

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 104-S TO EXTEND
SERVICE TERRITORY IN PASCO
COUNTY BY HUDSON UTILITIES, INC.,
AND REQUEST FOR LIMITED PROCEEDING.

DOCKET NO. 981079-SU

APPLICATION FOR INCREASE IN SERVICE
AVAILABILITY CHARGES FOR WASTEWATER
CUSTOMERS IN PASCO COUNTY BY HUDSON
UTILITIES, INC.

DOCKET NO. 020254-SU

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PROCEEDINGS: AGENDA ITEM NO. 5

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

DATE: Tuesday, July 15, 2003

TIME: Commenced at 11:30 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

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FPSC-COMMISSION CLERK

1 APPEARANCES:

2 MARTIN McDONNELL, Esquire, Rutledge Law Firm, P.O.
3 Box 551, Tallahassee, Florida 32302-0551; JOHN WITHERS and
4 MATHEW GRIFFIN, appearing on behalf of Hudson Utilities, Inc.

5 CHARLES BECK and STEPHEN REILLY, Esquire, The Office of
6 Public Counsel, c/o The Florida Legislature, 111 W. Madison
7 Street, Room 812, Tallahassee, Florida 32399-1400, appearing on
8 behalf of the Office of Public Counsel.

9 ROSANNE GERVASI, Esquire, PATRICIA MERCHANT and PATTI
10 DANIEL, 2540 Shumard Oak Boulevard, Tallahassee, Florida
11 32399-0850, appearing on behalf of the Commission Staff.

12

13 ALSO PARTICIPATING:

14 REPRESENTATIVE HEATHER FIORENTINO

15 MR. MIKE BUTLER

16 MR. OLIVER BARTUS

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P R O C E E D I N G S

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2 CHAIRMAN JABER: All right, we are on Item 5. Staff,
3 do you have an introduction?

4 MS. GERVASI: Yes. Item 5 is Staff's recommendation
5 to require Hudson Utilities, Inc. to show cause as to why it
6 should not be fined in the amount of \$1,500 for failure to
7 complete construction to the Signal Cove area and to file proof
8 of the transfer of territory from Pasco County to Hudson by
9 June the 30th of 2002, which is an apparent violation of Order
10 Number PSC-02-1626-PAA-SU.

11 Staff further recommends that Hudson's motion for
12 extension of time to file proof of the transfer of territory
13 should be granted and that Hudson be required to file, among
14 other things, a quarterly progress report on November 11th of
15 2003, and that if in that progress report Hudson does not
16 advise that construction to the Signal Cove area has begun,
17 Staff will file a recommendation concerning whether deletion of
18 territory proceedings should be initiated.

19 The parties have agreed to a suggested order of
20 speakers, beginning with representatives of the utility,
21 followed by State Representative Fiorentino, who is present to
22 address the Commission, then customers who desire to speak,
23 followed by the OPC.

24 Staff is present to answer any questions.

25 CHAIRMAN JABER: Thank you, Ms. Gervasi. Let's go

1 ahead and start. Mr. McDonnell, are you representing the
2 company?

3 MR. McDONNELL: I am, Madam Chairman. Thank you.
4 Marty McDonnell on behalf of Hudson Utilities. And with me
5 this morning is Mathew Griffin, who is vice-president of Hudson
6 Utilities, and Mr. John Withers, who is a senior analyst at
7 W.R.H. Mortgage, which is the company that basically put the
8 financing together for the deal that resulted in the commitment
9 letter on June 12th of this year.

10 CHAIRMAN JABER: Give me their names one more time,
11 please.

12 MR. McDONNELL: Yes, ma'am. Mathew Griffin, with the
13 company; John Withers, senior analyst with W.R.H. Mortgage.

14 CHAIRMAN JABER: Thank you.

15 MR. McDONNELL: And on behalf of the company, I just
16 have a few brief comments. Number one, we support, fully
17 support Staff's recommendation at least as to Issue 2, and that
18 is granting Hudson the necessary extension to complete the
19 Signal Cove construction. There is no question that Hudson
20 didn't do what this Commission wanted us to do, and that is to
21 get that service territory serviced by June 30th, 2003. .

22 However, I can state to the Commission it wasn't due
23 to a lack of effort. Mr. Griffin is here from the company to
24 explain the troubles they had in securing the finances. And
25 Mr. Withers can also explain the difficulties they had in

1 securing the financing, as well as a discussion, if there are
2 any questions, concerning the commitment letter to the
3 financing that is now finally in place.

4 What Hudson did do in compliance with this
5 Commission's order was we did file our quarterly reports on
6 time. I personally spoke to Ms. Gervasi many times advising
7 her of the status of our ability to secure this loan. We were
8 unable to secure it until June 12th of this year, like I said.

9 Rather than waiting until June 30th to file a
10 quarterly report to the Commission, I think I filed a motion
11 for extension. I think it was June 13th, the day after I got
12 the commitment letter which was not even signed. And I
13 submitted a fully executed commitment letter a couple of days
14 later after the commitment was signed. And the fact of the
15 matter is we are now ready to go with the financing. We would
16 certainly appreciate the opportunity to serve the Signal Cove
17 territory. We understand the frustration that it has taken so
18 long, and frankly we share in some of that frustration because
19 we have been trying awful hard to get it done before June 12th.
20 Unfortunately we didn't, but it's done now and we ready to go
21 forward.

22 If I could have Mr. Withers just address the
23 Commission regarding the current financing, if that is okay.

24 CHAIRMAN JABER: Please.

25 MR. WITHERS: Good morning. My name, again, is John

1 Withers, and I am here representing W.R.H. Mortgage. We were
2 helping Hudson Utilities test the market for additional
3 financing initially to fund the construction of the Signal Cove
4 and Sea Pines expansion as well as refinance the existing
5 senior debt. In this role we helped them by reviewing and
6 critiquing their financial projections, preparing financing
7 packages which included those projections. It included
8 historical financial information, additional information that
9 any lender that we met in the market would want to see in
10 evaluating underwriting the loan request. A pretty lengthy
11 document, it took some time.

12 We met with a number of banks in pursuit of that
13 initial financing for the senior note refinance, plus the new
14 construction money. After meeting with a number of local
15 lenders, we came to the conclusion that we would not be able to
16 achieve that kind of a loan, just given the responses of the
17 lenders with whom we met. Some of the challenges we faced in
18 seeking out this financing involved the small size of the
19 company, the negative net worth of the company on its balance
20 sheet. There weren't many earnings over and above fixed and
21 variable costs that would go to fund the debt and to provide
22 for a reasonable return. And those are some of the things that
23 were difficulties that we faced when presenting this loan to
24 the market.

25 Additionally, there was a lack of real estate

1 collateral. There is no mortgageable interest in the property
2 which is a lot of the things that many lenders look for. This
3 is a bit of an outside-the-box type loan. And I think one
4 final difficulty was the regulated nature of their industry. I
5 mean, that just adds a new dynamic for lenders when evaluating
6 the loan.

7 When faced with this hurdle of not being able to find
8 a lender willing to refinance the senior debt and willing to
9 extend additional about 1.8 million in construction dollars, we
10 turned back to the original group of senior lenders and tried
11 to work out a financing plan, which we were successful in
12 doing, to have the senior lenders renew and extend or modify
13 and extend the existing senior debt. Additionally, my company,
14 Diverge Mortgage (phonetic), has agreed to extend the
15 construction fund. A key element to being able to get the
16 existing senior lenders to stay on board to renew and to extend
17 was our agreement, W.R.H.'s agreement to fully subordinate the
18 construction money to that of the senior debt.

19 In the end, I mean, I think that what makes it
20 acceptable to W.R.H. is there will be an expanded service area,
21 more customers which allows the company to generate more
22 revenues and support the debt. Additionally, the cash flow is
23 currently adequate to pay the senior lender its full scheduled
24 principal and interest under the loan commitment, at least the
25 projected revenues are, and I think the strength of management

1 is something we have never had a problem with. We have always
2 felt comfortable with the management team in place. We felt
3 that they have run a pretty tight operation, they don't seem to
4 have excessive overhead, and they were very quick to respond
5 when we were trying to answer various lenders' questions,
6 revised financial projections, since a lot of the loan story is
7 going to be based on not what they have done in the past, but
8 what they are going to be doing in the future.

9 What we arrived at was a loan commitment which has
10 some significant improvements over the existing debt. The
11 senior loan, the interest rate is being lowered from 8-1/8th
12 percent fixed down to 6 percent fixed. Additionally, the
13 subordinate loan, which carries a current interest rate of
14 13-1/2 percent is going to go down to 12 percent, so there is a
15 percent and a half reduction.

16 COMMISSIONER DAVIDSON: Madam Chairman, can I jump in
17 with a question here? The utility had previously estimated
18 that it would take about four months to construct the new
19 facilities. My question is why have the lenders, as I
20 understand it, insisted upon an 8-month period rather than
21 working with the utility's estimate of four months?

22 MR. WITHERS: I think it is just -- there is no
23 specific concern other than concern of unforeseeable delays. I
24 mean, from the lender's perspective we don't want to be caught
25 in the middle of the construction, and then somehow because for

1 reasonable reasons there is a delay. Maybe there is a
2 construction delay that is unforeseeable and unavoidable. I
3 mean, it is our objective and our requirement of Hudson to
4 proceed in a diligent fashion to complete the construction as
5 quickly as possible. Though just in the natural caution of
6 lenders, there is, you know, what if. And that is the
7 intention is to maybe add on a what if factor.

8 CHAIRMAN JABER: Commissioner Baez.

9 COMMISSIONER BAEZ: Following up on Commissioner
10 Davidson's question, how does how we affect or how we would
11 deal with a delay in construction affect the lender's interest
12 in the project being completed?

13 MR. WITHERS: We are sensitive to the notion of
14 deletion of service area. And the expanded service area is one
15 of the things that the whole loan commitment is predicated on.
16 I mean, it is certainly, you know, given the small size of the
17 company, the ability to expand and add new customers will make
18 the company a healthier company in our view. And we don't want
19 to run the risk of having, maybe, perhaps a portion of the
20 service area deleted. I mean, we are not anticipating anything
21 other than, I mean, just natural lender caution.

22 COMMISSIONER BAEZ: Right. Thank you.

23 CHAIRMAN JABER: Had you completed your presentation?

24 MR. WITHERS: Yes, ma'am.

25 CHAIRMAN JABER: Mr. McDonnell, did Mr. Griffin want

1 to say anything, because I am ready to move on?

2 MR. McDONNELL: I don't know that Mr. Griffin could
3 add anything to what has already been said, but he is certainly
4 available to answer any questions that the Commission may have.

5 CHAIRMAN JABER: Thank you.

6 Representative Fiorentino.

7 REPRESENTATIVE FIORENTINO: Thank you, Madam Chair.

8 I appreciate the opportunity to be here today. If I may ask
9 you some questions, because I'm a little confused in listening
10 to something that was just said. They brought up the part that
11 a portion might be denied, but yet this is only talking about
12 Phase 1 of what you all ordered last time in November. There
13 are three phases. They are only talking about Signal Cove,
14 they aren't talking about Phase 2 which goes up U.S. Highway
15 19, and they aren't talking about Phase 3 which was Sea Pines,
16 which is another residential area.

17 And that gives me great concern, because this is all
18 in my district and they are only talking about Phase 1. So
19 will I be back here in a month when August comes forth and they
20 are supposed to have this next phase done and they are going to
21 be asking for an extension? I bring that up to you.

22 The other question I have, I understand that Mr.
23 Withers is here, and W.R.H. Mortgage is also owned by Mr.
24 Hough, who I believe is part of the company, and there is no
25 arm's-length there. There again I have some concerns, and I

1 just want to bring these up to you.

2 Part of the reason I am here today is to represent
3 the voice of hundreds of homeowners that are supposed to be
4 serviced through this company. Several of them have come up
5 today. But, you know, I can't bring everyone with me to
6 Tallahassee. My constituents have been waiting for over seven
7 years for this hook up, to be provided with this service.
8 Their daily lives are being affected.

9 We have some septic tanks that are failing, we have
10 rainwater -- this year has been a good rain season, they are
11 flooding over. They all live on canals, and there is pollution
12 going into these canals. The health department has closed down
13 some of the septic tanks and Hudson Utility is aware of this.
14 This is a health issue. It is a major concern for our area.
15 It has also closed down local beaches that are not too far away
16 that I think we also have to address.

