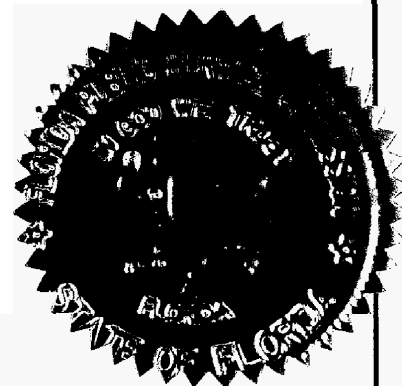


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 021256-WU

In the Matter of:

APPLICATION FOR CERTIFICATE
TO PROVIDE WATER SERVICE IN
VOLUSIA AND BREVARD COUNTIES
BY FARMTON WATER RESOURCES, LLC.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: Monday, May 17, 2004

TIME: Commenced at 1:30 p.m.
Concluded at 2:07 p.m.

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

REPORTED BY: TRICIA DeMARTE, RPR
Official FPSC Reporter
(850) 413-6736

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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1 APPEARANCES:

2 SCOTT KNOX, ESQUIRE, Office of the County Attorney,
3 1724 Judge Fran Jamieson Way, Viera, Florida 32940, appearing
4 on behalf of Brevard County.

PATRICK J. McNAMARA, ESQUIRE, de la Parte & Gilbert,
P.A., P. O. Box 2350, Tampa, Florida 33601-2350, appearing on
behalf of the City of Titusville, Florida.

F. MARSHALL DETERDING, ESQUIRE, and JOHN L. WHARTON,
9 ESQUIRE, Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines
10 Drive, Tallahassee, Florida 32301, appearing on behalf of
11 Farmton Water Resources, LLC.

12 WILLIAM J. BOSCH, ESQUIRE, County of Volusia Legal
13 Department, 123 West Indiana Avenue, DeLand, Florida
14 32720-4613, appearing on behalf of Volusia County.

15 KATHERINE E. FLEMING, ESQUIRE, and MARTHA CARTER
16 BROWN, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
17 Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf
18 of the Commission Staff.

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P R O C E E D I N G S

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COMMISSIONER DEASON: Call this prehearing conference to order. Could I have the notice read, please.

MS. FLEMING: Pursuant to notice issued by the Clerk of the Court on April 19, 2004, this time and place has been set for the purpose of conducting a prehearing in Docket Number 021256-WU.

COMMISSIONER DEASON: Thank you. Take appearances.

MR. DETERDING: F. Marshall Deterding and John L. Wharton of Rose, Sundstrom & Bentley Law Firm here on behalf of Farmton Water Resources.

MR. McNAMARA: Pat McNamara on behalf of the city of Titusville.

MR. KNOX: Scott Knox on behalf of Brevard County.

MR. BOSCH: William Bosch, assistant county attorney, on behalf of the county of Volusia.

MS. FLEMING: Katherine Fleming and Martha Brown on behalf of the Public Service Commission.

COMMISSIONER DEASON: Thank you. Ms. Fleming, do we have any preliminary matters?

MS. FLEMING: No, Commissioner, we do not.

COMMISSIONER DEASON: Let me open it up to the parties. Are there any preliminary matters on behalf of the applicant? Mr. Deterding?

MR. DETERDING: No.

1 COMMISSIONER DEASON: Okay. Titusville?

2 MR. McNAMARA: No, sir.

3 COMMISSIONER DEASON: Either of the counties, any
4 preliminary matters?

5 MR. KNOX: No, sir.

6 MR. BOSCH: No.

7 COMMISSIONER DEASON: Very well. Let's take just a
8 moment then to kind of review the procedure which I like to
9 follow in these prehearing conferences. Staff has done an
10 outstanding job putting together the draft prehearing order
11 which has been shared with everyone, and I hope everyone has
12 taken an opportunity to review that.

13 I propose that we proceed through the draft
14 prehearing order. We will do so section by section in fairly
15 rapid fashion. If there are any questions or the need for
16 additions or deletions or clarifications or corrections or
17 whatever, just speak up. We'll devote whatever time is
18 necessary to adequately address that.

