chapter 367.

24 COMMISSIONER BAEZ: Unless you're not a
25 governmental authority.

1 MR. HOFFMAN: Irrespective of that,
2 Commissioner.

3 COMMISSIONER BAEZ: If you were not a
4 governmental authority, you could still file an
5 application for approval?

6 MR. HOFFMAN: Without question. That
7 provision in the transfer statute under Chapter
8 367 applies to a governmental buyer or a
9 non-governmental buyer.

10 COMMISSIONER BAEZ: As long as you had a
11 contingency.

12 MR. HOFFMAN: Correct, correct.

13 COMMISSIONER BAEZ: And I guess I have a
14 question for staff.

15 CHAIRMAN JABER: Commissioner Baez.

16 COMMISSIONER BAEZ: I mean, I think --
17 there is a contingency included in the contract
18 after all; correct?

19 MS. HOLLEY: Yes, that's correct.

20 COMMISSIONER BAEZ: And has the staff had a
21 chance to review the adequacy of that
22 contingency? I mean, do you have any opinion of
23 that contingency as it's written?

24 MR. MCLEAN: No, sir, we haven't.

25 In the series of questions you had just

1 asked that Mr. Hoffman says you have received a
2 complete and full answer to, I want to -- staff
3 needs a point of clarification there. Is it the
4 case that the litigation in the various Circuit
5 Courts will address the issue specifically as to
6 whether this -- the acquiring organization is a
7 governmental authority as that term is defined
8 in 367.021? Staff believes that that's not the
9 case, that the result of all that litigation
10 still will not tell you whether this
11 organization is a governmental authority for the
12 purposes of our statute. Is that correct?

13 COMMISSIONER BAEZ: Well, and forgive me.
14 I think that's where I'm -- that's what I'm
15 trying to ascertain. If, you know, the
16 Commission has a responsibility, whether its
17 responsibility and obligation is to grant
18 something as a matter of right or not, it seems
19 to me, depends on another determination. Now,
20 I'm not sure that I have an opinion one way or
21 the other as to where the answer to that
22 question in particular, to that determination is
23 properly placed, whether it's before the court
24 or it's before this Commission. You know, if
25 you want to discuss it, that's fine.

1 MR. CULPEPPER: Commissioner, I think --

2 COMMISSIONER BAEZ: But the question --

3 MR. CULPEPPER: I'm sorry.

4 COMMISSIONER BAEZ: -- is still there. I'm
5 sorry.

6 MR. CULPEPPER: I'm sorry. I think counsel
7 is correct that with respect to the application
8 of 367 to the definition of governmental
9 authority, I don't believe that that specific
10 issue is before any court.

11 COMMISSIONER BAEZ: Well, then how --

12 MR. CULPEPPER: But all of the issues of
13 regulation, Public Service Commission
14 regulation, local government regulation, have
15 all been raised in one suit or another.

16 COMMISSIONER BAEZ: Well, then how are we
17 to know exactly what kind of review we're
18 supposed to give this? All that has ever been
19 maintained throughout this discussion is that
20 somehow the Water Services Authority is entitled
21 to approval as a matter of right. Now, is it
22 your understanding now after all this discussion
23 that somehow this is still some kind of review,
24 some level of review that is due from this
25 Commission in order for the deal to be

1 finalized? Not to be closed, but certainly to
2 be beyond regulatory review. Is that your
3 understanding?

4 MR. CULPEPPER: When the application is to
5 be filed, as provided by the law, then that
6 would be an issue, I suppose, that this
7 Commission would have to determine.

8 COMMISSIONER BAEZ: Well, you know, we can
9 agree or disagree as to when it needs to be
10 filed, whether before closing or --

11 MR. CULPEPPER: Correct.

12 COMMISSIONER BAEZ: -- after, but let's set
13 that aside for the moment.

14 MR. CULPEPPER: All right.

15 COMMISSIONER BAEZ: When it is filed, it is
16 your understanding that this Commission is going
17 to give it some level of review, which in most
18 cases is going to depend on some answer that's
19 currently in litigation, or not?

20 MR. HOFFMAN: Commissioner, if I may, there
21 are issues concerning the status of the
22 purchaser as a 163 entity in litigation.

23 COMMISSIONER BAEZ: Right.

24 MR. HOFFMAN: I don't think that this
25 Commission could do anything more than wait and

1 see how that turns out, which is what the
2 parties are doing before we -- you know, before
3 we file, which we think is our right under the
4 statute, or alternatively assume that it is a
5 valid 163 entity, because interpretations under
6 Chapter 163 are not within the power of the
7 Commission. Once we file our application with
8 the Commission post-closing, as we're entitled
9 to do under the statute, assuming the Commission
10 agrees with our position that the purchaser is a
11 governmental authority under the Commission's
12 statute, there is no further analysis or
13 scrutiny. It must be approved as a matter of
14 right.

15 COMMISSIONER BAEZ: I'm sorry. Can you
16 back up a second? I didn't catch the part --
17 who's determining whether it's a governmental
18 authority under 367?

19 MR. HOFFMAN: The Commission. That would
20 be within the Commission -- it's the
21 Commission's statute.

22 MR. MCLEAN: Commissioner Baez, if I could
23 interject just for a moment, the staff
24 recommendation assumes that the 163 entity which
25 is before you today was correctly formed, is

1 constitutionally constituted. We didn't go into
2 any of those issues. Ours simply assumes that.
3 Our focus is on 367. We don't presume to
4 determine whether Chapter 163 is constitutional
5 or whether the Authority was correctly formed
6 under 163. We assume the affirmative on both
7 those things. Our view is that if it is
8 constitutionally formed -- strike that. Our
9 view is that it is constitutionally formed, that
10 it is as it appears.

11 The question that we lay before you, I
12 think, or that we invite you to consider is
13 whether it's a governmental authority under
14 367.021(7). So we think this is -- I agree with
15 Mr. Hoffman. This is the appropriate forum to
16 make that determination.

