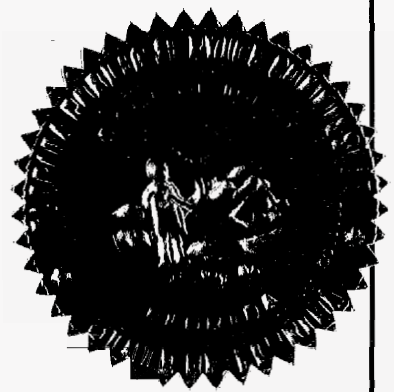


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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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Volume 1

Pages 1 through 134

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Tuesday, June 22, 2004

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
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

DOCUMENT NUMBER-DATE

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9 ESQUIRE, Rose Law Firm, 2548 Blairstone Pines Dr., Tallahassee,
10 Florida 32301, appearing on behalf of Farmton Water Resources
11 and Farmton Management.

12 WILLIAM BOSCH, ESQUIRE, Volusia County,
13 123 W. Indiana Ave., DeLand, Florida 32720-4613, appearing on
14 behalf of Volusia County.

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

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EXHIBITS

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COMMISSIONER DEASON: Call the hearing to order.

Could I have the notice read, please.

MS. FLEMING: Pursuant to notice issued by the Clerk of the Commission on May 24th, 2004, this time and place has been set for a hearing in Docket Number 021256-WU.

COMMISSIONER DEASON: Thank you.

Take appearances. We can just start at this end and work down.

MR. KNOX: Scott Knox, County Attorney representing Brevard County.

MR. McNAMARA: Pat McNamara, representing the City of Titusville.

MR. BOSCH: William Bosch, Assistant County Attorney on behalf of the County of Volusia.

MR. WHARTON: John L. Wharton and F. Marshall Deterding, Rose, Sundstrom and Bentley representing Farmton Water Resources, LLC.

MS. FLEMING: Katherine Fleming, Jennifer Rodan, and Martha Brown on behalf of the Commission.

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

MS. FLEMING: Yes, Commissioner, we have three preliminary matters that need to be addressed. Those are the stipulated exhibits, the proposed stipulations, and the

1 deposition transcript of Michael Thomas.

2 COMMISSIONER DEASON: Okay. Let's proceed.

3 MS. FLEMING: As far as the exhibits, staff has
4 compiled a list of exhibits that we believe can be entered into
5 the record by stipulation. In addition, staff has included the
6 prefiled exhibits attached to the witnesses' testimony in this
7 case. In an effort to facilitate the entry of those exhibits,
8 we have compiled a chart that we have provided to the parties,
9 the Commissioners, and the court reporter. In lieu of reading
10 off and marking each exhibit for the record, I would suggest
11 that this list, itself, be marked as the first hearing exhibit,
12 and that the other exhibits be marked thereafter in sequential
13 order as set forth in the chart.

14 COMMISSIONER DEASON: Very well. In the
15 comprehensive stipulated exhibits, the listing which you just
16 described will be identified as Hearing Exhibit Number 1, and
17 that has been provided to the parties. Is there any objection
18 to the identification and admittance of Exhibit 1? Hearing no
19 objection, show then that Exhibit Number 1 is admitted.

20 (Exhibit 1 marked for identification and admitted
21 into the record. Exhibits 2 through 37 marked for
22 identification.)

23 MS. FLEMING: Staff would note for clarification of
24 the record that Exhibits 3 through 8 and 30 through 37 are
25 sponsored by Farmton witnesses; 9 through 13 are sponsored by

1 the City of Titusville; 14 through 23 by Brevard County; 24
2 through 28 by Volusia County; and 2 and 29 by staff.

3 COMMISSIONER DEASON: Very well.

4 MS. FLEMING: The next preliminary matter are the
5 proposed stipulations. Parties and staff request that the
6 Commission panel approve the following issues as stipulations,
7 noting that Titusville, Brevard, and Volusia take no position
8 on these issues.

9 The first issue is Issue 10. The proposed
10 stipulation language is: Yes, Farmton has provided evidence
11 that it has continued use of the land upon which the utility
12 treatment facilities are or will be located."

13 COMMISSIONER DEASON: Do you want us to address these
14 one --

15 MS. FLEMING: We can address all three at one time.

16 COMMISSIONER DEASON: Let's just go ahead and do all
17 three, it may be a little more expeditious.

18 MS. FLEMING: Okay. Issue 12, the proposed
19 stipulation language is: Return on equity should be based on
20 the current leverage graph formula in effect at the time of the
21 Commission vote in this proceeding.

22 Issue 15, the proposed stipulation language is: The
23 allowance for funds used during construction, AFUDC, should be
24 based on the current leverage graph formula in effect at the
25 time of the Commission vote in this proceeding.

1 COMMISSIONER DEASON: Very well. Commissioners,
2 staff has described the proposed stipulations for Issues 10,
3 12, and 15. Are there questions or a motion?

4 COMMISSIONER JABER: Mr. Chairman, if there are no
5 questions, I would recommend that we find these stipulations to
6 be reasonable and move acceptance of them.

7 COMMISSIONER BRADLEY: And I will second that motion.

8 COMMISSIONER DEASON: It has been moved and seconded
9 to accept the proposed stipulations on Issues 10, 12, and 15.
10 All in favor say aye.

11 (Unanimous affirmative vote.)

12 COMMISSIONER DEASON: Show that those proposed
13 stipulations are approved.

14 MS. FLEMING: The final matter is the deposition
15 transcript of Michael Thomas. As mentioned at the prehearing
16 conference, Titusville stated that it intended to introduce the
17 deposition transcript of Michael Thomas in lieu of live
18 testimony.

19 MR. McNAMARA: Commissioners, if I can address, we
20 will not be reading the deposition of Mr. Thomas. We will
21 withdraw that request.

