

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
Registered Professional Reporter

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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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CONTINUATION OF PROCEEDINGS

CHAIRMAN JABER: All right. Let's pick it up where we left it. . .

Commissioner Deason, you had a question of Mr. Culpepper.

COMMISSIONER DEASON: Yes, that's correct.

MR. CULPEPPER: Yes, sir.

COMMISSIONER DEASON: Mr. Culpepper, I believe you indicated in your presentation that the selling entity, which in this case is Florida Water Services, must file an application; is that correct?

MR. CULPEPPER: That's the way I read the statute. It appears that way.

COMMISSIONER DEASON: And it's your position that that application would be filed after the closing; correct?

MR. CULPEPPER: That's the way I read the statute.

COMMISSIONER DEASON: Now, does the statute give Florida Water the right to not file that application until after the closing, or is it just permissible?

MR. CULPEPPER: I'll look and see. I mean, I know you're more familiar with that than I am.

1 I think it addresses the sale as opposed
2 to the filing, doesn't it? It says the sale --
3 a sale may occur prior to Commission approval if
4 the contract -- let's see. All right. You were
5 asking for -- you know what? I don't know.

6 COMMISSIONER DEASON: We'll just talk about
7 in terms of the sale then. The sale may take
8 place prior to the filing.

9 MR. CULPEPPER: Uh-huh.

10 COMMISSIONER DEASON: Does that in any way
11 limit this Commission's discretion to require an
12 application before the closing, before the sale
13 is consummated?

14 MR. CULPEPPER: I don't know without
15 studying that. And maybe I can have -- after
16 the next presentation, I'll see if I -- I'll
17 render an opinion, but I don't know on the spot.

18 COMMISSIONER DEASON: Very well. Thank
19 you.

20 MR. CULPEPPER: But I understand the
21 question, and I'll try to respond.

22 CHAIRMAN JABER: Commissioner Baez.

23 COMMISSIONER BAEZ: Just a follow-up along
24 those same lines. The reference in the statute
25 to contingency, a contingency which you all have

1 provided us, what kind of -- to your
2 understanding, under the statute, what kind of
3 -- is this discretionary? I mean, is your
4 creation of the contingency or your crafting of
5 the contingency a discretionary matter with the
6 parties to the contract, or is it something that
7 the Commission has to approve, or at the very
8 least review?

9 MR. CULPEPPER: The contingency?

10 COMMISSIONER BAEZ: Yes.

11 MR. CULPEPPER: The contingency itself?
12 May I take both of these and look at the same
13 statute and maybe have a response to you
14 shortly, if I could, Chairman?

15 CHAIRMAN JABER: That's fine with me.

16 MR. HOFFMAN: Chairman, may I briefly
17 respond to each of those questions?

18 CHAIRMAN JABER: Mr. Hoffman.

19 MR. CULPEPPER: If I could defer to
20 Mr. Hoffman, he's the one who's more familiar
21 with the PSC statute than I.

22 MR. HOFFMAN: Commissioner Deason, our
23 position would be that under that statute, the
24 utility is authorized to close on its
25 transaction and file the application after that

1 closing, if the contract contains the
2 contingency. The utility would also be
3 authorized to file the application before
4 closing. But under this statute, the utility
5 has the right to come in after the closing.
6 That's how we view an appropriate interpretation
7 of the statute to be.

8 CHAIRMAN JABER: He asked a little bit
9 different type of question.

10 COMMISSIONER DEASON: But my question is,
11 does that limit the Commission's discretion or
12 our ability -- realizing we regulate Florida
13 Water Services right now, do we have the ability
14 to require that application to be filed before
15 the closing?

16 MR. HOFFMAN: No, sir. I don't think that
17 the -- and I was trying to make that sort of a
18 focal point of my presentation. I think the
19 Commission could exceed its statutory authority
20 if it compelled Florida water, the regulated
21 utility, to file that application before the
22 closing.

23 COMMISSIONER DEASON: And you think the
24 statutory language which gives the selling
25 utility the authorization to file after closing

1 somehow limits the Commission's ability to
2 require that filing before closing?

3 MR. HOFFMAN: Yes, sir. I think that would
4 be both inconsistent with your precedent and in
5 violation of the statute.

6 CHAIRMAN JABER: Okay. We're at the stage
7 of hearing from the local governments.

8 COMMISSIONER BAEZ: Can I pose my question
9 to Mr. Hoffman then?

10 CHAIRMAN JABER: Yes, absolutely,
11 Commissioner.

12 COMMISSIONER BAEZ: Regarding the
13 contingency, what review, what discretion, what
14 -- you know, what responsibility does this
15 Commission have over that contingency?

16 MR. HOFFMAN: I think that -- Commissioner
17 Baez, I think that the contingency itself is a
18 matter of language that is crafted by the
19 selling and purchasing parties, as it has been
20 in this case. And so unless the Commission were
21 to find that somehow the language in an
22 agreement does not create the type of
23 contingency which gives the utility the right
24 that I believe it gives the utility under the
25 statute, then I think that the contingency gives

1 the utility a post-closing application right.

2 COMMISSIONER BAEZ: And just let me be
3 clear about what you're suggesting. Is it that
4 on some level and to some extent, there is
5 review by the Commission of the contingency in
6 order for that post-closing right to be
7 applicable?

8 MR. HOFFMAN: I don't think I've ever seen
9 that done, Commissioner. I don't recall any
10 precedent where the Commission has reviewed the
11 language itself.

12 COMMISSIONER BAEZ: Well, I think you put
13 it in the negative. In your example, you said
14 something to the effect of unless the Commission
15 has -- I forget what you said, but an objection
16 or some concern over the way the contingency is
17 drafted or something. That to me implies that
18 there is some review. You know, it has to be
19 either I don't have a problem or I do have a
20 problem.

21 MR. HOFFMAN: I think that's right.
22 Commissioner, I think that this Commission has
23 the right to interpret and apply its statutes,
24 and so it -- the statute here contains the
25 language, if the contract for sale is made

1 contingent upon Commission approval. The
2 language in this contract says the sale and
3 transfer of the assets pursuant to this
4 agreement is contingent upon approval by the
5 Florida Public Service Commission and the other
6 applicable county regulatory agencies.

7 COMMISSIONER BAEZ: And do you agree with
8 me that the Commission at least has to have some
9 sign-off as to the adequacy of that
10 contingency, no matter how it's drafted?

11 MR. HOFFMAN: Yes.

12 CHAIRMAN JABER: All right. Counties?

13 Mr. McLean, I asked you to figure out which
14 counties were here.

15 MR. MCLEAN: Yes, ma'am. Mr. Jenkins has
16 undertaken that task, and I think done admirably
17 well.

18 CHAIRMAN JABER: Okay. Mr. Jenkins.

19 MR. JENKINS: Good afternoon, Madam Chair
20 and members of the Commission. I'm John Jenkins
21 of the firm of Rose, Sundstrom & Bentley, here
22 today on behalf of the City of Marco Island.

23 At this point in the afternoon, many of the
24 cities or counties that were here earlier in the
25 day have gone. But in addition to myself, there

1 is Mike Mullin, who is the Nassau County's
2 attorney, and Lonnie Groot representing the City
3 of Palm Coast, and they'll be speaking after me.

4 Just to put this in perspective for you,
5 Florida water has got 152 systems around the
6 state. However, the thousands of residents on
7 Marco Island, both seasonal and permanent,
8 represent 20% of the revenues generated by
9 Florida water in a given year. The Marco Island
10 system, as well as the Deltona and Palm Coast
11 systems, those three systems represent over 50%
12 of the system revenues in a given year. So
13 there are a handful of these cities and counties
14 that make up a large part of the customer base
15 that we think is affected by the actions here
16 today.

17 The City of Marco Island is also a customer
18 of Florida Water, and we have been in contact
19 throughout with our homeowners associations and
20 other residents of the island with regard to
21 this issue.

22 Forgive me if my remarks are a little
23 choppy, but rather than speak on a lot of the
24 matters that have been discussed today, I'll
25 just cut to the chase on a couple of things.

1 And I think it's timely, because I'll pick up
2 where Mr. Hoffman and Commissioner Deason left
3 off.

4 We think that the Commission -- we support
5 the staff recommendation. We think the
6 Commission should consider an application from
7 Florida Water, and we think that application has
8 to be filed prior to closing. I think the
9 statutory provision, speaking of this section,
10 provides for that and speaks in terms of the
11 permissive "may" rather than "shall," that is,
12 specifically, a sale, assignment, or transfer
13 may occur prior to Commission approval if the
14 contract is made contingent upon Commission
15 approval.

16 Now, I submit to you that saying in a
17 contract that this is conditioned on Commission
18 approval; however, we think that this is going
19 to be approved as a matter of right, and from
20 that point forward, representing to bond
21 purchasers and others that this matter will be
22 approved as a matter of right is not
23 sufficient.

24 To have any meaningful contingency, you
25 have to have at least two things, in my view.

1 One is, you would have to have what we call an
2 extraordinary call provision in the bonds that
3 would allow those bonds to be redeemed if this
4 Commission does not approve the actions of
5 Florida Water Services Authority. For that
6 matter, a similar contingency should be included
7 in the event that any of these lawsuits that are
8 occurring around the state, of which there are
9 many, results in a finding that the Authority
10 did not have the authority to take the actions
11 it did or that the bonds were not properly
12 issued.

13 So in my understanding -- and I haven't
14 heard anything to convince me otherwise today --
15 no such contingency is contained in the efforts
16 of Florida Water to finance this deal.

17 The second requirement you would have to
18 have for this contingency to have any meaningful
19 impact would be a requirement that the proceeds
20 from the sale of the bonds be escrowed in the
21 event that the bonds had to be called. If the
22 money is simply going to be paid over to Florida
23 Water -- and the contract provides that over
24 \$400 million would be paid up front to Florida
25 Water and upstreamed to Allete in Duluth for

1 their stated corporate purposes of reducing
2 other debt and undertaking other strategic
3 initiatives that Allete has -- then you've got
4 no ability to come back and pay for a call of
5 the bonds.

6 And further, to Commissioner Bradley's
7 questions earlier, if you don't have these
8 extraordinary call provisions, in my view,
9 you've got two other options that I see as
10 possibilities. One is, you can tender an offer
11 for the bonds. What that means is that a given
12 bondholder, if offered a premium over what he
13 paid for the bonds, would be willing to sell
14 them back to you. But there's no money in the
15 deal for that. I mean, we're getting kind of
16 far out there on a limb here. But any
17 suggestion that you would do that would require
18 a rate increase payable by the customers to
19 support a premium to be paid on the bonds to
20 call them.

21 The other alternative you have is that the
22 bonds would default, the whole matter goes into
23 some sort of Circuit Court receivership action,
24 and the courts sort it out from there. We have
25 a very valid concern that from the standpoint of

1 Florida Water Services Corporation, they get
2 their money, and they run. And they don't care,
3 frankly, what sort of parade of horrors occurs
4 if it turns out these bonds need to be called,
5 or if it turns out that the bonds are deemed
6 taxable, or the authority didn't have the right
7 to issue the bonds. And frankly, we're
8 concerned that Florida Water Services Authority,
9 who is not accountable to any of these
10 customers, will simply deal with the problem
11 when it comes up. But that's the whole issue of
12 accountability here. That's the problem with
13 having an authority governing the actions of
14 this transaction without any real liability or
15 obligation to the customers.

16 So I would submit to you that without those
17 specific teeth to make a contract contingent,
18 that this Commission should require that the
19 approval process take place prior to closing.

20 Briefly, on two other points, I think the
21 proof is in the pudding that you need an
22 application and a forum to discuss these
23 matters. I've heard a great deal of information
24 being thrown out here, primarily by the
25 corporation and the Authority and their capable

1 lawyers. But frankly, there is a lot of
2 information that the local governments would
3 like to give you that deals with this
4 transaction as well.

5 I think for you to seriously consider
6 whether or not actions in any of these other
7 lawsuits should affect the decision-making of
8 this Commissioners, you've got to have before
9 you a half a dozen -- well, probably more like a
10 dozen different lawsuits that challenge
11 constitutional issues, statutory interpretation
12 issues, issues of governmental authority
13 designations, quo warranto actions, certiorari
14 actions in Santa Rosa County, right of first
15 refusal lawsuit in Deltona. I mean, the list
16 goes on. There are all sorts of matters, some
17 of which may affect this Commission, most of
18 which would not, I would submit to you. But the
19 only way you're going to be in a position to
20 know or appreciate that is to get that
21 information in front of you.

22 CHAIRMAN JABER: Mr. Jenkins, you bring up
23 a very good point about counties wanting to let
24 us know what their positions are. Have you --
25 help me understand what the counties want out of

1 this. Obviously, I heard you say that we should
2 require an application. But what do counties
3 hope to accomplish at the end of the day? That
4 the sale does not go through to the GUA and
5 what?

6 MR. JENKINS: Well, I think the -- I don't
7 know that I can speak for all the cities and
8 counties, because if you ask each one, I think
9 they may have a different view of what it is
10 ultimately they would like to see happen here.

11 I think I can tell you -- and I'll take
12 issue a little bit with Mr. Culpepper's prior
13 remarks about there not being any evidence that
14 the Authority is not responsive to the
15 customers. Last September when the Authority
16 was first formed and this was announced, there
17 was a public hearing, which they will express to
18 their dying breath meets all the sunshine law
19 requirements, but nevertheless didn't include a
20 single customer at the hearing. In a curative
21 action in November, there was a second public
22 hearing at which all 18 or so local governments
23 that represent from 80 to 90% of the customers
24 got up and spoke in opposition to the
25 transaction, and the Authority found that the

1 transaction was in the public interest,
2 notwithstanding a day of getting beaten up on by
3 local city and government officials and
4 representatives.

5 So I think in this forum, I would say the
6 City is simply hoping, in the case of Marco
7 Island, for a legitimate review of the
8 transaction and an opportunity to express the
9 objections that we would have to the
10 transaction, which, from our standpoint,
11 provides for no accountability, no rate
12 oversight, and no control of profits being sent
13 from customers around the state, and the turning
14 over of control on a statewide basis of
15 utilities to the City of Gulf Breeze.

16 CHAIRMAN JABER: I guess where I was going
17 with that question, Mr. Jenkins, is, have cities
18 and counties thought about a facilitator in the
19 transaction and communicating with Florida
20 Water? Has there been any effort to bring the
21 counties and the cities together to try to
22 figure out what kind of transaction would be
23 feasible?

24 MR. JENKINS: Madam Chair, there have been
25 all kinds of efforts, and we would be delighted

1 to have the opportunity to explain those to the
2 Commission and how this deal evolved, how it
3 began with the FGUA efforts to acquire the
4 system, how this subsequent Gulf Breeze deal
5 came about. I mean, all that information is
6 available from us and others, and what has been
7 done since in terms of cooperation among the
8 cities and counties with regard to the
9 transaction.

10 That's why I'm suggesting to you, I've
11 heard a lot of that discussion here today, and I
12 think you need a forum like the application
13 process, in which parties will provide that
14 information and you can determine for yourself
15 how much of that is relevant to your
16 decision-making here.

17 CHAIRMAN JABER: Okay. Do you have any
18 other remarks?

19 COMMISSIONER BRADLEY: I have a question.

20 CHAIRMAN JABER: Commissioner Bradley.

21 COMMISSIONER BRADLEY: Yes. Mr. Jenkins,
22 is it your opinion that the regulatory transfer
23 contingency clause allows for contingencies?

