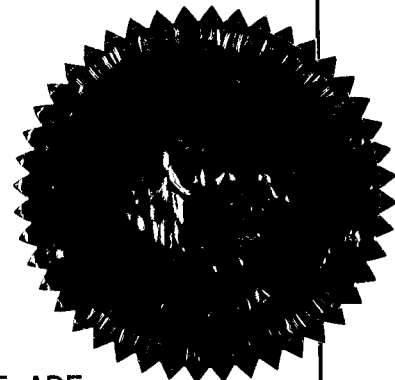


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020010-WS

In the Matter of

APPLICATION FOR STAFF-ASSISTED
RATE CASE IN HIGHLANDS COUNTY
BY THE WOODLANDS OF LAKE
PLACID, L.P.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: Monday, May 5, 2003

TIME: Commenced at 1:30 p.m.
Concluded at 2:21 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
OFFICIAL FPSC REPORTER
(850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMI 04111 MAY-7 8

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 MARTIN S. FRIEDMAN, ESQUIRE, Rose, Sundstrom &
3 Bentley, LLP, 600 S. North Lake Boulevard, Suite 160,
4 Altamonte Springs, Florida 32701, appearing on behalf of
5 Highvest Corporation and L.P. Utilities Corporation.

6 STEPHEN C. BURGESS, ESQUIRE, Office of Public
7 Counsel, c/o The Florida Legislature, 111 West Madison Street,
8 Room 812, Tallahassee, Florida, 32399-1400, appearing on
9 behalf of the Office of Public Counsel.

10 LAWRENCE D. HARRIS, ESQUIRE, FPSC General Counsel's
11 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
12 32399-0850, appearing on behalf of the Commission Staff.

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2 COMMISSIONER DEASON: Call the prehearing conference
3 to order.

4 Could I have the notice read, please?

5 MR. HARRIS: Yes, sir. Pursuant to notice issued
6 April 18th, 2003, this time and place has been noticed for a
7 prehearing conference in Docket 020010-WS, Application for
8 Staff-Assisted Rate Case in Highlands County by The Woodlands
9 of Lake Placid, L.P.

10 COMMISSIONER DEASON: Okay. Take appearances.

11 MR. HARRIS: On behalf of Commission staff, Lawrence
12 Harris.

13 MR. FRIEDMAN: Martin Friedman of the law firm of
14 Rose, Sundstrom & Bentley on behalf of L.P. Utilities Corp. and
15 Highvest Corp.

16 MR. BURGESS: Steve Burgess here on behalf of the
17 Public Counsel's Office representing the Citizens of Florida.

18 COMMISSIONER DEASON: I want to know why Mr. Burgess
19 didn't rise when I walked into the room.

20 MR. BURGESS: I was hoping you wouldn't see that.

21 COMMISSIONER DEASON: Okay. Mr. Harris, do we have
22 any preliminary matters?

23 MR. HARRIS: None that I'm aware of, Commissioner.

24 COMMISSIONER DEASON: Any -- are there any
25 preliminary matters by any of the parties? Mr. Friedman?

1 MR. FRIEDMAN: I don't have any, but Mr. Burgess, I
2 think --

3 COMMISSIONER DEASON: Mr. Burgess, any preliminary
4 matters?

5 MR. BURGESS: I don't know whether it would be a
6 preliminary matter or to be taken up as we go through the
7 prehearing order, but there were some positions that we
8 changed, modified, and I have sent them out by e-mail to
9 Mr. Harris and brought hard copies with me and provided a
10 diskette of them along with a hard copy to the court reporter.
11 And they are identified by issue. If I can bring you a copy.

12 COMMISSIONER DEASON: Surely.

13 MR. BURGESS: You along with everyone else in the
14 room pretty much has a copy.

15 COMMISSIONER DEASON: Thanks. Okay. I would assume
16 that probably the best place to address these changes is when
17 we arrive at each individual issue.

18 MR. BURGESS: I think so.

19 COMMISSIONER DEASON: All right. Well, with that, it
20 is my intent to proceed through the draft prehearing order.
21 I'm working from a version which is dated, dated today, in
22 fact, and we will proceed section by section.

23 If there are any questions or clarifications or
24 changes or whatever, please let me know. Otherwise I plan to
25 proceed rather quickly through the draft prehearing order.

1 And with that, we will begin with Section I, the
2 conduct of proceedings. Section II, case background. Section
3 III, jurisdiction. Section IV, confidential information.
4 Section V, the posthearing procedures. Section VI, prefiled
5 testimony and exhibits. Section VII, order of witnesses.

6 MR. FRIEDMAN: I've got a question about that. Yes.
7 Commissioner Deason, I notice that the staff has apparently
8 listed some witnesses as direct adverse, and I don't know what
9 that means.

10 COMMISSIONER DEASON: Okay. Staff?

11 MR. FRIEDMAN: Are they going to have those people
12 come and testify and that sort of thing?

13 MR. HARRIS: Yes, Commissioner. Our intent is to
14 issue subpoenas for Mr. Cozier and the two Lovelettes and call
15 them as staff's witnesses. Testimony has not been prefiled
16 since we don't have control over the witnesses. They're, in
17 fact, the utility's owner and -- or directors.

18 COMMISSIONER DEASON: Okay. Mr. Friedman, any
19 problem with that procedure?

20 MR. FRIEDMAN: No.

21 COMMISSIONER DEASON: Okay. Very well. Section
22 VIII, basic positions.

23 Mr. Burgess, your basic position has not changed; is
24 that correct?

25 MR. BURGESS: That's correct.

1 COMMISSIONER DEASON: Okay. Section IX, issues and
2 positions. We will begin with Issue 1.

3 Mr. Burgess, you have a change there?

4 MR. BURGESS: Yes. And, and this is one of the
5 issues that arises from the following situation. We were down
6 for depositions recently down in Lake Placid and I spoke with
7 some of the customers. I had been speaking with some by
8 telephone. But there are some areas that the customers intend
9 to bring to the Commission's attention.