22 MR. WHARTON: **And, Commissioners, if I may then** make
23 an ore tenus motion that we would like the deposition
24 transcript put into the record. As you recall, at the
25 prehearing conference the deposition had not yet taken place.

1 Well, I think it is clear at this point how the deposition
2 went. This deposition was taken by Titusville, it is a
3 transcript that exists, all the parties had a chance to
4 cross-examine the witness. At the time it was known and
5 recorded in the prehearing order that it was the intention of
6 Titusville to move this deposition into the record and
7 therefore parties had an ample opportunity to cross-examine --

8 COMMISSIONER DEASON: Move it into the record subject
9 to objection, right? Yes, very well. And I understand you are
10 reserving your right to strenuously object, if you saw fit.

11 MR. WHARTON: Correct. And at this point we would
12 move the deposition transcript into the record.

13 COMMISSIONER DEASON: Okay. There has been a motion
14 to move the deposition transcript into the record. Is there a
15 response to the motion?

16 MR. McNAMARA: Yes, Commissioner. A couple of
17 points. At the prehearing conference, I did not say I was
18 definitely going to read it. What I said was it hadn't been
19 taken yet and that I would make that decision prior to the
20 hearing. I included Mr. Thomas on our witness list for
21 Titusville as a potential witness. Farnton has had control of
22 this witness. He is a tenant of theirs. He has been someone
23 who they could have provided direct testimony for in compliance
24 with the prehearing order deadlines and did not.

25 As the Commissioner may recall at the prehearing, I

1 indicated that I believed he was an adverse witness, and that
2 for that reason I was taking his deposition and reserving the
3 right to read it, although I do not believe I said I was
4 definitely going to read it. And I believe Ms. Fleming can
5 confirm that, that I told her that I would make that decision
6 prior to the hearing.

7 Since Farmton did not identify this person as a
8 witness on their witness list, they did not identify him in
9 their prefiled testimony, and since this is a witness that was
10 under their control and they could have obtained prefiled
11 testimony, I believe it would be inappropriate to allow Farmton
12 to add additional prefiled testimony at this time, which is
13 essentially what they are seeking to do.

14 COMMISSIONER DEASON: Any other responses to the
15 motion from any other parties?

16 MR. WHARTON: Briefly, Commissioner Deason.

17 COMMISSIONER DEASON: I'm giving the other parties an
18 opportunity to address the motion.

19 MR. BOSCH: Commissioner, Volusia County simply
20 adopts what Titusville has just said and we agree with that
21 position.

22 COMMISSIONER DEASON: Mr. Knox, do you have any
23 comments?

24 MR. KNOX: Brevard would also adopt the position of
25 Titusville.

1 COMMISSIONER DEASON: Mr. Wharton, you may close on
2 your motion.

3 MR. WHARTON: Commissioner, this is a witness who
4 testified at the customer hearing, he is not an individual who
5 is under our control. I am scrambling to look through the
6 rules of civil procedure for a rule that I'm sure that exists
7 that says if he is unavailable or over 100 miles away his
8 deposition may be admitted. I should not be faulted for not
9 preparing for this motion in advance because the prehearing
10 order says, "Titusville has deposed Mr. Michael L. Thomas and
11 intends to file his deposition transcript in the docket in lieu
12 of testimony." We came here today ready to withdraw our
13 objection or to never make any objection to that stated
14 intention.

15 I do think that accurately reflects the conversation
16 that took place at the prehearing conference. And everyone,
17 again, knew of this at the time of the dep, I think that is an
18 important consideration, and had an opportunity to fully
19 develop that transcript much more so than most depositions of
20 nonprefiled witnesses.

21 COMMISSIONER DEASON: Commissioners, any questions?
22 Staff, do you have any thoughts?

23 MS. FLEMING: Yes. We agree with Titusville in that
24 Farmton should have filed this witness' testimony with their
25 prefiled testimony. At the prehearing conference it was

1 discussed that Titusville wanted to put the parties on notice
2 that they may introduce this as a deposition, his deposition in
3 lieu of testimony at the hearing.

4 Titusville was told by the prehearing officer at the
5 prehearing conference that if they intended not to introduce
6 this witness to let us know at the time of the hearing.

7 COMMISSIONER DEASON: Very well. Mr. Wharton, I'm
8 going to deny your motion. I'm not going to allow the
9 transcript into the record. I will recognize the fact, though,
10 that the deposition, it exists, I will just view it as part of
11 the discovery in this proceeding. It is available for any of
12 the parties to use for whatever purpose they deem appropriate
13 during the course of this hearing. And if there are objections
14 at the time for its use, we will deal with it at that time.

15 Okay. That addresses all of the preliminary matters?

16 MS. FLEMING: Yes, Commissioner, it does.

17 COMMISSIONER DEASON: Okay. As I recall, we did
18 discuss the giving of opening statements, and I think the
19 parties are availing themselves of that opportunity. **I think I**
20 did request that the parties, to the extent possible, work
21 together so that we don't get overly repetitious in opening
22 statements, mindful of the fact that we have a large number of
23 witnesses to hear during the course of this hearing, and that
24 time is going to be a premium commodity.

25 So, having said that, is it appropriate now to

1 proceed to opening statements?

2 MS. FLEMING: Yes, Commissioner.

3 COMMISSIONER DEASON: Okay. Mr. Wharton, are you
4 going to be giving an opening statement?

5 MR. WHARTON: I will, Commissioner.

6 COMMISSIONER DEASON: You may proceed.

7 MR. WHARTON: All right. With your permission,
8 Commissioner, if I may approach. What we have here is a map
9 that we are going to use as a demonstrative in the proceeding.
10 It is a little far from the Commissioners, and therefore I have
11 reproduced some miniatures of it. This is a demonstrative that
12 we will not seek to put into evidence unless asked. It is very
13 similar to a map that is an exhibit, but it does have a few
14 wells and demarcations on it that I won't be referring to in my
15 opening that when Mr. Hartman uses this map he may utilize.