17 COMMISSIONER BAEZ: I don't want the
18 General Counsel putting words in your mouth. Is
19 that your interpretation?

20 MR. HOFFMAN: He would never do that,
21 Commissioner. He would never do that.

22 The Commission has previously stated, by
23 treating the Florida Governmental Utility
24 Authority as a governmental authority, that a
25 Chapter 163 entity is to be treated as a

1 governmental authority under the transfer
2 statute. And the Commission certainly has the
3 power to interpret and apply the Commission
4 statutes.

5 MR. MCLEAN: That is the point at which
6 Mr. Hoffman and I differ.

7 CHAIRMAN JABER: Commissioner Davidson --

8 COMMISSIONER BAEZ: Then I'm less --

9 CHAIRMAN JABER: -- has had a question, so
10 I'll --

11 COMMISSIONER BAEZ: Then I'm less
12 comfortable -- I'm less comfortable with the
13 assumption that staff is making, because that
14 question is before a court.

15 MR. HOFFMAN: The question, Commissioner --

16 CHAIRMAN JABER: Let's all talk one at a
17 time, and let me tell you the order. We're
18 going to let Mr. Hoffman address Commissioner
19 Baez's question, we're going to let Mr. McLean
20 follow up, I'm going to let Commissioner
21 Davidson ask his question, and then I understand
22 that Commissioner Bradley has a question.

23 MR. HOFFMAN: There are a number of
24 questions before the court, Commissioner Baez.

25 COMMISSIONER BAEZ: Oh, I'm sure.

1 MR. HOFFMAN: Including legal issues that
2 address the validity of the purchaser as a
3 Chapter 163 entity.

4 COMMISSIONER BAEZ: Which is something that
5 I guess I heard Mr. McLean say we are assuming.

6 MR. HOFFMAN: Correct. And the main point
7 that I have on that is that those determinations
8 are outside the jurisdiction of the Commission.
9 They are within the jurisdiction of the Circuit
10 Court, and they are currently under
11 consideration.

12 CHAIRMAN JABER: Mr. McLean, you wanted to
13 add something?

14 MR. MCLEAN: I agree with what Mr. Hoffman
15 just said. I disagree with Mr. Hoffman on the
16 extent to which we are compelled to do here what
17 we did in an earlier case.

18 CHAIRMAN JABER: Commissioner Davidson.

19 COMMISSIONER DAVIDSON: I have two broad
20 questions, Mr. Hoffman, for you, following up on
21 a point the Chairman made.

22 If this Commission determines prior to the
23 sale that the Authority is not a governmental
24 authority within the statute, and if this
25 Commission finds a basis to conclude that the

1 sale can in fact not be made contingent upon
2 approval after the sale, meaning something can't
3 get done, it in fact cannot be made contingent,
4 what is your legal theory or basis for
5 concluding that this Commission would not have
6 jurisdiction to seek an injunction or some type
7 of equitable relief in court if we received an
8 indication from Florida Water that no matter
9 what you say here, the sale is going to go
10 through?

11 MR. HOFFMAN: Commissioner, first of all,
12 this Commission, just to make sure I understood
13 your question correctly, does not have the power
14 to issue an injunction. So what you are asking
15 me, as I understand it, is --

16 COMMISSIONER DAVIDSON: Correct. You
17 responded to the Chairman that this Commission
18 did not have jurisdiction to go into court and
19 seek an injunction, unless I misunderstood you.

20 MR. HOFFMAN: I did not say that, no. I
21 recommended to the Commission that it not do
22 so. If the Commission desires to go to court on
23 anything, I suppose it could. And I would have
24 to check, but I do believe that Chapter 367 even
25 talks about the Commission pursuing injunctions.

1 My only point, Commissioner Davidson, is
2 that we would hope you would not do so, because
3 I would anticipate that your petition for an
4 injunction would be premised on the theory and
5 the rationale of your staff recommendation. And
6 my only point is, if you adopt that, I believe
7 you are exceeding your statutory authority.

8 COMMISSIONER DAVIDSON: Second question.
9 On section 163, accepting that this Commission
10 may not be the body to determine whether in fact
11 Florida Water Services Authority is a properly
12 created 163 authority, you used a phrase a
13 couple of times in your answers which I found
14 interesting. When talking about the Authority,
15 you have called it a 163 entity. You have not
16 called it a 163 governmental authority. And I
17 would like to raise a couple of issues that
18 appear in 163 and have you address that.

19 163.01(7)(g)1, which I assume is the
20 section you're relying on, does not refer
21 anywhere to a governmental authority, but uses
22 the term "separate legal entity." While that
23 provision relates back to specific statutes, it
24 does not relate to Rule 367.071 or to the
25 definition of a governmental authority in

1 367.021(7).

2 Further, in expressly excluding the power
3 of eminent domain from the authority of a
4 separate legal entity, the Legislature, in my
5 view, seems to have clearly intended that this
6 -- I apologize here -- separate legal entity not
7 be treated the exact equivalent of a city,
8 county, or municipality.

9 So if you could address sort of those
10 points, I would be appreciative.

11 MR. HOFFMAN: Thank you, Commissioner.
12 Just to clarify, when I was referring to a
13 Chapter 163 entity in my prior remarks, I was
14 only attempting to sort of speed things along,
15 and I had always intended to be pointing to
16 section 163.01(7)(g)1. So just so you'll
17 understand, I have been referring --

18 COMMISSIONER DAVIDSON: But that section
19 does not refer to a governmental authority. I
20 mean, I think you were correct in your use of
21 the term "163 entity," as the term "entity" is
22 the term that's used in that section.

23 MR. HOFFMAN: Yes, sir. But to now get to
24 more of the substance of your question, that
25 section does not use the words "governmental

1 authority," but we think that if you take into
2 consideration the fact that, first, the
3 Commission has treated a 163 entity in the past
4 as a governmental authority, secondly, that if
5 you look at the Commission's definition of a
6 governmental authority, you'll see that it
7 includes political subdivisions. Political
8 subdivisions include municipalities. Of course,
9 we have two municipalities who formed this
10 authority.