10 My understanding is that there will be a customer
11 portion of the testimony prior to the hearing. And I assume
12 that if they raise something, the Commission will then deal
13 with that issue at that particular time.

14 It's a little bit of a complication in a PAA that has
15 been protested where issues have been clearly defined and then
16 the customers have issues that perhaps have not been dealt with
17 specifically in, in the prehearing process. I have tried to
18 understand what their concerns are and incorporate them into
19 issues that have been raised in the various draft prehearing
20 orders.

21 And the second half of our position in response to
22 this issue is one of those issues. It's, it's where the, a
23 particular part of the plant has been included in rate base,
24 and it's my understanding from what we've gleaned so far and
25 what the customers have told me is that that was a contributed

1 asset.

2 And so I have put it in the CIAC -- in our CIAC
3 position. It doesn't need to be there. It can be specified
4 elsewhere. I don't know where it would fall out. If they
5 tried to raise it and there's an objection to it as being
6 beyond the scope of the hearing -- I, you know, I don't know
7 really how to approach it. And so I've tried to -- what I've
8 tried to do is bring to the Commission's attention and all
9 parties' attention as early as possible any issues that I've
10 become aware of, and certainly there may be others that on the
11 day of the hearing are new to me as well. But those that I
12 have been apprised of, I've tried to bring them to everybody's
13 attention and put them to what seems to be the appropriate
14 position in the prehearing order.

15 COMMISSIONER DEASON: And your position reflects that
16 there is an amount included in rate base for the value of the
17 land for this particular plant in question?

18 MR. BURGESS: That's correct. It's my understanding
19 that that's, that is the factual situation.

20 COMMISSIONER DEASON: And it's your position that
21 that land was contributed in either -- there should be no
22 inclusion in rate base or else there should be recognition of
23 CIAC to offset that?

24 MR. BURGESS: Yes. But, but I want you to be aware
25 that it's our position, but it's not something that we put in

1 our testimony, in Mr. Larkin's testimony. It's information
2 that I've understood from the customers, that I have become
3 aware of from the customers and that I understand they intend
4 to bring to the Commission's attention at, at the hearing and,
5 therefore, present the evidence on it.

6 So it's not something that we've presented in our
7 testimony, but it's something that I have become aware of that
8 customers intend to, to present to the Commission.

9 COMMISSIONER DEASON: Okay. Mr. Friedman.

10 MR. FRIEDMAN: Commissioner Deason, you know, we have
11 a procedure, there's a procedural order that's pretty standard
12 that was entered in this case, which has been entered in cases
13 for as long as I can remember, and it tells people to take
14 certain positions at certain particular times. And one of the
15 reasons for that is to afford everybody an opportunity to know
16 what the issues are going to be when you go to trial.

17 This is an issue that has never been mentioned before
18 Mr. Burgess took some depositions last week, not something that
19 we have had an opportunity to analyze or deal with, and it is
20 inherently unfair to allow somebody to raise an issue two or
21 three weeks before trial when there's -- they could have raised
22 this issue earlier. And if Mr. Burgess says he just found out
23 about it, you know, he knew at what point in time he needed to
24 set his case. He knew at what point in time he needed to
25 decide what his positions were going to be. And if he didn't

1 get that information at the time that he needed it, then that's
2 no fault of the utility's or anybody else's. But it's
3 inherently unfair to let somebody bring in an issue that has
4 never been raised, never been briefed three weeks before the
5 trial.

6 COMMISSIONER DEASON: Mr. Friedman, though, the issue
7 states, "What is the appropriate CIAC balances?" So you don't
8 think that this is, falls within the scope of that issue?

9 MR. FRIEDMAN: Absolutely not.

10 COMMISSIONER DEASON: Okay.

11 MR. FRIEDMAN: Because the point -- what they
12 raised -- they raised this first part of the issue is what they
13 raised as their CIAC issue.

14 If you remember, we filed a withdrawal of the CIAC
15 issue, and you decided that in spite of that withdrawal you
16 were going to let that issue stay in. That issue framed as it
17 is deals only with the issues raised in or with the matters
18 raised in the first part of this, which is the CIAC for the,
19 for the water meters.

20 Nobody has ever mentioned and there's no testimony
21 filed on the second part of this -- how are we supposed to
22 address something in the procedural mechanism that is not
23 raised until three weeks before trial? I would suggest to you
24 that I say it's, I say it's inherently unfair. You know, I
25 think it's probably got some constitutional implications, but I

1 don't raise due process arguments down here at the Commission.
2 But I do raise ethical issues. And it's not, it's not fair to
3 let somebody bring an issue whether it's pro or con; whether I
4 was the one raising it or Mr. Burgess was raising it. To bring
5 in something -- and he calls it the same issue because it is
6 CIAC, but you could look at the issues raised and go to
7 anything, you know, come up at trial and mention something that
8 had never been mentioned before. CIAC is a big issue and he
9 took his position on CIAC and said what his position was. You
10 allowed him to -- you've allowed that issue to remain in over
11 our objection. But it needs to be the issue that they raised
12 and not allowed to expand to include something else.

13 COMMISSIONER DEASON: But what I understand
14 Mr. Burgess to say is that he has engaged in discovery,
15 consultation with his clients. He has discovered that there's
16 more information that may or may not lead to some other
17 adjustment within the purview of CIAC. I thought that that's
18 what discovery is all about and that's why we allow it up to a
19 certain point before the hearing begins. I'm trying to
20 understand why you think that this particular position is out
21 of bounds.

22 MR. FRIEDMAN: Well, then how do I -- let's say, how
23 do I respond to this? How can I -- where, where in the
24 procedural mechanism do I have any opportunity to respond to
25 this?