19 If I don't hear anything from anyone, I'm just making
20 the assumption that what's contained in the draft prehearing
21 order is sufficient and satisfactory, and then we'll just
22 continue on.

23 Any questions with that? Very well.

24 Section I, conduct of proceedings. Section II, case
25 background. Section III, jurisdiction. Section IV,

1 confidential information. Section V, post-hearing procedures.
2 Section VI, prefiled testimony and exhibits. There is a
3 proposed order -- well, that's the next section. Section VII,
4 order of witnesses. Are there any changes necessary for the
5 order of witnesses?

6 MR. WHARTON: Commissioner Deason, I believe there
7 are. There are two issues. And in fact, I am thumbing through
8 one that you already skipped that actually might fall under
9 Section VI, but it's listed later, so we'll deal with it later.

10 So back to Section VII. And these are similar
11 issues, and that is, I want to argue that it is not necessary
12 for you to reach a decision today about some thing's
13 admissibility, but rather, that it should not be in the
14 prehearing order. And that is, "Titusville intends to depose,"
15 and this is the very last line in that section, Commissioner,
16 "Titusville intends to depose Mr. Michael L. Thomas and file
17 his deposition transcript in the docket in lieu of testimony
18 since he is an adverse witness." Well, that deposition is not
19 even yet noticed, and it has not occurred. And so I am in
20 perhaps an awkward position of arguing for its exclusion, and
21 that's why I think all we should do is that it should not be
22 referred to in the prehearing order because I might like it. I
23 might like it. But I could tell you right now, he's not
24 adverse. He hasn't testified yet, and he's not a witness.

25 But the real thing that catches my eye in that

1 sentence is -- well, that's actually the exhibit. I think what
2 you've got to decide, Commissioner Deason, when you're looking
3 at something like that is, what kind of testimony is that? If
4 it's direct testimony, it's ten months too late. I am not a
5 big fan of prefiled testimony, but we have conducted our
6 activities based on the logical assumption that the direct
7 testimony of Titusville was the direct testimony. We then
8 engaged in discovery, strategic decisions, obviously the
9 content of rebuttal. Mr. Thomas is not someone who is newly
10 discovered. He is someone that if you pulled up the Web site
11 for the corporation that has the hunting leases on the Farmton
12 properties name comes up. And to say that a deposition is
13 going to be taken two weeks from now and then present it as
14 part of the direct case, I believe, is -- yeah, in fact, the
15 original application had a letter from him that was filed well
16 over a year ago. So this is not someone who was newly
17 discovered.

18 I think it's a violation of due process. Certainly
19 if it's direct, we have no chance to rebut it. The whole
20 concept of -- and what I assume this reference to an adverse
21 witness is, is that there's a line in the Civil Rules saying
22 that the deposition of an adverse witness can be put into
23 evidence. Well, again, he's not a witness. He's not one of
24 the witnesses who have prefiled, and nobody knows right now
25 whether he's adverse.

1 I should not have to engage in some pseudo
2 cross-examination in order to preserve my right to cross if
3 he's not going to be at the hearing. Again, I think all these
4 arguments can be deferred until the time, and I'm willing to do
5 that, rule on admissibility at the time, I just don't think it
6 should be in the prehearing order.

7 COMMISSIONER DEASON: Okay. Mr. McNamara.

8 MR. McNAMARA: Yes, sir. If I can respond briefly.
9 We have scheduled the deposition of Mr. Thomas for June 7th,
10 and it was -- we've been attempting to schedule it for a couple
11 of months. And because of the parties' schedules and the
12 witnesses' schedules, that was the earliest date we could
13 obtain. I included it in our prehearing statement simply
14 because I thought it was important under the prehearing orders
15 to establish notice to the parties. This witness filed the
16 letter in support of Farmton's application. He also, I
17 believe --

18 COMMISSIONER DEASON: When was that letter filed?

19 MR. McNAMARA: It was filed and attached to their
20 application.

21 COMMISSIONER DEASON: Okay.

22 MR. McNAMARA: He also spoke last week at the public
23 meeting, and we are seeking the opportunity to depose him. I
24 indicated to Ms. Fleming, when we spoke about this, that I
25 included it in my prehearing statement and asked for it to be

1 included in the order simply because I didn't want someone to
2 later claim there was some surprise associated with it. I
3 believe we can argue it at the time of the hearing because the
4 deposition has not been taken yet. If it turns out that it's
5 not adverse, I probably wouldn't want to use it. But if it is
6 adverse, I think under the Rules of Civil Procedure I'd be
7 permitted to read it into the record.