24 MR. JENKINS: I'm not sure I follow the
25 question.

1 COMMISSIONER BRADLEY: Well, you know, the
2 word "contingent" is prominent in the clause,
3 and you mentioned several contingencies. You
4 suggested several contingencies that would, in
5 your opinion, make the deal fairer to everyone.
6 Is that your opinion?

7 MR. JENKINS: I'm suggesting to you that
8 where the statute says that it's contingent upon
9 Commission approval, and when you're discussing
10 a situation in which that's after the fact,
11 after a closing has taken place, that the only
12 way to give that statute any meaning is to have
13 a contingency which allows for the transaction
14 to be undone in a way that protects the
15 interests of the customers.

16 And I'm further suggesting to you that I
17 have not heard Florida Water Services Corp. or
18 the Authority step up and give you any assurance
19 that when this closes, there's any way to unwind
20 this transaction. And I submit to you that this
21 will be a disaster with a capital D if this deal
22 closes, \$550 million worth of bonds are issued,
23 and this Commission and the consumers of the
24 state are left to pick up the pieces.

25 COMMISSIONER BRADLEY: Okay. My question

1 still, though, is this: Does the word
2 "contingent" in this clause imply that we have
3 the authority to issue contingencies, say it's
4 contingent upon?

5 MR. JENKINS: I believe you do. I believe
6 you've got today the authority over Florida
7 Water Services Corp. to require them to transfer
8 this -- to submit to Commission jurisdiction to
9 transfer this facility in a manner which allows
10 you adequate review.

11 I'm not sure I'm answering your question
12 exactly, but I think you can place reasonable
13 requirements on the condition of transfer here
14 to protect the interests of the customers. And
15 in this case, that means either a requirement
16 that they obtain Commission approval prior to
17 closing or, if it's going to be post-closing,
18 that there be some meaningful requirement that
19 the deal can be unwound, and that that's what
20 the contingent language in the statute is
21 referring to.

22 COMMISSIONER BRADLEY: Let me ask it
23 another way. You know, I -- and maybe I -- I'm
24 assuming that -- I've heard this stated several
25 times today, or I've heard this particular

1 portion of the clause referred to as the
2 contingency clause. So I'm assuming that if it
3 is a contingency clause, that implies that this
4 Commission has the authority to add
5 contingencies. It has been called a contingency
6 clause. I mean, what does that mean? That's
7 what I'm trying to get you to answer for me and
8 tell me if that's your belief.

9 MR. JENKINS: I guess I'm -- I was talking
10 to Mr. Twomey there. I think that the -- it may
11 not be a function of this Commission to place
12 requirements on the closing. I think in order
13 to be considered contingent on Commission
14 approval, they have to come to you with some
15 sort of assurance that after closing, the matter
16 can be unwound, that it's reasonable to assume
17 that "contingent on Commission approval" means
18 that the -- well, it means just that, that the
19 deal can be unwound, if need be, afterwards.

20 And I don't think it's incumbent on the
21 Commission necessarily to place requirements on
22 any particular transaction. I think it's
23 incumbent on the applicant or on the regulated
24 seller to come to you and satisfy the
25 requirements of the statute in that regard.

1 CHAIRMAN JABER: Mr. Mullin?

2 MR. JENKINS: Thank you.

3 CHAIRMAN JABER: Thank you, Mr. Jenkins.
4 Mr. Mullin is representing Nassau County?

5 MR. MULLIN: Madam Chairman, with your
6 consent, I would like to have Mr. Gossett join
7 me, who is the county coordinator, if we could
8 ask Bruce just to slide down one so we can
9 borrow his microphone.

10 There you go. Thank you.

11 Madam Chairman and members of the
12 Commission, my name is Michael Mullin,
13 M-u-l-l-i-n. I'm the County Attorney for Nassau
14 County, Florida. And in case you don't know
15 where Nassau is, we're over -- the farthest
16 north that you can get without going into
17 Georgia on the eastern side of the state. And
18 Mr. Gossett is beside me. He's the county
19 coordinator.

20 We are here because, on behalf of the Board
21 of County Commissioners and all the ratepayers
22 of Amelia Island, we are vitally concerned with
23 this proceeding, and let me first tell you why.

24 And it has been interesting today, in light
25 of the nonprofit corporation papers that have

1 come in today -- and I commend them highly. I
2 know what it means now to float like a butterfly
3 and sting like a bee, because if you're not on
4 your feet, you could certainly lose in this
5 forum today.

6 I think it's interesting that that comes to
7 you at whatever time it came today, at 1:45
8 today, when we started this proceeding at about
9 11:30 this morning. So someone had the presence
10 of thought to run out and run downtown and file
11 it, because I can tell you that I checked this
12 morning at 9:30, and there was no nonprofit
13 corporation filed with the Secretary of State's
14 office, and I checked at 10:00, and it was not
15 filed.

16 And it's interesting. Under the statutory
17 authority that we are here discussing today,
18 that particular definition, when it says a
19 nonprofit corporation formed for the purpose of
20 acting on behalf of a political subdivision,
21 one would assume then that one of the political
22 subdivisions, i.e., Milton or Gulf Breeze,
23 authorized that at a public meeting for them to
24 file that today at 11:45, 12:45, whatever time.
25 we don't know if that's the case or not.

1 That's not before you today, because I
2 think it's, respectfully, disingenuous to bring
3 that to you when the staff recommendation is
4 such that it finds that it is not a governmental
5 authority and it should be looked into. And to
6 have you accept today that we filed that -- when
7 I say we, the Authority has filed that -- is
8 somewhat disingenuous.

9 And again, I think you would have to look
10 to determine at a later time whether the
11 political subdivisions have authorized that at a
12 duly authorized meeting, and can one political
13 subdivision form a nonprofit corporation and
14 therefore acquire Florida Water Services. I
15 don't think the statutes provide for that. This
16 is not Florida Water Services Authority. This
17 is a nonprofit corporation on behalf of a
18 political subdivision, I would assume Milton or
19 Gulf Breeze. And I don't think statutorily or
20 constitutionally, as has been argued to you
21 before, that there is the authority for that
22 nonprofit corporation to proceed.

23 So therefore, I think it is in doubt still
24 as to whether that's a nonprofit corporation.
25 And again, I don't know how you can be a

1 nonprofit corporation if your intent is to make
2 several million dollars for the two cities.

3 And even with that having been said, the
4 statutory provision in 367 also requires in
5 367.071(4)(a) that the sale of facilities, in
6 whole or in part, to a governmental authority
7 shall be approved as a matter of right.

8 However, the governmental authority shall, prior
9 to taking any such action -- and it has some
10 provisions. Well, the governmental authority
11 was only formed today, so they could obviously
12 not comply with that section if they still
13 contend we're a governmental authority. So I
14 think it also fails in that regard.

15 And getting back to the main portion of
16 367, it is permissive, may, talking about the
17 contingencies. And listening to the dialogue
18 between Commissioner Bradley and Mr. Jenkins, I
19 think you do have the right and the authority to
20 approve contingencies and/or require
21 contingencies, because what's being overlooked
22 in this whole matter, quite frankly, is -- and I
23 said this before at the public forums, both in
24 Orlando, that the law and ethics seem stop in
25 Marianna, because not only is there a time

1 difference between the western part and the
2 other parts of Florida east of Marianna, there
3 are these two differences, legal differences,
4 ethical differences.

5 We are spending a great deal of the
6 taxpayers' time on behalf of the County
7 Commission that I represent, and the others here
8 today, and your time, because two cities want to
9 make money, plain and simple. And that's what
10 it's about. It's not about the public interest.
11 It's not about cities and counties going to them
12 and saying, "We want you to keep Florida water
13 under your jurisdiction for our protection."
14 You won't hear that. No one went to them and
15 asked them to do this. They saw what they found
16 to be a loophole in the law, and will through
17 very able counsel try to tell that you we're
18 just operating under the loophole.

19 well, that's not right. You are the
20 authority of what I call last resort. Yes,
21 there is other litigation pending in other
22 counties, Osceola County. There's soon to be
23 some in Nassau. There's some in Santa Rosa
24 County. There's some in Hillsborough County.
25 All those will work their way through the system

1 for a year or a year and a half.

2 But the statutory authority that you have
3 on behalf of the ratepayers of the State of
4 Florida would seem to me very clear. And if you
5 don't follow that, then I think the disaster
6 Mr. Jenkins talked about, both legally and
7 ethically, and the cost to the ratepayers is
8 going to be disastrous, and we will all look
9 back on this day and say, "Gosh, isn't it great
10 the City of Milton and Gulf Breeze made money on
11 the burden and on the backs of everybody else."

12 Again, I think the statutes are clear. I
13 don't think it's a governmental authority. I
14 think you should require them to file an
15 application and that your staff should review
16 the nonprofit papers filed today. They should
17 review whether in fact these things were done in
18 the sunshine and the authorization issued,
19 because I can tell you, if you follow this and
20 you have the full details of how this was put
21 together, starting with an entity called Capital
22 Trust Agency and Gulf Breeze Financial, you will
23 not find, nor will any other body find that the
24 sunshine laws were followed.

25 There was an intentional, deliberate

1 attempt to cover this and hide it from the
2 public, and that's what brings us here today,
3 because if they had come -- and, Madam Chairman,
4 you asked the question, is there an ability or a
5 facilitator. We went through the conflict
6 resolution procedures. We started that. They
7 were very cooperative in that respect, but it
8 was clear that they believe making money is the
9 primary purpose. And I understand that. They
10 want to put money in their pockets. So there's
11 no communication other than the law tells us
12 we're going to make money, so let's talk about
13 this and then go away. And that's as genuine as
14 it has become.

15 And since that date, no one has come to
16 Nassau, Osceola, Citrus, Hernando, Hillsborough
17 -- I can name them all -- and said, "Why don't
18 we all sit down and let's see -- for instance,
19 maybe you want to be on our board to ensure that
20 the ratepayers are protected." It hasn't
21 happened. That can only happen, I think, in
22 this forum, because you control Florida water
23 services. You are what -- the people that I
24 come from in Nassau County are looking to you to
25 protect them, because there is nothing that

1 ensures, in spite of what Bruce tells you -- and
2 I believe he believes that, but there is nothing
3 that protects the ratepayers. And those rates
4 could go quadruple tomorrow.

5 And the bonds, if something happens among
6 those court cases, who knows what's going to
7 happen. It's going to make a lot of lawyers a
8 lot of money, but it's sure not going to benefit
9 the ratepayers.

10 So I think, Madam Chairman, legally,
11 morally, and ethically, we are here seeking your
12 help to do this the right way. And what's the
13 detriment to the Authority and to the two
14 cities? Suppose they have to wait 60 days while
15 your staff reviews this and perhaps a hearing is
16 set and you hear from all of the governmental
17 entities and/or craft some type of facilitation
18 approach? What's the loss to them? There's no
19 loss to them, none whatsoever, unless they
20 think, "Uh-oh. If we do that, this thing may
21 unravel, and those two cities are not going to
22 make money."

23 And it's really a shame we're spending all
24 this money on behalf of -- Florida Water paying
25 all the costs of Bruce and everybody else to be

1 here to benefit two cities like this. It's just
2 -- from where we come from in our portion of the
3 State of Florida, that's not right.

4 CHAIRMAN JABER: Mr. Mullin, I'll ask you
5 what I asked Mr. Jenkins.

6 MR. MULLIN: Yes, ma'am.

7 CHAIRMAN JABER: What does Nassau County
8 hope to accomplish if we require the company to
9 submit an application? Is it that you wish for
10 the sale as it's structured not to go through?

11 MR. MULLIN: In the current structure, yes,
12 ma'am. And we want a full and open hearing by
13 the Commission of all the details of the sale
14 and any other safeguards that might be accorded
15 to ensure that the ratepayers are protected.
16 And I think that's at a minimum what we would
17 like to see.

18 CHAIRMAN JABER: So is there another
19 structure you all might find feasible?

20 MR. MULLIN: Yes, ma'am.

21 CHAIRMAN JABER: Okay. Does that conclude
22 your comments?

23 MR. MULLIN: Mr. Gossett may have a remark
24 or two to make, with your consent.

25 MR. GOSSETT: Madam Chairman and

1 Commission, the only comment I would like to
2 make is, in taking notes, there was a common
3 thread listening to the state legislators and
4 some other people about protections for the
5 ratepayers, and I think that's -- where you sit,
6 you look out for the ratepayers on regulated
7 utilities. Utilities that are owned by
8 government entities within their boundaries are
9 protected by the local elected officials.

10 The one thing that I find extremely
11 interesting in listening today was all the
12 different options that supposedly the Authority
13 would be interested in putting in place to
14 protect those ratepayers, but yet the rating
15 agency in New York, Standard & Poor's, when they
16 rated this issue, on the upside, after all the
17 negatives, the number two bullet point was the
18 Authority represented to them that they had
19 rate-setting autonomy. That was told to the
20 rating agency. That's what they indicated. We
21 have the printout from Standard & Poor's to show
22 that. I find that in direct conflict with what
23 I've heard today.

24 CHAIRMAN JABER: Thank you, Mr. Gossett.
25 Mr. Groot representing the city of Palm

1 Coast.

2 MR. GROOT: Thank you, Madam Chairman and
3 Commissioners. Thank you for spending so much
4 time today and devoting so much effort in
5 reviewing this issue. We appreciate that.

6 And before I begin, I promised someone who
7 had to leave that I would make a statement real
8 quickly on his behalf. Charles K. Lewis,
9 director of regulatory and franchise
10 administration and property management for
11 Hernando County, asked me to state to you all
12 that Hernando County supports the staff
13 recommendation in totality. He had to leave,
14 and I promised I would do that for him.

15 I don't want to repeat anything, so my
16 thoughts are going to be pretty fairly random.
17 I'm just trying to address issues that have come
18 before you during the course of the discussion.
19 And initially, I would adopt and incorporate all
20 the arguments that have been made thus far in
21 support of the staff recommendation.

22 One thing we haven't -- we've had lots of
23 statutes read today, and one statute that hasn't
24 been read, at least in my hearing, is 367.121,
25 which relates to the powers of the Commission.

1 And I think this answers many of the questions
2 that have been asked today, including the
3 question that Commissioner Bradley asked
4 relative to whether or not the Commission can
5 impose minimum requirements in an order relative
6 to the contingency of a contract.

7 The statute provides that in the exercise
8 of its jurisdiction, the Commission shall have
9 the power to exercise all judicial powers, issue
10 all writs, and do all things necessary or
11 convenient to the full and complete exercise of
12 its jurisdiction and the enforcement of its
13 orders and requirements. That is plenary. That
14 is complete. And that answers many of the
15 questions, like I said, including the
16 contingency factor.

17 And I would reemphasize the fact that if
18 this proceeding -- if this proposed sale is
19 closed, it will be the proverbial tar baby.

20 And the question about liability that was
21 asked earlier I think is a good question.
22 Normally you think of liability in terms of
23 financial liability or the like. But my firm
24 represents nine cities and several other
25 government jurisdictions, and I continually tell

1 and see -- I continually see the impact that an
2 another city acting in a way that isn't
3 necessarily pleasing to the public has in terms
4 of an impact on all other cities, because the
5 perception is that that's just government.