17 Over the last three years, though, these homeowners
18 have received nothing but empty promises from this committee,
19 this company, I'm sorry. And in doing this they have also
20 increased the fee. They were promised seven years ago \$1,000.
21 And though I disagreed with it, they basically threatened some
22 of the customers and said if you don't do it we are going to
23 drop this and we are going to give it back to Pasco County and
24 they will have to pay \$8,000. Mr. Griffin made a similar
25 comment to me in my office. And I said, sir, there are other

1 utilities company out there that will buy you out. It doesn't
2 work that way.

3 With these threats, the customers called and they
4 said go ahead and raise our rates. If they promise we will get
5 this done in eight months, we will go ahead and pay the \$2,400
6 additional fee, because they were afraid of a six or an \$8,000
7 fee from Pasco County. But those empty promises came through
8 again. They have not been a person or a utility company of
9 their word. They have not followed through. This is their
10 fifth extension. We aren't talking first, we aren't talking
11 second. The first time it was shame on them, the second time
12 was shame on all of us representing the people. Now the fifth
13 time? I'm sorry, I have a hard time with this as a
14 representative of the people and trying to worry about the
15 public welfare and safety and especially the health factors
16 that I have in my community.

17 They not only have failed to do the completion, but
18 they also haven't done the transfer of the project, and that is
19 part of the reason that they are able to say we are going to
20 give it back to Pasco because the transfer has never been
21 completed. I am going to ask that you all send a very strong
22 message to both this utility company and to the customers that
23 what we are going to do is in the best interest of the people,
24 despite Hudson Utilities' failure to do so.

25 In the application before you Hudson Utility has

1 extended this territory as I said, five times. They have
2 talked about their financial and technical ability to provide
3 wastewater treatment connection to this expanded area, but yet
4 the residents of the community believe that Hudson every time
5 is going to make that commitment to provide this hook-up within
6 a specific time frame. And every time the PSC has done that.
7 However, as I just heard again, unforeseen circumstances is why
8 we cannot get it done. We hear that each extension. I am
9 already aware of lime rock in some other areas that have caused
10 some problems. Mr. Griffin was in my office and told me about
11 it. I see this as weasel wording. I see this as a future
12 extension that he is going to be utilizing.

13 The first time I was contacted in my office was by
14 the homeowners for the service area in September of 2001. They
15 explained the difficulties that they were experiencing at that
16 time, not being able to hook-up. With the assistance of the
17 Public Service Counsel Jack Shreve, I held several meetings
18 with the customers and also with Hudson Utility. And we
19 attempted to facilitate some type of service so that this could
20 get done without even coming to the PSC.

21 After a year of pleading with Hudson Utility at no
22 avail, the homeowners and I asked Jack Shreve to file a show
23 cause against the company hoping that it would result in
24 service being provided to these homeowners in a timely manner.
25 That was 2001. Then in 2002, November of 2002, Hudson

1 Utilities came before the PSC, again stating it would provide
2 service within eight months. It's funny, same numbers, same
3 story. But at that time they said if and only if they would
4 receive that 1,000 to 2,400. Again, I personally disagreed
5 with this. I knew it was because that they had threatened that
6 they wouldn't do it, that they would give them to Pasco County.
7 But, again, Hudson Utility, even though they got it, they got
8 the increase to 2,400, they got the customers to go along, they
9 still failed to follow through on their commitment.

10 The people are desperate in the Hudson Utility
11 service area. They are very frustrated and they need your
12 help. Some of these customers are failing from, as I said, the
13 septic tanks. The children are swimming in those canals. They
14 are walking. Last night I was up in Sea Pines, the other area
15 that is not being addressed, and they are so flooded that the
16 roads are flooded and kids were walking in this. And one of
17 the gentlemen at the meeting said that when he mows yards over
18 there, you can smell it, and he is walking through raw sewage.
19 The health department is aware of this and they have been out
20 there, and that's why the health department in your report has
21 said it is imperative that you all get them out there as fast
22 as possible.

23 Also, in November of 2002, the PSC granted Hudson
24 Utilities an increase of service fees. We have done everything
25 that they have asked, but, yet, in good faith from the

1 customers end, they have never followed through in any good
2 faith. They said we have looked for financing. For seven
3 years you couldn't find it, especially when one of the owners
4 is one with the mortgage company? Doesn't that raise
5 questions? I mean, there is no arm's-length, I will start
6 there. But, okay, now they are going to use them, couldn't
7 they have used them within the last seven years? I have
8 problems with this.

9 They were supposed to complete all three sections,
10 all three phases as of June 30th. Today is July 15th, and we
11 are here for a follow-up extension on number five. The utility
12 has failed to even begin construction. All they have is a
13 commitment. I asked if the letter was closed, they said no, it
14 was all depending on this hearing today. They have a letter of
15 commitment, that is all. Hudson Utility has not shown good
16 faith. They have not met any deadlines in seven years, all
17 they have done is file extensions.

18 In the Staff's recommendation a fine of \$1,500 is
19 suggested to send a clear message. Well, in my opinion, that
20 clear message is that Hudson Utility can once again ignore the
21 PSC and that it doesn't have to worry about its customers or
22 the safety and the health of the people back in Pasco. And
23 then when you read the letter of the terms, of the letter of
24 the terms with the company, you see that the request is a
25 highly conditional pledge. That it is providing within an

1 eight-month period, if and only if again, which we heard again
2 in testimony today, there are no unforeseen circumstances to
3 prevent them from doing so. As I said, they have already
4 stated that there is rocky areas, that that is going to have to
5 go on. They also haven't talked about the other areas that
6 have been provided in this. And I'm sorry, their word is not
7 their bond. That has been proven time and time again. And I
8 just see this as one of their loopholes.

9 I ask each of you to please protect the citizens of
10 Pasco County and the Hudson area. That you rule what is best
11 for the public. That you ensure compliance with your November
12 ruling, and that you please give viable alternatives in
13 granting this request. Remove its territory if they can't
14 follow through. Possibly give it back to Pasco; and certainly
15 at a minimum, levy a substantial fine against Hudson. A fine
16 such as \$5,000 a day which you are allowed to do. This in my
17 opinion would give them a message that is clear from the PSC.

18 If at this time -- I will be honest, I would rather
19 have Hudson come in or anyone come in because of the health and
20 the welfare of the people back home. What I would ask is that
21 you would fine them \$5,000 a day until they complete such a
22 project. Give them their eight-month extension. As you have
23 brought out, they have made it very clear that they could do it
24 within four months. Give them their -- double their time. Let
25 the lenders have what they have requested. Please do an

1 investigation so we can find out if this is an arm-length away
2 and that everything is upright. I would ask that you do a show
3 cause so an investigation can be done. Because there is a lot
4 of things when you read through the report that shows that an
5 investigation needs to be done. And then at that time, at the
6 end of eight months that they be allowed, that you would reduce
7 their fine maybe to your 1,500 or maybe 5,000 total, put
8 something to that. Put something over their head that is going
9 to make them for the first and final time do something other
10 than just give lip service and saying we are doing it.

11 I also heard that they are going to give quarterly
12 reports. Well, then possibly what we can do in those quarterly
13 reports put a final date for closure of the paperwork with the
14 lender. Put a final date for the beginning of the project so
15 that when we get the quarterly reports we aren't waiting until
16 the end to find out that they haven't done anything other than
17 talk to lenders. And also put a final date of completion of
18 the project. They have a monopoly, they know that. I think it
19 is time that we let them know that we expect them to provide
20 the service for the people that they have said -- and they took
21 on this extension. Pasco County offered it and they accepted
22 it seven years ago. And I think it is time that they go ahead
23 and do that. What I would really like to know, is this also
24 going to happen to my Sea Pines people also? And I thank you
25 very much for your time.

1 CHAIRMAN JABER: Thank you, Representative. I think
2 what I would like to do is we will address each and every
3 question that you raised. We will have those addressed. But I
4 would like to go through the customer presentations and then we
5 will come back to each of those questions.

6 Mr. Beck and Mr. Reilly, did you have customers that
7 you wanted to make presentations or are you making a
8 presentation on their behalf?

9 MR. REILLY: I have here Mike Butler, who is the
10 president of the Signal Cove Homeowners Association, I think he
11 is going to make the first presentation. And I believe it is
12 his intention then to perhaps introduce a few of the other
13 customers whose made the trip to share a few comments.

14 CHAIRMAN JABER: Thank you. Mr. Butler.

15 MR. BUTLER: Thank you very much for letting me
16 address you. My name is Mike Butler. I am the president of
17 the Signal Cove Owners Incorporated Homeowners Association, and
18 the members that are here today, you know, show this board
19 what -- how much -- how important this is to us, that came are
20 Ollie Bartus, Sharon Butler, Ernie Chapman, and Claude Hill.

21 Seven years ago -- we started this back in '95,
22 rather, and at that -- in the interim we, for instance, had the
23 Pasco County officials, like Doug Bramblet and Mr. Griffin
24 himself come to our clubhouse and tell us, for instance, back
25 in '97 that in a year's time we would be all done. And I want

1 to tell you what, that was a happy day for us, because we were
2 all looking forward to having sewer, because Signal Cove is a
3 subdivision that was originally put together in 1962, which was
4 like about 12 years before Pasco County had even become a
5 county and had any infrastructure. Anyways, so it was a day
6 that we thought, you know, we are heading down the right road
7 here, all problems will be solved and things like that.

8 But since then we have just had complete, you know,
9 the promises have been amazing. We have tried to work with
10 Hudson Utilities as much as we can. For instance, everything
11 that they have ever asked for of Signal Cove homeowners, we
12 have given them. Originally we were told it was only going to
13 be a \$1,000, 1,015. In fact, the Public Service Commission
14 granted that rate to them. Last year they said that wasn't
15 enough because of all the other problems that supposedly they
16 had had and that they needed to have \$2,400. Well, we thought
17 okay, if that is what it is going to take to get the job done,
18 all right, we'll go for it. And then you agreed to that for
19 them.

20 To this day we have septic tank trucks running
21 through our subdivision daily pumping systems, and that is \$140
22 on average to pump a septic tank these days. We have
23 homeowners who have -- they can't do their own washing of
24 clothes, things like that, they have to go use -- at their own
25 house, they can't do it there, they have to go to Laundromats

1 to have that done or to a friend's house. I know personally of
2 one particular case where the family cannot even use the
3 facilities when it is raining, and they have to go a block and
4 a half over to their in-laws to use the facilities.

5 And in our case, like Representative Fiorentino said,
6 just in the last three weeks we have had over 18 inches of rain
7 in the area, which should hopefully signify that the drought is
8 over, but it isn't helping the septic tanks and our sewage
9 problem. Mr. McDonnell speaks of frustration. Boy, we have a
10 completely different definition of frustration in Signal Cove.
11 And Mr. Withers wants to talk about quick responding, that they
12 responded quickly to all the questions and stuff. Well, talk
13 we don't need, it's action that we want, quick response.

14 And, honestly, seven years ago, my son was 16 years
15 old and in high school waiting to get his drivers license.
16 That is how long ago this was. Today he is 24, he is in the
17 Gulf serving in Operation Iraqi Freedom. That is how I measure
18 time and that is how a lot of people in our subdivision measure
19 time. So we would appreciate it if this board would do what --
20 get us some sewage, please.

21 CHAIRMAN JABER: Thank you, Mr. Butler.

22 Mr. Reilly, were there other customers that --

23 MR. REILLY: Yes. Mr. Ollie Bartus.

24 MR. BARTUS: My name is Oliver Bartis. I'm not a
25 public speaker, so bear with me. I have a son that lives in

1 Oregon and I retired and moved here about eight or nine years
2 ago. I now have grandchildren. I used to fly them in, or I
3 still do. The first time, what an experience. I had to put
4 them in a hotel because our septic system wouldn't hold it. I
5 can't even see my grandchildren unless I spend a ton of money
6 to fly them in from Oregon and put them up in a motel, okay.

7 The stench on some of these houses because these
8 septic systems are so old, because ordinances way back when are
9 not sufficient enough to cover area on leeching fields,
10 et cetera, they are leaking into the canal. He has told you
11 this, I am just reiterating what he has said. It is more
12 serious than I think you can simply imagine. Because I ask
13 anyone of you if you had a relative to come visit you and you
14 said, pardon me, you have to go down to the clubhouse because
15 our toilets are plugged. You wouldn't like it. It is very
16 embarrassing. We are not all low income people. Some of us
17 are ex-businessmen like myself.