8 It's not a witness I could have obtained prefiled
9 testimony from simply because he's not a witness that is able
10 to talk to us. I had to schedule his deposition through
11 Farmton's counsel.

12 COMMISSIONER DEASON: And when was the deadline for
13 the filing of prefiled testimony? Staff, when was that?

14 MS. FLEMING: For intervenor prefiled testimony,
15 August 22nd, 2004. For the utility direct testimony it was
16 July 25th -- oh, I'm sorry, 2003 for those dates, not 2004.

17 COMMISSIONER DEASON: I'm sorry, August the 22nd,
18 2003 was the date for which prefiled testimony?

19 MS. FLEMING: That was intervenor prefiled testimony.

20 COMMISSIONER DEASON: Intervenor.

21 MR. WHARTON: And respectfully, if I may very --

22 COMMISSIONER DEASON: Just a second. I'll give you
23 an opportunity.

24 I guess I'm at some -- when was the notice of
25 deposition actually filed?

1 MR. McNAMARA: At this point we scheduled the
2 deposition about three weeks ago. We cleared it with Farmton's
3 counsel. We have not yet obtained the subpoena from staff, and
4 it should be -- the notice should be issued with the subpoena
5 tomorrow.

6 COMMISSIONER DEASON: I guess I'm at some loss as to
7 why there's been such a delay between the filing of intervenor
8 testimony and the notice of deposition of a potential adverse
9 witness.

10 MR. McNAMARA: There are several reasons for that.
11 The initial order that scheduled the deadline for the
12 intervenor testimony was scheduled when this hearing was
13 anticipated to go forward last February. There was later a
14 continuance. Everything was pushed back. And really, the
15 depositions in earnest started in this case in March, and it
16 was at that point that we decided that we'd like to take the
17 deposition of Mr. Thomas. And as I indicated, we've been
18 working on scheduling dates. Initially Farmton took the
19 depositions of all of the intervenor's witnesses, and then
20 we've been proceeding to take the depositions of the Farmton
21 witnesses, and I would consider this gentleman one of the
22 Farmton witnesses. And he is actually set for the same day as
23 Mr. Underhill, who is Farmton's corporate representative.

24 COMMISSIONER DEASON: Mr. Wharton, you wanted to
25 conclude?

1 MR. WHARTON: Just briefly, Commissioner. The
2 intervenors filed their testimony ten months ago. There was an
3 eight-month -- and so that is the period in which we've
4 conducted all our activities in reliance on the content of that
5 direct testimony. There was an eight-month gap in between that
6 date and the filing of the application which had Mr. Thomas's
7 letter and support inside. And I just believe there's been
8 ample opportunity to put this on the table and bring it into
9 play. And it's not even noticed yet as we sit here at the
10 prehearing conference.

11 COMMISSIONER DEASON: Staff, do you have any
12 comments?

13 MS. FLEMING: My only comment is at this point it is
14 unclear whether the deposition transcript will be used as an
15 exhibit at the hearing, and so it is a bit premature. However,
16 I also agree, the reason the adverse witness was listed in the
17 draft prehearing order is because Mr. McNamara was concerned
18 that if it was not listed in the prehearing order, he would be
19 barred from introducing it at a later point in time. This is
20 something that doesn't necessarily need to be in the draft
21 prehearing orders now that all parties are on notice.

22 MR. WHARTON: And if it ends the discussion, we will
23 not object on the basis of surprise or that it's not in the
24 prehearing order. We may object, but we won't object on those
25 two bases.