16 COMMISSIONER DEASON: You may proceed.

17 MR. WHARTON: Commissioners, this application
18 involves approximately -- an approximately 57,000-acre parcel,
19 if you will, in Volusia and Brevard Counties which is owned by
20 the Miami Corporation. The applicant is an affiliate of Miami
21 Corporation, Farmton Water Resources, LLC, and before you today
22 is their application for a certificate to provide water service
23 to approximately 50,000 acres of that particular parcel.
24 Farmton is the large yellow piece of property that is
25 approximately in the middle of the demonstrative which we have

1 passed out.

2 One thing that you will note on the large
3 demonstrative beside us is that we have written in by hand that
4 the dark green property in the bottom, the territory of East
5 Central Florida Services, actually extends further south than
6 this map would make it appear, and Mr. Hartman will talk a
7 little bit more about that.

8 As the Commissioners are well aware, normally in
9 certificate cases key issues are the financial, operational,
10 and technical ability of the applicant to effectuate its
11 proposal, and whether or not the certification of that utility
12 will present a duplication of facilities under Chapter 367.
13 Here there is no genuine dispute as to these issues. And, in
14 fact, there is little attempt to create one by the petitioners.
15 Farmton will demonstrate that it has the financial,
16 operational, and technical ability to effectuate its proposed
17 application and that its proposal will not result in a
18 duplication of facilities.

19 Rather, in this case, the petitioners, the City of
20 Titusville and Volusia and Brevard Counties, argue that Farmton
21 should not be certificated because it may encourage sprawl, or
22 because its proposed service area fits within an exemption to
23 Chapter 367. In fact, the record will clearly demonstrate that
24 Farmton will not visit upon these counties some pattern of
25 growth against their will or in violation of their

1 comprehensive plans, that they will retain all the statutory
2 and lawful authority which they possess before certification to
3 control and oversee growth in their respective jurisdictions.
4 The record will also show that there is a demand for Farmton's
5 proposed service, and that this demand has increased and is
6 likely to continue to increase.

7 You will also hear, Commissioners, some about the
8 application, perhaps ten years ago, of East Central Florida
9 Services. I know that Commissioner Deason was involved in that
10 proceeding, as were Mr. Deterding and I. Many of the counties'
11 objections in this case are the same as they were in the case
12 of East Central Florida Services, which is a very large single
13 landowner owned piece of property which is very close to this
14 piece of property.

15 Many of the fears that were expressed by the
16 governmental petitioners in that case, who were the only
17 petitioners, are the same as those being expressed by the
18 petitioners in this case, and those fears have not been
19 realized in terms of the comprehensive plans, in terms of the
20 water resource, and the things that might occur. ECFS is an
21 interesting study, and given its proximity and given its
22 similarities, in some respect, to this application.

23 You will also hear the counties suggest, and they
24 have suggested in their prefiled testimony that they
25 essentially by ordinance can veto this application. That

1 whether or not an applicant such as Farmton comes to them
2 before coming to you or after coming to you and getting a
3 certificate, that they have the power to essentially determine
4 that the utility will not exist or that the service area does
5 not exist. In fact, while it is not the subject of much
6 testimony from us because it is a statement of law, and we do
7 have some testimony from our planning witness about it, we will
8 be briefing the issue. There is no stronger statement of
9 exclusive jurisdiction in Florida law than that in Chapter 367
10 establishing and defining your jurisdiction. Farmton will
11 demonstrate that it is entitled to a certificate under the
12 rules and the statutes of the Commission.

13 The three participants in this case appear not to be
14 motivated by a belief that Farmton cannot do what it says it
15 will do, or that the service is not needed that Farmton says is
16 needed, but rather that they have a fear of what will occur in
17 the future. And, again, these were many of the same fears that
18 were heard by the Commission in the ECFS case. The fear here
19 seems to be, well, there will be unplanned growth out there in
20 the form of sprawl or urban sprawl. There will be the creation
21 of water resources which haven't been part of our planning
22 efforts. Now, these planning efforts have been exclusively
23 governmental, but that is a concern that is voiced in the
24 prefiled testimony. Titusville has testified that, well, what
25 Farmton is attempting to do is to force us to buy water from

1 them. This Commission knows that, in fact, that could not be
2 the case. There is no part of the city limits of Titusville
3 which is even adjacent to the Farmton property.

4 All of these concerns will be demonstrated to be
5 groundless. They are the same fears that governmental entities
6 raised in the certification case of East Central Florida
7 Services, and not only have those fears proven to be
8 groundless, you will hear testimony about the advantages that
9 certification has visited upon that large parcel which, in
10 fact, I believe is over 300,000 acres.

11 If certificated, Farmton and its parent will enjoy
12 the significant advantages in planning, and resource
13 protection, and management that only a large landowner like
14 Farmton can bring to the table, and there aren't that many
15 large landowners like Farmton left in the State of Florida.
16 The record will reveal in this proceeding that the certificate
17 of Farmton will be demonstrated to be in the public interest
18 and that Farmton meets the rules and regulations which entitle
19 it to a certificate.