18 I would like to make one comment that is outside of
19 my area. He mentioned the time it took, the gentleman before
20 on how long it took to achieve this loan. Well, if it was a
21 straight proposition whereas Mr. Hudson Utilities, here is
22 Signal Cove, what is it going to cost to put sewers in there.
23 You go to the bank, the bank would say -- you talk about
24 assets, he says we don't have any physical assets, what better
25 assets could you have than over 400 residents that are paying

1 monthly cash flow coming into your business. And the reason --
2 I think the reason that it took so long is because he had a 13
3 percent loan sitting out there for I don't know how much, and
4 he said, boy, now is the chance to lower that loan down to a
5 manageable area for me. And the bank said, well, we will make
6 a little money on this because we have got a new loan coming
7 up. So if prime is sitting at 2 or 2-1/2 today and they can
8 borrow one cent above, they are borrowing -- it is up to 6
9 percent. That is why it took so long, because they finagled
10 each other. Good for the bank, good for them. Well, that's
11 fine, but we are out in left field. And that is just economic
12 sense, you don't have to be an Einstein to figure that out.

13 Other things I would have to say is I know of at
14 least 13 houses from my street and two over that right now the
15 odor when you walk by is a stench that you don't want to have
16 to -- nobody should have to live like that. This is not
17 Appalachia. This is not right. And they have distorted the
18 truth -- well, that is too strong of a term. But for seven
19 years we have lived this way, and this is ridiculous.

20 And what we can't stand and why we came this time is
21 because we frankly could not believe that any Commission didn't
22 know what was going on. Why they weren't ruling that Hudson
23 Utilities have to get off the mark. You know, when the going
24 gets tough the tough get going. Let's get this started. We
25 couldn't understand why they kept getting delay, after delay,

1 after delay. So we finally said -- talked with Heather, we
2 better get up there and let this Commission know this is
3 serious business. This is a health issue here. If you have an
4 open wound, and most of these people don't know, swimming in
5 those canals, there is the possibility of serious illness.

6 They closed Hudson Beach and they are just down from
7 us, and they have a better flow than we do with the current,
8 they closed it eight times last year because of fecal. And
9 they like to say it is the birds. That is a lot of bologna.
10 It is the septic systems, and everybody knows it. And how this
11 company has gone this long without having to do anything, with
12 no punishment, no retribution, no nothing. And they sit up
13 here and they sit there and, well, we are going to try. We
14 have heard it all before, and you have, because they violated
15 your own edicts. So that is all I have to say. Thank you very
16 much.

17 CHAIRMAN JABER: Mr. Bartus, thank you. Thank you
18 for being here. Mr. Reilly?

19 MR. REILLY: I guess we are done.

20 CHAIRMAN JABER: Okay. But, of course, I assume, any
21 questions that we may pose to the customers, the customers are
22 available for questions. Commissioners, there are -- I would
23 note there are other customers that are available to you. I
24 want to just start by throwing out some questions to Mr.
25 McDonnell and Mr. Withers. He didn't say -- Mr. Reilly, were

1 you going to make a separate statement?

2 MR. REILLY: I did have an intention to make several
3 comments.

4 CHAIRMAN JABER: Go right ahead.

5 MR. REILLY: I think the first comment I would make
6 is to really emphasize to this Commission the environmentally
7 sensitive nature of the matter. This is a federally designated
8 flood plain area. It is a coastal area with a very high water
9 table. It is really unsuitable for the efficient use of septic
10 tanks. The comprehensive land plan adopted by the county
11 called for this entire territory, Signal Cove and Sea Pines
12 area included to all be served by a sanitary sewer collection
13 treatment system. It was Hudson Utilities that came forward in
14 June of '98 that said is was the solution to this problem. And
15 I quote from their application when they said that they claim,
16 Hudson claimed that it had the financial and technical ability
17 to provide wastewater collection service to this entire
18 additional territory, and that the proposed expansion would not
19 impact its monthly rates or service charges.

20 It wasn't a matter of going out and getting
21 financing, it was we can do it, we can do it now. And when the
22 Commission issued its order, there was an order and then, of
23 course, another order that made that order final, that final
24 order was October of '99, and it granted this territory. And,
25 of course, the territory, this granting contemplated Hudson

1 going in and having to refurbish the Signal Cove area,
2 refurbish the part that the county was already serving, as well
3 as add the other additional lines and then interconnect that
4 completed refurbished system to the main that would go to the
5 county's wastewater treatment plant. And then once that was
6 accomplished, then the county would acknowledge their taking
7 over those 131 customers of the county.

8 Now, all of this was all going to happen within just
9 a matter of a few months, and this was specifically provided
10 for in that original order way back in October of '99. And so
11 that is the saga. That is the process when we started getting
12 these extensions. The first extension, the second extension.
13 I've got pages here, and I won't bore you with that, but it is
14 well documented in our response.

15 But we get all the way until June of 2000 when Hudson
16 somehow a year and a half into the process realizes that it is
17 not going to really be able to perform unless it gets an
18 extension. Excuse me, an increase of its service availability
19 charge from 1,000 to \$2,400. And although while -- and that is
20 one of its bases for its third motion for extension of time,
21 and that one today at the moment the Commission granted its
22 motion for extension of time and acknowledged that the utility
23 would come in at a later time and seek this increase.

24 Well, even that didn't happen in a timely way. And
25 according to this long chronology it is not until March of the

1 very next year that they even file for their service
2 availability extension increase. So weeks become months,
3 months become years. And, again, not to belabor it, it is well
4 documented in our response, the extensions go on and on.
5 Finally, I will just turn through these pages -- finally, when
6 we get to the order, I guess we are talking now, this is this
7 order of November 25, '02. This is the one that grants --
8 okay, we are going to give you what you want, the \$2,400. But
9 then the Commission goes on to say, now, failure to meet this
10 June 30 deadline, which is this considerable extension after
11 many, many extensions, shall result in immediate initiation of
12 a show cause proceeding before this Commission.

13 This is a fait accompli. There will be a show cause
14 proceeding by virtue of the language of this prior order. But
15 really the only issue before you today is are we going have a
16 real show cause proceeding or are we going to have such a de
17 minimis dollar amount that it will hardly even be responded to
18 by the utility. And I think that is one of the things that is
19 before us today. Also, that order that granted the extension
20 of time and the \$2,400 service availability charge required
21 that they start filing these quarterly reports. And then we
22 started getting the procession, the first and second quarterly
23 reports which basically are just, you know, chronologing the
24 company's failure to get financing.

25 What is interesting is you get to the second

1 quarterly report, which was filed in March of '02, and it
2 starts giving you more details. It says we are getting it
3 together. We have got Southtrust Bank and Regions Bank, we
4 have already gotten approvals from these bank's local
5 committees, we are just awaiting the senior committees to give
6 us approval. Bear with us. But then we get -- and I'm saying
7 '02, this is 12/30/02. And, of course, we are talking March
8 31, '03. So this is just March of this year.

9 So now before we even get to the third quarterly
10 report, now comes this fifth motion for extension of time. It
11 is interesting that no mention -- all of a sudden it drops off
12 the face, there is no mention of all of this imminent financing
13 that was going to be approved. What shows up is yes, we have a
14 commitment, we have a commitment with people we have been doing
15 business with all along. It is our senior -- they are
16 basically the senior financing that has always been with us, it
17 is going to stay with us, and that Mr. Hough and Mr. Hough's
18 W.R.H. Mortgage, Inc., is going to be -- the person who has
19 been working to find our financing is going to, in fact, be the
20 lender on the construction loan and the subordinated loan. So,
21 we looked at this commitment. And Public Counsel has some
22 concerns about it. Not so much concerns about the senior loan,
23 I think most of the terms, conditions, and points of that
24 really seem to be pretty much like you would expect. But it is
25 this W.R.H. Income Properties arrangement with its wholly-owned

1 company, I presume, W.R.H. Mortgage, Inc. that is providing the
2 construction loan and the subordinated loan raises a lot of
3 questions that we have to share with you. And as to whether it
4 is or is not in the public interest, all of these arrangements.
5 I think basically Staff is taking the position, well, we are
6 not deciding that today. That when and if this company comes
7 in for a rate case, we will look at all of that, and to the
8 extent that anything is not proper, we just won't allow it.
9 But we just still think it needs to be brought to the
10 attention, because here we are 3-1/2 years down the road, and
11 we are doing business with the people who were right in our own
12 backyard the whole time. So, you know, that raises a lot of
13 questions with me.

14 But the points of further concern is that the
15 principle of W.R.H. Income Properties, Inc., that this
16 corporation is given a -- I mean, Hudson has to pay, and the
17 arrangements they have to go through to get this subordinated
18 and construction loan seems a little extraordinary. They are
19 having to pay a \$25,000 annual fee payable monthly to W.R.H.
20 Income Properties, Inc. This is for providing financial advice
21 and servicing these loans that are the subject of the
22 commitment. They have to pay a 1 percent fee on the
23 construction loan, a .5 percent fee on arranging the senior
24 loan and the subordinate loan. Now, these are in addition to
25 the points that are paid to the various lending institutions.

1 When you add all of this up and the various points
2 that W.R.H. Income Properties receives both from making the
3 loan and arranging for the loan, it is about 58,000 -- over
4 \$58,000 for just upfront points to be paid in the construction.
5 Now, in addition to all this, W.R.H. and Hough is given, or its
6 corporation is given an extended -- what they call an extended
7 stock option. We didn't have any details on that.

8 But in this phone conference that we had last Friday
9 it was -- verbally it was disclosed that what has been given to
10 this lender and this arranger of the financing is a right to
11 purchase 9-1/2 percent of Hudson's outstanding stock at par
12 value. And apparently there is 200 issues outstanding and they
13 are allowed to buy these 1,900 shares at \$250 a share. So
14 basically there is this equity kicker on top of all of these
15 points, on top of really 12 percent interest even on a
16 subordinate loan, and I think there is a lot of us in this room
17 that would like to be getting 12 percent interest.

18 And then to add to all of that, if that wasn't
19 enough, we are going to kick in and say, now, if you dare try
20 to -- if you are going to pay this, excuse me, 12 percent
21 interest off sooner than the ten-year term of the subordinated
22 loan, then you will pay us a penalty, a prepayment penalty of 1
23 percent a year for every year that you pay that off sooner than
24 the ten years. I mean, it is just -- there is just a lot about
25 that that caused us concern.

1 In addition to all of that, not only all of these
2 financial sweeteners, but what Hudson had to give up to Mr.
3 Hough's corporations basically is tantamount control to the
4 utility. I mean, to secure these loans, basically had to
5 handle -- it requires the owner and the management salaries
6 subject to approval of an annual budget that is prepared by
7 management required approval of Mr. Hough and his corporation.
8 So really basically it controls the purse strings of the
9 corporation. Monthly operating statements and balance sheets
10 must be sent to Mr. Hough and all three lenders every single
11 month.

12 And even of greatest concern of all, if you will look
13 on that term sheet, the last page on the term sheet of the
14 executed commitment letter, it really goes to the very heart of
15 why we are here. And this is a condition which means that even
16 if Mr. Bannerman, even if Hudson Utilities decides it really
17 wants to go out and do what it says it is supposed to do, serve
18 the people in its territory on a timely basis, they can't do
19 it. They can't do it unless Mr. Hough and his corporation and
20 the lenders say they can do it, because under 4E it
21 specifically says expansion of the system may be undertaken
22 with the consent of the lenders upon an engineering certificate
23 as to the feasibility of that extension. And, of course, we
24 got into that pretty extensively in this little Friday
25 afternoon conversation with representatives of the utility.

1 And we, you know, said, gosh, how does this affect
2 Signal Cove, how does this affect Sea Pines? These people are,
3 you know, up to their eyeballs in problems here with sewage.
4 Are we going to be having more hoops to go over? Just to even
5 extend it -- if this person who lives in Sea Pines is four
6 blocks out there, and that \$2,400 doesn't quite cover the
7 additional cost of running that line a little further, are we
8 going to be getting into feasibility issues? And they
9 verbally, again, even though this is what this document says,
10 they said, no, we are verbally telling you that Sea Pines and
11 Signal Cove, this sentence does not apply to them. We are
12 really going to go full steam ahead and we are going to serve
13 these people without regard or having extra hoops or
14 feasibility studies in place.

15 Obviously it should raise questions to this
16 Commission as to all the other areas of the territory. And
17 what are we talking about? Has Hudson even surrendered its
18 ability to meet its statutory obligation to provide service if
19 it has to go hat in hand to the real power, and then to have
20 these extra feasibility studies done just so they can run the
21 line. So that sent just an incredible red flag through this
22 whole arrangement. I'm getting rid of some of my comments.

23 CHAIRMAN JABER: That's fine, Mr. Reilly.

24 MR. REILLY: I think that what we are getting to is
25 really this very important issue of penalty, and what is the

1 correct penalty. Staff says \$1,500 maximum potentially. We
2 are not even talking about penalty yet, we are talking about
3 maximum potential penalty for more than 3-1/2 years of repeated
4 failure to serve the customers and to follow the requirements
5 of not one or two orders, but a number of orders over this
6 3-1/2 year period.