1 COMMISSIONER DEASON: Okay. Well, one of the things
2 that the -- the prehearing order accomplishes many things. One
3 of which, and certainly not the least of the things which it
4 accomplishes, is to help my fellow Commissioners prepare for
5 hearing. So to the extent that this provides information to
6 the Commissioners as they prepare for hearing, I'm inclined to
7 go ahead and include it in the prehearing order if for no or
8 reason it just gives a heads-up to other Commissioners.

9 I think it is premature at this time to make any type
10 of a ruling on the admissibility of the deposition, and that's
11 something we will just defer if and when it becomes an issue at
12 hearing. To put parties on notice, I am somewhat troubled with
13 the delay, apparent delay and the time period in which this
14 case was originally -- the application was filed, and I know
15 there was a continuance, but this seems to be that depositions
16 are taking place shortly before hearing. However, that in and
17 of itself certainly doesn't render it admissible or
18 nonadmissible. It will be considered on the merits. And we
19 definitely would need to determine whether the witness is
20 indeed adverse or not and whether this matter even comes before
21 the Commission for consideration.

22 Having said all of that, I think what we'll do is
23 we'll leave it listed as is, realizing that we will take the
24 matter up at hearing at that time.

25 Okay. Any other questions concerning the order of

1 witnesses?

2 MR. McNAMARA: I had one additional item, sir, which
3 is under Ray Grant. I believe she's also in her prefiled
4 testimony addressed Issue 8.

5 COMMISSIONER DEASON: Add Issue 8 to Witness Grant?

6 MR. McNAMARA: Yes.

7 COMMISSIONER DEASON: Very well. Any other changes,
8 questions? Very well.

9 Section VIII, basic positions. We will proceed issue
10 by issue in Section IX, beginning with Issue 1. Issue 2.
11 Issue 3. Issue 4. Issue 5. Issue 6. Issue 7. Issue 8.
12 Issue 9. Issue 10. Issue 11. Issue 12. Issue 13. Issue 14.
13 And Issue 15.

14 MS. FLEMING: Commissioner, if I may go back to Issue
15 1, please.

16 COMMISSIONER DEASON: Sure.

17 MS. FLEMING: Brevard County has taken no position at
18 this time. If they're intending to take a position, they need
19 to do so or else that will be waived.

20 COMMISSIONER DEASON: Okay. Mr. Knox.

21 MR. KNOX: We will adopt the position of Volusia
22 County.

23 MS. FLEMING: Thank you.

24 COMMISSIONER DEASON: Okay. We will make that change
25 then in the draft.

1 Staff, do you have any other questions on the issues
2 and the positions?

3 MS. FLEMING: No, not at this time.

4 COMMISSIONER DEASON: Okay. Section X, exhibit list.
5 Section XI, proposed additional direct intervenor exhibits.

6 MR. WHARTON: And once again, Commissioner Deason,
7 perhaps your determination will be that the inclusion for this
8 is informational, but the time limits are the same as we
9 brought to your attention previously. Here, this specifically
10 says, to proffer as part of their direct case, direct case.
11 That direct case was filed back in the summer, and we have
12 conducted our activities based on its content, as I argued
13 before.

14 There are a variety of ways for a document which has
15 not been sponsored to direct testimony to come in, say, if it's
16 being used for rebuttal, if it's newly discovered, if it's
17 being used for impeachment, et cetera. But once again, the
18 prehearing order in this case says, each exhibit intended to
19 support a witness's prefiled testimony shall be attached. All
20 other known exhibits shall be marked for identification at the
21 prehearing conference. Well, "all other known exhibits"
22 follows the sentence that says, each exhibit intended to
23 support a witness's prefiled testimony. In other words, all
24 exhibits which aren't intended to support a witness's prefiled
25 testimony can be brought up at this prehearing conference, but

1 if it's to support a witness's prefiled testimony, which is
2 what is meant by the word "direct," which the draft prehearing
3 order uses when referring to those exhibits, it should have
4 been prefiled at the time, and we should have known about it
5 for at least a year now. And we'll again -- I guess I'm not
6 making an objection based on admissibility. It'd be better to
7 do that at the time, but I'm just not even sure it should be in
8 the prehearing order unless your determination is as it was
9 before. We will object at the time.