20 COMMISSIONER DEASON: Thank you. Does that conclude
21 your opening statement?

22 MR. WHARTON: It does.

23 COMMISSIONER DEASON: Very well.

24 Mr. Knox. Is there an order that has been worked out
25 previous? Very well, Mr. Knox, you may proceed.

1 MR. KNOX: Very briefly, Mr. Chairman, members of the
2 Commission.

3 Brevard County really feels this case is about the
4 public interest and what is in the public interest and what
5 isn't, and I think that is the determination that ultimately
6 the Commission has to make. And it is our belief that the
7 public interest is not going to be met in this case, it is not
8 going to be proven to be met in this case. I think the clear
9 evidence here is going to be that the 260 families who are
10 members of the hunt club are going to require some kind of
11 potable water service. And it is the county's contention, and
12 I think the evidence that we will present will show this, that
13 50,000 acres of certificated territory is not necessary to
14 fulfill the needs of those 260 families.

15 In fact, what 50,000 acres will do is create the
16 ability to provide future water service to areas that may want
17 to develop along this I-95 corridor. And the county has in
18 place, as the evidence will show, comprehensive plan policies
19 that require this particular entity, Farmton or Miami
20 Corporation, whoever wants to put that system in, to come
21 before the county commission to obtain their approval and
22 consent for the construction of any facilities that are
23 required to provide this kind of service.

24 And there is statutory authority that we will provide
25 to you in the form of argument at the conclusion of these

1 proceedings that establishes the county's right to do so. And
2 the county has laid the groundwork to require that consent in
3 the form of an ordinance which is going to be made part of the
4 record in this case. So it is basically the county's
5 contention in this case that the public interest has not been
6 determined or can't be determined until the county commission
7 has made its consent either available or not available, and
8 Farmton has not proceeded before the county commission is what
9 we will show you.

10 We will also be able to demonstrate to you that the
11 county does, in fact, have facilities that are available for
12 water service within two miles of the Farmton boundaries, and
13 the boundaries that are being sought in this case. And that it
14 is not unusual -- in fact, the evidence will show that there
15 are other systems, other developments in the same area that
16 have applied for county service within three miles, actually
17 within three miles of the county system. So it is not unusual
18 for the county to be able to extend service in those kinds of
19 areas.

20 And, again, we will show that the process that
21 involves is an amendment application to come before the county
22 commission to amend its service territories to provide that
23 service or to put the facilities in themselves and dedicate
24 those facilities to the county. Those are all requirements in
25 the county's rules and regulations that are adopted as part of

1 the comprehensive plan in implementing regulations.

2 And, finally, it is the county's belief that when all
3 is said and done this application is nothing really more than
4 an application to provide for future growth and development,
5 and that is clearly something that is within the county's ambit
6 to determine how it wants to grow in the future. There are
7 rules and regulations in the Florida Administrative Code and
8 Florida Statutes that provide a prohibition against urban
9 sprawl, and it is the county's position, I think, that we will
10 be able to show that this is a first step and an important step
11 in the creation of the ability to create urban sprawl, which
12 should be demonstrated as not in the public interest. Thank
13 you.

14 COMMISSIONER DEASON: Thank you, Mr. Knox.

15 Mr. McNamara.

16 MR. McNAMARA: Yes, Commissioners. To start off
17 with, one of the things Mr. Wharton said was that we were not
18 disputing the need for service, the financial ability, and the
19 technical ability, and those are not true. **We believe the**
20 facts will show in this case, first, that there is no need for
21 service. We believe it will show that Farmton has not
22 established it has the financial ability. And we also believe
23 the facts will show that Farmton has not established that it
24 has the technical ability to provide service.

25 But let's just talk about the basic facts. With

1 regard to retail service, Mr. Wharton had pointed out that this
2 is approximately 50,000 acres that will be served in retail
3 service, and yet what they have proposed to install are eight
4 or seven two-inch wells with no interconnecting systems, and
5 with no service coming from those wells other than one spigot
6 from each the wells. This is not something that we believe
7 requires a need for service by a certificated utility.

8 What we are talking about for the most part with
9 these seven or eight wells are the Miami Tract Hunt Club
10 hunting camps, and I believe the testimony from Mr. Underhill
11 will show that those hunt camps are used on a temporary basis
12 part of the year. And that the way the campers use them are to
13 go to, right now, a hand pump and pump water for use in
14 camping. Again, we do not believe this is the type of use that
15 requires a certificated utility.

16 As far as bulk water goes, I think the facts will
17 show that Farmton has no contracts, no serious inquiries from
18 any entity to purchase bulk water. And we believe it would be
19 inappropriate to certificate a utility for the provision of
20 bulk water without a serious and established need through a
21 contract, a contract may be contingent upon this Commission's
22 granting of a certificate.

23 The only discussions that the discovery has shown to
24 have occurred were between Farmton and the City of Titusville,
25 and Farmton would readily admit that those discussions have

1 discontinued quite a long time ago, and so currently there is
2 no real customer for bulk water. The other part of that is
3 when asked, I think the facts will show that the potential
4 customers for bulk water are all government utilities. And as
5 government utilities, the provision of bulk water will be
6 exempt from PSC jurisdiction. And so there is really, again,
7 no demonstrated need for bulk water.

8 The third type of service they proposed is fire
9 protection. And as Mr. Wharton pointed out, all of this land
10 is owned by the Miami Corporation. The Miami Corporation
11 already has two fire protection wells on the property. There
12 is no PSC certificate required for the Miami Corporation to put
13 in the additional ten fire protection wells on their own
14 property as private wells that they propose in their
15 certificate. And so I would suggest, again, there is no
16 evidence to show the need for a PSC certificated utility.

17 We believe that the evidence will also show that
18 Farmton Water Resources is a two-tier removed shell
19 corporation. The overall parent corporation is the Miami
20 Corporation. They have created another corporation called
21 Farmton Management, and beneath Farmton Management is Farmton
22 Water Resources. We do not believe Farmton Water Resources has
23 shown the financial ability to obtain a certificate, and this
24 is in two senses.