7 CHAIRMAN JABER: Let me ask you about that, Mr.
8 Reilly, because you have touched on the very first question I
9 was going to ask, and let's just hit it head on. I went back
10 and listened to the agenda tape from our last vote just to
11 refresh my memory last night. And it occurs to me that the
12 issue of the fine was heavily addressed and we did send very
13 strong signals to the company. And just as one Commissioner, I
14 am flabbergasted that you guys are back here today, I really
15 am. But we haven't gotten to that.

16 My question relates to the last time this came to
17 agenda we were hesitant to establish show cause proceedings and
18 establish a fine because we also didn't want to get in the way
19 of the company's ability to obtain financing by some sort of
20 regulatory action we took. It doesn't seem like we have that
21 problem today because we do have and we haven't gotten to the
22 arm's-length transaction and whether our Staff should look at
23 it, but we do have a representative from the mortgage company
24 that has made a commitment to execute a letter after our vote
25 today. Would you agree that a larger fine would set a greater

1 incentive to complete construction and interconnect customers
2 by the time period established? That's an easy question.

3 MR. REILLY: Commissioner Jaber, you have stolen all
4 of my thunder. I'm getting to that.

5 CHAIRMAN JABER: Well, get to it quicker then.

6 MR. REILLY: I couldn't agree more, and I think that
7 is the opportunity that the show cause proceeding provides us.

8 CHAIRMAN JABER: Would you also agree --

9 MR. REILLY: In all fairness to Hudson and to its
10 nervous lenders, it doesn't necessarily mean, you know, and I
11 am going to be proposing today what that fine or potential fine
12 should be.

13 CHAIRMAN JABER: Let me get to the second question.

14 MR. REILLY: Okay.

15 CHAIRMAN JABER: If you agree that a larger fine
16 would perhaps create the incentive to induce the action that
17 has been required a number of times, would you also agree that
18 it might be appropriate to suspend that fine or to lower it as
19 the representative suggested, as well, at the completion of
20 perhaps not just this project. I think there is a lot to be
21 said about we are only in the first phase of the project. Is
22 that something you would agree to on behalf of the consumers?

23 MR. REILLY: I believe I would.

24 CHAIRMAN JABER: Okay. Now, do you have more,
25 because I do have more questions?

1 MR. REILLY: I do have a little bit more.

2 CHAIRMAN JABER: Okay. Go right ahead, because we
3 want to ask these questions.

4 MR. REILLY: Well, I was going to quote Staff's
5 statement in the order that said this is a high enough amount
6 to send a clear message that the Commission's disapproval of
7 the length of time, going on, and on, and on. Of course, I
8 strongly and respectfully disagree with that sentence. It
9 certainly does not send that message. And in this little
10 informal phone conversation, again, that took place on Friday,
11 it was readily admitted that Hudson would be well prepared to
12 pay \$1,500 and not even respond, and that is exactly what --
13 that invitation is there. The language of the order says -- or
14 of the recommendation says if Hudson responds to the order to
15 show cause by remitting the penalty, then the show cause matter
16 shall be considered resolved and go away. And I'm afraid that
17 is really where we would be going with the \$1,500.

18 So essentially what we would be recommending and what
19 comes straight from the statute is the \$5,000 per day. I think
20 the potential -- we are recommending the potential penalty
21 should be \$75,000. That is \$5,000 per day since June 30 up
22 until July 15th, today's date. That is 5,000 times 15 is the
23 \$45,000, excuse me, \$75,000. And that that should be what the
24 Commission should vote as the potential penalty. And I believe
25 it is there. And that is going to, of course, give them an

1 incentive to come in and give us the details. We have been
2 exercising our best efforts, just a naked statement like that,
3 I think this Commission deserves and the customers deserve a
4 little more explanation as to what happened to those two other
5 extensions. Why those things failed. There needs to be some
6 discovery as to why we are where we are today.

7 But even more important than that, we have this
8 commitment. We have a closing that is supposed to take place
9 on August 11th. If, in fact, everything happens as Hudson says
10 it is going to happen, then obviously the Staff will take all
11 of these things into consideration when it comes back to the
12 Commission with its recommendation in light of this and that
13 all of these things have happened. Yes, they have immediately
14 started construction, and, yes, by the time -- and by the way
15 we strongly support the Staff's recommendation of the quarterly
16 reports. And according to them, I agree with them the first
17 quarterly report -- I think they had it coming in November,
18 which was really 90 days after the supposed closing was going
19 to take place. So by that time we are going to really know the
20 lay of the land. Whether, in fact, the closing took place, and
21 if and when it took place did they proceed aggressively to help
22 solve these problems. And so you have got your vehicle.

23 CHAIRMAN JABER: Mr. Reilly --

24 MR. REILLY: Stop when you have won.

25 CHAIRMAN JABER: Yes. Let me ask some more questions

1 to clarify what might be acceptable to the customers.

2 MR. REILLY: All right.

3 CHAIRMAN JABER: You are not suggesting that any
4 regulatory action we take today delay the loan from moving
5 forward or the construction from moving forward, correct?

6 MR. REILLY: I think that is correct.

7 CHAIRMAN JABER: In that vein --

8 MR. REILLY: Which is contrary to our written
9 response.

10 CHAIRMAN JABER: That is exactly why I'm asking that
11 you clarify it. And in that vein, if the show cause proceeding
12 is not the most appropriate vehicle to investigate, as you have
13 used the financial transaction between the finance company and
14 the company, would you all agree to a staff auditor looking at
15 the transaction while the loan is being executed and while the
16 construction is beginning?

17 MR. REILLY: We certainly wouldn't, and there was --

18 CHAIRMAN JABER: You would not object to that.

19 MR. REILLY: We would not object to it.

20 CHAIRMAN JABER: You would support it?

21 MR. REILLY: I would support such an audit. Let me
22 say further, though, Staff in its recommendation talks about
23 the utility's obligation to provide this Commission notice
24 within ten days of the August -- on or before the August 11th
25 closing date. If, in fact, August 21 comes and the Commission

1 has heard nothing, and there has been no proof that the closing
2 has taken place, then I want to come on pretty hard here with
3 these penalties. I want to come pretty hard with the show
4 cause. I mean, we recommend that a further show cause
5 proceeding be instituted for this new most serious failure to
6 perform.

7 CHAIRMAN JABER: Here is my problem with it, and I
8 think you need to let us finish our questions and maybe we will
9 give you some comfort. It is not the show cause you really
10 want, it is the ultimate action that gets these customers
11 hooked up to facilities that you want.

12 MR. REILLY: That is correct.

13 CHAIRMAN JABER: And where I may disagree with you is
14 the most efficient way of handling that. I don't necessarily
15 know that the initiation of a show cause proceeding each time
16 is the most efficient way. So I'm looking for the most
17 efficient way. And to borrow a phrase that the Representative
18 used, getting the incentives out there. If it creates an
19 incentive to have our auditor go in and review the financial
20 documents, great. If it creates an incentive to impose a fine
21 that will only be abated or suspended after certain actions
22 have taken place, great.

23 But with all due respect, all a show cause proceeding
24 does is it increases the amount that goes into the general
25 revenue, and that's not what we are talking about. That is not

1 the action you really need. Now, saying all of that, quarterly
2 reports, is there a benefit to having monthly reports?

3 MR. REILLY: I would not be opposed to that at all.
4 I don't think Public Counsel would be opposed to that. I would
5 say that somewhere -- Staff did have another thing, another
6 comment that I frankly agreed with, and this is when they made
7 the statement in their recommendation that when it came to that
8 November quarterly report, if, in fact, they haven't even begun
9 construction at that point, then all bets are off. And Staff
10 is saying we want to come in here, or they are suggesting they
11 are going to come in here with a recommendation for deletion of
12 territory. And, quite frankly, I think I support that. You
13 know --

14 CHAIRMAN JABER: Well, I'm glad you brought that up.
15 Let's say that one of the --

16 MR. REILLY: Total failure, if we have total failure
17 between now and November, then this Commission -- the citizens
18 and the Commission and everyone is going to have to come to
19 realize that we are wasting our time chasing Hudson to be the
20 answer to this problem. And that since the problem is so
21 great, that we better begin to come up with some better,
22 different answers to the problem.

23 CHAIRMAN JABER: Mr. Reilly, you hit on a level of
24 frustration we had last time we discussed this, and that I
25 personally have again today. By the time it reaches us, the

1 alternatives with respect to getting service to the customers
2 are very slim, when we understand from Staff's recommendation
3 and my recollection from last time that Pasco County is not
4 able to provide this service in a cost-effective manner,
5 either.

6 Saying that, if this territory is deleted, you don't
7 bring us an alternative, do you? So I'm back to finding
8 incentives to induce this company to behave in a certain
9 fashion. And with that, Mr. McDonnell, here are the questions
10 to you. Four months versus eight months, it seems that if this
11 Commission were to find it in its discretion and judgment to
12 impose a fine, that fine may be reduced or eliminated at the
13 conclusion of four months if everything is complete. And
14 perhaps it needs to be doubled if it takes longer than four
15 months. Why don't you react to that.

16 MR. McDONNELL: My first reaction is there is no
17 evidence in this record nor do I believe that Hudson has
18 engaged in any deliberate conduct to violate any orders of this
19 Commission. I'm not convinced Hudson has engaged in any
20 negligent conduct not to comply with any orders of the
21 Commission.

22 CHAIRMAN JABER: I thought you started your
23 presentation by recognizing that Hudson did not do what it was
24 supposed to do.

25 MR. McDONNELL: They did not get it done. But, I

1 mean, that is the first question in an order to show cause, I
2 believe. Why they didn't get it done is certainly the
3 appropriate question as to a punishment that the Commission is
4 going to consider imposing, because that is what a fine is to a
5 company that doesn't have any money to the extent they couldn't
6 get financing. And --

7 COMMISSIONER DAVIDSON: I want to jump in here,
8 Chair, because I share your frustration. I think that is
9 exactly what we would get to in a show cause proceeding. But
10 there is to me enough on the face of this to show that this
11 delay, why and how it has occurred to me appears to be somewhat
12 unreasonable. Customers are not being served and it is posing
13 health risks. You will have every opportunity if a show cause
14 is granted to argue why the -- if a show cause proceeding is
15 ordered as to why a show cause should not be granted. I mean,
16 you will have an opportunity, I think, to make these very types
17 of arguments on the merits.

18 MR. McDONNELL: I appreciate that, Commissioner
19 Davidson. And I think you're right, but I think I was asked
20 how I felt about the fines and that is what I was getting to.
21 If you are going to talk about a punishment, we would like a
22 fair opportunity to be heard that we are not doing anything
23 deliberate. But I'm not saying nobody should be frustrated. I
24 appreciate the frustration. It has gone on too long. The fact
25 of the matter is we are in better shape here than we were four

1 months ago and we are trying to get it done. I mean, the last
2 time we were here we didn't have the financing. Then we come
3 with financing. I didn't hear a commercial banker say this is
4 inappropriate financing.

5 CHAIRMAN JABER: Why have you not closed on the
6 commitment letter? I understood from the presentations that
7 the letter of commitment depends on the result of this vote.
8 Were you wondering what the vote would be?

9 MR. McDONNELL: Yes. OPC is asking to delete the
10 territory.

11 CHAIRMAN JABER: Mr. -- is it Withers?

12 MR. WITHERS: Yes, ma'am.

13 CHAIRMAN JABER: How soon can you close on the loans
14 and what are the unforeseen circumstances that, you know, that
15 can be adequately accounted for? Help me understand why --
16 Commissioner Davidson asked you this earlier, too. What is the
17 most reasonable time frame and how quickly can you act?

18 MR. WITHERS: We are looking to close no later than
19 August 11th. We are looking to close actually in advance of
20 that. We have additional lenders, and obviously their
21 attorneys involved. I spoke in advance of this hearing to the
22 lender attorney and said -- our lender attorney, and said we
23 are shooting for basically next Friday, the end of next week.
24 You know, given the friction of scheduling of multiple number
25 of parties, you know, that time line might not be met, but that

1 is our earnest goal is to close by that time.

2 As for unforeseen circumstances, some are
3 contribution related. I mean, I am not quite sure, I'm not an
4 engineer, what might arise during the course of construction.
5 I have seen it happen in other construction where things on the
6 ground are not what you expect. And it is just simply that,
7 the unknown. I would also say on, I guess, the consideration
8 of a fine, I mean, the \$1,500 fine is something that we were
9 aware of. But given the size of the company, and the lack of
10 equity in the company as it currently stands, I mean, we would
11 be concerned if they were forced to spend money on a fine that
12 might otherwise go towards construction.