6 And if this matter were to close and
7 everything were to be unraveled or attempted to
8 be unraveled, the liability would be on this
9 Commission, the City Council of Palm Coast, and
10 other city and county commissions throughout the
11 state, because what the perception would be is,
12 how did this happen, how did this happen,
13 because without the contingency that Mr. Jenkins
14 so very well articulated, the first issue that
15 any purchaser of a bond is going to raise if
16 there's an attempt to undo the situation is,
17 "PSC, you can't impair my contractual rights.
18 City of Palm Coast, you can't impair my
19 contractual rights," and the assertion will be
20 that any attempt to undo what has been done will
21 be an impairment of contractual rights.

22 Another thing I would like to talk about --
23 like I said, I'm going to be somewhat random,
24 because I'm at the end and I don't want to
25 repeat anything that has been stated before. I

1 think it's important for the Commission to again
2 think of the principle of law of primary agency
3 jurisdiction, which, in my understanding, means
4 that this Commission interprets its statutes.

5 In terms of the issue of what is a
6 governmental authority, if I was a judge and
7 that issue came before me, I would say, "The PSC
8 has to decide that before I'll determine whether
9 or not it's right." And that's true. It's a
10 decision for you all to make, what is a
11 governmental authority, is FWSA a governmental
12 authority. We submit it's not, but that's your
13 decision. And in order to have an application
14 that's approvable by right, that's a decision
15 that has to be made, is it a governmental
16 authority. We think not.

17 The recent change to be a, quote, unquote,
18 nonprofit corporation, we would also state that
19 that's a decision that's before this Commission.
20 You know, the purported nonprofit corporation,
21 which is a corporation which is going to glean a
22 profit, is it a nonprofit corporation within the
23 definition of governmental authority?

24 For example, as a matter of what this
25 Commission may look into in terms of

1 interpreting that, the nonprofit corporation is
2 to be formed for the purpose of acting on behalf
3 of a political subdivision. Mr. Mullin got into
4 that very well. But it also says with respect
5 to a, a water or waste water facility, facility,
6 in the singular. There's a definition in your
7 statutes that talks about system. It doesn't
8 say systems. It says a facility. So once
9 again, primary agency jurisdiction, that's
10 before this Commission.

11 By the way, the issue of whether FWSA is a
12 governmental authority is not in any of the
13 litigation that I know of, and it shouldn't be
14 at this point, because once again, that's before
15 you all as a matter for you all to determine.

16 Mr. Culpepper read part of a staff report
17 from the Florida Legislature that described the
18 amendments in 1997 to Chapter 163, and he read a
19 portion of the staff report. I would just like
20 to read another portion of. And the staff
21 report on page 4, the May 20, 1997 staff report
22 says, "At least 30 chapters of Florida law
23 relate to the activities of county and city
24 governments, providings these entities with a
25 broad range of authority. For example, Chapter

1 163, Florida Statutes, regulates interlocal
2 agreements whereby cities or counties enter into
3 agreements to provide services or share the
4 expenses for services which their residents
5 need."

6 Once again, what the citizens of Palm Coast
7 need should not be determined by an entity
8 established by the cities of Milton and Gulf
9 Breeze.

10 And again in my random stream here,
11 Mr. Culpepper also quoted a part of Section
12 163.01, where it was inferred that the
13 Legislature said this type of entity fulfills a
14 state purpose. And at least it was inferred in
15 my hearing that that state purpose was somewhat
16 equivalent to the state purposes that come
17 before this Commission.

18 Well, if you read that provision in its
19 entirety in Section 163.01, it does mention
20 state purpose. But I'm going to read on
21 further, if you don't mind. And I know it's
22 horrible to read statutes to people, but I think
23 it's important in this case.

24 Mr. Culpepper read, "The accomplishment of
25 the authorized purpose of a legal entity created

1 under this paragraph is in all respects for the
2 benefit of the people of the state, for the
3 increase of their commerce and prosperity, and
4 for the improvement of their health and living
5 conditions." That's as far as he got.

6 Now, why was this section in the statute?
7 well, I'll read the rest of it. "Since the
8 legal entity will perform essential governmental
9 functions in accomplishing its purposes, the
10 legal entity is not required to pay any taxes or
11 assessments of any kind whatsoever upon any
12 property acquired for use by it for such
13 purposes or upon any revenues at any time
14 received by it. The bonds, notes" -- and I
15 won't go on.

16 That's a boilerplate provision that's
17 placed in many a statute in order to ensure that
18 a governmental entity is tax-exempt and it does
19 not -- it's exempt from taxation. That's what
20 the purpose of that statute was. That's not to
21 state that an entity such as FWSA created by two
22 Panhandle cities totaling 15,000 people in
23 population can exercise their jurisdiction
24 throughout the State of Florida.

25 Just a couple more points. In terms of --

1 and the Chair has been asking this question a
2 lot, it seems like, in terms of -- I think you
3 were interested in what input FWSA was receiving
4 from the jurisdictions, the affected
5 jurisdictions. And Mr. Mullin had a Chapter 164
6 conflict resolution conference between his
7 client and the -- I think it was Milton and Gulf
8 Breeze. And we recently had one, and Palm Coast
9 and the cities of Milton and Gulf Breeze and
10 FWSA representatives were there. And I'm going
11 to depict this as straightforward as I possibly
12 can.

13 The city manager of Palm Coast, Mr. Dick
14 Kelton, had 18 points listed on a piece of
15 paper. That paper was essentially identical to
16 the outline of his presentation in the November
17 -- and I'm going to use quotes. I don't like to
18 do this (gesturing), but the public hearing
19 before FWSA which occurred in Orlando, which was
20 supposed to be the curative public meeting for
21 the meeting that was held in September in
22 Pensacola without notice.

23 During the course of our conflict
24 resolution session, Mr. Kelton started to go
25 over those 18 points, and the response was,

1 "well, we've never heard those before."

2 And Mr. Kelton said, "well, these are the
3 same points I brought out at the Orlando public
4 hearing, you know, your public hearing."

5 And the response was, "well, I guess we
6 didn't appreciate them."

7 And the point is that the citizens of the
8 city of Palm Coast and the citizens of the other
9 jurisdictions before you should not have to rely
10 upon officials appointed by Gulf Breeze and
11 Milton for accountability, because you will not
12 get it.

13 Just two more points and I'll be through.

14 In terms of -- I heard some discussion that
15 maybe the PSC, FDEP, and others could be on
16 potential committees. That has been suggested
17 to Palm Coast too, that maybe after FWSA starts
18 fulfilling its stated role under its interlocal
19 agreement, et cetera, that there could be
20 committees or additional members of the FWSA to
21 maybe provide input, because FWSA is very
22 interested in input.

23 well, when you read the basic
24 jurisdictional statute of this Commission, which
25 is, "The Florida Public Service Commission shall

1 have exclusive jurisdiction over each utility
2 with respect to its authority, service, and
3 rates," and "The regulation of utilities is
4 declared to be in the public interest, and this
5 law is an exercise of the police power of the
6 state for the protection of the public health,
7 safety and welfare," the concept of this
8 Commission being a member of a committee or a
9 city being a member of a committee of a
10 jurisdiction which is attempting to impose, you
11 know, regulation 400 miles away, like Palm
12 Coast, and says, "well, maybe Palm Coast could
13 be a member of a committee that FWSA would
14 appoint," that just totally demeans what this
15 Commission's jurisdiction should be and what the
16 home rule powers of the many jurisdictions that
17 are affected have.

18 And the last point I would like to touch
19 upon is, I know that your staff is correct that
20 you can't adjudicate. I know you're not a
21 court, and you can't determine whether FWSA is
22 a constitutional body or whatever. But
23 nevertheless, this Commission must act
24 constitutionally in itself. So its orders must
25 be constitutional. Its orders must comport with

1 law. So if its orders violate the transfer of
2 power, or if its orders violate home rule,
3 that's an element that should be considered in
4 every decision that this Commission makes.

5 Once again, we appreciate your time. I
6 hope the comments have been helpful. And if you
7 have any questions --

8 CHAIRMAN JABER: Thank you, Mr. Groot.

9 Mr. McLean, on my list I have Public
10 Counsel next, if Public Counsel wishes to make a
11 presentation.

12 Let me make sure. Are there any other
13 local governmental representatives in the
14 audience that wish to make a presentation?

15 Okay. Mr. Shreve. Thank you for waiting
16 patiently.

17 MR. SHREVE: And I will be brief. I think
18 you've heard all the points that have been made,
19 and I think everyone has done a good job. I
20 think the points made by the counties and the
21 cities and their attorneys and the legislators
22 were very pointed and accurate.

23 One question -- I'm going to hit a couple
24 of things that came out during the conversations
25 that I would like to --

1 CHAIRMAN JABER: Mr. Shreve, is your
2 microphone on, or does the mike just need to be
3 closer to you?

4 MR. SHREVE: Maybe it needs to be closer.
5 Thank you.

6 I think earlier you asked a question if
7 there would be any change in the -- that the
8 customers would see or anything along those
9 lines if the Authority closed, if Florida Water
10 closed with the Authority. The answer was no.

11 I think there will be a great change, and
12 one example is that there will be immediately a
13 change in connection fees, which has already
14 been voted by the Authority. So that will go up
15 immediately, those same connection fees used to
16 in the future pay for part of the purchase price
17 to Florida Water, which normally would be used
18 as CIAC to go to the benefit of the customers.

19 CHAIRMAN JABER: And do you recall whether
20 the Authority voted to increase connection fees
21 or --

22 MR. SHREVE: They voted to increase the
23 connection fees substantially.

24 CHAIRMAN JABER: Okay. What else?

25 MR. SHREVE: So that will take place

1 immediately, and we don't know what other
2 changes.

3 The nonprofit corporation, I have no idea
4 what the situation is with that. The first I
5 had heard of it was today, and we thought we had
6 been looking into this thoroughly trying to get
7 some information, as I know your staff had
8 planned to look into it. I think some excellent
9 points have been made about how it was formed,
10 but we know nothing about it. I assume the
11 contract now is with the nonprofit corporation
12 rather than the Authority, but I don't know what
13 the outcome of that is.

14 As to the precedent that has been set by
15 this Commission, you have never had a situation
16 like this. I think any of the precedent that
17 Mr. Hoffman was referring to had to be when
18 there was at least a part of the purchase within
19 the city boundaries or within the county
20 boundaries. I don't think there has ever been a
21 purchase come before you where the agents or the
22 entity was not dealing with something within
23 their boundaries, and that is not the case
24 here. So it certainly is not on all fours, and
25 I think you have the ability to take whatever

1 action you need to.

2 specifically, as to the contingency
3 language in the agreement, clearly, the
4 Legislature did not change the definition of the
5 entity that was to receive a transfer as a
6 matter of right at the time they put the
7 language in forming the Authority. They did not
8 change that, so you would have to surmise that
9 they did not intend to change that.

10 There clearly is a question that has been
11 raised on that, and we raised it earlier when we
12 filed our motion to compel Florida Water to
13 provide the discovery that we had asked for. So
14 that has been raised. It's clearly a question
15 that has been raised by many different parties
16 at this point.

17 If you go to the contingency language
18 that's in the contract, the first part of it --
19 there are two sentences. Sale and transfer of
20 assets pursuant to this agreement is contingent
21 upon approval by the Florida Public Service
22 Commission and the other applicable county.
23 That's only the first sentence. The second
24 sentence is, regulatory agencies pursuant to
25 Section 163.01(7)(g), Florida Statutes, Section

1 367.071(4)(a), Florida Statutes, and prior legal
2 precedent, such approvals may be obtained after
3 closing and must be granted as a matter of
4 right.

5 That second sentence I think practically
6 makes the whole contingency language in the
7 contract a nullity, which would mean that they
8 should be required to go ahead and request the
9 transfer earlier.

10 I think you have those questions before
11 you. My recommendation would be that you order
12 Florida Water not to proceed with this sale and
13 that they immediately be required to file for a
14 transfer so that a hearing on public interest
15 can be held. I would think that the two cities
16 and the Authority would welcome that opportunity
17 to show you and everyone else that they really
18 do have the public interest at heart and see no
19 downside at all in taking that action.

20 It was raised that they couldn't make the
21 filing within three days. That may be the case.
22 If that's the case, there should be an order out
23 there ordering them not to proceed until the
24 filing is made and approved by this Public
25 Service Commission.

1 CHAIRMAN JABER: Thank you, Mr. Shreve.

2 MR. SHREVE: Yes, ma'am.

3 CHAIRMAN JABER: Let me -- while we have
4 you here, let me ask you a couple of questions
5 with respect to your experience on the
6 contingencies and undoing transactions. It
7 seems to me if you set aside the legal issues
8 for a moment, whether or not this agency has the
9 authority to undo the sale -- I've been
10 concerned with the logistical aspects of it all,
11 especially in light of what Mr. Hoffman and
12 Culpepper said, that if they close before any
13 sort of application is reviewed and before some
14 of the court cases are decided, the Authority
15 has been formed, there is an intent to allow the
16 employees to become employees of the Authority.
17 You've just represented that there has been a
18 decision to increase connection fees.

19 So for all intents and purposes, the
20 consumers start getting service from the
21 Authority and not from Florida Water. To the
22 degree -- I see logistical concerns with respect
23 to undoing the transfer, even if legally we
24 could.

25 Have you thought about that, and what

1 feedback could you give me in that regard?

2 MR. SHREVE: well, I think that also plays
3 in the contingency language, when you get right
4 down to it. If you make a decision not to have
5 the transfer and it were decided at that point
6 that you have that authority, which I think you
7 do, not to make the transfer, and the contract
8 was then supposed to be gone, I to this day
9 don't know what's going to happen to the bond
10 money. I don't think anyone does.

11 COMMISSIONER BRADLEY: Happen to what?

12 MR. SHREVE: The bond money, the \$550
13 million, and where it's all going. We don't
14 have that information as to the details as to
15 where it's going to go.

16 I think Mr. Jenkins made some excellent
17 points. You're going to have to have some
18 financial security in there somewhere to be able
19 to cover the possible future decision. I
20 totally agree that there -- I think there's a
21 very real problem there in undoing it if it goes
22 through.

23 CHAIRMAN JABER: Okay. And with respect --
24 Mr. McLean, I asked you to take a look at the
25 two cases that have been cited to as precedent.

1 And maybe the Poinciana decision did come to
2 agenda, but I am just not remembering that, and
3 I would like to think that I remember what I
4 vote on.

5 MS. HOLLEY: It was originally scheduled
6 to be decided by the Commission, but was
7 deferred, and then eventually was decided
8 administratively.

9 CHAIRMAN JABER: So that order was not an
10 order -- it was not a decision that we publicly
11 deliberated on. Obviously, we have given you
12 all delegated authority to issue administrative
13 orders.

14 MR. MCLEAN: I may have improvidently said
15 that the Commission sat in judgment on that. I
16 don't think that's really the case. It was
17 adminis -- it was issued administratively.

18 CHAIRMAN JABER: I'll tell you why that's
19 important to me, Mr. McLean. And I don't want
20 to cast any doubt on that decision, but this is
21 such a case of first impression for me,
22 Commissioners, if I could just open up the
23 dialogue by using this as a vehicle. This is a
24 case of first impression not because this
25 doesn't match up with the GES situation or it

1 doesn't match up with the Poinciana situation,
2 although I think it does not because we did not
3 have an opportunity to ask some of the questions
4 we're asking now, but I think this is a case of
5 first impression because this is the largest
6 private water company in the State of Florida.