1 MR. BURGESS: Commissioner, I wonder if I might --

2 COMMISSIONER DEASON: Certainly.

3 MR. BURGESS: I've apparently miscommunicated a
4 little bit.

5 This is one of the issues -- when I saw this -- when
6 I went down and talked to the customers, when I saw this as one
7 of the issues that they plan to raise at the customer -- when
8 they, when they have the opportunity to testify.

9 Now assuming that's part of the hearing process, it's
10 something that, that they have told me that they, that they
11 plan to raise it, that they would raise it.

12 And Mr. Friedman is talking about three weeks before
13 the hearing. Well, under the normal course of events, you
14 know, I would have heard it just on the day of the hearing as
15 would the Commission when the customers came and testified.

16 I don't -- you know, my understanding is that when
17 the Commission takes customer testimony, if it bears on the
18 case, the Commission is willing to hear it and provide some
19 mechanism for the utility to respond to it. And if that's the
20 case, well, then what I'm doing and what my intent was was to
21 give everybody a three week jump on hearing these issues rather
22 than I heard it for the first time, you know, about this date
23 and I waited for the hearing before I let anybody else know
24 about it and kept it to myself. If that's what Mr. Friedman
25 would rather, I, I can take that approach as, you know, when I

1 hear something from the, from the customers, just wait until
2 the customer testimony comes along. But I assume the
3 Commission's precedent has been that if the customer has raised
4 something that's relevant, they aren't going to say, well,
5 thank you very much and we intend to ignore that. The
6 Commission would consider it if it's relevant to the case. And
7 so this is, you know -- and as I say, my intent is -- rather
8 than a surprise, this was an intent to inform everybody as far
9 in advance as I could possibly manage it.

10 COMMISSIONER DEASON: Mr. Burgess, perhaps I
11 mischaracterized. But what you just described was my
12 understanding, that this was an issue that was to be raised by
13 either one or more individual customers in the customer phase
14 of the hearing. And perhaps when I used the term "discovery,"
15 maybe that was too formal. I'm not really sure. But you did
16 discover it somewhere later in the process after you filed your
17 prefiled testimony.

18 MR. BURGESS: Yes. That's right.

19 MR. FRIEDMAN: Well, my point is, you know, I'm
20 just -- I'm amazed. This is an issue that he talks like he
21 just met with his client for the first time and all of the
22 sudden they had this revelation that they brought to his
23 attention. If that is, then that's just a bad way that maybe
24 the Office of Public Counsel deals with their clients.

25 Those customers are their clients just like the

1 utility is my client. I can't sit there and meet with my
2 client and then all of the sudden get to trial and have my
3 client testify about something that's nowhere listed as an
4 issue or nowhere listed as something that anybody is going to
5 take into consideration. I can't do that. Why can he?

6 COMMISSIONER DEASON: Staff, do you have anything to
7 add at this point?

8 MR. HARRIS: Commissioner, my understanding of the
9 procedure is similar to what Mr. Burgess enunciated. I think
10 that the customers have traditionally come to hearings and they
11 say what they say and the Commission, my understanding is, has
12 in the past has always tried to accommodate that, that as it's
13 brought up at the service phase.

14 If my understanding is correct, Mr. Burgess is trying
15 to notify the parties early on of something he anticipates the
16 customers will raise. I'm a little bit concerned that he's
17 changing his position to reflect that. But at the same time I
18 think that we need to recognize OPC is trying to give notice so
19 that instead of being ambushed by something he knew about, he's
20 letting everybody know up front that he anticipates that the
21 customers will raise this issue.

22 MR. FRIEDMAN: But he also said --

23 COMMISSIONER DEASON: Wait. Wait. Wait. We're
24 going to have order here. I decide who speaks when. Okay?

25 So having said that, Mr. Friedman, I'll hear from you

1 and, Mr. Burgess, I'll hear from you.

2 MR. FRIEDMAN: Well, Mr. Burgess just said a minute
3 ago, this is one of the issues they're going to raise and maybe
4 they'll raise some other issues. Boy, that really raises a red
5 flag for me. I mean, that invites people to not put forth what
6 your case is going to be. You're inviting people to take the
7 process and misuse it.

8 COMMISSIONER DEASON: Mr. Friedman, let's explore
9 that statement for just a second.

10 What you're saying then is you're saying Public
11 Counsel would be better off not to hire any expert witnesses,
12 not prefile any testimony and depend on their case in chief to
13 be presented by non, nonexpert witnesses from their -- from the
14 general population of customers. I'm not so sure that that is
15 --

16 MR. FRIEDMAN: They're just like anybody else.
17 They've got a client. They go and they talk about the case
18 with their client. Their client tells them what their concerns
19 are. They hire an expert. That expert takes these clients'
20 concerns and puts them in prefiled testimony just like I do.

21 Then to allow his client at some point after we've
22 already closed the testimony, after we've closed our positions,
23 we filed prehearing statements, it was not in a prehearing
24 statement, this issue didn't show up, and all of the sudden you
25 get to a hearing and they're allowed, just because it's under

1 the auspices of being CIAC you can say anything you want?

2 COMMISSIONER DEASON: I understand.

3 MR. FRIEDMAN: I mean, that's, that's, that's just
4 inherently unfair.

5 COMMISSIONER DEASON: Mr. Burgess.

6 MR. BURGESS: One of the things Mr. Harris pointed
7 out is that he was a little troubled that it was then
8 incorporated into our position. I don't have any problem with
9 removing it from our position. That doesn't -- that's fine
10 with me. I don't have any problem with removing it from any
11 reference in the prehearing order and then just letting the
12 customer testimony take place and whatever comes out comes out.
13 That's fine with me.