13 CHAIRMAN JABER: What about a fine that completely
14 disappears at the conclusion of the construction and the
15 interconnection of the customers?

16 MR. WITHERS: I mean, I can't speak for the senior
17 lender, and I honestly have to go back to my superiors, but I
18 think --

19 CHAIRMAN JABER: See, the way I look at it, you, from
20 a business perspective, need them to get their act together and
21 interconnect these customers.

22 MR. WITHERS: Absolutely.

23 CHAIRMAN JABER: So I see a potential for us working
24 together with regard to providing the company the right
25 incentive. You need them to finish construction and

1 interconnect customers because that increases the customer base
2 and that is precisely the reason you agreed to the loan. You
3 just said that. So a large fine that gets completely suspended
4 at the end of the project should be good for you, not bad for
5 you.

6 MR. WITHERS: I suspect that if it is coordinated
7 with reasonable extensions. I mean, our goal is not to allow
8 the utility to not proceed in a diligent fashion to complete
9 construction. We would be concerned, however, I will say --

10 CHAIRMAN JABER: You think you only need eight
11 months. So assume with me that this Commission uses its
12 discretion to levy -- with an opportunity to be heard, of
13 course -- a large fine that will be completely removed at the
14 eight-month period. At the conclusion of the eight-month
15 period construction should be complete, connections should be
16 made. You don't need an extension, right? Eight months.

17 MR. WITHERS: If we think that it is not going to
18 be -- that the fine -- you know, if there are reasonable things
19 in place and the fine will never be assessed because the
20 company, as we expect it, is going to move forward, I'm not
21 sure that that would be a problem. But, again, I can't speak
22 for the senior lender. I am going to be presenting, I guess,
23 whatever the outcome of this hearing and your recommendation to
24 the lender.

25 CHAIRMAN JABER: Commissioner Baez, you have a

1 question?

2 COMMISSIONER BAEZ: Well, maybe a question will come
3 out. Madam Chair, I hear what you are saying, and I think at
4 no point -- I read this recommendation, and I remembered -- and
5 I remembered jotting down just a question of as to exactly who
6 is calling the shots here. And it seems to me from reading the
7 chronology of the case, and it seems that at all times it is
8 the lenders that have been calling the shots. And, in fact,
9 Mr. McDonnell has -- you know, some unforeseen circumstances
10 always seem to be whether they can close the loans, and are the
11 commitments executed, and all of these other things. And that
12 seems to have taken the bulk of the responsibility for why all
13 of the extensions have occurred or would otherwise be
14 anticipated.

15 And I would be interested in finding -- acknowledging
16 the fact that the lenders are not the regulated utility. I
17 still think that we need to pay attention -- there is one key
18 date here that I don't think has received enough attention, and
19 that is when is construction going to begin. I think once
20 construction begins it all is, you know, sort of stuck
21 together. Once you start construction, then momentum builds.

22 I think having whatever penalties or whatever fines
23 might be assessed, and I have said before I would probably
24 favor suspending the fines pending certain conditions. One of
25 the conditions that I would like us to entertain is setting

1 some kind of interim milestone, whether it be 30 days after
2 closing of the loan, 30 days after funding becomes available
3 that construction has to begin. I mean, some tangible symbol
4 of everybody's commitment. I don't know if that goes far
5 enough in putting the onus or some of the onus on the lenders
6 to get this.

7 I mean, Mr. Withers, I appreciate attorneys getting
8 involved with a loan that involves two or three different
9 lenders, I can appreciate the things that can go wrong. But I
10 can also appreciate the things that can go right. And I think,
11 you know, there comes a point at which the responsibility and
12 the burden has to be on the lenders to get this thing on the
13 road, otherwise why are they in business. But I am also
14 concerned that if the lenders are taking a little bit too long,
15 and we have customers sitting out there that desperately need
16 service for reasons other than money, and interest payments,
17 and revenues, and all of those things, there are real human
18 considerations here that need to be addressed.

19 So, you know, and I will agree with, I think the
20 Representative's statement, that there comes a point at which
21 we have to say are we going down the wrong road with this. Do
22 we have to consider jumping off of this, off this train
23 altogether. I mean, I don't want that to happen. In fact, it
24 wouldn't be my first choice. I think, you know, the company
25 obviously has the franchise and has the responsibility now, and

1 believe me a deletion process, if you think this took long, you
2 know, you can see how much pain you are adding. So it is a
3 very difficult step to take. But I also want that to be clear
4 in everybody's mind that it eventually will become part of the
5 process.

6 So, you know, making a long story short, I really
7 don't have a question. I would just like to discuss amongst
8 ourselves some alternatives that really take into account a key
9 date that is other than the completion date. Obviously we
10 should be focused on that, but I think we need to focus on
11 getting things started.

12 CHAIRMAN JABER: Commissioner Davidson.

13 COMMISSIONER DAVIDSON: Yes. As the parties were
14 presenting, and as the Chair was asking her questions to the
15 parties, and as Commissioner Baez has been speaking here, I
16 have been sort of jotting out notes for what could be a
17 possible motion on Issue 1. And I just want to sort of lay out
18 the concepts to talk about, and then maybe come back and
19 articulate it.

20 While a show cause may not in all cases be the best
21 incentive and it may not be the best incentive down the road, I
22 think it is an important step at this stage right now, and
23 hopefully we won't ever have to revisit this issue in this
24 case. And it seems as if a motion might include that we move
25 Staff to immediately initiate a show cause proceeding, and give

1 the company 21 days to show cause why, and there would be
2 elements to there. One element would be it should not be fined
3 blank amount, whatever that amount is, per day for failure to
4 have completed construction by June 30th. And that fine would
5 run up through today. And I made a note as the Chair was
6 speaking, which fine would be held, however we hold those
7 fines, in escrow or whatever we do procedurally at the PSC to
8 hold it, and then returned according to a percentage scale.

9 For example, 100 percent could be returned if
10 completed in four months, and then there could be -- and these
11 are just ideas to discuss -- and then there could be a sliding
12 scale of a certain percent refunded if construction was
13 completed between four and five months, five and six, six and
14 seven, seven and eight, to really incentivize the utility to
15 try and complete before eight but allowing it up to eight.
16 That would be sort of one conceptual element.

17 Another conceptual element would be that the utility
18 should be required to, and maybe we add in, start construction
19 by and complete construction by a date certain. We just put a
20 date in there, whether it is start in ten days and then
21 complete eight months of that -- within eight months after the
22 ten days from now, the second element.

23 The third element, if construction is not implemented
24 by that date certain, why the utility should not be fined blank
25 amount per day for any -- I said any failure to complete

1 construction by eight months, but I think we need some type of
2 parameter in there, and I completely understand the delay. But
3 if there is a failure due, for example, to an act of God to
4 complete, that is excusable in my view if there is progress
5 being made and in the six months something happens and it is
6 going to take a couple of months. So some notion, I think,
7 needs to be built in, either commercially unreasonable,
8 unreasonable, something -- right, force majeure, exactly. Some
9 concept there, and maybe failure to complete due to
10 circumstances other than force majeure, a perfect example. And
11 so those are the three sort of fine elements.

12 And I don't know if we put in this motion, I think we
13 can put in a motion for an order to show cause also
14 requiring -- sort of ancillary to that show cause order
15 requiring continuation of quarterly or monthly reports,
16 whatever Staff deems appropriate, with whatever content needs
17 to be in there to make the reports meaningful.

18 And I personally -- the fifth element would be I
19 would like to have some comfort knowing that the funding option
20 now is commercially reasonable. I agree, Staff, regulatory
21 bodies should not be micromanaging the finances of an
22 organization, but I would like some comfort level that this
23 financing scheme is commercially reasonable, however you might
24 demonstrate that. So those are what I see as sort of the five
25 elements that would go into resolution of Issue 1.

1 CHAIRMAN JABER: Commissioners, the Commissioner was
2 asking for feedback. Something you said at the end, though,
3 triggered a question for Staff. And I want to get back to
4 Representative Fiorentino, I think it was the first question
5 you asked us to address. The arm's-length transaction between
6 a utility company and the bank. Our normal process is that it
7 is reviewed, correct me if I'm wrong, in a rate case process.
8 We do take a look at whether the transactions are arm's-length
9 transactions. So I think the standard -- Ms. Merchant, correct
10 me if I'm wrong -- is whether the transaction is an
11 arm's-length transaction that is in the public interest.

12 MS. MERCHANT: Right. We have a lot of
13 arm's-length -- nonarm's-length and arm's-length transactions.
14 Just because it is a nonarm's-length transaction doesn't mean
15 it is unfair. But what we are going to look at is compare it
16 to what an arm's-length transaction would be. So if by chance
17 you go in and you look at this transaction, this loan agreement
18 and there are some unreasonable aspects of it that wouldn't be
19 available in the open market, then we could disallow those in
20 the rate case. And the utility would be responsible for paying
21 them because they made an agreement with their lender, but the
22 ratepayers would not be responsible if this Commission deemed
23 that they were unreasonable costs.

24 CHAIRMAN JABER: Now, there is nothing, though, to
25 preclude us from sending an auditor, an analyst to go ahead and

1 look at those documents. Candidly, my concern is I don't want
2 to hold up construction or closing of the loan. But just in
3 the interest of making sure the record is covered, there is
4 nothing that precludes us from sending an auditor, an analyst
5 to take a look at those transactions now.

6 MS. MERCHANT: Right. We have the documents, we
7 could take a look at them now. We wouldn't necessarily need an
8 auditor to look at them. But normally we don't prejudge the
9 debt agreements beforehand. We look at them after the fact to
10 see if they are prudent. Because it truly is the utility's
11 responsibility, the management's responsibility to make the
12 best most prudent decision that they can in securing financing.
13 We might -- or the Commission might not agree with that. And
14 certainly to that extent that they don't agree, the utility
15 management is responsible for that.

16 CHAIRMAN JABER: And that issue really only comes to
17 play in ratemaking if the company were to try to pass on the
18 expenses and costs associated with any of those transactions
19 through the rates.

20 MS. MERCHANT: That is correct.

21 CHAIRMAN JABER: Okay. Commissioners, feedback to
22 Commissioner Davidson's thoughts or questions of your own.

23 COMMISSIONER DAVIDSON: On that, just to comment, I
24 think that would take care of my concern. I just wanted to
25 make certain that customers would not be bearing the burden of

1 what we might conclude is commercially unreasonable. It sounds
2 like we will have that opportunity in the event those rates are
3 ultimately passed on to consumers or attempted to be passed on
4 to consumers.

5 MS. MERCHANT: And we would definitely be looking at
6 that if they pursue rate relief with this.

7 CHAIRMAN JABER: Commissioner Deason?

8 COMMISSIONER DEASON: Yes, I have a question, and it
9 pertains to the general framework that was outlined by
10 Commissioner Davidson. And I appreciate him doing that. And
11 it appears that there is some advantages to putting an
12 incentive based approach to try to get the job done and service
13 initiated to customers. That is our ultimate goal and ambition
14 here. But along those lines, my concern -- and this is, I
15 guess, in response to a response made by -- is it Mr. Weathers
16 or Withers?

17 MR. WITHERS: Withers.

18 COMMISSIONER DEASON: Withers. That he can't speak
19 for the lenders of the senior debt, is that correct?

20 MR. WITHERS: We have got the senior debt, which is a
21 Republic Bank loan that has been participated out to another
22 lender, United Bank.

23 COMMISSIONER DEASON: And that this is an entire
24 package, this entire refinancing as well as the new
25 construction loan is all contingent on being done as one -- at

1 one time, it is going to be one large closing, is that correct?

2 MR. WITHERS: Yes, there is going to be agreements
3 among the creditors. There are agreements among the creditors
4 to the existing loan. While I have the opportunity I would
5 like to say that Phase 3 is being included in the planned
6 construction. I know that was a concern that was addressed
7 earlier and is addressed in the commitment. But that is part
8 of the construction program.

9 COMMISSIONER DEASON: I guess my concern is this, I
10 am all for incentives in trying to get this matter resolved
11 quicker rather than later, but I guess my concern is that if we
12 adopt the essence of the motion, and somehow that creates a
13 degree of uncertainty or uncomfot with the senior lenders and
14 they back away, then are we prolonging the ultimate resolution.
15 Or is -- I guess this is maybe a question for Mr. Reilly. I
16 mean, in your presentation you suggested that there needs to be
17 a larger fine amount, and that it maybe needs to be contingent
18 to some extent. Are you willing to take the risk that if we
19 take your recommendation and the senior lenders back away, that
20 we are going to be prolonging this resolution and maybe even
21 excluding Hudson as the solution to the problem?