11 The provision that you're looking at,
12 Commissioner Davidson -- and I'll be very
13 specific. 163.01(7)(g)1 states that an entity
14 that is created under this section shall have
15 all of the privileges and benefits conferred
16 upon municipalities. And then if you go down a
17 little bit further in --

18 COMMISSIONER DAVIDSON: If I can interrupt
19 you, Mr. Hoffman, the words public body or body
20 politic or political subdivision include
21 counties, cities, towns, villages, special tax
22 school districts, special road and bridge
23 districts, bridge districts, and all other
24 districts in the state. I understand the gist
25 of what you're saying, but I don't -- I just

1 don't find the specific support for it in the
2 statute right now.

3 MR. HOFFMAN: Well, I think -- I'm sorry,
4 Commissioner. I think that if you read Chapter
5 163 together with your definition of
6 governmental authority under Chapter 367, it is
7 clear to us that the entity created under
8 Chapter 163 is entitled to all of the privileges
9 and benefits of municipalities. And if you go
10 on later to subsection (9)(c) --

11 COMMISSIONER DAVIDSON: Mr. Hoffman, I'm
12 sorry to interrupt you again, but it's --
13 163.01(7)(g)1 specifically references certain
14 statutory provisions. It does not reference
15 367.071, any part of it. It does not reference
16 367.021. So I understand your argument, but I
17 don't find it based in the specific wording of
18 the statute.

19 MR. HOFFMAN: Commissioner, excuse me. It
20 does reference section 367.171(7). And it says
21 notwithstanding that section, any separate legal
22 entity created under this paragraph is not
23 subject to Commission jurisdiction.

24 So there's no question -- and I say there's
25 no question, Commissioner Davidson, because this

1 provision was enacted after your definition of a
2 governmental authority in Chapter 367, and it's
3 the more specific provision when it comes to
4 this type of entity. So I think --

5 COMMISSIONER DAVIDSON: Are you relying on
6 that provision to say that Florida water is not
7 subject to the jurisdiction of this Commission?

8 MR. HOFFMAN: That the Florida Water
9 Services Authority is not subject to this
10 Commission's jurisdiction; correct, yes.

11 CHAIRMAN JABER: Commissioners, let's --
12 Commissioner Bradley, and then we're going to
13 move forward on the presentations. Mr. Hoffman,
14 I know that you had presentation left, so we'll
15 let you finish, and then we'll go forward.

16 COMMISSIONER BRADLEY: My question is along
17 the same line as Commissioner Baez and
18 Commissioner Davidson.

19 I need to ask General Counsel a question,
20 though. A governmental authority versus an
21 interlocal authority, define governmental
22 authority for me briefly, and define interlocal
23 authority for me.

24 MR. MCLEAN: Commissioner, I can define it
25 for you only as well as the Legislature did in

1 Chapter 367.021, section 367.021. Governmental
2 authority means a political subdivision as
3 defined by section 1.01(8) -- in my mind, that's
4 cities and counties -- a regional water supply
5 authority created pursuant to section 373.1962
6 -- I know of no claim that the receiving entity
7 has made under that section -- or a nonprofit
8 corporation formed for the purposes of acting on
9 behalf of a political subdivision with respect
10 to water and wastewater facilities. This far in
11 the debate, governmental authority, I think from
12 the clear wording of 367.021, is a county or a
13 city.

14 Now, whether it involves a 163 entity,
15 which looks a whole lot like a county or city,
16 is one that's before you today and is yet
17 unresolved. But my reading of Chapter 367.021
18 says it's a county or a city. It does not
19 include something that just happens to look like
20 one or exercise some of the rights and duties of
21 a county or a city.

22 COMMISSIONER BRADLEY: Okay. So what would
23 an interlocal authority be?

24 MR. MCLEAN: I'm sorry, sir?

25 COMMISSIONER BRADLEY: Interlocal,

1 interlocal authority.

2 MR. MCLEAN: May I ask where -- I'm not
3 sure.

4 COMMISSIONER BRADLEY: Well, I'm reading
5 from Mr. Twomey's presentation, and he uses the
6 term "interlocal authority."

7 MR. MCLEAN: I believe Mr. Twomey is using
8 that to refer to a 163 entity. We might have to
9 ask Mr. Twomey. If it is 163, then it's a
10 combination of these political subdivisions
11 which result in a 163 entity. I don't know if I
12 can do better than that.

13 Commissioner, I can't tell you whether a
14 163 is a governmental authority or not, because
15 it is somewhat unclear to me. My conclusion
16 after reading 367.021 is that the Legislature
17 said, in its own way, cities or counties, not
18 combinations of them, not 163 agencies. They
19 didn't speak to that. But that --

20 COMMISSIONER BRADLEY: Just to make sure I
21 heard what you said, the intent of the
22 Legislature was not to define a governmental
23 authority as a combination of two cities. Is
24 that your interpretation of it?

25 CHAIRMAN JABER: Perhaps we should ask you,

1 Commissioner Bradley.

2 MR. MCLEAN: That's kind of the --

3 COMMISSIONER BRADLEY: I wasn't in the
4 Legislature then.

5 MR. MCLEAN: -- ultimate question --

6 CHAIRMAN JABER: Did you think the whole
7 day would go by without --

8 MR. MCLEAN: That's the ultimate question
9 before us. I can only guess what the
10 legislative intent was from what they wrote.
11 And they were very specific when they referred
12 us to the definition in section 1.01(8). And
13 having read that section, in my mind, it refers
14 you to cities and counties.

15 COMMISSIONER BRADLEY: Okay. And one other
16 question, and I'll be finished.

17 CHAIRMAN JABER: Go right ahead.

18 COMMISSIONER BRADLEY: Then how is this
19 august body to determine if we are dealing -- if
20 our focal point is to be in the public interest
21 or as a matter of right?

22 MR. MCLEAN: You have to determine whether
23 they're a 163 entity as it's presented to you,
24 is a governmental authority. If it is a
25 governmental authority, it is entitled to its

1 transfer as a matter of right upon application
2 or upon an adequate contingency. If it's not a
3 governmental authority, again, upon application
4 or adequate contingency, you have to determine
5 whether the transfer serves the public
6 interest.