14 As I said, my point was to try to let people know
15 what I understood might be coming and then -- and as far as any
16 other issues that Mr. Friedman is talking about, this is the
17 extent of it. That's why I put these in here.

18 Perhaps put in somewhere else, you know, some
19 recognition that some customers have made known concerns in two
20 areas and the determination of whether they'll be considered
21 relevant issues will be, will be made at the hearing itself.
22 It, it does -- none of it matters to me as far as that goes.

23 COMMISSIONER DEASON: Mr. Harris, any last words
24 before I make a ruling?

25 MR. HARRIS: No, Commissioner. The only thing that

1 occurred to legal staff was perhaps one alternative the OPC
2 could have made that they didn't was they could have asked for
3 leave from the prehearing officer to file additional testimony
4 with some type of discovery. We're three weeks from hearing.
5 I think OPC could have taken that route. They chose not to. I
6 see this as more of a notice than perhaps a formal amendment of
7 the case issues.

8 COMMISSIONER DEASON: Well, let me tell you what my
9 main concern is and what I'm going to preserve to the extent
10 that I can, and that is the ability for customers to appear at
11 the customer phase of the hearing and to present their
12 positions on this case, and I'm going to allow that.

13 At the point that there is a customer or customers
14 who wish to address this particular issue, Mr. Friedman, that
15 could be subject to objection at the time that testimony is
16 attempted to be made.

17 MR. FRIEDMAN: I think that's the appropriate way to
18 deal with it, Your Honor.

19 COMMISSIONER DEASON: And we will deal with it at the
20 hearing. This particular position, Mr. Burgess, is going to be
21 deleted for purposes of the prehearing order.

22 MR. BURGESS: Very good.

23 COMMISSIONER DEASON: We will deal with it at that
24 time. I would anticipate there's going to be an objection, it
25 will be dealt with, and there are remedies to that. It may be

1 that, Mr. Friedman, you would be allowed to provide some type
2 of responsive testimony if that testimony is indeed allowed to
3 be given at the time of the customer hearing.

4 I know that it is customary when we receive testimony
5 from customers dealing with quality of service or particular
6 complaints that testimony is allowed in the record and the
7 utility is generally allowed to, subsequent to hearing, file
8 some type of response indicating how that customer complaint
9 was handled or the nature or the reason that there was a
10 problem, and it's given whatever weight the Commission deems
11 appropriate.

12 I don't know what the outcome is going to be. But
13 for purposes of today the position is not going to be
14 incorporated. Mr. Burgess, your witnesses, customers, they
15 certainly can appear at the customer phase of the hearing.
16 They can provide testimony which they deem relevant, subject to
17 whatever objections which, which may be made at that time.

18 MR. BURGESS: Understood. And for the record, that
19 would be the second paragraph of our two-paragraph position in
20 response to Issue 1.

21 COMMISSIONER DEASON: That's my understanding. Let
22 me ask you this question: Is the first paragraph consistent
23 with your -- the prehearing statement you filed?

24 MR. BURGESS: It is.

25 COMMISSIONER DEASON: Okay. Then that is the ruling.

1 Okay. That addresses Issue 1.

2 MR. BURGESS: It's consistent but it has been
3 changed. In other words, the position is the same. I have
4 reworded some of the items.

5 COMMISSIONER DEASON: If it's simply clarifying or
6 editorial changes but the issue and your position is basically
7 the same, I don't have a problem with that. And that's based
8 upon your representation, I take it. I've not done a
9 line-by-line comparison of the two.

10 But I will do -- Mr. Friedman, I'll give you just a
11 moment now to, if you wish, to read paragraph one of Issue 1 to
12 see if there's anything in there that you feel is a substantive
13 change which you wish to address at this point.

14 MR. FRIEDMAN: No, Commissioner Deason. It seemed
15 pretty consistent with what they've presented prior to this
16 time.

17 COMMISSIONER DEASON: Very well. Okay. Okay. Issue
18 2. Issue 3.

19 Issue 4, Mr. Burgess, you have filed a change for
20 Issue 4. What's the nature of the change?

21 MR. BURGESS: Yes. And this is another one of the
22 issues that the customers came to me and said, no, we, we have
23 people who have -- without getting into too much of the detail
24 of the substantive issue, a certain amount of revenue was
25 imputed based upon the understanding of the PSC staff of the

1 amount of rentable lots. And the customers dispute the
2 fact-finding of that.

3 I incorporated that into our position. I would
4 suggest that I remove it by simply having our position be the
5 first sentence. And I would ask you for leave to come back
6 and, and provide a little bit of fleshing out later. In other
7 words, I will remove that, that controversy about the number of
8 unrentable lots that I have raised there because that is
9 something the customers intend to -- told me they intend to
10 bring forward.

11 COMMISSIONER DEASON: Let me ask you this question.
12 What is deficient about the position you've taken in your
13 prehearing statement which has been incorporated in the draft
14 prehearing order?

15 MR. BURGESS: Let me see. Well, first, I've got it
16 -- I apparently have, have -- we are not consistent with what
17 the particular issues are.

18 COMMISSIONER DEASON: Okay. I'm looking at, I'm
19 looking at Page 8 of the draft prehearing order, which is
20 identified as Issue 4.

21 MR. BURGESS: Right. There was in an earlier
22 prehearing order an amount of imputed revenues which has now
23 been put back to a suggested or proposed stipulation. So it's
24 no longer an issue. And my numbering system is off because I
25 went by the --

1 COMMISSIONER DEASON: Okay. So your change, your
2 indicated change for Issue 4 actually relates to Issue 5 in the
3 draft prehearing order; is that correct?

4 MR. BURGESS: No. Actually I think it relates to --

5 COMMISSIONER DEASON: No. No. I'm sorry. There's
6 an issue that -- I'm -- I guess I'm confused. Help me out.

7 MR. BURGESS: Okay. What happened was there was an
8 Issue 4 in an earlier draft prehearing order, which is now back
9 in proposed stipulations, proposed stipulation number one on
10 Page 12 of the proposed, of the draft prehearing order. And
11 that is the imputed revenue.