7 And frankly, my compliments to Florida
8 water and their quality of service. You know,
9 it's all -- relatively speaking, we've not had a
10 tremendous deal of concern as it relates to this
11 utility and how you run your business and how
12 you treat your consumers. So, you know, my
13 compliments there. But it makes you unique,
14 because the breadth of service you provide to
15 the state -- privilege, it is absolutely a
16 privilege, but it makes you unique.

17 And the sale of your company is a case of
18 first impression, because the nature of the
19 sale, obviously, in that there are two cities
20 that have formed a governmental authority,
21 cities -- again, my compliments to how they came
22 into it, but cities that are not cities where
23 your facilities are located. So that's yet
24 another reason this is a unique transaction that
25 is worthy of comment and discussion, and

1 frankly, just because there are so many public
2 issues that have come to fruition that demand a
3 debate.

4 And as I said early on in the discussion, I
5 think some of those debates have got to occur at
6 the Legislature, but I would like to have a
7 debate here. And I use "debate" loosely. I
8 think that at the end of the day, if you are so
9 confident that this is a governmental authority,
10 then you have nothing to fear, because the
11 evidence will show that it's a governmental
12 authority, Commissioners, and we'll leave it at
13 that. But I want that review to occur.

14 And, Mr. Hoffman, I want to address
15 something you said early on. You said this
16 docket has been open for a while and that staff
17 just filed a recommendation to require an
18 application to be filed. I want to hit that
19 head on, directly, and let you know that's
20 because your comments were filed on the 23rd of
21 January, I believe, so it made staff's
22 recommendation timingwise appropriate.

23 MS. HOLLEY: The 21st is when we received
24 the comments.

25 CHAIRMAN JABER: Okay. So I don't know

1 what you meant by that statement, but let me
2 just address it head on. It's my understanding
3 that staff -- and staff can correct me if I'm
4 wrong. Staff through Tim Devlin and Harold
5 McLean has asked a lot of questions with respect
6 to the proposed transaction. So in an effort to
7 gather all the information and bring the
8 appropriate course of action to this Commission,
9 I trust that staff did that in the most prudent
10 fashion. But, of course, I can't imagine you
11 meant anything by your statement.

12 MR. HOFFMAN: Madam Chairman.

13 CHAIRMAN JABER: Mr. Hoffman.

14 MR. HOFFMAN: Since we are certainly the
15 ones who are subject to what I would call the
16 burden of staff recommendation, may I have just
17 a brief rebuttal to a few of the remarks that
18 have been made by the local governments?

19 CHAIRMAN JABER: Yes, I do think that's
20 appropriate, Mr. Hoffman.

21 Commissioners, I did want to put my initial
22 thoughts out there for your feedback and
23 reaction to as well, so I want us to come back
24 to that.

25 Commissioner Bradley.

1 COMMISSIONER BRADLEY: Right. But before
2 he does his rebuttal, I would like to put
3 something --

4 CHAIRMAN JABER: Commissioner Bradley.

5 COMMISSIONER BRADLEY: -- on the plate.

6 You know, I think it's pretty apparent, and
7 it should be to Florida water, that if this deal
8 goes through, that you're going to have some
9 customers who are going to not feel very good
10 about the company that may come about as a
11 result of the sale.

12 And I listened to Mr. Shreve, and I got to
13 thinking about some of the other complex issues
14 that this body has had to consider and some of
15 -- well, the process that maybe we've used in
16 order to try and negotiate to put together a
17 compromise that maybe both parties at least can
18 accept. And I was wondering if you all would be
19 adverse to this, and I was wondering what
20 Mr. Shreve might think about it and what the
21 members of the Commission might think.

22 Would it be helpful if you all would get
23 together, if you all could get together with
24 Public Counsel and come up with some suggested
25 points of compromise that maybe -- that may

1 serve as a solution to some of the complex
2 issues that we've addressed today?

3 Because it's apparent to me you're going to
4 have -- if the sale goes through, that you're
5 going to have some unhappy -- literally, some
6 unhappy customers out there. And you have a lot
7 of litigation going on right now. And it would
8 just make good sense to me for you all to sit
9 down and talk to see if there's something that
10 can be worked out that might be in the best
11 interests of both parties, the public as well as
12 the two entities that are proposing the sale.

13 I'm just throwing it out there.

14 CHAIRMAN JABER: I think it's an excellent
15 question. Mr. Hoffman.

16 MR. HOFFMAN: Chairman, of course, we'll be
17 happy to sit down with Mr. Shreve, as we have on
18 many prior occasions on issues that concern this
19 utility.

20 I'll be honest. I'm under no authority to
21 make any concessions in the positions that I've
22 outlined to you today. And I'm confident that I
23 would need to -- Mr. Menton and I would need to
24 meet with our client and discuss some of the
25 possibilities.

1 But I also want to be very frank with the
2 Commission, because I have a lot of respect for
3 the Commissioners and the staff, and I know
4 you've sat here today for a number of hours and
5 listened to this. And I don't want to be any
6 less than frank, Commissioner Bradley, that, you
7 know, it is our intention at this point to
8 proceed to closing.

9 You know, the market conditions for this
10 transaction are preferable, and a 1% change in
11 the interest rate can have perhaps a \$30 million
12 impact on this transaction, and we wish to
13 proceed to closing. We have faced obstacles,
14 Commissioners and Chairman, to this closing at
15 the local level, whether you're talking about
16 show causes, whether you're talking about new
17 ordinances directed to this transaction, whether
18 you're talking about local governments that we
19 believe have abused their regulatory power
20 because they wish to purchase the facilities in
21 their local government through a competing
22 bidder, the Florida Governmental Utility
23 Authority.

24 I mean, you asked Mr. Jenkins what the end
25 game was for Marco Island, and his statement was

1 that the City is hoping for a legitimate review
2 of the transaction. And I would very
3 respectfully disagree, in that the record of the
4 public hearings and the actions taken by the
5 City of Marco Island confirm that they wish to
6 purchase these facilities and that they support
7 the FGUA proposal. Nassau County, Mr. Gossett
8 is a member of the FGUA's board.

9 So I want to give you that context and why
10 we believe that it is necessary for us to move
11 forward. We think that the bottom line here is
12 that our opponents are asking you to do what the
13 Circuit Court will not.

14 Mr. Jenkins mentioned all the litigation.

15 COMMISSIONER BRADLEY: Right. But excuse
16 me, Mr. Hoffman. To my point, though.

17 MR. HOFFMAN: Okay.

18 COMMISSIONER BRADLEY: And my point is
19 this. And it's not to imply that the sale
20 should not or cannot go forward. My question
21 was this. Is there a willingness to sit down
22 and to talk with your constituents, your current
23 constituency and the prospective constituency of
24 the new entity if the sale goes through? Are
25 you all willing to be good servers of the public

1 and to sit and talk and to try and work out
2 something that might be more acceptable to your
3 future customers if in fact this sale does go
4 forward? And what I'm really saying is that
5 that -- let's assume that the sale does go
6 forward. Then are you -- but prior to the sale
7 going forward, are you willing to sit down and
8 negotiate so that they have more comfort with
9 the deal?

10 CHAIRMAN JABER: That's probably more
11 appropriately addressed to the Authority.
12 Mr. Culpepper?

13 MR. CULPEPPER: Commissioner Bradley, we'll
14 always speak with and work with the Public
15 Counsel, and have in the past and certainly will
16 in the future.

17 I think Mr. Hoffman's statements are
18 correct in terms of the importance of moving
19 forward and the effect on the market and all of
20 the nuances of that. We feel compelled for the
21 benefit of even prices, customers, and so forth,
22 to move forward as fast as we can.

23 I will say this, Commissioner. In regards
24 to unhappy customers, I have not been privy to
25 any of those types of issues so far in any of

1 the litigation or issues before, or hearings, as
2 a matter of fact, before the Authority.

3 We know that there is certainly dismay and
4 disgruntlement, if that's a word, from local
5 governing authorities who may want to conduct,
6 purchase, or acquire their own systems. But we
7 do not -- as has been said, we think water
8 services has done a very good job with regard to
9 customer relationships. We would adopt those.
10 We will inherit those relationships and want to
11 carry them on. So we don't feel that there is
12 going to be a consumer issue with regards to
13 what this transaction is. We do think it's
14 certainly important to move forward from a
15 market standpoint.

16 CHAIRMAN JABER: Mr. Culpepper, I need to
17 give you some thoughts on that --

18 MR. CULPEPPER: Sure.

19 CHAIRMAN JABER: -- just in the interest of
20 fairness. Yes, absolutely, there will be some
21 cities and counties that, for growth reasons,
22 economic development reasons, perhaps would be
23 interested in buying any privately owned water
24 company. But there's also an expectation on
25 their constituents' part that to the degree

1 there is another governmental authority that's
2 formed, it seems to me that the constituents
3 would come to the affected county and say, "why
4 didn't you participate, and what could we have
5 done?"

6 And I'm speculating, but I know if I could
7 insert myself in that perspective, it seems to
8 me that there's also a necessity on behalf of
9 their constituents to preserve public interest
10 in that regard, because what would -- I haven't
11 seen anyone from Orange County, but what would,
12 you know, the Orange County constituent say to
13 the Orange County Commissioner next year when
14 they have a complaint about water that's
15 provided from the Orange County facility? "You
16 need to call the city of Gulf Breeze on that"?

17 And I'm not -- and I really want to send
18 you back with a message to Gulf Breeze and
19 Milton. This is not about those two cities.
20 It's about the ongoing regulation and the review
21 of the largest private utility in the State of
22 Florida, and who's going to be the voice for the
23 consumer.

24 Commissioner Bradley, did you have a
25 question?

1 COMMISSIONER BRADLEY: Yes. And I -- you
2 know, I think that -- I don't know if you were
3 here at the very beginning. I'm assuming that
4 you were. You would not have seen the Senators
5 and the Representatives here if they had not
6 been receiving a tremendous amount of feedback
7 from the users of your current service.

8 And I think you're playing with a hornet's
9 nest to not sit and talk and negotiate, because,
10 you know, when I look at the number of counties
11 and cities involved in this, you're going to
12 have a lot of legislative opposition to you.
13 And when you count -- I mean, if you simply do
14 the math, I think you're going to put yourself
15 in a situation that you're going to be defending
16 for quite a while. You know, some of those
17 people have long memories over across -- on the
18 other side of town.

19 MR. CULPEPPER: Well, let me -- yes, I
20 understand that. Let me make only this
21 response.

22 COMMISSIONER BRADLEY: They're nice people,
23 but they have excellent memories. They remember
24 in detail.

25 MR. CULPEPPER: All right. Just in

1 response to both, in terms of what used to be
2 done or where these issues must be aired, I
3 think that's what the court system is for, and
4 that's exactly what's going on within the court
5 system. So many of the issues that are raised
6 to you today are legal issues to be determined
7 by our judicial system, and I submit to you,
8 with all respect, perhaps not within the
9 Commission's jurisdiction or aegis.

10 And so clearly, we must deal with the
11 Legislature and we must deal with the court
12 system, and that will be done and is being
13 done. And I think all of the issues that are
14 before you that were mentioned today are being
15 subjected to review by the court system now.

16 CHAIRMAN JABER: And again, for my
17 Commissioners' benefit, I want the Commissioners
18 to know that where I disagree with you is with
19 respect to whether we can discuss the transfer
20 and the result of that transfer.

21 Commissioners, I want to be clear. I don't
22 necessarily disagree with respect to the
23 language being discretionary as it relates to
24 the contingency. My only concern is that this
25 Commission reserve its authority to review the

1 transfer. And that's not to prejudge what the
2 conclusion might be.

3 In reviewing the transfer, we may find that
4 you're absolutely right, it's a governmental
5 authority, and therefore, it should be approved
6 as a matter of right. But I need to look at
7 that entity and understand that it's a
8 governmental authority so that when the
9 constituent calls a county or when the consumer
10 calls the State of Florida and talks to our
11 Public Service Commission 800 staff, they could
12 say, "You can call this person. This is where
13 your voice is."

14 Commissioner Davidson had a question, and
15 Commissioner Baez. And I know, Mr. Twomey,
16 you've wanted to address us, but I want to
17 entertain the Commissioners' questions.

18 COMMISSIONER DAVIDSON: Thank you,
19 Chairman. I just wanted to note for the record
20 that a January 11th St. Pete Times article
21 pointed out that at a January 10th meeting of
22 the Authority, impact fees were raised 25% in
23 all localities. Guaranteed revenue fees were
24 adjusted, some up, some down, differently for
25 each service area. I just wanted to note that

1 to follow up to Public Counsel's comment on
2 cost.

3 A second point. The timing of staff's
4 docket doesn't present a tremendous concern for
5 me. In September of 2001, Florida Water
6 Services Corporation's parent company announced
7 that the utility was up for sale and it was in
8 negotiations with FGUA. I think in that year
9 and four months, there has been ample time to
10 prepare the basics of what would go into an
11 application in the event one was necessary.

12 During all the testimony today, I actually
13 read every line of what's required in the
14 application. And frankly, it's not a difficult
15 document. I mean, it will take some man-hours
16 to go into it, but it's not a difficult project.
17 Some of information requested can be put in in
18 the form of statements. And if I were sitting
19 on your side, I would err on the side of caution
20 and put that together. I think it's very doable
21 in a three-day period. And work with staff, and
22 if the information -- if that's the ruling of
23 this Commission, if the information is difficult
24 to put together, then bring that to staff's
25 attention.

1 sort of following up to the Chair's
2 comments, this is a case of first impression for
3 me, because it's my first case here on this
4 issue.

5 I am -- as I sit here, I'm not convinced at
6 all that this legal entity falls within the
7 definition of a governmental authority. I might
8 even go a little further than the Chair and say
9 I don't know what type of factual evidence would
10 convince me otherwise. I, in a sense, think
11 that's a legal determination. I think the
12 statutes are pretty clear in their provisions,
13 and right now I'm just not persuaded that this
14 entity falls within that definition.

15 Thank you, Chairman.

16 CHAIRMAN JABER: Thank you, Commissioner.

17 Commissioner Baez, you had a question or a
18 comment?

19 COMMISSIONER BAEZ: Just a couple of
20 comments. First of all, you know, I want to get
21 clear in my head, or at least lay out there that
22 this is -- you know, we're not talking about
23 three days to file an application. I want us
24 all to understand that. I think that there has
25 to be more to make it meaningful, so there is a

1 hereafter to this process that we're
2 entertaining.

3 For me, the key -- and I also want to say
4 that I would just -- I would love --

5 CHAIRMAN JABER: Get ready for that
6 question, because that's the question, what is
7 the hereafter.

8 COMMISSIONER BAEZ: I would love a crack at
9 discussing the policy behind it, including the
10 issues of governmental authority and all that.
11 I'm not entirely convinced that that's our
12 province. And for purposes of this discussion,
13 it really doesn't matter much to me, although
14 it's perhaps the sexiest part of the issue. You
15 know, we get stuck -- well, anyway.

16 The problems with all of this for me are
17 this. And it was in answer to a question that I
18 posed to the General Counsel a while back. And
19 the implication was that we're somehow assuming
20 -- for purposes even of the recommendation,
21 we're assuming that we're dealing with a
22 governmental authority under 163. We're taking
23 that as a given, even for purposes of our --
24 your analysis.