10 COMMISSIONER DEASON: Very well.

11 MR. BOSCH: Commissioner, if I may just respond.

12 COMMISSIONER DEASON: Yes, Mr. Bosch.

13 MR. BOSCH: Thank you. Commissioner, the pretrial
14 order specifies that exhibits should be attached to the
15 prefiled testimony, and then it says that if they're not, they
16 may be waived. There's not a definite. So it's discretionary
17 with this panel. I would suggest that the exhibits that I've
18 listed that were not filed with the prefiled testimony have
19 served two purposes. Number one, they're there for helping
20 this panel with clarifying the issues. They're not designed to
21 muddle the issues or to do anything of that such. They're
22 there to help identify the issues and bring some evidentiary
23 proof that will assist in determining the issues in this case.

24 I'd like to also point out that there is -- I do
25 not -- with several exceptions, very few exceptions, all

1 documents that I have listed that I wish to present on direct
2 hat were not listed with the prefiled testimony have been
3 roduced through discovery methods to Farmton's attorneys in a
4 uch earlier time. So there's no prejudice on their part.

5 COMMISSIONER DEASON: Staff, any thoughts?

6 MS. FLEMING: The order establishing procedure does
7 state that all exhibits intended to support a witness's
8 prefiled testimony shall be attached to that witness's
9 testimony. Intervenor prefiled testimony was due on
10 August 22nd, 2003. The exhibits under Section XI have not been
11 prefiled with any testimony, and at this point it is unclear if
12 the parties intend to actually introduce these exhibits at the
13 hearing. Once again, this is the same situation as the
14 deposition. We were putting in there because of concerns that
15 were raised that they would be barred from introducing these at
16 the hearing.

17 COMMISSIONER DEASON: Very well. Well, I would make
18 one observation, and that is, the listing of an exhibit in the
19 prehearing order, that in and of itself does not make an
20 exhibit admissible or inadmissible, and all of that is taken up
21 in due course during the hearing. So here again, on the side
22 of having full disclosure to the extent possible for
23 preparation of the case, I'm going to allow this Section XI to
24 be included in the prehearing order. However, I'm going to
25 request, staff, that you add a sentence there at the beginning

1 indicating that these exhibits may be objected to at the
2 hearing. I think that's understood going in, but it's
3 certainly not going to hurt to state that up front.

4 And if and when these exhibits are presented in some
5 form or fashion and their admission is sought, well, then we
6 will take up objections at that time and make rulings
7 accordingly.

8 Any questions from any of the -- any counsel?

9 MR. BOSCH: No, Commissioner.

10 COMMISSIONER DEASON: Very well.

11 MS. FLEMING: Excuse me, Commissioner, if I may.

12 Looking back over the draft prehearing order under
13 Section IX on some of the issues, I went back through and
14 noticed that some are still listed as "no position." So if we
15 could go back through a couple of issues.

16 COMMISSIONER DEASON: Okay. Do you have specific
17 ones in mind?

18 MS. FLEMING: Yes. On Issue 2, for staff's position
19 we have no position at this time. We'd like to clarify that to
20 no position at this time pending review of the evidence
21 presented.

22 COMMISSIONER DEASON: Very well.

23 MS. FLEMING: The next issue --

24 COMMISSIONER DEASON: Issue 3, Brevard County; is
25 that next?

1 MS. FLEMING: Yes, that's correct.

2 COMMISSIONER DEASON: Well, it says, "no position,"
3 and that's perfectly permissible. Is it no position at this
4 time, or that is there is no position being taken now or later?

5 MR. KNOX: We have no position at this time.

6 COMMISSIONER DEASON: Okay. But you're under an
7 obligation to provide a position at the prehearing conference
8 to the extent possible.

9 MR. KNOX: Then we will go ahead and adopt Volusia
10 County's position again.

11 COMMISSIONER DEASON: Very well. Staff will make
12 that change.

13 Staff, other issues?

14 MS. FLEMING: The next one I have is Issue 6 for
15 staff. Once again, no position at this time pending review of
16 the evidence presented.