25 First, Farmton Water Resources has never filed a tax

1 return, has never provided a financial statement. Secondly,
2 Farmton Water Resources has no written financial obligation,
3 contract, agreement, line of credit, irrevocable letter of
4 credit, or anything from either of its parent corporations or
5 from any other entity to provide it with financing.

6 The last thing I will address is just briefly to talk
7 about the technical ability. The director of operations for
8 Farmton Water Resources is Mr. Underhill. And Mr. Underhill
9 will testify that he has no personal experience in running any
10 water utility, and so we believe, based on that alone, that
11 there has not been an establishment of the technical ability to
12 provide service.

13 Finally, we believe that under the circumstances the
14 certification of a utility is not in the public interest
15 because a utility is not needed for the services proposed to be
16 provided. We believe the evidence will show that all of the
17 services proposed to be provided could be provided by the Miami
18 Corporation on its own property without obtaining any
19 certificate. And that concludes my opening comments.

20 COMMISSIONER DEASON: Thank you. Mr. Bosch.

21 MR. BOSCH: Thank you, Commissioners. I will try not
22 to be duplicative. We believe that this application which is
23 intended to create one of the largest water systems in Volusia
24 County in terms of geography, number of acres, is for a small
25 group of private individuals who simply wish to camp out in the

1 woods and hunt. By doing this, Farmton is asking you to ignore
2 our comp plan, they are asking you to ignore our established
3 water planning mechanisms that are in place in the county. We
4 call that WAV, which stands for the Water Authority of Volusia
5 County, it is our central planning entity for water resources.

6 During this hearing we are going to set out the
7 elements of our comp plan which this application is in direct
8 opposition to. Farmton is a nonurban area. It is actually a
9 large forested area. And I hope that the Commissioners have
10 had a chance to drive out there and see this area. It is -- at
11 least in Volusia County it is 42,000 acres of forest land with
12 very few, if any, residents out there, some hunting camps
13 scattered throughout. It is unpopulated, and it is considered
14 a valuable resource for the county. In fact, it has been
15 considered such a resource that it has an overlay, a zoning
16 overlay in it, a land use overlay called the NRMA, which stands
17 for Natural Resource Management Area. It is an environmentally
18 sensitive land with limited use and extremely low residential
19 densities making an application for water certification
20 unnecessary and violative of our comp plan.

21 Our comp plan also requires developers to dedicate
22 all infrastructure such as the water plants, lines, and pump
23 stations to the county. We do that in order to allow public
24 ownership rather than private. And the reason for that, that
25 is found in our comp plan, this preference for public

1 ownership, is because there has been a history in Volusia
2 County of abandonment of private facilities which necessitates
3 that the county come in, take over these facilities and pump
4 taxpayer money into curing the deficiencies and upgrade the
5 system which has been caused by the neglect of the private
6 water utility owners.

7 Furthermore, I mentioned WAV, the Water Authority of
8 Volusia County, that was created in order to coordinate the
9 water supplies, promote conservation and plan for future
10 supplies and alternate sources. Farmton, as a private water
11 company, would not be eligible for membership in WAV. WAV
12 consists entirely of municipal corporations within Volusia
13 County and the county itself. They would not be eligible
14 because they are not a sovereign entity. Therefore, their
15 absence from this central planning agency would create
16 deficiencies in our modeling, our computer modeling, as well as
17 our planning and other activities associated with water
18 conservation.

19 We believe that after all of this evidence is heard
20 that it is going to demonstrate that there is no need for
21 certification, that there is an actual inconsistency with our
22 comp plan, that certifying the Farmton area would not be
23 beneficial to the public, but, in fact, would be harmful to the
24 environment, to the water resources of the county, and to the
25 future growth patterns within the county of Volusia. Based on

1 that, we are going to ask the Commission to deny this
2 application. Thank you.

3 COMMISSIONER DEASON: Thank you. Staff, I assume you
4 have no opening statement, is that correct?

5 MS. FLEMING: That's correct.

6 COMMISSIONER DEASON: Okay. Staff, when are we going
7 to address your Exhibit Number 2?

8 MS. FLEMING: Exhibit 2 was one that was stipulated
9 by all the parties.

10 COMMISSIONER DEASON: Would it be appropriate, then,
11 to go ahead and admit it into the record?

12 MS. FLEMING: Yes, Commissioner.

13 COMMISSIONER DEASON: Hearing no objection, show then
14 that Hearing Exhibit Number 2 as identified within Exhibit
15 Number 1 is admitted.

16 (Exhibit 2 marked for identification and admitted
17 into the record.)

18 COMMISSIONER DEASON: Okay. I believe we are at the
19 point where we can swear in witnesses, is that correct?

20 MS. FLEMING: That's correct, Commissioner.

21 COMMISSIONER DEASON: I'm going to ask all witnesses
22 that are present and in the hearing room at this time to please
23 stand and raise your right hand. And, attorneys, I want you to
24 acknowledge the witnesses that are being sworn in and when they
25 take the stand to have that indicated in the record.

1 (Witnesses sworn.)

2 COMMISSIONER DEASON: Please be seated.

3 Mr. Wharton, you may call your witness.

4 MR. DETERDING: Commissioner, we call Gerald C.

5 Hartman to the stand.

6 **GERALD C. HARTMAN**

7 was called as a witness on behalf of Farnton Water Resources,

8 LLC, and having been duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 BY MR. DETERDING:

11 Q Mr. Hartman, please state your name and employment
12 address.

13 A Gerald C. Hartman, Hartman and Associates, 201 East
14 Pine Street, Orlando, Florida.

15 Q Have you been retained by Farnton Water Resources,
16 LLC, to provide testimony and expert opinions in this
17 proceeding?

18 A Yes, I have.

19 Q Did you prepare, in conjunction with my office, a
20 document referred to as prefiled direct testimony of Gerald C.
21 Hartman, consisting of six pages?