25 MR. McLEAN: That's not quite right,

1 Commissioner, no.

2 COMMISSIONER BAEZ: Is that not right?

3 MR. MCLEAN: No, sir. We're assuming that
4 they are formed correctly and constitutionally,
5 whatever they are.

6 COMMISSIONER BAEZ: What's the difference
7 of saying --

8 MR. MCLEAN: Between those two? Hopefully
9 none. But we look to our statute, 367, to see
10 whether they're a governmental authority, and
11 that's the end of our inquiry. There are cases
12 pending in the courts, as I understand, that
13 suggest that the entity was not appropriately
14 formed under 163. Our recommendation to you
15 somewhat presupposes that they were legally
16 formed under Chapter 163.

17 COMMISSIONER BAEZ: Okay. And let's --
18 stop right there.

19 MR. MCLEAN: Yes, sir.

20 COMMISSIONER BAEZ: If you presupposed
21 wrong, if the answer to those questions are the
22 opposite of what you are presupposing, it seems
23 to me that that leaves us in a situation where
24 we have made an assumption and used that as a
25 jumping-off point that we can't turn back from.

1 MR. McLEAN: No, sir, but I guess I would
2 say if that turns out to be the case, they have
3 worse problems than the PSC. I mean, they will
4 have --

5 COMMISSIONER BAEZ: I would agree with you,
6 but --

7 MR. McLEAN: Right.

8 COMMISSIONER BAEZ: But somehow we've used
9 some assumption that could be right or could be
10 wrong at the end of the day in order to -- in
11 order to let -- I mean, in essence, in order to
12 say, "You know what? We don't have jurisdiction
13 over it. This doesn't concern us," in essence.

14 MR. McLEAN: Let me respond this way. I
15 think that staff could wait until the resolution
16 of those various lawsuits, but if we do, this
17 deal will go down --

18 COMMISSIONER BAEZ: I think we're getting
19 -- and I may be not saying it right. That's
20 precisely the point. There's a question out
21 there that, at least in my mind, becomes the
22 basis of whether my responsibility is to grant
23 something as a matter of right, or my
24 responsibility is to look into the public
25 interest, to entertain an application in the

1 public interest.

2 And if I have to assume that they're
3 properly formed under 163, that tilts the scale
4 toward saying, "Okay. I have to approve this as
5 a matter of right." In my mind, you know, if
6 I've already made -- if I've already conceded
7 that result, then there's not a whole lot -- you
8 know, this whole application -- I mean, going
9 back to the hereafter, then entertaining an
10 application doesn't really matter. I mean, it
11 does, you know, so we can all check our boxes
12 and everything else. But if we're going to have
13 to grant it as a matter of right, you know, I
14 think we've already done that.

15 CHAIRMAN JABER: Commissioner Baez, I want
16 to understand your point in the discussion
17 you're having with Harold. Where are you all
18 getting that there's an assumption that the 163
19 creature is set up correctly? Did I miss that
20 in the recommendation?

21 MR. MCLEAN: It may be stated more
22 accurately to say we are not concerned with
23 that. We are taking it as a given that they're
24 organized correctly under 163. We don't care
25 whether they are or not. But if they are, then

1 we believe that they would have to come here and
2 determine -- and it's your determination whether
3 they're a governmental authority under our
4 statute. We can't sit in judgment over whether
5 they are correctly formed under 163.

6 CHAIRMAN JABER: Right.

7 COMMISSIONER BAEZ: Well, then I have this
8 question. What are the criteria for someone to
9 qualify as a governmental authority under our
10 statute? Is that in the statute?

11 MR. McLEAN: Yes, sir. It's in 367 --

12 COMMISSIONER BAEZ: Under .021?

13 MR. McLEAN: Yes, sir.

14 COMMISSIONER BAEZ: Is it .021 that we're
15 looking at?

16 MR. McLEAN: In my opinion, yes. With
17 respect to whether they're entitled to a
18 transfer as a matter of right, that issue is
19 determined by 367.021(7). And under (7), they
20 are now alleging that they are on the one hand a
21 governmental authority, or they are a nonprofit,
22 or perhaps both.

23 COMMISSIONER BAEZ: And here's -- that just
24 leads into something else. I mean, there are
25 too many aspects of this -- in my mind, there's

1 too many aspects of this for which there are no
2 solid answers. I mean, we haven't seen the
3 nonprofit documents, although I'm sure they've
4 been provided to you at this point, we've been
5 at this so long today.

6 The contingency, I had problems, because
7 you told -- at least you represented to me that
8 we had not made analysis of it in terms of
9 whether it was sufficient for the purpose it's
10 intended, whether it's adequate. I thought I
11 heard Mr. Hoffman say that he was in agreement
12 that there is some review of contingency
13 language. You know, what the standard is, I
14 don't know, but that there is at least some
15 level of review by the Commission as to adequacy
16 of the contingency language.

17 MR. MCLEAN: Yes, sir, I heard that.

18 COMMISSIONER BAEZ: And that hasn't taken
19 place either.

20 MR. MCLEAN: It has not.

21 COMMISSIONER BAEZ: Anyway, long story
22 short, all of these unanswered questions leave
23 me at least with some -- you know, it's an
24 either/or. Now, I don't feel comfortable going
25 forward with all of these open questions, so

1 what solution do I have, at least in my mind?
2 And again, is the staff recommendation -- but I
3 guess my question to you is, is there any
4 hereafter contemplated in the staff
5 recommendation? I don't remember.

6 MR. MCLEAN: Implicitly so, Commissioner.
7 I think we're suggesting to you that you require
8 an application or a sufficient contingency. And
9 you've heard a lot of debate about what that
10 would be. We want an application or a
11 contingency, and that necessarily implies that
12 at some point you're going to weigh that
13 application to determine whether this is a
14 governmental authority or a nonprofit.

15 And I have to say that implicitly I think
16 in staff's recommendation is the notion that
17 staff should probably protect your opportunity
18 to do that by some action in Circuit Court
19 perhaps, although we have not recommended that,
20 because we did not know what direction you would
21 take with the underlying issue.

22 COMMISSIONER BAEZ: Well, would it -- and I
23 guess, speaking of implicit, subsequent
24 measures, is it time to make them explicit?

25 MR. MCLEAN: Perhaps so, sir. If you

1 determine that you want an application, why
2 would you want the application without the
3 opportunity to weigh it and to determine the
4 several factual and legal issues you've heard
5 debated today?

6 CHAIRMAN JABER: Is it within our
7 discretion to just schedule this for a hearing?

8 MR. MCLEAN: Yes, ma'am. In my opinion,
9 yes.

10 CHAIRMAN JABER: And I don't know,
11 Commissioner Baez, if that's where some of your
12 questions were going, but it goes back to the
13 question I asked Mr. Twomey. How do you -- your
14 recommendation, if we memorialize it in an
15 order, is currently noticed to be issued as a
16 final, or some sort of procedural order, but not
17 PAA. It is a non-PAA.

18 MS. HOLLEY: Correct.

19 CHAIRMAN JABER: So either we make this PAA
20 and count on someone to protest, which doesn't
21 seem very efficient, or I suppose we could on
22 our own motion schedule a hearing.

23 MR. MCLEAN: Yes, ma'am.

24 COMMISSIONER BAEZ: And I --

25 CHAIRMAN JABER: Those are ideas, but --

1 MR. McLEAN: Legally you could.

2 CHAIRMAN JABER: -- I'm not suggesting one
3 way or the other.

4 MR. McLEAN: The Commission has on many
5 occasions determined that a hearing or a protest
6 was inevitable and set the matter for hearing on
7 their own motion at the outset.

8 COMMISSIONER BAEZ: Now, that doesn't in
9 and of itself deal with this post-closing, or if
10 there is a closing --

11 MR. McLEAN: The contingency.

12 COMMISSIONER BAEZ: Yes. The mere fact
13 that the Commission would set something for
14 hearing certainly doesn't --

15 MR. McLEAN: My sense is, I agree with the
16 other parties who said that they have the option
17 to file an application or an adequate
18 contingency. My sense is that you should not
19 demand of them an application until you've
20 determined the adequacy of their contingency.

21 COMMISSIONER BAEZ: You know, there have
22 been couple of ideas suggested, or certainly a
23 couple of points made that might point to
24 adequacy, but I don't think we've been able to
25 fix that. You know, that hasn't been defined.

1 MR. MCLEAN: No, sir, but Mr. Bradley
2 raised a very interesting point, in my mind, and
3 that is -- I don't want to speak for
4 Mr. Bradley, but this is the sense that I got:
5 Demand an application, or in the alternative, a
6 contingency that has some teeth in it that says
7 we will reverse -- we will stand ready to
8 reverse the deal if the Public Service
9 Commission determines that it needs to be
10 reversed, and here's how we'll go about it.

11 Now, it's probably controversial, because
12 I'm not sure the statute gives you specific
13 authority to do that, but it certainly gives you
14 arguable authority to do that. The statute says
15 contingency. Well, contingency in the ordinary
16 term in law and in ordinary parlance means that
17 you can undo it. It's reversible. How are you
18 going to unwind it, in the words of one of these
19 folks? On the other hand, the statute could
20 have been much more explicit on that point.

21 But I thought -- I don't mean to speak for
22 Mr. Bradley, but that's kind of what I heard the
23 direction in which it seemed to me he was going,
24 and it seemed to me a reasonable direction to
25 go.

1 CHAIRMAN JABER: But you know my concern
2 with that? It's easier to undo transactions,
3 and we've had to do to this between sales of two
4 private utilities, because we still have
5 regulatory powers over that buying entity, and
6 those have been seamless. I wouldn't even know
7 where to begin in terms of ordering additions of
8 contingencies, because I don't pretend -- I'm
9 not a bond lawyer either, and I wouldn't know
10 where the risks are and where the liabilities
11 are and could not insure that the consumers are
12 protected in that kind of setting, whereas I
13 think the PSC could if it was a sale between two
14 private entities.

15 COMMISSIONER DAVIDSON: Chairman.

16 CHAIRMAN JABER: Commissioner Davidson.

17 COMMISSIONER DAVIDSON: I think if we
18 articulated the guiding principle that the
19 contingency somehow has to be made effective, I
20 would then think the burden would be squarely
21 upon the shoulders of those presenting the
22 contingency to put forth one that would return
23 the parties and the transaction as close as
24 possible to the status quo if this didn't go
25 through.

1 And we heard some ideas today. I'm not a
2 bond expert either, but to place an
3 extraordinary call on the bonds, have certain
4 provisions relating to the lawsuits, require
5 that proceeds be escrowed in case the bonds have
6 to be called in, et cetera. I personally would
7 feel uncomfortable trying to draft that
8 contingency myself, but would feel comfortable
9 reviewing it on the basis of any expert
10 testimony here.

11 And I guess that raises a question for sort
12 of all the interested parties here. Could a
13 contingency be drafted that would return the
14 parties to the status quo if the sale did not go
15 through? Could there be specific provisions in
16 a contingency? For anyone to jump in.

17 COMMISSIONER BAEZ: Acknowledging that
18 there are no bond lawyers in the --

19 CHAIRMAN JABER: We all need T-shirts, "I
20 am not a bond lawyer."

21 COMMISSIONER BAEZ: Did anyone sleep at a
22 Holiday Inn last night? No? Okay.

23 MR. CULPEPPER: The only answer --

24 MR. HOFFMAN: Maybe tonight.

25 MR. CULPEPPER: Well, obviously, we don't

1 know, because we didn't jump up. I would simply
2 repeat what I said earlier in the morning, I
3 guess, at this point, which was that the risk is
4 with the bondholder and not on the customer with
5 regards to the process of the unwinding. I do
6 understand that.

7 whether that language could be -- I do not
8 know, Commissioner. I mean, clearly, there are
9 people in this world on either side of this
10 issue that can determine that, and we can do
11 that with phone calls. But for your purposes at
12 this moment, we cannot.

13 May I -- while I have the floor, may I do
14 one more thing? I just want to clarify.

15 CHAIRMAN JABER: If you'll bring the
16 microphone closer to you so we can hear you.

17 MR. CULPEPPER: Because I don't sense that
18 I'll get much rebuttal, because I guess we've
19 taken that in response, and time is running.

20 But there was one comment with regard to
21 the nonprofit and the fact that its date is
22 today. That's correct. But from the outset,
23 the original outset of the adoption of the
24 interlocal agreement, there was a provision in
25 that agreement adopted by both of the cities

1 that I represent in a public meeting, normal
2 publicized, open meeting, that provided that the
3 Authority could form -- and I think it's 617,
4 Chapter 617; I believe that's right -- a
5 nonprofit corporation. That was from the very
6 outset.

7 So it's not something that they creatively
8 ran around and tried to create outside of the
9 sunshine today, and I just simply needed to
10 report that, because you get the sense that
11 something is going on outlaw, and that's really
12 not the case.

13 CHAIRMAN JABER: Commissioners, do you have
14 any other questions before I let Mr. Twomey
15 address us? Hang on, Harold.

16 COMMISSIONER DAVIDSON: I'm finished.

17 CHAIRMAN JABER: Commissioners, just in the
18 interest again of disclosing where I am, I'm not
19 interested in playing with the contingency
20 language, because I'm not interested in
21 prejudging what this thing will look like. And
22 I speak for just the way I'm -- the perspective
23 I'm coming at this. I want to bring us back to
24 staff's recommendation is to get an application,
25 let's figure out what this is, and we'll know

1 how to process it.

2 But there are outstanding questions that,
3 frankly, will determine whether this gets
4 approved as a matter of right or whether it
5 comes under the public interest standard. I'm
6 not really ready to go beyond that and take a
7 look at the contingency provision, because at
8 the end of the day, there may not be anything to
9 undo.

10 MR. MCLEAN: Yes, ma'am.

11 CHAIRMAN JABER: Mr. McLean.

12 MR. MCLEAN: Just a housekeeping matter.
13 Mr. Jacobs is with us today. He came over
14 earlier. He was originally scheduled to speak
15 with the other interested folks. He was called
16 to the Legislature for some important business,
17 and he's back with us, and I believe he would
18 like to briefly address the Commission, if
19 possible.

20 CHAIRMAN JABER: I'm sorry. You're too
21 late.

22 MR. JACOBS: That's probably a wise
23 decision.

24 CHAIRMAN JABER: Nice to see you again.
25 Come on up, Mr. Jacobs.

1 MR. JACOBS: Madam Chairman and members of
2 the Commission, he said housekeeping. And I
3 left the broom in the car, but I can clean up
4 afterwards if you would like. I'll turn the
5 lights out as well if you would like me to.

6 My name is Buddy Jacobs, and I'm a lawyer
7 from a place called Fernandina Beach, Florida.
8 I represent the Amelia Island Property Owners
9 Association, some 2,500 users of Florida water.
10 I also am a user myself, a customer, and I'm
11 here on behalf of those folks as well as myself.

12 what I'm most concerned about, and on
13 behalf of my folks, we had a meeting on
14 Saturday, a property owners annual meeting, and
15 a large part of the topics discussed that
16 morning -- there were 500 folks there -- was
17 this sale. They are greatly alarmed and quite
18 concerned. And for all the reasons you've heard
19 all day, I've heard these, because I've been to
20 several of these meetings with all the folks
21 involved.