22 MR. BECK: Commissioners, let me respond if I could.
23 You know, the end result we are looking for is performance by
24 the company. There is no question that is the goal. If you
25 take the performance or incentive type of proposals, the key to

1 whether the fine is ever paid is going to be with the company.
2 In other words, we are not against no fine at all if they would
3 simply perform and provide the service that they promised year
4 after year, the service they are obligated to provide. I think
5 as part of the incentive there has got to be consequences.
6 That is probably one of the problems before, there has never
7 been a consequence for this company for failing to do what they
8 promised to do and what they are obliged to do. So I think
9 some sort of substantial fine with the key being with the
10 company that they can avoid it completely if they simply do
11 what they said they are going to do, that is what we are in
12 favor of.

13 COMMISSIONER DEASON: Thank you for that
14 clarification. I appreciate it, Mr. Beck.

15 CHAIRMAN JABER: Commissioners, I think Commissioner
16 Davidson has moved us along into a potential motion. And
17 before we vote on possibly the motion, I want to make clear to
18 Mr. Withers that it is not our intent, as you have gathered by
19 now, to frustrate this process. And I have comfort in knowing
20 that you will hopefully confirm for me in a few minutes that
21 you will go back and do everything you can to help us make this
22 happen. You know, to the degree you can influence these senior
23 lenders, we are all after the same thing, aren't we?

24 MR. WITHERS: Correct. And it is also a concern of
25 my company. I mean, this loan was underwritten under a certain

1 set of parameters. We try to, you know, predict the future, to
2 the extent you can. You project to determine whether that
3 certain money is going to be there to fund debt service. We
4 have constructed a loan program in an effort to take service
5 availability fees and apply those to construction and only then
6 if there is a shortfall that they can't fund the construction
7 proceeds will come out of the construction loan. The goal
8 being to reduce the debt burden on the company, to reduce the
9 interest costs on the company. We have pursued it on that
10 basis. Now, I will say that the notion of the fine, and I
11 understand, I think we are all on the same page --

12 CHAIRMAN JABER: Thank you.

13 MR. WITHERS: -- is a concern to the extent that it
14 becomes pretty burdensome given the size of the company and
15 given, you know, my earlier comments about this is a small
16 company and in the past it has not earned enough money to
17 amortize its debt. I mean, I will say that the construction
18 piece has never been further along. This is a commitment
19 letter that has -- yes, there are some subject tos and caveats,
20 but those are natural to commitment letters. It is just what
21 lender commitment letters are about.

22 CHAIRMAN JABER: And, again, we can't emphasize
23 enough a lot of that is in the company's own destiny because
24 the fine could potentially go away completely if we entertain
25 Commissioner Davidson's possible motion within a certain set of

1 time. That should be understood.

2 MR. WITHERS: I understand that. And I think that
3 the conference call that we had on Friday and the issue of a
4 fine, and the size, the \$1,500 size, didn't cause any degree of
5 heartburn with the construction lender.

6 CHAIRMAN JABER: Commissioner Davidson, I think with
7 regard to my questions on the auditor, while it is within our
8 discretion to go ahead and asked that an auditor or an analyst
9 review the transaction, I personally believe it is premature.
10 I think the bigger issue is getting folks connected and service
11 provided by Hudson. But with regard to monthly reports, unless
12 Staff corrects me, I think there is probably a benefit to
13 moving the responsibility from a quarterly report to a monthly
14 report, if not for anything but that Staff is more aware. They
15 can bring to us red flags quicker, I think, if we are touching
16 base with the company monthly. So it is really just a selfish
17 reason. The way the process has been coming to agenda and we
18 have this discussion, by the time we are having the discussion
19 our options are limited, and to the degree a monthly report may
20 help in that regard, I am all for it.

21 MR. McDONNELL: The company is all for that, too,
22 Madam Chairman. We have filed quarterly reports, but I have
23 also been in relatively constant contact with Ms. Gervasi, just
24 because I know the frustration here, and I am just trying to
25 keep her apprised.

1 CHAIRMAN JABER: And I don't doubt -- I don't doubt
2 that you cooperate fully. But the monthly reports probably get
3 filed in the docket, Public Counsel becomes aware of them and
4 the customers are aware of them.

5 COMMISSIONER BAEZ: Another question, Madam Chair.

6 CHAIRMAN JABER: Commissioner Baez.

7 COMMISSIONER BAEZ: Mr. McDonnell, how soon after the
8 August 11th date, assuming it goes the whole way that Mr.
9 Withers expects, how soon do you break ground on construction?

10 MR. WITHERS: It would happen within 30 days and
11 probably -- (Inaudible. No microphone).

12 COMMISSIONER BAEZ: Okay.

13 MR. McDONNELL: I don't know if it is clear or not,
14 that eight months that the bank requested wasn't the result of
15 a construction study.

16 COMMISSIONER BAEZ: No, no, no. I'm asking -- I
17 understand that your engineering is based on a four month. I
18 think everyone has taken that as reasonable at this point. I
19 don't know. But since the lender, again, is the one that is
20 going to make this whole thing happen somehow on some level, if
21 they are requiring eight months as part of their commitment,
22 then eight months -- I will be willing to accede to that to the
23 extent that we have anything to do with that. So eight months
24 is not offensive. I guess going back to a concern that I had,
25 I am interested in knowing how soon, how soon the customers can

1 start seeing the progress towards the result that we all want.
2 Because while Commission Davidson's suggestion doesn't
3 necessarily include some acknowledgment that construction has
4 to begin soon, I think it is important. I'm not offering it as
5 an amendment or anything, but I want to stress how important it
6 is to me that something tangible be out there that the
7 customers can see.

8 MR. McDONNELL: I understand. Yes, sir. Did you
9 hear Mr. Griffin's response?

10 COMMISSIONER BAEZ: I heard Mr. Griffin say in a best
11 case scenario within a day or two after closing, but definitely
12 within 30 days.

13 CHAIRMAN JABER: So you anticipate closing you said
14 next Friday, and Mr. Griffin's response was construction
15 beginning date is 30 days after next Friday?

16 COMMISSIONER BAEZ: No later than. No later than I
17 think he said.

18 MR. WITHERS: No later than is what I understand. I
19 mean, next Friday is the goal that we will be working to on the
20 lender's side and the borrower's side.

21 CHAIRMAN JABER: Commissioner Davidson, that probably
22 helps you out with those blanks you had on the dates.

23 MR. WITHERS: That is a pretty tight time schedule
24 obviously. We are on the lender's side looking to use the
25 existing loan documents and modify them as appropriate. So we

1 don't want to -- we are viewing this as pushing it forward as
2 fast, as quickly as we can. I mean, I can't assure you that it
3 will be closed by next Friday, but that is our target.

4 And in advance of this hearing I spoke to one of the
5 attorneys who will be kind of pushing that along and told them
6 that was our target. So hopefully that lends a degree of
7 comfort into our mindset.

8 CHAIRMAN JABER: Commissioner Davidson.

9 COMMISSIONER DAVIDSON: That helps a lot. And I
10 think there are two other sort of open issues there for
11 discussion before I would memorialize this into a motion. One,
12 the amount of fine per day. Staff has recommended a total of
13 1,500 fine, the customers have sought a \$5,000 per day fine
14 which strikes me a bit unreasonable given that we are trying to
15 work this out. It is not an unreasonable amount, but we also
16 don't want to just sort of knock the possibility of financing
17 out of the way. So if the Commission can discuss that.

18 Then the sliding scale that I had in mind was 100
19 percent refund of the fine if construction was completed within
20 four months. And then, as I mentioned the sliding scale,
21 completion after four months but under five, return 90 percent;
22 five to six months, return 80; six to seven, return 70, seven
23 to eight months, return 60, and then if it takes more than
24 eight months to complete not return any of the fine. That is
25 sort of an easy formula, but I don't know if that strikes the

1 rest of the Commission as reasonable, so I throw that out on
2 the table for discussion.

3 CHAIRMAN JABER: Let me ask Staff a question. In the
4 initial discussion Commissioner Davidson asked, you know,
5 whether it be held in escrow or whatever the process is. We
6 have assessed fines in the past through a show cause proceeding
7 and held them in abeyance. Is that what -- if we vote this
8 motion out, is that what you envision, that we would order this
9 amount of fine, this sliding scale, and recognize that -- what
10 is it we would do, Ms. Gervasi, is it that we would recognize
11 it is held in abeyance if construction is completed within four
12 months, and then levy, actually levy the fine after that, a
13 certain percentage? Walk us through the procedure.

14 MS. GERVASI: I think what I am used to seeing, what
15 we typically have done before when the Commission has abated a
16 fine, is to not require the money -- the company to put the
17 money up front, and to say this fine will become payable on
18 such and such a day if X,Y, or Z doesn't happen, but
19 permanently abated if the company does perform. So by putting
20 the money in escrow now, I don't think that there is anything
21 to preclude the Commission from doing that, it is just
22 different from what we typically have done with the abating of
23 fines.

24 COMMISSIONER DAVIDSON: My concern here when you say
25 abeyance, and I understand the procedure, but my concern is I

1 don't want for some reason the public of Florida, the customers
2 to become really a creditor with low priority in the event of
3 ultimate non-performance by the utility. My preference would
4 be that the funds of a certain amount be collected and held in
5 escrow, but that is just one Commissioner's view. I think that
6 gives us a little bit greater assurance that some money will be
7 held for customer benefit in the event of non-performance.

8 But, again, I put that out for the Commission's --

9 COMMISSIONER DEASON: Let me comment on that, if I
10 may. I understand the frustration and the desire for that, but
11 I think there are perhaps two problems. First, before you
12 actually collect the money you have got to give the party due
13 process. We can show cause them and impose a fine, but it is
14 only after the party is given ample opportunity to respond to
15 that and then we make a decision.

16 And the other is the ultimate goal of getting this
17 project completed. If we take resources away from them now and
18 put them in escrow, you are talking about taking potential
19 capital, either loan proceeds or otherwise, and putting it into
20 an escrow account that can't be utilized to construct. So
21 those are my concerns.

22 CHAIRMAN JABER: And the other thing to point out,
23 Commissioner Davidson, I think it is workable, it is just a
24 matter of finding the right procedure to articulate. But the
25 other thing to point out relates to the money through a show

1 cause process does not go back to the customer, it is going to
2 go into the general revenue of the State of Florida. So,
3 again, having it in escrow will serve that purpose, not getting
4 it back to the customers.

5 So can we get to the same place, Ms. Gervasi -- we
6 want to capture the spirit of what Commissioner Davidson
7 proposes, which is to create an incentive for the company to
8 complete everything it needs to complete by the preferable
9 four-month period, and then doing something more severe as the
10 time period is extended. Do you need a few minutes to think
11 about it?

12 MS. GERVASI: I can envision a sliding scale kind of
13 fine, but maybe it would be a good idea to confer.

14 COMMISSIONER BAEZ: Can I ask a quick question?

15 CHAIRMAN JABER: Commissioner Baez.

16 COMMISSIONER BAEZ: Is there a way to draft or to
17 issue a show cause that has -- where the due process rights
18 attach at the time the fine becomes -- I mean, is that what we
19 are talking about?

20 MS. GERVASI: What we would be talking about would be
21 to give the company a 21-day period within which they could
22 respond as to why the fine that is being proposed should or
23 shouldn't be assessed. And then at that point the Commission
24 would make a decision and we could go to hearing on just that
25 issue.

1 COMMISSIONER BAEZ: But with the -- and I know I am
2 probably using the word incorrectly, but with the refundable
3 nature that makes all sorts of other implications, and I don't
4 intend that. But with the returnable nature or the negligible
5 nature of the fine, can we do it so that we are not -- I guess
6 my concern would be to be involved in this 21-day period now
7 when we should be focussing our resources, as Commissioner
8 Deason has suggested, and rightly so, let's get all the
9 resources focused on getting this thing started and getting
10 this thing finished rather than fighting out whether the show
11 cause is proper and whether the fine was proper now.

12 I mean, the way that Commissioner Davidson has at
13 least structured a potential motion you would have a fine
14 become really payable subject to payment at a later date.
15 Would it also be legally possible to have the due process
16 rights attach at a later date so that we are not creating
17 process on the front end where we should be focussing on what
18 the ultimate goals are.