22 A Yes.

23 Q If I asked you those same questions here today, would
24 your answers be the same?

25 A Yes.

1 Q Do you have any corrections to make to that
2 testimony?

3 COMMISSIONER DEASON: Before we proceed any further
4 -- Mr. Hartman, you were sworn, correct?

5 THE WITNESS: Yes.

6 MR. DETERDING: I apologize, Commissioner.

7 COMMISSIONER DEASON: It is just a formality, but
8 something we need to do for each witness.

9 A Only one. In the report, Table 2-1, the footnote,
10 instead of average annual flow it should have been maximum
11 daily flow. That is on the attachment.

12 Q In Exhibit 2?

13 A Yes, the report. It is the footnote to the report.

14 Q All right. Give me that again, the exact location of
15 that?

16 A Table 2-1.

17 Q 2-1.

18 A Which is Page 2-7, Footnote 1. Instead of average
19 annual, it should be maximum daily flow.

20 Q Okay. You prepared in conjunction with the
21 preparation of that direct testimony two exhibits that you are
22 sponsoring, is that correct?

23 A Yes.

24 Q And I believe these were originally labeled as GCH-1,
25 which is the application of Farmton?

1 A Yes.

2 Q And GCH-2 is your resume?

3 A That's correct.

4 Q Do you have any other changes to make to either of
5 those?

6 A No.

7 MR. DETERDING: Commissioners, I assume by the
8 process that we have gone through that those have been marked
9 as Exhibits 3 and 4?

10 COMMISSIONER DEASON: That is correct.

11 (REPORTER NOTE: For the convenience of the record,
12 Mr. Hartman's prefiled direct testimony is inserted in the
13 record.)

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1 Q. State your name and address.

2 A. Gerald Charles Hartman, P.E., Hartman & Associates, Inc.,
3 201 E. Pine Street, Orlando, Florida 32801.

4 Q. Mr. Hartman, are you a registered professional engineer in
5 the State of Florida?

6 A. Yes. My registration number is 27703.

7 Q. Mr. Hartman, what is your area of specialty in your
8 practice?

9 A. I specialize primarily in water and wastewater utility
10 matters.

11 Q. Do you have a designation beyond your professional
12 engineer's license?

13 A. Yes. I am a Diplomate in the American Academy of
14 Environmental Engineers with the water and wastewater
15 specialty designation.

16 Q. Have you been accepted by the Florida Public Service
17 Commission to render testimony concerning utility management
18 and engineering on original water certificates and/or
19 service area modifications?

20 A. Yes, I have on several occasions over the past 20 years.

21 Q. In what areas are you going to provide testimony in this
22 matter?

23 A. In utility management and engineering areas associated with
24 the application of Farmton Water Resources, LLC, for a
25 Florida Public Service Commission original water certificate.

1 Q. Are the services proposed by Farmton services, which are
2 required to be regulated by the PSC under the provisions of
3 Chapter 367, Florida Statutes?

4 A. Yes, they are. That is why this application was filed.

5 Q. Were portions of the application for certificate, including
6 the supporting technical report, prepared by your firm?

7 A. Yes, other than the pleading itself, which Farmton's counsel
8 prepared, our firm prepared the engineering, accounting,
9 hydrogeological and utility management aspects of the
10 certificate application, including the associated technical
11 report (Composite Exhibit GCH-1), under my supervision and
12 direction, relying as necessary on data and information
13 provided by Farmton.

14 Q. Were there deficiencies and changes and corrections to that
15 application as originally submitted to the PSC which were
16 later filed with the PSC?

17 A. There were corrections to maps, to service availability
18 tariff sheets, proof of notice and re-notice, and other
19 related information that was requested in the Commission's
20 letter dated February 13, 2003, which were submitted to the
21 Commission under cover letters from the Utility's counsel
22 dated March 14, 2003 and April 4, 2003. Those are included
23 as part of the GCH-1 and are presumed to be included
24 whenever I refer to the Application of Farmton Water
25 Resources, LLC.

1 Q. In your opinion, does Composite Exhibit GCH-1, provide a
2 true, accurate and appropriate representation regarding the
3 original certification of the proposed water utility?

4 A. Yes, it does.

5 Q. Based upon your review, does Composite Exhibit GCH-1 meet
6 the requirements for original certification of a proposed
7 water utility?

8 A. Yes, it does.

9 Q. Is there a need for the services proposed and does Farmton
10 have the ability to provide those services?

11 A. Yes. There is a current need for the services delineated in
12 the application for potable, fire protection and bulk water
13 services, and Farmton Water Resources, LLC clearly has the
14 technical ability to provide those services. The nature and
15 adequacy of the facilities required to deliver those
16 services, both existing and needed, are addressed in the
17 technical report prepared for by our firm. We have
18 completed the planning and preliminary engineering for the
19 additional facilities needed. I believe Mr. Charles Drake
20 is handling the consumptive use permitting required.

21 Q. Has Farmton provided notice of the requested certification
22 in accordance with the PSC rules and statutes?

23 A. Yes, the required notice has been provided in accordance
24 with those rules and statutes and the proof of publication
25 and required affidavits of such noticing are part of GCH-1.

DIRECT TESTIMONY OF GERALD C. HARTMAN, P.E.

1 These were submitted either as part of the original
2 application, or as part of the supplemental information
3 provided in the information filed with the Public Service
4 Commission with the attorney's March 14, 2003 and April 4,
5 2003 letters, which is also a part of GCH-1.