12 When it was an issue, we had simply agreed with PSC
13 staff and the PAA on it. This is another one though when I,
14 when I understood it was an issue, I put this in here to alert
15 the Commission that there are customers who intend to address
16 that particular issue. I can take it out. I can just withdraw
17 a position on it since it's not an issue.

18 COMMISSIONER DEASON: So you're indicating that that
19 is no longer a proposed stipulation, is that correct, what's
20 identified as proposed stipulation number one?

21 MR. BURGESS: Well, I mean, it falls into that, yes.
22 But it falls into that complicated area of we didn't have a
23 problem with it. We didn't raise it in our testimony. But I
24 found out that the customers intend to testify on it because --
25 well, they, they did a lot count and they intend to provide

1 testimony on it.

2 You know, again, I'm sort of at a loss. Should I not
3 be bringing anybody's attention to these things? I can start
4 doing it that way, if that's a better approach. But with
5 regard to this, it's not something that we filed testimony on.
6 If the customers raise it, I will say that I'm going to do my
7 best to argue that that testimony is relevant, should be
8 considered by the Commission, should be resolved by the
9 Commission and, and considered in the case. But, you know, but
10 I understand also my obligation to the, to the prehearing
11 process and raising issues at a particular time on behalf of
12 the Office. So we didn't raise it in our testimony, but I know
13 the customers intend to, intend to bring it up.

14 COMMISSIONER DEASON: Yeah. Mr. Friedman?

15 MR. FRIEDMAN: Well, first of all, I don't have that
16 new issue on four he had. But if you'll recall, we filed a
17 notice of withdrawal of two issues. I don't remember exactly
18 when that was. One issue was the CIAC issue and the other
19 issue was this imputed revenue issue. And Public Counsel
20 objected to the withdrawal of the CIAC issue and you agreed
21 that it should not be withdrawn. Nowhere was there any
22 discussion that the other issue wasn't properly withdrawn. To
23 me it's not an issue.

24 COMMISSIONER DEASON: Well, but there is a
25 proposed -- this draft prehearing order includes a proposed

1 stipulation, which I assume is no longer being stipulated to.
2 And at some point there was an issue listed through the
3 prehearing process which listed imputed revenue as an issue; is
4 that correct?

5 MR. FRIEDMAN: We listed it as an issue and we
6 withdrew it.

7 COMMISSIONER DEASON: Okay. Now were you allowed to
8 withdraw that?

9 MR. FRIEDMAN: We withdrew it.

10 COMMISSIONER DEASON: You just withdrew it on your
11 own? And did the Commission acknowledge that in any way?

12 MR. FRIEDMAN: Well, I think you did implicitly when
13 you -- we withdrew that at the same time we withdrew the CIAC
14 issue, I believe. And Public Counsel objected to withdrawing
15 the CIAC issue and you agreed, but nobody addressed that we
16 couldn't withdraw the other issue. And we argued and if you'll
17 look -- I can pull my brief out and I could reargue the law
18 about our ability to withdraw issues that we raised. But, you
19 know, here again you're allowing somebody to start raising
20 issues at the last minute that we haven't had an opportunity to
21 deal with.

22 MR. BURGESS: I agree with Mr. Friedman in his
23 rendition of how things happened. It was approved by the
24 Commission, the withdrawal of it, and that's why I am where I
25 am. I -- you know, it can be a stipulation, proposed

1 stipulation. I couldn't agree to it. I understand that, you
2 know, that the prehearing process has us where we are, which is
3 a withdrawal of this issue. I further understand from
4 discussions with customers that they plan on, on bringing this
5 to the Commission's attention.

6 COMMISSIONER DEASON: Staff, do you have anything to
7 add at this point?

8 MR. HARRIS: May I have a moment?

9 COMMISSIONER DEASON: Sure.

10 MR. HARRIS: Commissioner, the way Staff sees it, the
11 issue was withdrawn, the order left the CIAC and it allowed the
12 withdrawal of that. At the same time, the stipulation appears
13 to have gone away, so staff's position would be that the
14 proposed stipulation should be deleted and the issue should be
15 shown as withdrawn.

16 COMMISSIONER DEASON: Let me -- just so I can have
17 one thing clear in my own mind. Mr. Friedman, you, you
18 requested the withdrawal or indicated that you were withdrawing
19 two issues: One dealing with CIAC and the other with imputed
20 revenue.

21 There was an objection dealing with the withdrawal of
22 the CIAC issue, but there was no objection to the withdrawal of
23 the imputed revenue issue. Is --

24 MR. FRIEDMAN: That's my recollection.

25 COMMISSIONER DEASON: Okay. Mr. Burgess, you accept

1 that?

2 MR. BURGESS: That's correct. That's my
3 recollection.

4 COMMISSIONER DEASON: Okay. Since that has happened,
5 I think it probably would be inappropriate at this time to try
6 to add the issue since it was indicated it was being withdrawn,
7 there was no objection filed to that withdrawal.

8 But it would also be inappropriate to indicate that
9 there is a stipulation concerning imputed revenue. So when we
10 get to Section XI dealing with proposed stipulations, we will,
11 we will delete Number 1 listed under that section.

12 Okay. Now I understand we've got a little bit of a
13 discrepancy here with the numbering of issues, so we'll try to
14 coordinate as best as we can. The draft prehearing order
15 indicates that Issue 4 is the issue concerning office rent.
16 And, Mr. Burgess, that is in your list of issues that you've
17 just distributed today listed as Issue 5; is that correct?