19 MS. GERVASI: Yes, and I don't know what the answer
20 is to that question just off the top of my head. I know they
21 need to be given, according to law, you know, a point of entry,
22 but whether we --

23 COMMISSIONER BAEZ: And it is not my intention -- my
24 suggestion in no way is to curtail any due process rights, that
25 they will get whatever process is due to the fullest extent of

1 the law. My question really is is there a way to delay that
2 right as we are delaying the imposition of a fine?

3 MS. DANIEL: Commissioners, may I make a suggestion?
4 Not as to the legality of how to get there, but some other
5 options which you might want to consider. And before I talk
6 about the fine, let me make one other comment, if I could. It
7 is the Signal Cove area that has the severe health issues.
8 These construction loans and other loans are for all of the
9 area that Hudson is considering adding lines to, so I want you
10 to be aware of that as we go through the language that we might
11 include in this order.

12 And to go back to the fine, Commissioner Davidson, if
13 I may, the sliding scale that you are suggesting, put the cap
14 on the amount of fine, and if that is your intent, then that is
15 probably the way to get there. The other way to handle that
16 would be to begin fining the company at some point in the
17 future, four or six months after the close of the loan with a
18 daily fine, if you will, for each day that construction is not
19 completed, collectable on a monthly basis, or some specified
20 period of time that makes it an open-ended fine, it puts the
21 company at peril for all of those unforeseen delays that might
22 occur in the future. I just wanted to kind of throw that mix
23 in there.

24 CHAIRMAN JABER: That is an excellent point, Ms.
25 Daniels. So you could actually structure the fine to be \$5,000

1 per day to commence at the end of the four-month period,
2 because that setup right there means no fine is assessed for
3 the four-month period that construction is supposed to be
4 complete. Commission Davidson and then Baez.

5 COMMISSIONER DAVIDSON: I had envisioned a bit of the
6 same thing, but it strikes me as a reasonable compromise that
7 we impose some fine for the failure to meet this delay now,
8 June 30th to July 15th, and we hold -- as it seems the majority
9 would like to do that fine in abeyance, but go ahead and impose
10 it so that we are just not letting go the non-performance to
11 date.

12 Then, going forward, and we have been talking about
13 eight months here to complete construction, it doesn't really
14 matter to me if it is four months, six months, eight months, if
15 construction is not completed by a certain point, have that
16 daily fine. It strikes me as eight months is the right
17 approach if that is what the lenders and the utility have
18 required. Now, we can always just impose an obligation of four
19 months if we get a representation here from the utility that
20 they can complete in four or six months, but I would envision a
21 fine for June 30th to July 15th for failure to complete
22 performance, which would be held in abeyance and would be
23 refunded along the sliding scale in addition to a fine for
24 failure to complete along the lines you have suggested for
25 failure to complete at four, six, eight months.

1 And to the parties my hope would be that on this
2 initial fine, sort of consistent with Commissioner Baez's, the
3 Chairman's, Commissioner Deason's goal of -- and my goal of
4 really getting this going, and I'm sure Commissioner's
5 Bradley's goal, that if you all could agree to some fine that
6 would be held in abeyance, it puts the burden on you, and you
7 know you can perform, so there shouldn't be that much of a risk
8 agreeing to a fine that you know won't ever happen because you
9 are going to construct the utility. If you all could stipulate
10 to some fine less than 5,000 and certainly no less than the
11 1,500 that has been discussed, that might alleviate the need
12 for the actual show cause proceeding. The parties can
13 certainly address that aspect of the case.

14 CHAIRMAN JABER: Commissioner Baez, do you want to
15 ask a question and then we will take a 15-minute break.

16 COMMISSIONER BAEZ: If it was only going to be half
17 in jest, we keep talking about \$5,000 a day fine, and I don't
18 want to -- I mean, I got real heartburn with that. I would say
19 more than heartburn. We are dealing with a Class C utility.
20 So if you are going to use an example, let's use something a
21 little more realistic.

22 CHAIRMAN JABER: I think the reason Ms. Daniel --
23 actually you may not have used the amount, I may have brought
24 that in. That just comes from the statute, I don't think we
25 were there in terms of --

1 COMMISSIONER BAEZ: I wanted to clear that up. That
2 is not what we are talking about. Certainly that is not what
3 I'm talking about, I wanted that clear.

4 CHAIRMAN JABER: Okay. Ms. Gervasi, how much time?
5 Do you think 1:30 gives you sufficient time?

6 MS. GERVASI: We will do what we can within those 15
7 minutes, yes, ma'am.

8 CHAIRMAN JABER: Do you need additional time?
9 Because, frankly, the Commissioners have not broken all day,
10 either. So if you need more time, you just need to let us
11 know.

12 COMMISSIONER DEASON: Are we going to break for
13 lunch?

14 CHAIRMAN JABER: Let's do that. We have not broken
15 for lunch today, so why don't we go ahead and break for an hour
16 and we will come back and finish up this item.

17 MS. GERVASI: Thank you.

18 CHAIRMAN JABER: Thank you. An hour.

19 (Lunch recess.)

20 CHAIRMAN JABER: Commissioners. And, let's see, Ms.
21 Gervasi, where we left it you wanted to do a little bit of
22 research on the procedural aspect of trying to apply a
23 scaled-down incentive program related to the fine.

24 MS. GERVASI: Yes, ma'am. And we met with the
25 parties. The problem that Hudson is having is that they are

1 not able at this point today to agree to any amount above and
2 beyond the 1,500 that Staff recommended for the reason that
3 they don't know whether the banks will walk away from the loans
4 or not if the loan amount is any higher than that. So we were
5 not able to come to a consensus among all of the parties for
6 that reason.

7 Public Counsel and Staff believe that it might be a
8 better idea rather than to have a scaled down amount of a fine,
9 that the concern is that the banks would look unfavorably upon
10 that, as well. But rather than to do that, to actually give
11 the company the full eight months in which to complete
12 construction to Signal Cove, keeping in the recommendation the
13 language about how if they don't at least break ground within
14 90 days from the date of closing on the loans, and no later
15 than August 11th is when the closing is to take place. So no
16 later than 30 days from that date or from the date of closing,
17 whichever comes sooner, Staff will bring a recommendation
18 concerning deletion proceedings. Because, frankly, if they
19 don't begin construction within those 30 months (sic), they are
20 probably not going to be the ones to provide the service to
21 these customers.

22 The monthly reporting rather than quarterly so that
23 we are on top of what is going on. And then at the end of the
24 eight months, if the company has not completed construction to
25 Signal Cove at that time that show cause proceedings will be

1 initiated at that time to require the company to show cause as
2 to why they shouldn't be fined in an amount of up to \$5,000 per
3 day for each of the 15 days beyond June 30th and today that
4 they didn't construct up to a total potential liability of
5 \$75,000. And, pardon me, the company at that time, of course,
6 would have their due process rights to let us know why that --
7 you know, we may or may not recommend the full 75,000 depending
8 on whatever the mitigating or aggravating circumstances may be
9 during the next eight months that we don't know about yet. But
10 up to 75,000, and then the company could respond to that. And
11 we would go from there as to whether we go to hearing or not.

12 CHAIRMAN JABER: And that proposal or that idea you
13 have talked to Public Counsel about, did I understand you
14 correctly?

15 MS. GERVASI: Public Counsel agrees with that. I
16 believe the Representative agrees to that. Hudson, of course,
17 is unable to agree to that, and we don't know whether the banks
18 will walk away because of that.

19 CHAIRMAN JABER: Mr. Beck, do you have anything you
20 want to add? And, Representative, I will ask you the same
21 thing.

22 MR. BECK: Yes. Thank you, Chairman Jaber. We think
23 the Commission's best legal authority deals with violations of
24 the order that is already outstanding. I think it is less
25 clear if you try to have proposed fines for actions in the

1 future that don't amount to a violation of what they have
2 already done. So we see the maximum that you could fine the
3 company right now is \$75,000; 5,000 for 15. You know, what we
4 would propose is that you give the company eight months from
5 the August 11th date with a confirmation of no fine at all. In
6 other words, you give them free reign from the date they have
7 set from August 11th to April 11th, 2004, and state up front
8 that you are not going to fine the company if they complete
9 construction within that time frame. I don't think I would put
10 any other conditions in there about other matters, just simply
11 give them the full eight months from their date.

12 And then have a show cause issued to which the
13 company responds on April 11th, 2004. In other words, they
14 wouldn't even have to respond during that eight-month period.
15 But at that point they would show cause why they shouldn't be
16 fined up to a maximum. And you can go to 50,000 if it makes
17 other people nervous going up to 75. But that is not to say
18 that that is what the fine is going to be. It would simply be
19 show cause why not up to that point, and the Commission would
20 make no determination of the actual fine until the company has
21 responded on April 11th, 2004 to the show cause order.

22 And then there is due process from there, and it
23 would take some time. But would you then at that point be in a
24 position to make a decision and that would be based on the
25 violations through today.

1 CHAIRMAN JABER: So you wouldn't make -- rather than
2 the 21-day response time, you would allow them to show cause in
3 writing by April 11th, 2004 if the construction is not
4 completed?

5 MR. BECK: Right. And tell them up-front that there
6 is no fine if they do complete it in that time.

7 COMMISSIONER BAEZ: Then what Ms. Gervasi -- I'm
8 sorry to interrupt, Madam Chairman.

9 CHAIRMAN JABER: No, that's okay.

10 COMMISSIONER BAEZ: And, Mr. Beck, the mention by Ms.
11 Gervasi of the 90 days, excuse me, I think it is contained in
12 the recommendation.

13 MR. BECK: I know it is in there. I don't see any
14 need to address that at this point. I would just simply give
15 them the full eight months free reign, finish. I mean, that is
16 the maximum of amount of time that the company has ever said
17 they would need to complete construction. It gives them a free
18 reign during that time period to do what they say they are
19 going to do. I mean, they have said they are going to do it a
20 lot quicker than that.

21 COMMISSIONER BAEZ: Question, Ms. Gervasi. Without
22 that condition explicitly set out, is there anything tying the
23 Commission's hands, or the Staff's hands, rather, from coming
24 back to the Commission with any concerns about any delay in the
25 beginning of construction, you know, before the eight months,

1 and I guess that is really the question?

2 MS. GERVASI: Absolutely not. If the monthly reports
3 indicate that there are delays, or we have any kind of concerns
4 at all, we can and will bring a recommendation sooner than
5 that.

6 CHAIRMAN JABER: And, Representative Fiorentino, I
7 wanted to get back to you. Do you agree with Mr. Beck's
8 position and --

9 REPRESENTATIVE FIORENTINO: Yes, ma'am. The one
10 thing that I just wanted to make sure, and I just reiterate
11 this is that you all do get those monthly reports. And I know
12 the office will be kind enough to share those with us so that
13 we can share those with the constituents back home. I think
14 that all of us are in agreement, we want this project to get
15 done, but we also want to make sure that there is an incentive
16 for the utility company to come forward this time.

17 CHAIRMAN JABER: Absolutely.

18 Mr. McDonnell, I am assuming the quarterly reports
19 you would go ahead and send to Public Counsel, too, is that
20 right?

21 MR. McDONNELL: Yes. We file them and there is a
22 certificate of service. OPC gets a copy.

23 CHAIRMAN JABER: Okay. And the monthly reports you
24 will do the same?

25 MR. McDONNELL: Absolutely.

1 CHAIRMAN JABER: Mr. McDonnell.

2 MR. McDONNELL: One thing that wasn't discussed in
3 this room, but I believe was discussed when we conferenced
4 during the break, that eight months was also subject to a,
5 quote, unforeseeable delay clause.

6 CHAIRMAN JABER: Commissioners, you know, Mr.
7 McDonnell was right, we did not discuss that. I had underlined
8 in the recommendation that I don't agree it should be eight
9 months plus a time period for unforeseeable circumstances. Let
10 me see the exact language that I circled. On Page 11, Staff
11 recommends that the eight-month time period should begin on the
12 loan closure deadline of August 11th and should expire on April
13 11th with potential additional extensions of time available.
14 My preference is that we delete that part, because it is my
15 understanding that the eight months is supposed to incorporate
16 unforeseen circumstances. So --

17 COMMISSIONER DEASON: Madam Chairman.

18 MR. McDONNELL: I wish to be heard, please.

19 CHAIRMAN JABER: Commissioner Deason. And we will
20 come back to you.

21 MR. McDONNELL: I'm sorry.

22 COMMISSIONER DEASON: I agree with that, and I also
23 would note that at the end of eight months all that does is
24 trigger the show cause. And if the company can come forward
25 and show there was some type of legitimate force majeure

1 situation, act of God, or otherwise, that would be their
2 defense. And I think this Commission is reasonable. I don't
3 think we have ever held somebody liable for something that they
4 could not control that was indeed beyond their legitimate
5 control.