7 The seminal question here for you is to
8 determine whether the entity, the receiving
9 entity is a governmental authority. And I've
10 given you my opinion.

11 COMMISSIONER BRADLEY: The receiving
12 entity?

13 MR. MCLEAN: Yes, sir.

14 COMMISSIONER BRADLEY: Okay.

15 CHAIRMAN JABER: Mr. Hoffman, we're going
16 to let you continue.

17 Mr. Twomey, I know you probably have a
18 response. We're going to wait until the end.
19 But we have a lot to do, so --

20 MR. HOFFMAN: Madam Chairman, I'll try to
21 move this along, because I know I've had the
22 opportunity to answer some questions, but to get
23 directly to Commissioner Bradley's inquiry --

24 CHAIRMAN JABER: Go right ahead.

25 MR. HOFFMAN: We obviously, I think for

1 the reasons that I've stated, believe that the
2 purchaser in this case is a valid 163 entity
3 and is a governmental authority under the
4 Commission's statute. We didn't have any reason
5 to believe otherwise based on the Commission
6 precedent.

7 But we want to let you know that in the
8 definition of a governmental authority, as
9 Mr. McLean stated, it does include a nonprofit
10 corporation formed for the purpose of acting on
11 behalf of a political subdivision with respect
12 to a water or wastewater facility. Again, even
13 without that provision, we believe we're a
14 governmental authority.

15 But this Authority has the power to become
16 such a nonprofit corporation acting on behalf of
17 the cities of Gulf Breeze and Milton under
18 section 3 of the interlocal agreement and is
19 today and has today filed the appropriate papers
20 to become a nonprofit corporation. So to the
21 extent that there has been any debate or doubt,
22 even in Mr. Twomey's remarks, I think it is now
23 perfectly clear and must be clear that this
24 entity is a governmental authority under the
25 Commission's definition of a governmental

1 authority.

2 CHAIRMAN JABER: Mr. Hoffman, is that a
3 modification to your argument or -- I'm sorry.
4 You've lost me there. I was trying to do a good
5 job following your logic.

6 MR. HOFFMAN: Yes, ma'am. Let me go back
7 then just very briefly. Our position is that we
8 are a governmental authority because the
9 Commission has treated similar entities as
10 governmental authorities. That's the first.

11 CHAIRMAN JABER: And you're saying if that
12 doesn't work --

13 MR. HOFFMAN: And if that doesn't work,
14 secondly, that the definition of a governmental
15 authority includes municipalities, and that
16 under Chapter 63 -- 163, excuse me, we are
17 entitled to the same privileges, rights, and
18 exemptions as municipalities, we being, I'm
19 sorry, the purchaser, Mr. Culpepper's client.

20 And now I'm saying, third, that we have
21 today formed a nonprofit corporation acting on
22 behalf of these municipalities. And therefore,
23 it is clear, we think --

24 CHAIRMAN JABER: When did you do that?

25 MR. HOFFMAN: Today.

1 COMMISSIONER BRADLEY: Today.

2 CHAIRMAN JABER: Today.

3 MR. HOFFMAN: Today.

4 CHAIRMAN JABER: So is your contract going
5 to be -- contract for sale going to be modified
6 to reflect that?

7 MR. HOFFMAN: No.

8 CHAIRMAN JABER: It doesn't need to be?

9 MR. HOFFMAN: No, ma'am.

10 CHAIRMAN JABER: All right, Mr. Hoffman.
11 Anything else?

12 MR. HOFFMAN: Yes, ma'am.

13 CHAIRMAN JABER: Go ahead.

14 MR. HOFFMAN: Okay. I believe that I was
15 talking about the issue of post-closing
16 applications and the Commission's prior
17 precedent in connection with sales to
18 governmental authorities. And I just want to go
19 back to that and say if the Commission were to
20 deviate from that precedent in connection with
21 this transaction, as you've already heard, this
22 particular contract does require Commission
23 approval. So we believe that you would be
24 acting in derogation of your statutory authority
25 to require Florida water to file any type of

1 application before closing, because we have the
2 contingency clause in the contract.

3 Commissioners, I've talked to you, and I've
4 just gone through with the Chairman our reasons
5 why we believe we qualify as a governmental
6 authority under the Commission's statute.

7 Under the case law, Commissioners, we have
8 a right -- and by example, I'll refer you to the
9 Amos vs. HRS case, a First District decision at
10 444 So.2d 43 -- to research and locate an
11 agency's precedent and to have it apply, and the
12 right to know the factual basis and the policy
13 basis for agency action. In that decision, as
14 well as other decisions from the First District,
15 the Court has said inconsistent results based
16 upon similar facts without a reasonable
17 explanation violate not only the Administrative
18 Procedure Act, but the equal protection
19 guarantees of both the Florida and United States
20 Constitutions.

21 So what we are saying, Commissioners, is
22 that in this case, we went out and we located
23 the only prior Commission decision addressing a
24 sale of assets by a regulated utility to a
25 section 163.01(7)(g)1 governmental authority,

1 and we found in that order that the authority
2 was treated as a governmental authority, and the
3 transaction was approved as a matter of right
4 under 367.071(4)(a).

5 Under the Amos decision, we have the right
6 to have that precedent apply to our sale to the
7 Authority, and to deviate from that would
8 violate Florida Water's constitutional right of
9 equal protection.

10 The Commission's prior treatment of the
11 FGUA transaction a couple of years ago,
12 Chairman, was the only legally sound course of
13 action. The term "governmental authority" under
14 your statute includes municipalities. And as
15 I've stated, Chapter 163 confers the same
16 privileges, benefits, and exemptions from laws
17 to an entity formed under Chapter 163 that are
18 available to municipalities.

19 I've mentioned to you also that we have
20 formed a nonprofit corporation, and therefore,
21 the buyer now clearly is, in the words of your
22 statute, a nonprofit corporation formed for the
23 purpose of acting on behalf of a political
24 subdivision with respect to a water or
25 wastewater facility.