18 MR. BURGESS: Yes, sir. That's correct.

19 COMMISSIONER DEASON: So you have made a change to
20 the prehearing order Issue Number 4.

21 MR. BURGESS: That's correct.

22 COMMISSIONER DEASON: Okay. And what is the nature
23 of that change?

24 MR. BURGESS: Well, for one thing, after discovery I
25 found out that the issue as I couched it, not as it was couched

1 in the testimony, but part of the issue, subissue as I couched
2 it in the initial prehearing order was based on a faulty
3 premise. And so I have adjusted an implicit position out or an
4 implicit rationale out of our position. I've excised it from
5 our position because it was based on faulty information. And
6 so I have simply recouched our position.

7 COMMISSIONER DEASON: Does your new position, does it
8 go beyond the scope of your prefiled testimony?

9 MR. BURGESS: No.

10 COMMISSIONER DEASON: It's consistent --

11 MR. BURGESS: As a matter of fact, it is -- it was
12 the former position that went beyond the scope of the prefiled
13 testimony. The new position is more in line with the prefiled
14 testimony.

15 COMMISSIONER DEASON: Mr. Friedman?

16 MR. FRIEDMAN: Commissioner Deason, I haven't seen
17 the language that is being proposed to redo, so I don't know
18 how to address it. All I got was the -- well, that's why. You
19 only gave me one with 1 and 3. You didn't give me one with
20 Page 2 on it, Larry.

21 COMMISSIONER DEASON: Why don't we do this. Let's --
22 Mr. Friedman, let's give you an opportunity to, since you
23 didn't have that page, let's give you an opportunity to review
24 that, the change.

25 MR. FRIEDMAN: That looks okay.

1 COMMISSIONER DEASON: Okay.

2 MR. FRIEDMAN: That looks okay.

3 COMMISSIONER DEASON: Staff, you have no problem with
4 the change?

5 MR. HARRIS: None.

6 COMMISSIONER DEASON: Okay. All right. Well, then
7 we'll incorporate that change under Issue 4.

8 We will now proceed to Issue 5, which addresses rate
9 case expense. And, Mr. Burgess, your Issue 6 is rate case
10 expense; correct?

11 MR. BURGESS: That's correct.

12 COMMISSIONER DEASON: Okay. And you have made a
13 change to your position. What is the nature of the change?

14 MR. BURGESS: Just to expand upon it. There's
15 nothing -- no really substantive differences. It's not based
16 on additional information. It's just adding, I guess, what I
17 consider to be rationale that's incorporated in the prefiled
18 testimony into the position. But I represent that there's --
19 this is not one of those where based on information that the
20 customers have provided it has adjusted it at all.

21 COMMISSIONER DEASON: Mr. Friedman, do you need
22 additional time to review the change?

23 MR. FRIEDMAN: No. No. Other than questioning my
24 morality, I don't have any problem with it.

25 COMMISSIONER DEASON: Ethics and morality. This is

1 going to be an interesting hearing.

2 MR. FRIEDMAN: He can question my ethics all he
3 wants, but not my morality.

4 MR. HARRIS: And, Commissioner, I would note on a
5 related issue, with the rate case expense, my understanding is
6 it's Commission practice generally that at the time of hearing
7 for the utility to submit a statement of the actual and their
8 estimated expenses. Prior to the hearing. I'm sorry. And at
9 this point we'd like to ask that the utility submit prior to
10 the hearing an updated accounting of the estimated rate case
11 expenses and the actual that they've spent to date.

12 COMMISSIONER DEASON: Mr. Friedman, can that be done?

13 MR. FRIEDMAN: Certainly.

14 COMMISSIONER DEASON: Okay.

15 MR. FRIEDMAN: At what, what point in time do you
16 want me to cut it off?

17 COMMISSIONER DEASON: Staff, what's your preference?

18 MR. HARRIS: A week before the hearing, Commissioner,
19 one week.

20 COMMISSIONER DEASON: Very well. While we're on the
21 question of rate case expense, let me just explore something
22 with the parties here.

23 It strikes me that we have a limited number of issues
24 dealing with a utility which has a small customer base. Some
25 of these issues, it appears that the facts are pretty much

1 established and there's a question of appropriate regulatory
2 treatment, I guess, perhaps from a policy standpoint.

3 My question is is there any way that there's any
4 action that we can take at this point to try to minimize the,
5 the inclusion or the incurrence of any more rate case expense
6 by trying -- I know the parties apparently have tried to reach
7 some stipulations. This is my concern, you know, that if we
8 have to go to hearing -- and I anticipate that there's going to
9 have to be some opportunity for customers to testify because
10 it's been noticed as such. I guess I'm just trying to throw
11 out to the parties for feedback just exploring the question of
12 what, if anything, can we do to try to minimize rate case
13 expenses. We're now engaged in the prehearing process.

14 Mr. Friedman, I'll toss it your way to begin with and then,
15 Mr. Burgess, I'll let you respond.

16 MR. FRIEDMAN: I really don't know any way we can
17 accomplish that. Mr. Harris and I had talked about that at one
18 point trying to zero it in to where we can stipulate facts.
19 But I don't know how we can do that, frankly. The way the case
20 is set up and if the customers are going to, want an
21 opportunity to come in and talk about particular issues, then
22 certainly we need to be available to do that. I do not think
23 it's a two-day, a two-day trial. I mean, unless the customers
24 are going to take more than a couple of hours, I would expect
25 we would be through by the end of the day.

1 COMMISSIONER DEASON: Mr. Burgess, your thoughts.

2 MR. BURGESS: Well, taking it from a practical side,
3 I try to think of what would we save, and I can't think of a
4 way to save going -- I mean, from the standpoint of rate case
5 expense I can't think of a way to save Mr. Friedman and his
6 client from, from being there. And so once they're there, once
7 they are there, that's almost all the expense that would be
8 associated with it anyway, even if we had a factual
9 stipulation. The only way I could think that we could even
10 possibly arrive at something otherwise is if we had a factual
11 stipulation and the customers agreed not to testify.