6 MR. McDONNELL: And that does not concern me at all,
7 Commissioner. Thank you. That doesn't concern me. What does
8 concern me is a clause in the commitment letter. And I don't
9 represent the banks, but the commitment letter calls for
10 unforeseeable circumstances on top of the eight months. And I
11 am only concerned that any other order from this Commission
12 today may implicate that commitment letter.

13 CHAIRMAN JABER: Well, if we take this reference out,
14 we are not speaking to what is in your commitment letter. I
15 fail to see how what is in your commitment letter related to
16 unforeseeable circumstances binds us with regard to extending
17 the time period.

18 COMMISSIONER DAVIDSON: I agree. This is an
19 agreement between two parties negotiated freely. And the
20 lesson to take back to the client is they need to complete
21 construction within eight months. Preferably closer to the
22 four that they said they can do it in, but at the outset,
23 eight. And I would hope the utility would agree to that
24 language and bear the burden of not being able to complete it.
25 The customers don't bear that burden, the utility should bear

1 that burden. The PSC doesn't bear that burden, the utility
2 should bear that burden.

3 Commissioner Deason was right, I believe the
4 Commission would act reasonably if there was some force majeure
5 situation that had to be considered. But as to the rest, I am
6 very comfortable with the Commission's indication that that
7 language should come out. Eight months in my view was just the
8 outmost time frame. And I think the customers and OPC are
9 giving the utility the benefit of the doubt here by not
10 pressing hard for a fine at this point and saying, once again,
11 we will trust you to get this done.

12 MR. McDONNELL: And --

13 CHAIRMAN JABER: Commissioners, I'm ready for a
14 motion.

15 MR. McDONNELL: If I could just say one thing, Madam
16 Chairman. I'm not sure I made myself clear. The company does
17 not have a concern with what you just said about eight months.
18 The banks put in the commitment letter that their eight-month
19 period is subject to the force majeure or unforeseeable delay
20 clause. And so if it is not in the order, it may implicate the
21 commitment. And I only say that because my client is trying to
22 get the financing, not because I represent the bank.

23 CHAIRMAN JABER: Mr. McDonnell, I think you are
24 making yourself perfectly clear. Perhaps it is us that is not
25 making itself perfectly clear.

1 MR. McDONNELL: No, if I made myself clear, then I'm
2 done.

3 CHAIRMAN JABER: Let's do this again. And,
4 Commissioners, you can correct me if I'm wrong. It looks like
5 there is consensus with respect to adhering to this eight-month
6 time period, although we recognize and prefer that construction
7 be completed within a four-month time frame. What I heard
8 Commissioner Deason say, and I wholeheartedly agree, this
9 Commission has a reputation of being extremely reasonable.
10 This case is an example of that. Is there anything more we
11 need to add? I'm ready for a motion.

12 COMMISSIONER DEASON: Commissioner Davidson, we're
13 looking at you.

14 COMMISSIONER DAVIDSON: Yes. I'm hoping I can just
15 move Staff's revised recommendation as presented to us verbally
16 without having to repeat that and have Staff prepare an order
17 in accordance with its revised recommendation, discussions with
18 the parties, and the Commission's directives.

19 CHAIRMAN JABER: Rosanne, do you need any
20 clarification from us? You have recommended the monthly
21 reports, you have recommended eight months for completion of
22 the construction --

23 MS. GERVASI: Correct.

24 CHAIRMAN JABER: -- with initiation of a show cause
25 proceeding at the completion of the eight months, at the

1 conclusion of the eight months if construction is not complete,
2 with a potential fine of up to 75,000.

3 MS. GERVASI: Correct.

4 CHAIRMAN JABER: And that the response to the show
5 cause would be due when?

6 MS. GERVASI: Well, after we bring the recommendation
7 they will have 21 days within which to respond from the date of
8 the order being issued on that show cause issue. I also
9 suggested leaving in the language about bringing a
10 recommendation on deletion proceedings if they do not begin
11 construction within 90 days. I think I heard Mr. Beck say --

12 COMMISSIONER DAVIDSON: Within 30 days.

13 MS. GERVASI: Within 30 days, okay. So we want to
14 change the recommendation from 90 days to 30 to bring in
15 deletion proceedings.

16 COMMISSIONER DAVIDSON: I'm sorry, I didn't want to
17 speak for you. I thought that is what had been discussed.

18 MS. GERVASI: The current recommendation says 90.

19 CHAIRMAN JABER: Yes, I agree with Commissioner
20 Davidson. I thought what had been discussed was the 30-day
21 time period. Why don't we --

22 MR. BECK: Madam Chairman.

23 CHAIRMAN JABER: Hang on, Mr. Beck. I'm going to
24 entertain Mr. Beck's comment, but if you would just jot down
25 what your revised recommendation is, because we don't want this

1 to come back to agenda for clarification. So take a moment and
2 form what your revised recommendation is and that will be a
3 motion that we take up.

4 Mr. Beck.

5 MR. BECK: It would be our position that you not
6 include that 30-day provision in there. I think you need to
7 give the company just the maximum flexibility. If the show
8 cause is for the violation through today, you are always free
9 to take other actions at other times. I think it simply
10 complicates matters to include that in there, as well. We
11 would recommend you not take that up at this time.

12 COMMISSIONER BAEZ: Madam Chair, and that's why I had
13 asked Staff that even absent that condition as part of our
14 decision today, do they still have the flexibility, based on
15 what they get in the monthly reports, to come back prior to the
16 eight months. So if that -- if the order is silent as to that
17 condition, the Staff's ability to come back, and certainly the
18 Commission's authority to begin that kind will always be there.

19 CHAIRMAN JABER: Okay. Why don't we just give Staff,
20 Mr. McDonnell, and Mr. Beck five minutes. We will be right
21 here. Take a few minutes to form your revised recommendation
22 and we will entertain it.

23 (Off the record.)

24 CHAIRMAN JABER: Ms. Gervasi.

25 MS. GERVASI: Commissioners, our recommendation on

1 Issue 1 is to require that show cause proceedings be initiated
2 if Hudson does not complete construction to Signal Cove within
3 eight months from the date of closing on the loan, with that
4 date being no later than August the 11th as being the date that
5 that eight-month time clock begins. With no force majeure
6 being entertained, it is eight months, period. And then we
7 initiate show cause if construction is not completed as to why
8 the company should not be fined in the amount of up to \$5,000
9 per day for the 15-day period covering from June 30th up until
10 today for a total potential liability of up to \$75,000. I
11 would propose that we not include the language about deletion
12 of the territory if they don't begin construction within the 90
13 days, just to align with what Public Counsel suggested.

14 But I do have one question about clarification so
15 that I know how to write this order correctly. And that is
16 there is a force majeure clause which is part and parcel of the
17 motion for extension of time, which is a separate issue. There
18 is the show cause issue, which is Issue 1, and then the motion
19 is Issue 2. I'm clear that there will be no force majeure
20 clause for the purposes of determining when the eight months
21 ends for the show cause, but if you do not agree with the force
22 majeure clause at all, and your intention is to not approve
23 that provision, then I see it that you would not be approving
24 or granting the motion for extension of time in its entirety.
25 You would be granting it in part and actually denying it in

1 part. And the part that you would be denying is that force
2 majeure clause which is what the bank wants. And that raises a
3 concern as to whether the bank would walk away from the
4 commitment.

5 CHAIRMAN JABER: Commissioners.

6 COMMISSIONER BAEZ: And just to explain the force
7 majeure clause, wouldn't force majeure get wrapped into any
8 discussion on once show cause has been commenced?

9 MS. GERVASI: Yes.

10 COMMISSIONER BAEZ: It could stand as like some kind
11 of affirmative defense, or --

12 MS. GERVASI: Yes, a mitigating circumstance.

13 COMMISSIONER BAEZ: Mitigating circumstance.

14 MS. GERVASI: Yes, sir.

15 CHAIRMAN JABER: Rosanne, the part I am confused
16 about and find it difficult to provide you an answer to your
17 question, I don't understand why the force majeure clause in
18 the loan commitment letter is something that even needs to be
19 addressed by us at this time. If you could help me better
20 understand that, I might do better for you.

21 MS. GERVASI: It is one of the requests that is
22 included in the motion for extension of time. They are asking
23 the Commission to approve an eight-month extension of time with
24 additional extensions being entertained if and only if there
25 are unavoidable construction delays. And I know that language

1 comes from the commitment letter, so that if you do something
2 different, you are not approving the motion -- excuse me, you
3 are not granting the motion in its entirety by denying that
4 portion of it.

5 CHAIRMAN JABER: Well, unless the Commissioners feel
6 strong one way or the other, I am comfortable approving the
7 motion in part. I mean, it looks like there is consensus that
8 the motion for an extension of time should be granted in part.
9 And at the eight-month period, we would put a mechanism in
10 place that requires some further action by the Commission. It
11 seems premature to deal or discuss unforeseen circumstances
12 right now.

13 Commissioner Deason.

14 COMMISSIONER DEASON: Well, I agree with you, but
15 there is the unavoidable potential that the lenders may find it
16 objectionable. So I am weighing that, as well. I don't think
17 we lose anything. Because at the end of eight months, if there
18 is indeed a force majeure situation, if there really is indeed,
19 and I guess it may be to some extent in the eyes of the
20 beholder, if there is a force majeure situation, I think that
21 we would be reasonable in identifying it as such and allowing a
22 further extension, or at least delaying any initiation of show
23 cause proceedings. So I don't think we lose anything by having
24 that in there.

25 I just wouldn't want that language to give false hope

1 to the company that, you know, if the foreman trips one day and
2 stubs his toe, that is a force majeure situation. You know, I
3 am being a little bit extreme here in my example, I understand.
4 But if it gives comfort to the lender that if there is indeed
5 truly a force majeure situation, I don't think we lose anything
6 by having it.

7 CHAIRMAN JABER: But is that the language we can put
8 in the order? I think what is troubling to me is with
9 potential additional extensions of time available to
10 accommodate any unavoidable construction time. And I think
11 that is the -- I want to preserve the opportunity to make a
12 finding that it was an unavoidable construction delay. I think
13 language in the order that says this Commission will be
14 reasonable, always has been reasonable, and language related to
15 a force majeure situation is one thing, but leading the company
16 and the lender to believe that future extensions of time will
17 be entertained is something I'm uncomfortable with.

18 COMMISSIONER DAVIDSON: What about the idea of
19 modifying the unavoidable construction delays due to force
20 majeure, just simply adding that in to make clear, that seems
21 to be what we are talking about. So we are not talking -- we
22 are really limiting the universe of unavoidable construction
23 delays. One could argue from a commercial context it is
24 unavoidable because our supplier didn't send us the pipe in
25 time. Well, that is not an unavoidable construction delay

1 under our reading. What would be unavoidable would be an
2 unavoidable construction delay because of, you know, a massive
3 flood, or, you know, a hurricane coming through the area. You
4 know, knock on wood, let's hope that doesn't happen. But that
5 would be the type of delay. So I would propose modifying the
6 language unavoidable construction delays to mean unavoidable
7 construction delays due to force majeure.

8 MS. GERVASI: And one other point of clarification.
9 I don't know that my motion made it specific that the eight
10 months would be specific to construction to Signal Cove.

11 CHAIRMAN JABER: And then did you also include in
12 your recommendation monthly reports?

13 MS. GERVASI: Yes, ma'am.

14 CHAIRMAN JABER: Commissioners, what is your
15 pleasure?

16 COMMISSIONER DAVIDSON: Well, I am prepared to move
17 that. I just have that one question. As I was sitting here, I
18 thought the motion would apply to all three phases. Is it the
19 parties' understanding that this only applies to Signal Cove?
20 Okay.

21 MS. GERVASI: Yes, sir.

22 COMMISSIONER DAVIDSON: Fine. Then I would move
23 Staff's revised recommendation.

24 COMMISSIONER BAEZ: And I will second.

25 CHAIRMAN JABER: There has been a motion and a second

1 to approve Staff's revised recommendation on Item 5. All those
2 in favor say aye.

3 (Unanimous affirmative vote.)

4 CHAIRMAN JABER: Item 5 is unanimously approved as
5 modified today by Staff.

6 Thank you, parties.

7 MR. McDONNELL: Thank you on behalf of Hudson
8 Utilities.

9 (The Agenda Item concluded.)

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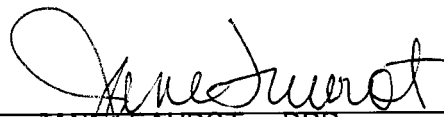
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 23rd day of July, 2003.



JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732