22 And I would just submit to you that you
23 really are the kind of the last hope in this
24 matter on behalf of the consumers of this
25 utility. You are the last hope because, as

1 they've stated to you, they're going to closing,
2 and they're planning that to be the Valentine's
3 Day Massacre, as we viewed it last Saturday in
4 the description of it. Valentine's Day is when
5 they plan to close. They've had a closing. It
6 slid several times for many reasons, a lot of
7 which has been the building and building and
8 building of opposition to this occurring.

9 It just doesn't make sense. You have
10 500,000 folks who use these utility companies
11 around the state, and they're going to be
12 governed by three folks over in the Panhandle.
13 And as the writer H. L. Mencken said, when they
14 say it's not about money, folks, it's going to
15 be about money. And that's what this is all
16 about.

17 But that's not what you're about. You're
18 about protecting the consumers and the citizens
19 of Florida. I would suggest to you that once
20 the bell is rung, you can't unring it. I would
21 suggest to you whatever you think you can do
22 with the bonds and puts and calls and all that
23 kind of stuff, that's not going to get it done.
24 I think you've got to do as the staff has
25 recommended to you, that you need to require

1 them to submit an application, and then whatever
2 happens happens. But you would have discharged
3 your statutory duties and would have done your
4 best, and you would have tried to protect the
5 people of the State of Florida. And I would
6 urge you to do that, and that's why I'm here
7 today. And I'll be happy to try to answer any
8 questions if you might have some for me.

9 CHAIRMAN JABER: Mr. Jacobs, are you going
10 to petition the court for an injunction?

11 MR. JACOBS: We're part of a lawsuit out
12 there as well, and those things are out there.
13 But you all are really the people that I think
14 we have to look to at this stage. Now, once the
15 application is submitted, we'll see where that
16 goes. But if you have to go to court on behalf
17 of the citizens of Florida to stop this sale
18 before the bell is rung -- before the bell is
19 rung, if you have to do that, I hope you will.

20 CHAIRMAN JABER: Does that mean you will
21 not?

22 MR. JACOBS: well, we're doing the best we
23 can where we are. Yes, ma'am, we'll do
24 everything we can. we'll pile on.

25 CHAIRMAN JABER: Is Mr. Jenkins still here?

1 Mr. Jenkins, does your client intend to seek an
2 injunction?

3 MR. JENKINS: We haven't asked the court
4 for that at this time. We're just proceeding --
5 we filed a lawsuit, and we're proceeding with
6 the motions that have been filed by the
7 Authority in that regard.

8 I think the issue for a lot of communities,
9 including us, and I suspect Mr. Jacobs, is that
10 you either have to post a bond or have a
11 considerable amount of potential liability in
12 the event -- especially on a \$550 million deal.
13 I mean, the fact of the matter is, no matter how
14 comfortable you are with your legal position,
15 that's an awful lot of potential liability to
16 bite off on. And I think that's really the main
17 reason you haven't seen more injunction hearings
18 going on around the state in conjunction with
19 these various lawsuits.

20 MR. JACOBS: And I guess he made the point
21 better than I could, but I would just submit to
22 you --

23 CHAIRMAN JABER: What was that you said
24 about the money, Mr. Jacobs?

25 MR. JACOBS: Well, it is about the money,

1 yes, ma'am, and we -- you know, I noticed the
2 folks here to my right. These are all much
3 better lawyers than I am, and they're worth a
4 lot more. And I'm sure, and I would almost
5 swear to it, they're being paid a lot more than
6 I am. And that's fine. I'm in favor of lawyers
7 making money.

8 But I would just submit to you that the
9 little folks can't fight this thing much longer.
10 It's going to happen. They're going to
11 judgment. They're rushing to judgment, and they
12 have great weight behind them, which is an awful
13 lot of money. And I don't know how we can do
14 anything without you. I think we're here.
15 You're the court of last resort. And I implore
16 you to not let them ring this bell, because I
17 don't care what anybody says, you're not going
18 to be able to unring it.

19 CHAIRMAN JABER: Well, again, in the
20 interest of disclosure and to air out all these
21 opinions publicly, Mr. Jacobs, because I want
22 the application to allow me as one Commissioner
23 to take a look at whether this is a governmental
24 authority and decide which course of action to
25 take in addressing the issue, does not mean that

1 today I'm interested in doing anything to seek
2 an injunction. As one Commissioner, I want that
3 out there, you know. ...

4 MR. JACOBS: Yes, ma'am, and I think that's
5 fine. And if you discharge that as your duty, I
6 think that no one criticize it. You're done
7 what you said you would do and what you're
8 required to do, and that's fine. We can't say
9 anything about it. If it happens, it happens.

10 CHAIRMAN JABER: Now, saying that,
11 Mr. Hoffman, I hope that your client -- to
12 respond to something you said earlier, the
13 interest rates and the market lend themselves to
14 the bond financing right now, and the sale and
15 all of that, you have to also weigh into that
16 the cost of litigation and how long that's going
17 to take. And I think you threw out -- I think
18 you said something like \$8 million.

19 MR. HOFFMAN: Thirty.

20 CHAIRMAN JABER: Thirty million. It's not
21 unheard of, certainly as it relates to Florida
22 water litigation, to think that that litigation
23 expense could get close to that. So it sounds
24 like the money you may think you are saving, you
25 might want to consider what your litigation

1 expenses -- I offer that as perhaps on your own,
2 you may want to consider the timing of your
3 closing.

4 MR. HOFFMAN: Chairman --

5 COMMISSIONER DEASON: Madam Chairman, may I
6 add something --

7 CHAIRMAN JABER: Commissioner Deason.

8 COMMISSIONER DEASON: -- to that? This is
9 a point that I wanted to make, and you have
10 touched upon the subject. I am sensitive to the
11 argument that I've heard here today from
12 Mr. Hoffman concerning the timing of the closing
13 and its relationship to the favorable terms that
14 perhaps exist in today's bond markets. You
15 know, I don't think that -- I think we need to
16 take those things into consideration, but I
17 don't think that we necessarily need to be bound
18 by that. But the point I was going to make is
19 that we've heard also here today that it would
20 -- potentially it could be the bondholders which
21 bear the liability and the risk if somehow this
22 sale is not consummated and it does not receive
23 our approval.

24 If that indeed is the case, it seems to me
25 that there's going to be a premium demanded by

1 the bondholders if they are in fact made aware
2 of this contingency that may exist out there.
3 It may be that the bell cannot be unrung. I
4 don't know. But I know that if I were a
5 bondholder, I would look at today's discussions,
6 and the underwriters and everything would have
7 to be made aware of this, and it may be that you
8 may get more favorable terms in the capital
9 markets if this potential liability and this
10 uncertainty is removed. And the only way you're
11 going to remove that is to file the application
12 and get a determination. So I think you need to
13 consider that as well.

14 MR. HOFFMAN: And let me respond to that,
15 Commissioner Deason, just from that one last
16 point that you made, because the Chairman raised
17 it as well, and that's just to bring to your
18 attention that the issue of whether this
19 purchaser falls within the scope of a, quote,
20 governmental authority under your statute, that
21 process has already been undertaken in this
22 docket. The staff asked for comments. You
23 mentioned that we filed them, Chairman. So did
24 virtually all of the other parties. They filed
25 comments on that docket -- on that point.

1 My point is, the Commission is moving
2 forward in resolving that without the filing of
3 an application in this investigation docket. So
4 I just wanted to bring that point to your
5 attention.

6 And secondly, Chairman, I just want to
7 focus the entire Commission on the fact that we
8 have talked all afternoon about sort of the vast
9 amount of litigation that's out there, the fact
10 that many of these complaints include requests
11 for injunctions. No injunction has been
12 secured. And at bottom, what we believe is
13 happening here is, our opponents to the
14 transaction want you to do something that you
15 don't have the power to do, which is to issue an
16 injunction, and thereby relieve them from having
17 to secure an injunction from a Circuit Court and
18 post a bond to pay for the damages that they
19 could very well cause if an injunction were
20 issued. And that's our primary concern.

21 CHAIRMAN JABER: Mr. Twomey.

22 MR. TWOMEY: Thank you, Madam Chair. Just
23 briefly, first -- and I don't want to belabor
24 this, but I'm long past tired of hearing from
25 the representatives of this authority and this

1 utility that this is a bunch of suits, a bunch
2 of suits and ties, coats and ties, a bunch of
3 jealous suitors in the form of other governments
4 that are in complaining about this, and that
5 Mr. Culpepper hasn't heard any customers speak.

6 I'll remind him that when I introduced
7 myself this morning, that I'm appearing on
8 behalf of Sugarmill Woods Civic Association,
9 Inc., an organization that those of you that
10 have been here any time know are consumers, know
11 are concerned consumers that attempt to protect
12 their rights at the Commission and elsewhere.
13 Mr. Jacobs introduced himself as representing a
14 homeowner or civic association as well. Both of
15 these organizations spoke in Orlando. I don't
16 recall if Mr. Culpepper was in the room at the
17 time. They spoke as consumers. Others there
18 spoke. So we've got consumers and customers,
19 Commissioners, that have been raising these
20 issues from the beginning. It's not an issue of
21 jealous suitors in the form of other
22 governments.

23 I want to say very quickly that you need to
24 have a hearing, I think. You need to have a
25 hearing on a lot of the issues that Commissioner

1 Baez said there were no answers to. The way you
2 could answer it is, you have a hearing. If
3 you're going to preserve the right, Madam Chair,
4 for you to ask the questions you want and have
5 that opportunity mean anything, you've got to
6 stop this sale.

7 Mr. Hoffman has all but said, I think,
8 they're going to go ahead. Unless somebody
9 stops them, they're going to have this sale.
10 And it's not just a matter of litigation
11 expense. I don't believe they care. They're
12 funding all the lawyers in this room, all the
13 consultants and so forth on both sides, because
14 they stand to make through this deal at least
15 \$170 million of CIAC retrieval that they can't
16 get otherwise.

17 And the necessity for them moving quickly,
18 I would submit to you, is not because of market
19 conditions. Commissioner Deason is certainly
20 right; if they were to lift this veil, this
21 cloud of the proceedings, they would get better
22 rates. Their concern, I would submit to you, is
23 that they want to close the window on this deal
24 before the Florida Legislature has a chance to
25 act and foreclose it under these circumstances

1 for all time.

2 so I would urge you, go ahead and find
3 that they need to have an application, and find,
4 if you will, that you have to preserve your
5 right to review it. And if it takes seeking an
6 injunction, then I would beseech you to do it,
7 because if you decide to do the right thing and
8 you don't preserve the ability to carry through
9 on it, then we've not much from this proceeding.

10 Thank you.

11 MR. JACOBS: Madam Chairman, I wanted to
12 answer your question you asked at 12:22 this
13 afternoon --

14 CHAIRMAN JABER: Okay.

15 MR. JACOBS: -- as I was leaving. You
16 asked the question, what happens if this thing
17 doesn't work and you have to unwind it at some
18 time, who's going to be left holding the bag?
19 well, as I understand it, simply put, as only I
20 can put things, which is simply, you have a
21 water company selling to an authority -- and
22 we'll assume for a minute that they are an
23 authority. They're selling all their assets to
24 this authority. The authority is borrowing the
25 money from bondholders, who are citizens

1 somewhere, and those bonds are backed up by
2 rates. Those rates are being -- have been set.
3 Some parts of them have already been set. Then
4 they have another rate hearing that I've just
5 heard about that's supposed to happen this
6 Friday, and I believe it will be in Orlando.
7 And they'll set those rates, and those rates
8 will be backing up the bond issue.

9 When they started this adventure, the bonds
10 were going to be -- and they said they would not
11 do this, or there was some discussion that it
12 was going to be AAA bonds, a nice high rating.
13 It has fallen to BBB by one rating and somewhere
14 else by another rating service. So now the cost
15 of this adventure has gone way up because the
16 interest rate has gone up, and so the
17 bondholders now are getting a higher rate of
18 return because their capital is more at risk.

19 But who's going to pay for the bonds? It's
20 not the three people who sit on the Authority
21 out in the Panhandle. It's going to be the
22 ratepayers all around the state. So who's left
23 holding the bag? It's the ratepayers. They're
24 the ones that have got to pay this bond issue
25 off.

1 And they are being served by a monopoly, a
2 monopoly. You've got to have water, and you've
3 got to have sewer. And that monopoly has no
4 governance at all on them that responds to the
5 ratepayers, and that's the issue. And so who's
6 left holding the bag? It's 500,000 Floridians,
7 2,500 of which I represent. And so I would
8 suggest to you that that, simply put, is the
9 bottom line of this adventure. And again, I
10 would ask you to do what you can.

11 CHAIRMAN JABER: Thank you, Mr. Jacobs.
12 Commissioners, I'm ready for additional
13 questions or a motion.

14 COMMISSIONER DEASON: Well, I have a
15 question for staff. Maybe Mr. McLean can help
16 me.

17 The recommendation as filed indicates that
18 we should require the filing of an application
19 on a date certain, February the 7th, I believe.

20 MS. HOLLEY: 5th.

21 CHAIRMAN JABER: 7th? 7th.

22 COMMISSIONER DEASON: I believe it's the
23 7th. And the reason for that is, we want the
24 application -- to issue a recommendation that we
25 require the application before closing. Is that

1 the reason that the 7th was the date?

2 MR. McLEAN: Yes, sir.

3 COMMISSIONER DEASON: Is there anything
4 wrong in requiring the application prior to
5 closing? They may postpone the closing, and
6 that may give them more time to file the
7 application. Or do you -- is there something
8 magical about the 7th regardless of the closing
9 date?

10 MR. McLEAN: Only this. You heard
11 Mr. Twomey mention that you ought to protect
12 your opportunity to decide, to weigh the
13 application and so forth. If we get the
14 application the day before the closing and the
15 closing goes down the next day, our opportunity
16 to protect your opportunity to weigh that
17 application is somewhat fleeting. We can't move
18 that fast.

19 COMMISSIONER DEASON: Well, let me ask you
20 this. Assuming the closing date is the 14th and
21 there's not a postponement in that date, what
22 are we going to do with an application that we
23 have just seven days prior to that?

24 MR. McLEAN: I think that you all need to
25 talk some more about that, because you've heard

1 parties before you suggest that somebody has got
2 to go into Circuit Court and protect your
3 opportunity to weigh the application, if I
4 understood your question correctly.

5 COMMISSIONER DEASON: well, I guess my
6 question -- well, maybe at least the next
7 question, if we have the authority -- and I know
8 there's legal debate on both sides, very learned
9 legal debate on both sides as to whether we have
10 the authority to require the application prior
11 to closing. If we have the authority, if we
12 have the authority to require the application
13 prior to closing, do we have the authority to
14 tell them not to close until we have ruled upon
15 their application?

16 MR. MCLEAN: I don't know how you would
17 enforce it. I think you probably do have that
18 authority, but you may not want to wait for its
19 breach to go to Circuit Court to seek an
20 injunction, because it will be too late. I'm
21 happy with your ordering -- I think we can
22 defend, given the fullness of time, your
23 opportunity to order them not to go forward with
24 the sale, but it is extremely difficult as a
25 practical matter to enforce, unlike the Circuit

1 Court injunction, where somewhere down the road
2 we would have to get -- or at least before the
3 closing we would have to get --

4 COMMISSIONER DEASON: well, I know there
5 are a lot of "ifs" here, but if we have the
6 authority to require, to order them, and they --
7 they being Florida Water Services, who is a
8 regulated utility -- and they disobey our order
9 and they go forward and close, do we still have
10 them on the hook for up to \$5,000 a day for
11 disobeying a Commission order? And I know
12 \$5,000 a day may not be adequate in terms of a
13 \$550 million bond issue, I understand, but is
14 there any type of enforcement?