17 COMMISSIONER DEASON: Very well.

18 MS. FLEMING: Under Issue 7 for Brevard County.

19 MR. KNOX: We'll go with Volusia again.

20 COMMISSIONER DEASON: Very well.

21 MS. FLEMING: Issue 8, Brevard County.

22 MR. KNOX: We'd go with Volusia again.

23 COMMISSIONER DEASON: Very well.

24 MS. FLEMING: Issue 10 we don't have positions for
25 Titusville, Brevard, and Volusia.

1 COMMISSIONER DEASON: Mr. McNamara.

2 MR. McNAMARA: Commissioner, we are taking the
3 deposition of Mr. Underhill on June 7th, and we would
4 anticipate that at that point we would better be able to
5 establish and state our position. The Commissioner may know,
6 the discovery cutoff in this case is June 15th, and so we're
7 taking it well within the discovery cutoff period. His
8 deposition would be the deposition that would allow us to
9 inquire into the status of this draft lease that was attached
10 to the application which really goes to the heart of this
11 issue.

12 COMMISSIONER DEASON: Okay. Mr. Knox.

13 MR. BOSCH: Commissioner, just -- I'm sorry. On
14 behalf of Volusia County, I agree. We would like to just have
15 until the discovery deadline in order to come up with a
16 decision on that one.

17 COMMISSIONER DEASON: And Mr. Knox.

18 MR. KNOX: Mr. Commissioner, we'll just go ahead and
19 say yes to this one.

20 COMMISSIONER DEASON: Okay. We'll make that change
21 then. Brevard County's position would be yes. When is the
22 discovery cutoff for this case?

23 MS. FLEMING: June 15th.

24 COMMISSIONER DEASON: And we're going to hearing the
25 week after that; is that correct?

1 MS. FLEMING: Yes, that's correct, on June 22nd.

2 COMMISSIONER DEASON: And, staff, it is your desire
3 to issue this prehearing order when?

4 MS. FLEMING: June 7th.

5 COMMISSIONER DEASON: When will -- there's discovery
6 pending -- outstanding at this point addressing this issue; is
7 that correct?

8 MR. McNAMARA: Yes, sir. We have the deposition of
9 Mr. Underhill, who is the corporate representative for Farmton,
10 scheduled for June 7th, and we would inquire of him about the
11 status of this lease. We understand that he also represents
12 the Miami Corporation, which is the parent corporation, that
13 actually owns the property.

14 COMMISSIONER DEASON: What time are you taking that
15 deposition? Is that in the morning on the 7th?

16 MR. McNAMARA: I believe we have two set that day,
17 both Mr. Underhill and the other witness that we spoke about
18 earlier, and I don't recall which is in the morning and which
19 is in the afternoon.

20 COMMISSIONER DEASON: Let me tell you what my desire
21 would be. And, staff, you let me know if the logistics would
22 work. It would be my desire for you to have the prehearing
23 order in final form with the exception of the positions on this
24 issue pending notification of the parties with outstanding
25 positions what their position is such that it can be

1 incorporated into the final version which will be issued June
2 the 7th.

3 Parties, can you give that position by -- when will
4 you need this to be able to issue the order on June 7th?

5 MS. FLEMING: June 7th is just an early date. If we
6 need to move it to the end of the week, that's at your
7 discretion.

8 COMMISSIONER DEASON: All right. Well, what I will
9 do, I'll put this burden on the parties that have issues that
10 are pending to, by the close of business on June 7th,
11 communicate to staff what your position is concerning this
12 issue so that staff can incorporate that and issue the
13 prehearing order as soon as possible thereafter. Is that
14 sufficient?

15 MS. FLEMING: Yes, that will be sufficient. Thank
16 you.

17 COMMISSIONER DEASON: Very well.

18 MR. BOSCH: Thank you, Commissioner.

19 MR. McNAMARA: Thank you, sir.

20 COMMISSIONER DEASON: Okay. Continuing with the
21 issues. Staff, are there other positions which have a
22 question?

23 MS. FLEMING: There are a couple more. On Issue 11,
24 staff will take the same position of no position at this time
25 pending review of the evidence presented.