6 Q. Have you reviewed other utility service areas in the region?

7 A. I have. I provided assistance and am knowledgeable about
8 the Utilities Commission, New Smyrna Beach Agreement with
9 Volusia County concerning the extent of its water utility
10 service area. I am familiar with the interlocal
11 understanding between the Utilities Commission, New Smyrna
12 Beach and the City of Edgewater concerning the boundary
13 between the two utilities. I am knowledgeable of the City
14 of Edgewater's utility service area and the Southern Volusia
15 County utility service area. I am knowledgeable of Volusia
16 County's existing assets in southern coastal Volusia County.
17 I am also knowledgeable of the utility systems in the
18 northern part of Brevard County. I have been involved in
19 the previous water resource analyses for the City of
20 Titusville and have reviewed Brevard County's water resource
21 studies as well as both Titusville's and Brevard County's
22 utility systems. I am also knowledgeable of the two package
23 plant systems in the Scottsmeer area. Neither Brevard
24 County nor the City of Titusville have extended utilities to
25 serve the Scottsmeer area which is south and east of the

DIRECT TESTIMONY OF GERALD C. HARTMAN, P.E.

1 Farnton areas and, based upon my last review, did not have
2 facilities on the west side of I-95. Further, the Maytown
3 water utility service is comprised of small private wells.

4 Q. Based on your review of the existing assets, service areas
5 and facilities in the region, do you believe that the
6 proposed certification of the Farnton water utility will be
7 in competition or duplication of any other system?

8 A. No. No other system serves the Farnton properties, and it
9 is my opinion that the proposed utility will not be in
10 competition with or duplicate the services of any other
11 water utility system. There are no other systems within
12 close proximity to the proposed territory that could allow
13 for services to the proposed territory. Even if there were
14 such systems in the area, the existence of the facilities
15 owned by Farnton currently providing those services would
16 mean that service by any other entity would be a clear
17 duplication of Farnton's existing service, and extremely
18 inefficient.

19 Q. Does Farnton have the technical ability to serve the
20 requested territory?

21 A. Yes, as provided in the application and supporting
22 documents.

23 Q. Does Farnton have sufficient plant capacity to serve the
24 requested territory?

25 A. The application shows the current maximum day capacity

1 needed in the proposed territory and, I believe, amply
2 demonstrates that Farmton either has or is taking
3 appropriate measures to ensure sufficient plant capacity to
4 provide the proposed services.

5 Q. Has Farmton provided adequate assurance of its continued use
6 of the land upon which the utility facilities are or will be
7 located?

8 A. I believe it has, and supporting information is included
9 within Composite Exhibit GCH-1.

10 Q. Can you tell us whether bulk service to the City of
11 Titusville will be accomplished?

12 A. It is Farmton's intent, as an investor-owned utility, to
13 provide such service if requested and needed by the City of
14 Titusville or any other entity requesting such bulk services
15 if we are able to do so with available water resources and
16 if such service is technically and financially feasible.

17 Q. Who is providing the hydrogeological and water supply
18 testimony in this case?

19 A. Mr. Charles W. Drake, P.G.

20 Q. Who is providing the financial testimony in this case?

21 A. Ms. Tara L. Hollis, C.P.A.

22 Q. Do you have a resume?

23 A. Yes, my resume is attached as Exhibit GCH-2.

24 Q. Does this conclude your direct testimony?

25 A. Yes.

1 BY MR. DETERDING:

2 Q Mr. Hartman, please provide the Commission with a
3 summary of your direct testimony?

4 A Yes. We prepared the application and exhibits, and
5 our firm was involved in the financial studies associated with
6 this application. Mr. Chuck Drake of our firm is the water
7 resource hydrogeological partner, and the partner in charge,
8 and he is a P.G. Tara Hollis, M.B.A., C.P.A., was the person
9 involved in the financial aspects, and I'm an engineer and also
10 utility management person.

11 I believe it meets all the requirements of an
12 original application for certification. There is a need for
13 water service, both potable, fire protection, and bulk. I'm
14 knowledgeable of all the active water service areas in the area.
15 I believe in my direct testimony and also on this chart here, I
16 can show to you the various service areas, active service areas
17 of all the entities. I think it is undisputed that the Farmton
18 Water Resources area is far and quite distant for the points of
19 service from any existing utility, is not duplicative of any
20 other system, there are no other systems with services in this
21 area. It would be technically, or technically it would be
22 terribly inefficient for anyone else to serve this system or
23 serve these customers other than to have service from within.

24 Farmton does have the technical ability. I have
25 assisted in many applications at the Public Service Commission

1 in a similar state of evolution. We have the capacity for
2 service. These are four-inch wells and not two-inch wells. We
3 have adequate assurance for continued use, I think that has
4 been stipulated. And we have -- the financial resources have
5 been provided and the water resources capable of providing for
6 full service. That ends.

7 COMMISSIONER DEASON: That concludes your summary?

8 THE WITNESS: Yes, it does.

9 MR. DETERDING: We tender the witness for cross.

10 COMMISSIONER DEASON: Very well. Is there any
11 particular preferred order of cross-examination?

12 MR. McNAMARA: As for Mr. Hartman, I was going to go
13 first, Commissioner.

14 COMMISSIONER DEASON: Very well. You may proceed.

15 CROSS EXAMINATION

16 BY MR. McNAMARA:

17 Q Mr. Hartman, my name is Pat McNamara. I'm
18 representing the City of Titusville, and I have a few questions
19 for you on cross-examination today.

20 It was discussed during opening statements that the
21 Farmton proposed service area comprises over 50,000 acres, is
22 that correct?

23 MR. DETERDING: I apologize. I don't mean to
24 interrupt, I believe I failed to request that his testimony be
25 inserted into the record as though read.

1 COMMISSIONER DEASON: Without objection, it shall be
2 so inserted.

3 MR. DETERDING: Thank you. I apologize.

4 (REPORTER NOTE: Testimony previously inserted.)