12 And I'm not even sure then whether it's something
13 where we wouldn't need to be down there to be -- or at some
14 point to be somewhere to be making our arguments to the
15 Commission. And, of course, that's -- the expense in this case
16 is Mr. Friedman, that he is not, they've not hired, you know,
17 gone out and hired other consultants. So he's going to need to
18 be wherever the argument takes place, and I can't see a way to
19 avoid that.

20 COMMISSIONER DEASON: Well, it seems to me then the
21 only way -- obviously -- let me make one thing perfectly clear.
22 Everybody is entitled to a hearing. And if that's where we
23 are, we're going to have a hearing and we're going to give
24 everyone to the fullest extent we can their due process. So
25 that's, that's not in question. I'm just trying to explore

1 alternatives.

2 What I hear you saying is that the only way to
3 eliminate the need for a hearing probably would be for your
4 clients to agree not to testify and that there be some, perhaps
5 some, just a stipulation on the entire case, just make the
6 entire case go away.

7 MR. BURGESS: Something like that. Or perhaps
8 alternatively the testimony be entered into the record and, you
9 know, the Commission make its determination based on the facts
10 of the case, the facts presented. You know, that's all I can
11 think of.

12 I -- whatever -- if something works, I'd certainly be
13 willing to entertain it. I mean, I don't --

14 COMMISSIONER DEASON: Let me ask, have the parties
15 attempted to sit down and discuss a settlement of the entire
16 case to prevent the necessity of a hearing?

17 I mean, I'm not against having a hearing and I'll be,
18 I'll be glad to participate fully in the hearing. I'm just
19 trying to eliminate the incurrence of any more additional rate
20 case expense. Have there been any discussions about settling
21 the entire case in some manner? And, if not, is that something
22 the parties are willing to discuss before we actually convene
23 the hearing?

24 MR. FRIEDMAN: Well, I hate to -- you know, I raised
25 the issue with Mr. Burgess as to whether there was something.

1 There's -- one of the big issues in this case is the amount of,
2 is a \$69,000 refund. And I had broached the subject with
3 Mr. Burgess as to whether they had some flexibility in dealing
4 with that issue and that's as far as it got.

5 COMMISSIONER DEASON: Yeah. Well, I guess I don't
6 need to know the details of the discussions at this point. I
7 appreciate that you're bringing to my attention that there has
8 been an attempt made to discuss at least one of the larger
9 issues. And I would just encourage the parties, you know, as
10 we get closer to hearing, I mean, if you feel like it would be
11 conducive to explore that, by all means I would endorse the
12 attempts. And I understand that often times there are many
13 attempts made and they don't come to fruition, but that's just
14 part of the process.

15 MR. BURGESS: Yeah. We'd be happy to discuss it.
16 It's just -- it's -- as Mr. Friedman points out, there is a
17 significant large issue upon which there's not a whole lot of
18 middle ground that I can see, so.

19 COMMISSIONER DEASON: Very well. Staff, do you have
20 anything to add on that particular point?

21 MR. HARRIS: No, Commissioner.

22 COMMISSIONER DEASON: Okay. I believe that concludes
23 Issue 5, rate case expense.

24 We're now on Issue 6. Issue 7. Issue 8. Issue 9.
25 Issue 10. Issue 11. Issue 12.

1 Let me -- in relation to Issues 11 and 12, this
2 strikes me as being essentially, essentially legal issues. Are
3 these issues which we're going to receive testimony on or are
4 these matters which are just going to be briefed? Mr.
5 Friedman?

6 MR. FRIEDMAN: There's a significant amount of
7 testimony on it. That was the major substance of the
8 depositions that staff took last week were on this particular
9 issue.

10 COMMISSIONER DEASON: The adverse witnesses, are they
11 going to be addressing this matter as well?

12 MR. HARRIS: That's who we plan -- that's the
13 majority of our questions for the witnesses, yes.

14 COMMISSIONER DEASON: Very well. Okay. I was just
15 hoping.

16 Section X, exhibit list. Section XI, proposed
17 stipulations. As I indicated, we will, we will not incorporate
18 Item 1. There are two other items, 2 and 3. If there are no
19 problems with those, we will incorporate those and just
20 renumber accordingly. Is there any objection to that?

21 MR. FRIEDMAN: No.

22 COMMISSIONER DEASON: Very well.

23 MR. HARRIS: And, Commissioner, I would have a
24 question with respect to the third. It relates to the
25 testimony of Ms. Welch, who is the staff auditor. The meat of

1 the stipulation is that we can enter basically the auditor
2 report without the necessity of a staff auditor being present
3 at the hearing.

4 I know that traditionally the Commission or the panel
5 would rule at the hearing. But it seems to me since the
6 hearing is going to be in Sebring, if we could have some
7 resolution from the panel in advance whether Ms. Welch would be
8 needed to answer Commissioners' questions, if that makes sense.
9 I'd hate to see her come down to Sebring to be excused pursuant
10 to the stipulation.

11 COMMISSIONER DEASON: I think the best way to handle
12 that, we will include this -- the parties stipulate there's no
13 need for her presence.

14 Mr. Harris, just inquire of the other Commissioners
15 assigned to this panel if they anticipate any questions for the
16 staff auditor. And if none -- if other Commissioners are in
17 agreement, well, then you can advise Ms. Welch that she does
18 not need to be in attendance at the hearing.

19 MR. HARRIS: Thank you, Commissioner.

20 COMMISSIONER DEASON: I do not require her presence.
21 I can tell you that now.

22 Section XII, pending motions. None are indicated. I
23 assume that is accurate. The parties are not aware of any
24 motions which are pending?