1 Commissioners, we believe that the notion
2 that --

3 CHAIRMAN JABER: Have you shared the
4 articles or bylaws with our staff?

5 MR. HOFFMAN: No, ma'am, I have not.

6 The notion that this transaction should be
7 treated under the public interest application
8 section, despite your controlling precedent,
9 can't be harmonized with the entire transfer
10 statute. Under subsection (4)(b) of your
11 transfer statute -- and that's 367.071 -- it
12 states when the sale of facilities is not to a
13 governmental authority, the Commission shall
14 amend the certificate of authorization to
15 reflect the change resulting from the sale. And
16 then subsection (5) goes on to authorize the
17 Commission to establish the rate base for the
18 purchaser, except when the sale is to a
19 governmental authority.

20 These statutes clearly contemplate that a
21 sale under 367.071(1) involves a sale to an
22 entity that will be subject to continuing
23 Commission jurisdiction. Here, as we previously
24 discussed, there would be no continuing
25 Commission jurisdiction over the Florida water

1 Services Authority because, no matter what the
2 debate may be about the exemption provisions in
3 your statute, the later enacted statute,
4 163.01(7)(g)1, clearly states that this
5 purchaser is not subject to Commission
6 jurisdiction.

7 Finally, Madam Chairman, just to get back
8 to a point that you had raised earlier, we
9 believe that if you were to abide by the staff's
10 recommendation, your action would be both
11 unlawful and unconstitutional, and that the only
12 possible approach of this -- to handle the staff
13 recommendation, if you were to approve it, would
14 be to treat it as a proposed agency action.
15 Simply put, any action that would compel Florida
16 water to file an application that we believe to
17 be in derogation of your statutory authority
18 clearly affects Florida water's substantial
19 interests and could only be issued as a proposed
20 agency action.

21 Finally, Commissioners, I just want to
22 reiterate that this Commission is without
23 authority to issue an injunction, and we believe
24 it would be inappropriate for the Commission to
25 pursue an injunction from a Circuit Court,

1 because by doing so, we think that the
2 Commission will be advocating a position that
3 is in excess of the Commission's statutory
4 authority.

5 So for all those reasons, Madam Chairman
6 and Commissioners, we believe that the most
7 appropriate course of action and the only lawful
8 course of action would be to deny the staff
9 recommendation.

10 CHAIRMAN JABER: Thank you, Mr. Hoffman.

11 Mr. Culpepper, did you have prepared
12 remarks on behalf of the Authority?

13 MR. CULPEPPER: Yes, ma'am, if I may. And
14 I'll pare them down in light of the questions
15 that we've already gone through.

16 As you know, I represent Florida Water
17 Services Authority, which was created,
18 Commissioner Bradley, by an interlocal agreement
19 under Chapter 163. I also represent the
20 citizens of the City of Milton and the citizens
21 of the City of Gulf Breeze, which were the two
22 cities that created through interlocal agreement
23 the Authority.

24 From the outset, these cities and the
25 Authority have followed the law -- and that was

1 the admonition that you got from Mr. Twomey from
2 the very start, follow the law -- to the letter.
3 It is very clear. It is not ambiguous. We
4 haven't tried in any manner, or the Authority
5 hasn't, nor the cities, to utilize a loophole or
6 to expand upon some questionable interpretation
7 of the statute. It is very clear.

8 Section 163.01(7)(g)1, which you are
9 familiar with, and which I've said many times
10 before courts and will many more times,
11 absolutely is straightforward in terms of what
12 power and authority these cities have in forming
13 the interlocal -- through interlocal agreement
14 the authority to purchase the water and
15 wastewater system. It was the intent of the
16 Legislature, clearly stated.

17 Mr. Twomey is trying to use the Commission
18 to accomplish what he has not been able to
19 accomplish yet in court. There are a number of
20 lawsuits filed, many by him and his clients and
21 many by other counties, that address all of the
22 issues that have been raised before you.

23 You heard an issue of transfer of powers
24 and the constitutional issue. That's before the
25 courts. That's not before this Commission,

1 particularly on the agenda item that's before
2 you today. And we will deal with those, and we
3 have responded to those. And we believe, for
4 instance, with regard to transfer of powers, of
5 the county powers to the Authority, we've
6 pointed out that in the Constitution and in the
7 statutes relating to counties that they are
8 subject to general or special law. They are
9 subject to the intention and the direction of
10 the Legislature.

11 And so when the Legislature then issues
12 another law which says that authorities can buy
13 water services as an interlocal agreement, then
14 if there is an inconsistency between the
15 transfer powers that are set in the statutes, in
16 that statute, which is clear, the statute under
17 which we're operating, then clearly the
18 Legislature has spoken and has said that the
19 Authority is entitled to that and that there
20 will be a transfer of powers. But those are
21 issues not to be determined by this Commission,
22 as Commissioner Baez has pointed out also.

23 The only issue, as I understand it, here
24 today for you is, should there be an application
25 filed today, or before the closing. I read the

1 statute, and when I read it, honestly, I said,
2 "I must be missing something." I read the
3 statute. The Legislature knows what it's
4 doing. That's presumed. And that's a command
5 for state agencies, is what the Legislature
6 says, and it says that they can do it after as
7 well as before.

8 Now, we are a nonprofit corporation.
9 Clearly, looking at the statute, that makes,
10 without a doubt, the issue of governmental
11 authority not one that I think is in doubt.

12 We believe because of the wording of 163
13 giving to the Authority the same privileges and
14 immunities as a municipality, that that would
15 apply to all of the statutes, and that also
16 would then apply to 367 and as to a
17 determination of governmental authority.

18 I believe perhaps a predecessor Commission
19 must have decided the same thing with regard to
20 the FGUA. I don't know the premise under which
21 that previous decision was made that has been
22 referenced. But that's justified under the
23 statute if you read that statute, so I
24 understand that decision. But this is broader
25 now, because we now are before you as a

1 nonprofit corporation.

2 I do have the articles. They're right
3 here, as a matter of fact, and they're still
4 warm. But they're here.

5 So I want to say to you that the
6 Legislature knew what it was doing. I did look,
7 and you will look, and your staff has looked at
8 the legislative history of 163, to look back and
9 say, "Okay. Was there something devious? Was
10 there something that was misunderstood in
11 there?"