15 MR. MCLEAN: well, as a practical matter,
16 Commissioner, I believe that corporation is
17 going to be empty as my old Coke can here. You
18 can't get anything from it. In other words,
19 once that deal goes down, the receiving utility
20 is exempt from our jurisdiction. The selling
21 utility -- I don't know what we would have to go
22 against. It's sold. The money is in Minnesota.
23 I don't know what we could do in that situation.
24 It would be a very difficult legal issue to face.
25 It would be expensive, and I think very

1 time-consuming.

2 COMMISSIONER DEASON: Then are you saying
3 then the next logical step, if we require an
4 application to be filed by February the 7th,
5 that between the 7th and the 14th, we would be
6 required to go to court to seek an injunction?

7 MR. McLEAN: That's what I think,
8 Commissioner, or perhaps join other parties who
9 -- upon the authority of the order that you
10 require an application, they might want to go to
11 court too. Mr. Shreve might want to go to
12 court.

13 But in the final analysis, we would have to
14 protect your opportunity to weigh that
15 application and the allegations of the
16 application. I think that's implicit in the
17 staff recommendation. We could have included
18 that in the staff recommendation, but we knew
19 that this discussion would be wide-ranging and
20 you would hear a lot of policy choices. And we
21 know that the Commission frequently modifies the
22 staff recommendation.

23 So I think implicit in our recommendation
24 is the notion that you should protect and order
25 us to protect your opportunity to weigh that

1 application for the substance that it brings to
2 you.

3 COMMISSIONER DEASON: Let's look at it from
4 another point of view. If we go forward with
5 the recommendation and require an application to
6 be filed on February the 7th, and as counsel for
7 Florida Water Services has indicated and for
8 Florida Water Services Authority has indicated,
9 they think we do not have that authority, what
10 recourse do they have if we enter such an order?

11 MR. MCLEAN: To seek a writ of prohibition
12 against the agency that suggests we're operating
13 outside the law, in excess of our legislative
14 delegation.

15 COMMISSIONER DEASON: And how long does it
16 take to receive such a writ if they prevail?

17 MR. MCLEAN: I don't think there's any good
18 answer for that. I think courts normally honor
19 the exigency of the circumstances, and I think
20 we're dealing with -- I believe they would have
21 the opportunity to do that before the sale, and
22 I believe that they could get the ear of the
23 court before then, because the court --

24 COMMISSIONER DEASON: But then it would be
25 their choice as to whether to go forward with

1 the sale, with or without such a writ?

2 MR. MCLEAN: Yes, sir, but we ought not to
3 stand by and watch the deal close if we
4 contemplate your intelligently weighing the --

5 CHAIRMAN JABER: Wait a minute. The writ
6 of -- that's not an automatic. Isn't the agency
7 given an opportunity to show cause or respond or
8 something?

9 MR. MCLEAN: Yes, ma'am, but it would all
10 be done. I think, I predict that the court
11 would give them an audience and require us to
12 give account of ourselves, and that would be a
13 matter fully litigated before the court in very
14 short order.

15 A writ of prohibition is just like an
16 injunction, an extraordinary writ, not easy to
17 get. Courts are not anxious to hear those
18 things. But if they persuaded the court that
19 there were some exigent circumstances here, that
20 there might be damages which might be done if
21 the deal didn't go down, I believe that they
22 could get an audience. And I have never filed
23 for a writ of prohibition in my life, so --

24 CHAIRMAN JABER: Along those lines, I have
25 been reviewing 367.011, which talks about the

1 jurisdiction of the Commission, and it says the
2 Commission has exclusive jurisdiction over
3 authority, service, and rates, over a regulated
4 utility's authority, service, and rates. And
5 then later on it talks about regulation being in
6 the public interest, and the PSC has certain
7 police powers to preserve public health, safety,
8 and welfare. And I read that -- and then the
9 final provision talks about this law supersedes
10 all other laws that are inconsistent.

11 And I read that in conjunction with the
12 powers of the Commission in .121, and I find
13 myself confused, Harold, with respect to writs.
14 It says under .121(g) that the Commission can
15 exercise all judicial powers, which includes
16 issuing writs. And maybe we don't go that far,
17 but in conjunction with this provision and .011,
18 we do require the application. We do go as far
19 as requiring Florida Water not to close on the
20 sale, again citing these two statutes, until
21 we've had an opportunity to review the
22 application.

23 One way or the other, I'm assuming Florida
24 Water would -- I'm hopeful that Florida Water
25 will respect that. But let's say they exercise

1 their opportunity to appeal. The issues that
2 you and Commissioner Deason just discussed,
3 doesn't that get us into the appellate arena
4 anyway on whether the sale can occur without our
5 approval?

6 MR. MCLEAN: I think so, but then that
7 gives rise to whether there would be a stay. My
8 sense is -- and I don't mean to speak for the
9 utility or the authority, but that they would
10 seek a writ of prohibition as opposed to an
11 appeal. That seems to me to be the strategic
12 thing to do. But I am persuaded by what you
13 say.

14 CHAIRMAN JABER: Well, you don't want to
15 give the learned counsel any ideas.

16 MR. MCLEAN: Well, I certainly don't. I
17 don't ever tell people how to sue my client.

18 CHAIRMAN JABER: You know, Mr. Hoffman, I
19 think you understand, at least as one
20 Commissioner, what I'm trying to accomplish
21 here. And I just want to see what it is, and at
22 the end of the day, you all may absolutely be
23 right. You know, how do we get there? It seems
24 to me you need to go back to your client and
25 find a reasonable solution, because I don't

1 think we're asking unreasonable questions.

2 MR. TWOMEY: Madam Chair.

3 CHAIRMAN JABER: Mr. Twomey.

4 MR. TWOMEY: I just wanted to offer what I
5 think is a view of the appellate law aspects of
6 this.

7 We, by the way, meaning my clients, have in
8 Santa Rosa County obtained, I think out of all
9 the litigation, a stay, we think an operable
10 stay that is precluding this transaction from
11 going forward and closing. It may be lifted
12 within the next week or two. But we could only
13 seek review of the Authority's order because of
14 certain changes in the -- other horrible changes
15 in the law which I don't think anybody really
16 understood. But it took review of their agency,
17 163 local authorities out of appeal to the First
18 DCA and made it so you had to go to the local
19 Circuit Courts.

20 We didn't know if we had a right to appeal
21 necessarily in the traditional sense or to seek
22 a writ, but we went ahead and sought a writ of
23 certiorari and prohibition. And my concern is
24 -- and maybe it's one you want to look at
25 shortly, is whether or not they could seek a

1 writ of prohibition -- Harold may be right.
2 whether they could seek a writ of prohibition if
3 in fact they're also addressing an appealable
4 order. Usually you have to exercise -- exhaust
5 your administrative appeal type remedies before
6 you would take an extraordinary writ.

7 CHAIRMAN JABER: Are you saying all of that
8 to say that perhaps the vehicle of issuing an
9 order that cites to .011 and .121 that parties
10 can appeal is just -- is another appropriate
11 recourse --

12 MR. TWOMEY: Yes.

13 CHAIRMAN JABER: -- instead of seeking an
14 injunction?

15 MR. TWOMEY: Yes, ma'am. Well, no. I
16 would like to be very clear on this, because I
17 raised it at the outset.

18 Our best outcome today would be you issue
19 an order, you have a decision from the bench,
20 but you issue an order saying, "We want an
21 application. We forbid you to sell yourself
22 until the application is received and received
23 approval from us."

24 I share the concern raised --

25 CHAIRMAN JABER: Didn't I just say that? I

1 didn't use "forbid," but --

2 MR. TWOMEY: well, that's my word.
3 Prohibit them from selling themselves until they
4 receive your authority.

5 My concern, and one I share apparently with
6 Mr. McLean, is that they have so much money at
7 risk here, they may go ahead and thumb their
8 nose at you and say, "we're going to go ahead
9 and do the closing anyway. No one is going to
10 be able to unring the bell," as Mr. Jacobs
11 refers to it, "and we'll take the \$5,000 a day
12 penalty, given how much we have in profit on
13 this, if they can catch us and make us pay it."

14 So all I'm saying in that is that you have
15 to do your order. That's a given. But in order
16 to preserve and protect your ability to have
17 your order mean anything, we would urge you to
18 go ahead and seek the Circuit Court injunction.

19 And it's not this business of Mr. Hoffman
20 saying you're doing their work. You know, it's
21 preserving your jurisdiction to help protect the
22 citizens of the State of Florida. It's just
23 that simple.

24 CHAIRMAN JABER: Commissioners do you have
25 a motion, thoughts, questions?

1 COMMISSIONER DAVIDSON: Chairman, I have
2 thoughts, not a motion at this point.

3 This are two vehicles which would
4 facilitate a sale: A sale being made
5 contingent. And my view is that provision would
6 have to be made very effective so that it truly
7 was contingent. The second vehicle is a sale to
8 a government authority.

9 As I've mentioned throughout the day, my
10 view of that issue is that whether the Authority
11 is -- whether the legal entity is a government
12 authority within the meaning of the statute is,
13 for the most part, a legal inquiry that doesn't
14 take a lot of factual analysis. However, the
15 provision that the Authority is relying upon
16 today is that it's a not-for-profit corporation
17 formed for the purpose of acting on behalf of a
18 political subdivision with respect to a water or
19 wastewater facility. I think that's a mixed
20 legal and factual question that can't be sort of
21 answered sitting here today, so some type of
22 input is necessary.

23 The PSC has jurisdiction to block this sale
24 if it determines it's not in the public
25 interest, either before the sale, after

1 concluding it's not a governmental authority,
2 or after a sale with a contingency. And as I
3 sit here, I'm trying to think of options to sort
4 of move the process along in an orderly fashion
5 so that those determinations can be reached in
6 an orderly fashion. So that's sort of a general
7 comment. It's not in the form of a motion, but
8 I'm struggling with the right process that
9 serves all the interests at hand.

10 CHAIRMAN JABER: Thank you, Commissioner.
11 I think we're all at the same place.

12 Something I asked earlier that we need to
13 go ahead and discuss, what's wrong with on our
14 own motion scheduling a hearing as well? And to
15 the degree we find out through the court,
16 whatever court vehicle, Mr. McLean, we end up
17 taking, it's easier to cancel a hearing than it
18 is to find a hearing, you know, and to act
19 expeditiously. In that regard, I would much
20 rather have a hearing scheduled than try to find
21 one later.

22 Commissioners, if I had to make a motion,
23 it would be something like they need to file the
24 application, and the application needs to be, as
25 staff has articulated, to allow us to determine

1 whether this is a transfer that needs to be
2 approved as a matter of right or whether it's a
3 transfer that requires us to make a
4 determination using the public interest
5 standard.

6 And frankly, because today is the first day
7 we heard about the formation of a nonprofit
8 corporation, I would expect that the application
9 include information about that, and that our
10 staff be given the articles of incorporation and
11 the bylaws and all of those 617 requirements.

12 And I would also make part of my motion
13 that the Commission on its own motion schedule a
14 hearing.

15 And I would also direct staff to work with
16 the company on helping the company understand
17 that perhaps on their own, they would
18 re-evaluate the timing of the sale and how there
19 would be a public benefit to helping the
20 Commission, the Legislature, and local
21 governments understand what you're doing and
22 why, and that you keep up with the negotiations
23 and the facilitation, because I think at the end
24 of the day, that's what saves you money.

25 But I'm not making the motion, so -- I can.

1 COMMISSIONER DEASON: Madam Chairman, let
2 me -- I don't really have a problem with what
3 you have suggested. It would be along the lines
4 of what I would do as well. The only thing that
5 I have a question about is whether we need to
6 take any action seeking an injunction if it's
7 necessary to preserve our right to look at the
8 sale before it's consummated.

9 CHAIRMAN JABER: Yes, absolutely. And you
10 notice, Commissioner Deason, I did not include
11 that. I wanted to say to Mr. Hoffman, I've
12 always appreciated your candor, and I heard what
13 you said with respect to your intent to go
14 forward with the sale. And as you know, I'm a
15 candid person too, and my request of you is that
16 you take back our request that you consider the
17 timing of the sale.

18 And, Commissioner Deason, to address your
19 concern, I wasn't -- I am hopeful that this
20 agency will not have to seek an injunction in
21 Circuit Court, but recognizing that that perhaps
22 is wishful thinking, I would direct our staff to
23 come back and let us know as soon as they know.
24 And at some point it becomes legal strategy, and
25 I don't know that we're required to have that

1 discussion here.

2 COMMISSIONER BAEZ: Well, should we hear
3 back by a certain date?

4 MR. MCLEAN: May I make a modest suggestion
5 that you as part of your motion, or Commissioner
6 Deason's motion, authorize the staff to take all
7 necessary measures to protect your jurisdiction
8 to fully review the application?

9 COMMISSIONER DEASON: What does that
10 mean? If you get the application and you feel
11 like you need to file for an injunction, you
12 would have the authority to do that?

13 MR. MCLEAN: Yes, sir.

14 COMMISSIONER DEASON: Well, I'm going to
15 make a motion at this point, and we'll get
16 something out on the table, and it can maybe be
17 a means for further discussion if necessary.

18 I would move that we approve staff's
19 recommendation that there be an order entered
20 that would require the filing of an application
21 for transfer or sale, whatever the appropriate
22 terminology is, and that application be filed by
23 February the 7th, that that application address
24 questions addressed by the Chairman, that being
25 whether this application should be approved as a

1 matter of right or if there should be some type
2 of a public interest standard that should be
3 applied by the Commission. We also need further
4 explanation into the nonprofit corporation that
5 has apparently just been formed and how that
6 fits into whether the authority is in fact a
7 governmental authority under Chapter 367.

8 Madam Chairman, I would also agree, and it
9 would be part of the motion that we go ahead and
10 schedule this for hearing on our own motion, but
11 I think there should be some latitude for staff
12 to review the application. And what the timing
13 of that would be would be depending, I guess,
14 upon the review of that application.

15 CHAIRMAN JABER: Yes.

16 COMMISSIONER DEASON: And consistent with
17 your comments and with those of Commissioner
18 Bradley, certainly inherent in this motion would
19 be the idea that continued negotiations would be
20 permissible and in fact encouraged, that there
21 may be some type of an agreement that can be
22 reached which hopefully could adequately address
23 all concerns. Maybe not, but at least it
24 certainly should be pursued.

25 I am not going to include in the motion at

1 this point the suggestion by General Counsel
2 that we include direction to staff to take all
3 necessary steps to preserve our jurisdiction,
4 but I'm open to discussion on that. But that is
5 not part of the motion as I'm making it right
6 now.

7 COMMISSIONER DAVIDSON: Chairman.

8 CHAIRMAN JABER: There's a motion.
9 Commissioner Davidson.

10 COMMISSIONER DAVIDSON: I would add to that
11 motion, in the second part, the section on
12 questions being addressed, to approve as a
13 matter of right or use the public interest
14 standard, discuss the nonprofit corporation, to
15 also address while you're preparing the paper
16 work the contingency issue and really give that
17 thought, go back and talk, and talk to the
18 Office of Public Counsel, to Mr. Twomey, to all
19 the interested parties, and see if there is a
20 way that this sale can truly and effectively be
21 made contingent, so that if it's not approved,
22 it can be dismantled.