1 COMMISSIONER DEASON: Very well.

2 MS. FLEMING: On Issue 12, the same for Titusville,
3 Brevard, and Volusia. I don't know if that will be based on
4 discovery that's still ongoing.

5 MR. BOSCH: Commissioner, on behalf of Volusia
6 County, we take no position and it will remain that way.

7 COMMISSIONER DEASON: Okay. No position on Volusia.
8 Brevard County.

9 MR. KNOX: We're going to stand by no position also,
10 Mr. Commissioner.

11 COMMISSIONER DEASON: No position. And Mr. McNamara,
12 Titusville.

13 MR. McNAMARA: I would expect we would take no
14 position, but we're deposing Tara Hollis, who is their
15 financial and rate person, this Thursday. And so I can get our
16 position to staff certainly on Friday.

17 COMMISSIONER DEASON: Very well. I'll put you under
18 that obligation to communicate that. If there's going to be a
19 change, you communicate that to staff, and if we don't hear
20 from you by the end of business on Friday, we're going to
21 insert no position.

22 MR. McNAMARA: That's fine, sir.

23 MS. FLEMING: On Issue 13, staff's position is no
24 position at this time pending review of the evidence presented.
25 And we don't have a position for Volusia.

1 COMMISSIONER DEASON: Okay. Mr. Bosch.

2 MR. BOSCH: We will take no position.

3 COMMISSIONER DEASON: Very well.

4 MS. FLEMING: Issue 14, staff's position is no
5 position at this time pending review of the evidence presented.
6 And we need a position from Volusia.

7 MR. BOSCH: Again, we take no position, Commissioner.

8 COMMISSIONER DEASON: And, Titusville, is there
9 discovery outstanding on this issue?

10 MR. McNAMARA: Yes, sir. It will be the same
11 discovery that I discussed earlier, the deposition of
12 Ms. Hollis, and I will agree to communicate that Friday as
13 well.

14 COMMISSIONER DEASON: Very well.

15 MS. FLEMING: Issue 15, we don't have a position from
16 Titusville and Volusia.

17 COMMISSIONER DEASON: Mr. McNamara, is this discovery
18 pending on this as well?

19 MR. McNAMARA: Yes, sir. It's the same witness, so
20 Friday would be fine.

21 MR. BOSCH: Commissioner, nevertheless, the county of
22 Volusia will take no position.

23 COMMISSIONER DEASON: Very well. No position for
24 Volusia County.

25 MR. WHARTON: Commissioner Deason, perhaps this goes

1 under Number X. The prehearing orders says, if a demonstrative
2 exhibit or other demonstrative tools are to be used at hearing,
3 they must be identified by the time of the prehearing
4 conference. I just want to identify that we will be using a
5 couple of large maps. One will be that one that Gerry Hartman
6 produced at his deposition showing all the service areas.
7 Another one I have a feeling is going to be like an overlay
8 that is consistent with Howard Landers' testimony saying, this
9 is how many lots could be developed on the Farmton properties
10 even under a worst-case interpretation of the comp plans.

11 COMMISSIONER DEASON: Any questions or objections?

12 MR. BOSCH: No, Commissioner. In fact, I would just
13 communicate the same thing, that some of the exhibits that are
14 listed here and that have been not objected to, I would
15 anticipate would be blown up just for the hearing purposes.

16 COMMISSIONER DEASON: Very well.

17 MR. KNOX: Same here.

18 COMMISSIONER DEASON: Very well.

19 MR. McNAMARA: And the same for Titusville, sir. But
20 without having seen these exhibits and seeing how they've used
21 it, I don't want to waive any objection.

22 COMMISSIONER DEASON: You're not waiving any
23 objection. I think this is more just notice --

24 MR. WHARTON: We'll never move to have them admitted.

25 COMMISSIONER DEASON: If and when they -- any party

1 seeks admission, there's always the availability of making an
2 objection.