12 And I looked in this bill -- 163 was in
13 1969, essentially, the Interlocal Cooperation
14 Agreement -- or Act, excuse me. But it was
15 amended in '97 to add this provision that we're
16 discussing today, and that was with House Bill
17 1323. And the staff analysis of 1323 states
18 very specifically that the Legislature knew what
19 it was doing when it said, "It clarifies that
20 cities and counties may create special legal
21 entities through interlocal agreements that can
22 own and operate water or wastewater facilities
23 for the use of their own residents or customers
24 outside of their boundaries."

25 That's one of the issues before the court,

1 of course, and the many courts, is whether you
2 can operate an authority in an
3 extrajurisdictional boundary through the state.
4 That will be determined. We'll argue that.
5 That's not before the Commission, but clearly is
6 an issue.

7 And other statements made within the
8 legislative history and the committee reports
9 indicate that the Legislature well knew what it
10 was doing.

11 So we are following the clear statute as
12 it's provided and as it's given to the powers of
13 the municipalities. A municipality -- Gulf
14 Breeze and Milton are creatures of statute.
15 They can do no more than what the Legislature
16 will allow them to do or directs them to do.
17 And their powers can be constricted or can be
18 enlarged. That is the law. And so they are
19 subject directly to only what can be directed or
20 determined by the State. What they do must have
21 a municipal -- excuse me. I should say this.
22 What they do should have a public purpose, just
23 as what the State may do should have a public
24 purpose.

25 But the municipality is not confined to a

1 municipal purpose. It may also carry on a state
2 purpose if that is directed to it by the State
3 Legislature. And I contend on behalf of our
4 clients and the citizens of Gulf Breeze and
5 Milton that the Legislature imposed, or gave to,
6 or granted, or empowered those cities and all
7 counties and cities to take on a state public
8 purpose.

9 And you know, I'm not even guessing. I'm
10 actually citing directly to the statute, because
11 this is what the Legislature said to Milton and
12 Gulf Breeze. "The accomplishment of the
13 authorized purposes of a legal entity created
14 under this paragraph" -- and this is the same
15 paragraph as our (g), the famous (g)1; this is
16 (g)4 -- "is in all respects for the benefit of
17 the people of the state, for the increase of
18 their commerce and prosperity, and for the
19 improvement of their health and living
20 conditions." That's the Legislature speaking to
21 the two cities that formed the Authority
22 specifically as it was allowed under the
23 statute, and now they proceed.

24 There are issues to be determined. We
25 believe they're clear. They are court issues

1 before the courts and not before this
2 Commission. The specific issue again in coming
3 back before this Commission is, what is it that
4 we have to do when we look at 367? And that is
5 very specific too. Before or after the closing,
6 the selling entity, which is subject to your
7 jurisdiction, Water Services Corporation, must
8 file an application.

9 And as we go forward and must account to
10 future investors, et cetera, we then look to see
11 what happens next when the application is filed,
12 and we look at the definition of governmental
13 authority, and we understand by that definition
14 that is in the statute, unchanged today, what it
15 is that the Commission would do.

16 CHAIRMAN JABER: Mr. Culpepper, who do you
17 believe you're accountable to?

18 MR. CULPEPPER: I personally?

19 CHAIRMAN JABER: No.

20 MR. CULPEPPER: I'm accountable to my
21 client, so I'm accountable to the citizens of
22 Milton, Gulf Breeze, and the Authority that they
23 formed.

24 CHAIRMAN JABER: I didn't mean you
25 personally. I mean in terms of the governmental

1 authority.

2 MR. CULPEPPER: I'm sorry.

3 CHAIRMAN JABER: The GUA. Who does the GUA
4 believe it's accountable to?

5 MR. CULPEPPER: Oh, okay. Under the
6 statute, as I understand it, it's accountable to
7 the forming municipalities, so it is accountable
8 to the cities, Milton and Gulf Breeze.

9 CHAIRMAN JABER: Okay. I interrupted you.
10 Go ahead.

11 MR. CULPEPPER: And if the Legislature has
12 spoken differently, I haven't seen it. I
13 believe that's exactly what the Legislature said
14 is the way it was to be.

15 CHAIRMAN JABER: Did you read me something
16 that said that the Legislature said that the
17 public purpose had to be representative of
18 interests of the state? Is that what you --

19 MR. CULPEPPER: No, no. What I said was,
20 under statute -- and these are arguments that
21 will be used in court. And as you understand,
22 many of the statements that were made really
23 will be addressed more properly in another
24 forum. But what I said was that municipalities
25 have a public purpose and that they may also be

1 instilled, may be empowered with a state purpose
2 by the Legislature, if specifically the
3 Legislature will do that and empower that upon
4 counties or cities, which we argue in this case
5 has been done by (7)(g)1.

6 So we have followed from the start the
7 statute. We've taken the Legislature at their
8 word.

9 I heard today by the legislators that spoke
10 to you speeches on the floor, speeches
11 concerning maybe other legislation. But with
12 regard to the existing statute today and what it
13 is, it is very clear. We have not tried to
14 deviate in any manner from those very specific
15 provisions in it.

16 And we had expected with regards to the
17 timing in the application that the specific
18 wordings of the statute would be followed by
19 this Commission, as well as everyone else,
20 unless the statute changes ultimately. And so
21 we go through that.

22 Now, one more point. There was some
23 reference by one of the speakers that this
24 authority would not be responsive to the public
25 or to the citizens. There has been no evidence

1 whatsoever that has been brought out in any of
2 the pieces of litigation that have been filed
3 all over the state so far, and in their infancy
4 really, that has suggested in any manner that
5 this Authority would not be responsive to the
6 consumers.

7 The Authority so far has bent over
8 backwards to try to get over the fact that this
9 is a large state, it's a large area of service,
10 and they, of course, have to be at an available
11 spot to be able for people to have input and to
12 talk to them and be available. But the
13 Authority has bent over backwards to do that.