25 MR. FRIEDMAN: No.

1 COMMISSIONER DEASON: Very well. And the same
2 applies to Section XIII, confidentiality matters. There are no
3 pending confidentiality matters at this time.

4 Section XIV, rulings. It's indicated that if there,
5 if there is to be an opening statement, it's limited to ten
6 minutes per, per side. Let me inquire at this point: Will
7 there be opening statement, Mr. Friedman?

8 MR. FRIEDMAN: I'll waive mine, if Mr. Burgess will
9 waive his. But if he's not going to, I can't waive mine.

10 COMMISSIONER DEASON: Mr. Burgess? I understand.

11 MR. BURGESS: I think I'd like to make an opening
12 statement. Is there a problem if, if I decide later to waive
13 it, let you know at the hearing and then waive it, then we
14 jointly waive? I mean, at this point it would be my plan to
15 make an opening statement. I think it will be helpful to the
16 Commission.

17 COMMISSIONER DEASON: We will include this time
18 limit -- first of all, is ten minutes sufficient?

19 MR. BURGESS: Right.

20 COMMISSIONER DEASON: Okay. We will include this
21 limitation and we will be going on the assumption that there
22 will be opening statements so both parties are prepared. But
23 at the time of hearing if both parties agree that there is to
24 be no prehearing statements, we will certainly allow that to
25 take place as well. I just don't want a situation where one

1 party is prepared and the other party is not.

2 MR. FRIEDMAN: I appreciate it.

3 COMMISSIONER DEASON: Mr. Harris, to the extent I've
4 made any decision today which is classified as a ruling,
5 incorporate it.

6 I think the only thing is that we've made some
7 decisions concerning issues and the position of those issues
8 and they will just be incorporated in as part of the process of
9 issuing the prehearing order. So I don't really think there's
10 any rulings in addition to what you have listed.

11 MR. HARRIS: I'll go back and check the transcript to
12 be sure, Commissioner.

13 COMMISSIONER DEASON: Very well.

14 MR. HARRIS: There's one last thing before we
15 adjourn. OPC did file a formal petition for intervention. I
16 believe that that's been referred to in a number of subsequent
17 orders, but I don't believe an official order was issued by the
18 Prehearing Officer. I don't know if you wanted to address that
19 at this point. Or if Mr. Burgess was going to ask for a
20 separate order, if we could just acknowledge that the
21 intervention was granted and eliminate that motion that's been
22 outstanding.

23 MR. BURGESS: I don't need a separate order.

24 COMMISSIONER DEASON: Very well. So it's just --
25 it's acknowledged that, that Mr. Burgess, Public Counsel's

1 Office is intervening.

2 MR. FRIEDMAN: I want to dismiss him.

3 COMMISSIONER DEASON: Yeah. I tell you, anybody that
4 doesn't stand up when I walk into the room, I want to dismiss
5 them, too.

6 For purposes of the record, that was said in jest.

7 MR. BURGESS: I'll do it at the hearing.

8 COMMISSIONER DEASON: Okay. In some preliminary
9 discussions, Mr. Harris, you indicated that staff may be
10 intending to introduce an exhibit which you referred to as a
11 matrix of the various entities, legal entities which are the
12 subject of this hearing. Is that something we need to address
13 at this point, or do you want to just introduce that at the
14 hearing?

15 MR. HARRIS: Yes, Commissioner. We did not --
16 basically in the context of the depositions we took last week
17 there's some interrelationships between three parties and
18 they're -- and by separate corporations.

19 In order to simplify it for the Commission, we had, I
20 had made up what I would propose to introduce probably through
21 one of the company -- the companies that we're going to call
22 the staff witnesses. And, of course, it would be subject to
23 objection by Mr. Friedman. Unless he wants to stipulate it in
24 at this point, it would be a staff exhibit. We haven't
25 prefiled it since we didn't prefile testimony. But I wanted

1 to, similar to Mr. Burgess, make sure everybody knew what we
2 were trying to do and see if we could get some agreement today.

3 COMMISSIONER DEASON: Well, I won't ask Mr. Friedman
4 to stipulate at this point, but he has it. And at the time of
5 hearing if he's willing to stipulate this information, it may
6 speed the process at hearing. But we will allow you to explore
7 that at the time of the hearing. But at least Mr. Friedman and
8 Mr. Burgess are on notice that this is an exhibit which staff
9 intends to, to sponsor in some way, I assume, through an
10 adverse witness; is that correct?

11 MR. HARRIS: That's our intention at this time, yes.

12 COMMISSIONER DEASON: Okay. Mr. Friedman, you --

13 MR. FRIEDMAN: I understand that. Yes. I was
14 provided with a copy of that last week.

15 COMMISSIONER DEASON: Very well. Okay. All right.
16 Is there anything else to come before the prehearing officer at
17 this time?

18 MR. FRIEDMAN: Nothing from the utility.

19 COMMISSIONER DEASON: Okay.

20 MR. BURGESS: We have nothing further.

21 COMMISSIONER DEASON: Staff?

22 MR. HARRIS: Nothing from staff.

23 COMMISSIONER DEASON: Okay. Thank you all for your
24 participation, and this prehearing conference is adjourned.

25 (Prehearing conference adjourned at 2:21 p.m.)

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER


3

4 I, LINDA BOLES, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
9 transcribed under my direct supervision; and that this
10 transcript constitutes a true transcription of my notes of said
11 proceedings.

12 I FURTHER CERTIFY that I am not a relative, employee,
13 attorney or counsel of any of the parties, nor am I a relative
14 or employee of any of the parties' attorneys or counsel
15 connected with the action, nor am I financially interested in
16 the action.

17 DATED THIS 7th DAY OF MAY, 2003.

18 
19 _____
20 LINDA BOLES, RPR
21 FPSC Official Commissioner Reporter
22 (850) 413-6734

23
24
25