3 Okay. I believe then we can proceed to Section XII,
4 proposed stipulations. The order indicates there are no
5 proposed stipulations. The same with pending motions,
6 Section XIII. The same with Section XIV, pending
7 confidentiality matters. And then that brings us to
8 Section XV, other matters. There's a notation that there's a
9 possible objection to a witness being proffered as an expert.
10 I have no objection leaving that in the prehearing order.
11 Obviously objections can be made at the time any witness's
12 testimony is presented and its admissibility is requested. But
13 for the purpose of disclosing to everyone for preparation of
14 hearing, I have no problem including this.

15 Then that brings us to the opening statements. Just
16 let me inquire. Do the parties intend to present opening
17 statements?

18 MR. WHARTON: I think that we might, Commissioner.

19 COMMISSIONER DEASON: Okay. Ten minutes sufficient?

20 MR. WHARTON: It is.

21 COMMISSIONER DEASON: Do the city or the counties
22 intend to make opening statements?

23 MR. BOSCH: Yes, Commissioner, I would intend to.

24 COMMISSIONER DEASON: And ten minutes sufficient?

25 MR. BOSCH: That is great.

1 COMMISSIONER DEASON: Okay. Any problems with any of
2 the other parties?

3 MR. McNAMARA: No, sir.

4 MR. KNOX: Ten minutes is fine.

5 COMMISSIONER DEASON: Very well. When we get to
6 hearing, I'd like either there to be an understanding there
7 will or will not opening statements. I don't want one party
8 coming thinking there will be opening statements and be
9 prepared to do such and other parties not. But it appears that
10 all parties intend to avail themselves of the opportunity, and
11 they realize that opening statements will not exceed ten
12 minutes.

13 I would also request that the counties and city, to
14 the extent that you can coordinate that, obviously we don't
15 want each one to take ten minutes and we hear the same thing
16 three times, if you want to divide it up some way or if you
17 have some unique arguments, please feel free to elaborate to
18 the extent necessary. But please don't be repetitious and
19 inefficiently use the Commission's time.

20 MR. BOSCH: Certainly.

21 COMMISSIONER DEASON: Very well. Section XVI,
22 rulings. I don't think there's -- to the extent there have
23 been any rulings made here, which I'm not sure there have been,
24 but it will be reflected in the order. And I don't think we
25 need anything listed specifically under this section.

And that exhausts the sections of the draft
2 prehearing order. I will open it up then. Is there anything
3 else to come before the Prehearing Officer at this time?

4 Farmton? Titusville?

5 MR. McNAMARA: No, sir.

6 COMMISSIONER DEASON: Brevard? Volusia?

7 MR. KNOX: No, sir.

8 MR. BOSCH: No, sir.

9 COMMISSIONER DEASON: Staff?

10 MS. FLEMING: We don't have anything further.

11 COMMISSIONER DEASON: I just want to take this
12 opportunity to put everyone on notice that I, as a member of
13 the panel, may be contacting the staff engineer. And to the
14 extent that he can coordinate it with his schedule and I can
15 coordinate it with my schedule, I may wish for him to accompany
16 me to go and look at some of the proposed service territory
17 unless there's an objection by any of the parties in me doing
18 so.

19 MR. BOSCH: None at all.

20 COMMISSIONER DEASON: Okay. Very well. And I'm not
21 saying that will happen, but it may. And I think it may be
22 beneficial to do that. I know there's some time between now
23 and when the hearing begins to do that, and if we can
24 coordinate that, I may avail myself of that opportunity since
25 there's no objection.

1 MR. BOSCH: And, Commissioner, on behalf of the
2 county of Volusia, we would actually encourage you to do so.

3 COMMISSIONER DEASON: Very well. Okay. Anything
4 further? Hearing none, this prehearing conference is
5 adjourned. Thank you all.

6 (Prehearing conference concluded at 2:07 p.m.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, TRICIA DeMARTE, RPR, Official Commission Reporter,
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' attorneys or counsel
connected with the action, nor am I financially interested in
the action.

DATED THIS 20th DAY OF MAY, 2004.



TRICIA DeMARTE
FPSC Official Commission Reporter
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