14 The Authority has said with regard to rates
15 that rates are going to be approved by
16 committees that are involved with
17 representatives, I believe, from, if willing,
18 the Public Service Commission, wastewater
19 management districts, certainly consumers. They
20 have bent over backwards and will continue to do
21 that, and must, because they're public entities.

22 CHAIRMAN JABER: I'm sorry. You lost me
23 there.

24 MR. CULPEPPER: Pardon me?

25 CHAIRMAN JABER: With respect to the rates,

1 the Authority has said that rates would be
2 approved by committees that are made up of
3 what?

4 MR. CULPEPPER: I understood that one of
5 the provisions that is being considered, and it
6 may be stamped in -- as far as I know, I read it
7 in a point item, that there would be certainly
8 input, if not the decision made by consumers,
9 representatives of Public Service, wastewater
10 management systems, and I think DER, I believe,
11 also, actually.

12 CHAIRMAN JABER: Well, you've confused me.

13 MR. CULPEPPER: But the point --

14 CHAIRMAN JABER: Let's stay on that point.

15 MR. CULPEPPER: All right.

16 CHAIRMAN JABER: Because if the sale is
17 approved as a matter of right, as your client
18 and the company want us to accept, then the
19 authority is completely outside -- becomes
20 outside the jurisdiction of this Commission.

21 MR. CULPEPPER: That's correct.

22 CHAIRMAN JABER: But at the same time, you
23 think that the PSC can serve on a committee that
24 would approve rates?

25 MR. CULPEPPER: I don't know. I really --

1 that's why I said if the PSC or any
2 representative thereof is willing. But it's
3 certainly something that the Authority has
4 indicated a willingness to attempt, in an
5 attempt to include more than just simply an
6 internal decision process in terms of rates or
7 anything that may affect the customers
8 throughout.

9 CHAIRMAN JABER: You know what that says to
10 me, though, Mr. Culpepper? That says to me that
11 your client is not really opposed to the
12 Commission taking a look at this. And I'm going
13 to put you on the spot and sort of cut to the
14 chase.

15 What is your client's real objection to the
16 PSC taking a look at the information? If
17 anything, that may help you at the end of the
18 day. If in our review process we say, "You're
19 right. It is a slam dunk governmental
20 authority, and this sale should be approved as a
21 matter of right," that's not bad for your
22 clients. I'm going to put you on the spot and
23 make you tell me what exactly their objection
24 is.

25 MR. CULPEPPER: This is -- this entire

1 transaction has so many incredible pieces that
2 must be put together. I mean, this is the first
3 one that has gone this far in this kind of a
4 transaction. There are so many pieces of this
5 to be put together. When you go down your
6 checklist, one of the checklists was PSC for the
7 seller, when do we have to do that in the time
8 line in order to accomplish the sale?

9 Well, we don't need to do it now, because
10 the statute clearly says we don't have to, that
11 we can do it post if we make the sale contingent
12 upon their approval. And I think that's
13 probably as far as that decision has gone.

14 So I don't think there's some --

15 CHAIRMAN JABER: That's very helpful. So
16 the question --

17 MR. CULPEPPER: I don't think there's some
18 deliberate statement to say we oppose, we're
19 against. I don't believe that there has been
20 the opposite of that either, frankly, because
21 what we're trying to do is go down the time line
22 to get it done as quickly as we can. It's a
23 matter of interest rates and things of that
24 nature.

25 Now, if there have been other comments like

1 that among the parties, I wasn't present.

2 CHAIRMAN JABER: Okay. That's very
3 helpful. So the question that you all have not
4 deliberated on is what do we have to lose by
5 having the PSC review the application prior to
6 closing.

7 MR. CULPEPPER: I haven't, but I do know --
8 well, I can tell you one thing that could be
9 lost, and that would be the time involved. And
10 I can answer that without having been in those
11 conversations. I think that the process of that
12 may delay what no one wants to delay. I mean,
13 we want to move --

14 CHAIRMAN JABER: So might the litigation;
15 is that correct?

16 MR. CULPEPPER: Pardon?

17 CHAIRMAN JABER: So might the litigation.

18 MR. CULPEPPER: Some like? Did you say
19 like litigation?

20 CHAIRMAN JABER: You said in terms of
21 delay, the issue would be delay. And what I
22 just asked was the litigation has the potential
23 of delay.

24 MR. CULPEPPER: That is the objective of
25 the litigation, clearly, which is why I think

1 that the Commission is being asked to do the
2 same thing or being used in the same manner.

3 CHAIRMAN JABER: Commissioner Bradley, you
4 had a question.

5 COMMISSIONER BRADLEY: Yes. Earlier the
6 statement was made that you all had formed a
7 nonprofit corporation. Would you describe for
8 our purposes your board, who your chair is, who
9 your vice chair is, your treasurer?

10 MR. CULPEPPER: You know, I've got the
11 executive director of the Authority here who
12 could answer that if you want that.

13 CHAIRMAN JABER: Commissioner Bradley, he's
14 coming up.

15 COMMISSIONER BRADLEY: Yes.

16 MR. CULPEPPER: This is Mr. Ed Gray. If
17 you would like to get the specifics on the
18 organization and so forth, I think he's more
19 capable of doing that than I am, Commissioner
20 Bradley.

21 CHAIRMAN JABER: No problem. Just
22 identify your name, please, for the record.

23 MR. CULPEPPER: And if I may --

24 COMMISSIONER BRADLEY: And also, for our
25 purposes, would you describe somewhat what their

1 expertise is, that is, why they're qualified to
2 serve on the board?

3 MR. CULPEPPER: Okay. I think he can do
4 that.

5 COMMISSIONER BRADLEY: Of your nonprofit.

6 MR. CULPEPPER: I'm trying to see if I
7 could wind up with any other statement that I
8 had.

9 I wanted to make the point to you that
10 there was sensitivity -- oh, that's it. One of
11 the public purposes, I mentioned to you the
12 general public purpose that the Legislature has
13 indicated, that this is clearly a benefit to the
14 state, and that the counties or municipalities
15 that form the Authority to buy the water service
16 is empowered with a state purpose and a state
17 public interest in order to do so.