23 CHAIRMAN JABER: Commissioner Deason.

24 COMMISSIONER DEASON: I have no problem
25 including that as part of the motion.

1 COMMISSIONER BAEZ: I have a question on
2 the motion --

3 CHAIRMAN JABER: Commissioner Baez.

4 COMMISSIONER BAEZ: -- if we can discuss it
5 for a moment.

6 CHAIRMAN JABER: Yes, absolutely.

7 COMMISSIONER BAEZ: Logistically, we don't
8 have in terms of staff or this Commission by
9 extension having the ability to make a decision
10 as to how best to protect its right to assert
11 its jurisdiction or to consider its
12 jurisdiction. Logistically, we don't have
13 another public meeting before the sale date.
14 Absent that, what are the alternatives, I guess,
15 if Commissioner Deason's motion at least
16 contemplates having a further discussion on
17 that? what are our alternatives short of an
18 agenda?

19 CHAIRMAN JABER: I'll let Mr. McLean
20 address this, but traditionally -- and,
21 Commissioner Deason, you may have knowledge
22 about this too. Traditionally, if there are
23 emergency situations, the General Counsel takes
24 action and at the next internal affairs gives us
25 that briefing. And to the degree we have any

1 problems with the legal strategy, things can be
2 undone. But -- do you have anything to add?

3 MR. MCLEAN: Yes, ma'am, that's my
4 understanding too.

5 CHAIRMAN JABER: Commissioner Deason, that
6 is how we've handled that in the past; right?

7 COMMISSIONER DEASON: I believe that's
8 correct.

9 MR. MCLEAN: Commissioners, a point of
10 clarification, moving on to one other item. I
11 didn't hear in Commissioner Deason's motion any
12 Commission-based prohibition or Commission-based
13 order to the company to postpone the sale.

14 CHAIRMAN JABER: Right. That's right.

15 MR. MCLEAN: I'm not suggesting that it
16 ought to be there or it shouldn't be there. I
17 just want to make sure we've got it right.

18 CHAIRMAN JABER: And I'll let Commissioner
19 Deason speak for himself, but I did not
20 understand your motion, Commissioner, to include
21 any language that requires Florida water to not
22 go forward with the sale.

23 COMMISSIONER DEASON: It was not in there,
24 but I'm open to discussion on that as to whether
25 it should be. As I indicated, the motion was

1 out there to kind of get us going forward. And
2 I'm open to discussion on that, but you're
3 correct, it was not part of the original motion.

4 COMMISSIONER DAVIDSON: Chairman and
5 Commissioner Deason, I would like to hear from
6 General Counsel. Is that -- is such a provision
7 clearly within our jurisdiction? We've heard a
8 lot of talk about that today. I have a comfort
9 level with including provisions that are within
10 our jurisdiction, a bit more discomfort with
11 including provisions that are not.

12 MR. MCLEAN: Yes, sir, I believe it is. I
13 believe it is a colorable position to take. I
14 believe it is a necessary pendant to the order
15 that tells them to submit the application,
16 because you have heard a great deal of argument
17 before you today that the bell can't be unrung.
18 It is absolutely senseless for them to send you
19 an application unless the Commission has
20 adequate opportunity to weigh that application.
21 And the only way to achieve that is initially
22 for you to tell the utility not to sell itself,
23 and then perhaps down the road somewhere, send
24 your legal staff into Circuit Court to persuade
25 the court that it should do the same.

1 COMMISSIONER DAVIDSON: Just as we sit
2 here, to keep this issue alive, what in general
3 terms is the basis of that colorable authority?
4 Is it the general provisions in our statute?
5 Are there specific statutory provisions?

6 MR. McLEAN: Chapter 367.12 -- and without
7 thinking about a great deal, Commissioner,
8 Chapter 367.121(1)(j), I believe, says the
9 following: To seek relief in Circuit Court,
10 including temporary and permanent injunctions,
11 restraining orders, or any other appropriate
12 order, et cetera.

13 CHAIRMAN JABER: (j) or (g)?

14 MR. McLEAN: (j), I think.

15 CHAIRMAN JABER: Okay. Commissioner
16 Davidson, when I asked that question -- and
17 Harold can tell us if I'm wrong. It seems to me
18 that 367.011 and 367.121(g) --

19 MR. McLEAN: Commissioner, I believe (g)
20 goes to subpoenas and the like.

21 CHAIRMAN JABER: Oh.

22 MR. McLEAN: An injunction is something
23 which traditionally lies in chancery and equity,
24 and the courts have uniformly deprived
25 administrative agencies of that kind of

1 authority.

2 CHAIRMAN JABER: I guess I'm not thinking
3 of the injunction in the sense of what the
4 injunction sought in court. If your concern,
5 which I'm sympathetic to, obviously, if your
6 concern is we want to be able to completely
7 exercise our jurisdiction and have a proceeding
8 that allows us to assess the application, using
9 (g), can't we require that the sale -- not an
10 injunction, but require that the sale not be
11 closed?

12 MR. McLEAN: I believe you can. I believe
13 section (j) also gives you that authority or
14 reinforces it.

15 CHAIRMAN JABER: And the question,
16 Commissioners, do you want to go that far? And
17 frankly --

18 COMMISSIONER DEASON: well, let me ask a
19 question about that. And, Mr. McLean, maybe you
20 can help me here. It can be argued that there
21 is legislative intent for there to be sales of
22 utility systems prior to approval of an
23 application if there's adequate contingency
24 there for PSC approval at some point. Would we
25 be violating that desire of the Legislature if

1 we were to make a decision which indicated that
2 they could not sell their assets prior to an
3 affirmative decision by this Commission that the
4 sale is in the public interest?

5 MR. MCLEAN: Perhaps, Commissioner. I
6 think that's certainly an argument I would take
7 if I were on the other side. On the other hand,
8 my sense of the discussion so far today is that
9 you all don't believe that that contingency is
10 adequate. My sense is that you all don't think
11 that that contingency is adequate.

12 COMMISSIONER BAEZ: You mean the existing
13 contingency?

14 MR. MCLEAN: I'm sorry, sir.

15 COMMISSIONER BAEZ: The existing
16 contingency?

17 MR. MCLEAN: That's correct, the
18 contingency that's contained in the contract.

19 COMMISSIONER DEASON: Well, then let me
20 ask it this way. If we were going to include
21 within the motion a requirement, or prohibit the
22 sale of the assets before a ruling upon the
23 application, would it be necessary for us to
24 make a finding that the existing contingency
25 language is inadequate?

1 MR. MCLEAN: I think it would be highly
2 desirable, yes, sir.

3 COMMISSIONER BAEZ: Well, I have a
4 question along those lines, the point that
5 Commissioner Deason made. Since there's the
6 opportunity to make the sale contingent in lieu
7 of filing an application prior to the sale, do
8 we have to offer that as -- do we legally have
9 to offer that as an alternative as well to stay
10 consistent with the statute?

11 MR. MCLEAN: Commissioner, I'm going to
12 say no, because time is of the essence here. The
13 best-case scenario, if we're going to go --

14 COMMISSIONER BAEZ: I'm not saying that a
15 contingency would ever be adequate under these
16 circumstances at this point.

17 MR. MCLEAN: No, sir.

18 COMMISSIONER BAEZ: I just don't want to
19 run afoul of the statute. I mean, if -- there
20 may be such a thing as an adequate contingency
21 in the next --

22 MR. MCLEAN: It's getting a little late in
23 the game.

24 COMMISSIONER BAEZ: -- ten days. That is
25 true. I think in a practical sense that's true,

1 but I'm talking about let's cross our Ts here as
2 well. I mean, I don't want to go ordering
3 something that goes contrary to what is already
4 available in the statute. If you don't have a
5 concern over it being --

6 MR. MCLEAN: I do have a concern. I would
7 like very much if we're going to go into Circuit
8 Court, the best-case scenario for me is for you
9 to order the utility not to sell itself and
10 determine that the contingency is inadequate.

11 COMMISSIONER BAEZ: I'm comfortable with
12 that.

13 MR. MCLEAN: Yes, sir.

14 COMMISSIONER BAEZ: I'm comfortable with
15 that now.

16 MR. MCLEAN: That will enhance our chances
17 of obtaining an injunction should that
18 eventuality come to pass, immeasurably.

19 And I also believe I should say that I
20 think the adequacy of the contingency is one for
21 legal argument that you've already heard today
22 and that it is not based upon factual
23 considerations, and you need not afford an
24 evidentiary hearing on the point.

25 CHAIRMAN JABER: Commissioner Deason, if

1 you're looking for feedback --

2 COMMISSIONER DEASON: I'm looking for some
3 direction. I'm open-minded about including
4 that, but I do want feedback from other
5 Commissioners.

6 CHAIRMAN JABER: As it relates to feedback
7 from me, I would be supportive of a motion that,
8 frankly, puts us in the best legal position. I
9 think that's the most efficient way of handling
10 this. And I would be supportive of inclusion of
11 language that requires that the sale not -- it's
12 not the sale. That the transfer does not close
13 until the PSC's approval of the application.

14 And I think -- Harold, you have to correct
15 me if I'm wrong -- that we must say, and this is
16 the basis of my support of the motion, that we
17 do that in our exercise, our exclusive exercise
18 of jurisdiction over Florida Water's authority,
19 service, and rates, and that we do have unique
20 powers with respect to ensuring that the public
21 health, safety, and welfare of customers, your
22 customers in particular, is maintained.

23 That really goes to the voice. I've been
24 referring to it as a customer voice, but it's
25 really to ensure continuity of service, an

1 adequate rate structure, and sufficient water
2 quality. So I would be supportive, Commissioner
3 Deason, of language that has that, that it
4 requires that no sale occur until the Commission
5 has reviewed the application, that cites to our
6 exclusive jurisdiction and the powers of the
7 Commission and references that we have not been
8 able to determine that the contingency clause is
9 adequate, in that we cannot determine that the
10 transfer can be undone such that the consumers
11 are not harmed.

12 COMMISSIONER DEASON: Let me take a stab at
13 it then. I would -- unless there's further
14 comment.

15 COMMISSIONER DAVIDSON: Yes, I have
16 comment. I'm troubled by the General Counsel's
17 suggestion that -- after what we've heard here
18 today, that the contingency clause can be
19 resolved as a legal matter. I think as we sit
20 here today, we can say that it's not adequate.
21 There's no sort of meaning to the clause that
22 we've seen, but we've heard from various
23 witnesses that possibly there can be provisions,
24 people don't know. I would like for the
25 conversation to occur with Public Counsel, with

1 Mr. Twomey, with the counties, with the
2 interested parties, to see -- and we'll put the
3 burden on the parties -- can a contingency
4 clause be drafted as a matter of fact that would
5 assure the Commission, you know, it looks as if
6 the sale could be undone, if not approved. I
7 just don't know that that's the case, but I
8 don't think it's a legal matter.

9 So if the order could be drafted such that
10 we tie in the factual nature of that, I don't
11 have a problem with some type of injunctive
12 relief until such time as we are satisfied that
13 there is an adequate contingency. But I don't
14 think it's a legal issue, and I'm troubled sort
15 of tying it to that, because it's not a
16 slam-dunk that there's not a contingency. Maybe
17 at the end of the game, there is one. Maybe
18 there's a 90% chance there's not one.

19 But I think we need to give all the
20 interested parties time to work that issue out.
21 And I would encourage everyone to work on this
22 tonight, tomorrow, tomorrow night, all night,
23 get it going and try and come up with a
24 solution, engage our fine Public Counsel here to
25 come up with some ideas.

1 COMMISSIONER DEASON: Let me say I think
2 that in the motion earlier was the expressed
3 desire for there to be continued negotiations
4 and discussions. And obviously, you know, if
5 the parties wish to, I would encourage them to
6 pursue contingency language and factors which
7 would be adequate, provide adequate protections.
8 And I think that's something that would be
9 contemplated. And in the additional motion I'm
10 going to make, it's not contemplated there that
11 there never could be adequate contingency. It's
12 just -- what I'm going to propose at this time
13 is that we include in the motion that we make a
14 determination that the existing contingency
15 language is inadequate to protect consumers, no
16 finding about contingency language is never
17 going to be adequate. It could be at some
18 future point.

19 And I would include along with that that
20 the -- we would prohibit the sale of the assets
21 prior to approval of the application, and we
22 would cite to our authority, the authority of
23 the Commission, our pervasive authority to
24 protect consumers.

25 And I think that would -- I think that's

1 all I have to add at this point.

2 COMMISSIONER DAVIDSON: I would propose the
3 additional point, prohibit the sale until
4 approval of the application or -- and it may all
5 come at the same time -- approval of a
6 contingency that satisfies this Commission,
7 because it appears the statute contemplates
8 those two vehicles, an outright application
9 approval after a public interest analysis, or if
10 there's an adequate contingency, that the sale
11 could go forward before that public interest
12 analysis. And I want to, to the extent we can,
13 keep to the parameters of the statute so that --

14 COMMISSIONER DEASON: I agree. I think
15 that's a very worthwhile addition to the motion.

16 MR. MCLEAN: May I ask that you not put us
17 on the sideline after -- they're supposed to
18 file the application on the 7th. Try not to put
19 us on the sideline waiting for that contingency
20 to show up, because from the 7th to the 14th is
21 seven quick days.

22 I understand the principle of what you're
23 saying. I think it's a well-founded concern.
24 But we don't want to be parked on the sideline
25 waiting for the contingency to show up when we

1 ought to be running down to Circuit Court.

2 COMMISSIONER DEASON: well, there's an
3 obligation for there to be some type of a filing
4 within the application, most likely, and a
5 determination by the Commission that that is an
6 adequate contingency. We would either approve
7 the application or else indicate that the
8 revised contingency language is adequate so that
9 the sale can be consummated, and we would still
10 be reviewing the application.

11 MR. MCLEAN: I understand. Thank you,
12 Commissioner.

13 COMMISSIONER DEASON: That's about the
14 longest motion I ever made. I can try to repeat
15 it, but --

16 COMMISSIONER DAVIDSON: Second.

17 COMMISSIONER DEASON: Good. Thank you.
18 Thank you, Commissioner.

19 CHAIRMAN JABER: There has been a team
20 motion and a second that I'm not going to repeat
21 either. I mean, obviously -- Mr. McLean, do you
22 understand the motion?

23 MR. MCLEAN: Yes, ma'am.

24 CHAIRMAN JABER: Okay. There has been a
25 motion and a second. All those in favor say

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aye.

(Simultaneous affirmative responses.)

CHAIRMAN JABER: ..Opposed?

The motion resolves Item 5A in its entirety, and that order will issue as a final order?

MR. MCLEAN: Yes, ma'am.

CHAIRMAN JABER: Let me thank the parties for their patience, for hanging in there for the length of the day. I really appreciate everyone's professionalism. And, Mr. Hoffman, I hope that you take the request to heart.

MR. HOFFMAN: Thank you, Madam Chairman.

CHAIRMAN JABER: Thank you.

MR. HOFFMAN: Thank you, Commissioners.

(Conclusion of consideration of Item 5A.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 122 through 247 are a true and correct transcription of my stenographic notes.

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

DATED THIS 11th day of February, 2003.


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