18 Clearly, as to this transaction, this
19 transaction is the transfer of an ownership from
20 ultimately Minnesota, as it was described by an
21 earlier speaker, to Florida municipalities, from
22 a privately owned to a publicly owned entity
23 and controlled entity which is subject to all of
24 the rules within the State of Florida of open
25 access and so forth with regard to their

1 decisions, which they assiduously are following
2 and have followed.

3 And this is one of the benefits, of course,
4 as well as the second one, which is the
5 maintenance of this consolidated entity. This
6 again is specific to this transaction, as
7 opposed to dismembering it into separate water
8 services throughout the state, which will inure
9 to the benefit of economies of scale, through
10 engineering, through consumer relationships, and
11 so forth. These are definite benefits that have
12 been identified and have been brought to the
13 attention of the courts who are making these
14 decisions.

15 So for my final comment, I believe if the
16 Commission can keep its eye on the ball as to
17 what is before you, which is an issue simply of
18 what does your statute say with regards to the
19 timing of applications -- and I read it pretty
20 straightforward that if there is a provision
21 within the contract, which you now know there
22 is, and which apparently was not known at the
23 time of the recommendation, but if there is a
24 contingency within the contract, it can be filed
25 post-closing.

1 Thank you. Mr. Gray I think is here to
2 respond to Mr. Bradley if you had a question, or
3 I'll be glad to also.

4 CHAIRMAN JABER: Identify yourself for the
5 record, please.

6 MR. GRAY: Commissioners, my name is Ed
7 Gray.

8 CHAIRMAN JABER: Commissioner Bradley,
9 Mr. Gray wanted to respond to your question
10 about the nonprofit question.

11 COMMISSIONER BRADLEY: Thank you.

12 MR. GRAY: Commissioner, if I recall your
13 question correctly, it was as to who are the
14 members of the board for the nonprofit, and it
15 is the same three individuals who are the
16 members of the Florida Water Services Authority
17 board created through the interlocal agreement.

18 COMMISSIONER BRADLEY: And will you
19 describe those individuals to us, those
20 individuals? We've had some level of discussion
21 about expertise and the fact that this entity
22 will have a statewide purpose. And I guess you
23 can tell by some of the presenters today that
24 some people are not quite convinced that that's
25 the case, so could you tell us a little bit

1 about the individuals who --

2 MR. GRAY: Yes, sir.

3 COMMISSIONER BRADLEY: Who are on the
4 board?

5 MR. GRAY: The individuals are all
6 community-minded persons having a background of
7 such. One individual who presently resides in
8 Jacksonville, Florida, was a member of the Gulf
9 Breeze City Council, serving for a dollar a year
10 for a number of terms, and presented time and
11 again a dedication to public service through
12 that effort.

13 Another member is a retired dentist who has
14 served on local emergency medical boards and
15 fire department boards of Gulf Breeze and has
16 again dedicated himself to public service
17 through no compensation time and again.

18 The other member appointed by the City of
19 Milton is currently an insurance agent,
20 successful in that business, and formerly a
21 County Commissioner, who understand the
22 obligations of public service.

23 Those three individuals also understand the
24 expertise of this operational utility vests in
25 the employees of the utility, who know the

1 system, who understand the proper service to be
2 delivered.

3 And therefore, from the outset of the
4 formulation of the Authority, their premise for
5 the purchase was that employees of importance to
6 the operation would through a contract move to
7 the Florida Water Services Authority, as
8 employees of that Authority, to continue to
9 operate the utility in a proper manner. So they
10 through contract intend to hire the senior
11 management that formerly worked for Florida
12 Water Services Corporation.

13 Those senior managers have indicated a
14 desire to continue to operate under Florida
15 Water Services Authority as employees of
16 theirs. And in fact, as recently as last week,
17 all of the employees of Florida Water Services
18 Corp. were introduced to the employee benefit
19 package that would be available to them if they
20 were to enlist as employees of Florida Water
21 Services Authority.

22 So the intent is to keep a cohesive group
23 of individuals who by their background and
24 experience can operate the utility and remain as
25 employees of the Authority to do so. They will

1 be under contract to be there for a number of
2 years, to have a continuity of management, and
3 that would be the plan being implemented and so
4 far is underway.

5 So, Commissioners, these individuals have a
6 record of public service as far as board
7 members, but certainly don't present themselves
8 as utility managers and intend to hire current
9 staff who have that expertise to manage under
10 their employ as Florida Water Services
11 Authority.

12 CHAIRMAN JABER: Mr. Culpepper, did you
13 have anything else to add?

14 MR. CULPEPPER: No, ma'am. Thank you.

15 CHAIRMAN JABER: Here's what we're going to
16 do, Commissioners. We're going to take a half
17 an hour break, because we have a lot more to do,
18 and three Commissioners have a panel to get back
19 to after this item. So we'll take a half an
20 hour break.

21 And, Mr. McLean, next on my list are the
22 local governments.

23 MR. McLEAN: Yes, ma'am. And I was hoping
24 you would invite them to meet with me during the
25 break so that we can work out a rational order

1 of presentation.

2 COMMISSIONER DEASON: Madam Chairman, I do
3 have one question for Mr. Culpepper when we come
4 back.

5 CHAIRMAN JABER: Oh, okay. Thank you.

6 Yes, Mr. McLean, seek them out and see if
7 there's a suggested order.

8 (Lunch recess.)

9 (PROCEEDINGS CONTINUED IN VOLUME 2.)

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1
2 CERTIFICATE OF REPORTER3
4 STATE OF FLORIDA)5 COUNTY OF LEON)
6

7 I, MARY ALLEN NEEL, do hereby certify that the
8 foregoing proceedings were taken before me at the time
9 and place therein designated; that my shorthand notes
10 were thereafter transcribed under my supervision; and
11 that the foregoing pages numbered 1 through 120 are a
12 true and correct transcription of my stenographic
13 notes.

14 I FURTHER CERTIFY that I am not a relative,
15 employee, attorney or counsel of any of the parties,
16 or relative or employee of such attorney or counsel,
17 or financially interested in the action.

18 DATED THIS 28th day of February, 2003.
19
20

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