5 BY MR. McNAMARA:

6 Q Mr. Hartman, the service area proposed by Farmton is
7 comprised of over 50,000 acres, is that correct?

8 A Approximately 50,000 acres, yes, within two counties.

9 Q May I approach the witness with an exhibit?

10 COMMISSIONER DEASON: Yes, you may. Let me just at
11 this point, if you don't mind, it may be more expeditious, and
12 this goes to everything. If there are folks available that
13 don't mind walking these things around, you can just kind of
14 stay at your desk. And if you need to -- if you feel the need
15 to do that yourself, that's fine. But I anticipate there are
16 going to probably be a number of exhibits are going to be
17 utilized and handed out, and if there are folks that can make
18 themselves available to do that, that would help us along.

19 MR. McNAMARA: Yes.

20 COMMISSIONER DEASON: You have no objection to that
21 process?

22 MR. McNAMARA: No, sir.

23 COMMISSIONER DEASON: Very well.

24 MR. McNAMARA: This is Mr. Henry Thomas who is taking
25 it over. He is one of our experts.

1 COMMISSIONER DEASON: And just so that everyone -- we
2 need to provide a copy to everyone when it is handed out,
3 including the court reporter. And staff will be happy to
4 assist in the process, as well.

5 BY MR. McNAMARA:

6 Q Mr. Hartman, can you identify this document for me?

7 A Yes. This is the exhibit to my deposition and some
8 revisions to Table 3-1 as the engineering and construction has
9 changed over time.

10 Q And this is a document that you prepared?

11 A Yes. It is a document that I prepared, and also with
12 Tara Hollis who actually had it typed.

13 Q And this is a document that reflects the types of
14 systems that will be included in the Farmton certificate of
15 service area for retail service, is that correct?

16 A Yes, for the initial facilities. This is the Phase 1
17 activities. Yes, this is a listing of the initial retail
18 supply engineers cost estimate for the Phase I activities.

19 Q When you say the Phase I activities, can you tell me
20 in your engineering report where are the Phase II activities
21 for retail service?

22 A We just presented what was necessary initially. Over
23 time as customers come in, and in any utility after you are
24 certificated we go into a master planning activity. And as we
25 have customer requests such as the Bell Ridge area that has

1 requested for its 100 sites to possibly get service, we would
2 then plan for the service to those additional sites.

3 Q But as far as the initial application goes, this is
4 the retail service that is proposed, correct?

5 A Yes, initially as I said.

6 Q And there is nothing else included in the application
7 for retail service other than what is on this page, correct?

8 A Out in the field, you know, we made construction
9 modifications, but in the application you're correct.

10 Q And this shows that there will be a total of six
11 four-inch wells, pump motors, and controls installed, correct?

12 A That's correct.

13 Q And as I understand it, there is also one existing
14 well at the Miami Corporation headquarters that will be turned
15 over to Farmton and used, correct?

16 A That is one facility that is being turned over.
17 There are others.

18 Q What are the others?

19 A There is additional well facilities. There is Clark
20 Cattle Ranch, there are other facilities on-site.

21 Q So as I understand it, with the six new wells there
22 will be a total of seven or eight wells, is that correct?

23 A Eight of the larger wells, the four-inch wells.
24 There will be eight of those. And then there would be also
25 several, 12 or so fire protection wells. A total of 20

1 four-inch wells.

2 Q I would like to just talk about retail right now. We
3 will get to fire protection later.

4 A Okay.

5 Q So, as far as retail service you are talking about a
6 total of eight four-inch wells, correct?

7 A Over time, yes.

8 Q And we are talking about four of these wells having a
9 two-inch meter, is that correct?

10 A Yes, based on this table.

11 Q And there would be three wells with a 5/8ths by
12 3/4-inch meter, correct?

13 A That is correct.

14 Q Now, as far as the number of connections, as I
15 understand it there would be four connections at the hunt
16 camps, is that correct?

17 A We have a master meter. The distribution system for
18 the various connections, as I testified in my deposition, gets
19 put in by the customers, you know, the CIAC.

20 Q But as far as Farnton Water Resources goes, each of
21 those four wells at the hunt camps have one connection,
22 correct?

23 A Well, as any water plant has, it has a single point
24 of discharge into the system, yes. All water systems -- most
25 water systems do that.

1 Q And each of these individual wells, they are not
2 interconnected with each other in any way, correct?

3 A That's correct.

4 Q With respect to the Miami Tract Hunt Club, when you
5 prepared your report back in December of 2002, it is my
6 understanding that you did not obtain any historical water
7 usage by the hunt club, isn't that correct?

8 A I think the best characterization was that it did not
9 exist.

10 Q It did not exist and you did not perform any studies
11 to determine what the historical water usage had been, correct?

12 A If it doesn't exist, you can't do the study.

13 Q You could have put a meter on the existing wells and
14 measured their usage over a period of time, couldn't you?

15 A It is possible. It is possible to put a meter out
16 there and measure use.

17 Q And you did not do that?

18 A Not yet.

19 Q You did not conduct any interviews of any of the
20 representatives of the Miami Hunt Club as to their amount of
21 time they used the property, correct?

22 A As I testified in my deposition, personally I did
23 not. I did not state that no one had.

24 Q You did not personally take any interviews, correct?

25 A Personally I did not, that's correct.

1 Q Did someone conduct interviews?

2 A As I told you at that juncture and testified in my
3 deposition, that I had not known what those interviews were and
4 what the discussions were. After the deposition, of course,
5 then, of course, I talked to everyone.

6 Q Did anyone in your firm conduct any interviews of the
7 Miami Tract Hunt Club prior to your submission of your
8 engineering report that is included in the application?

9 A Mr. George Flint discussed this application with
10 Earl, and Earl basically had his discussions. He is in
11 day-to-day conduct with the Miami Hunt Club. So we used that
12 conduit for ease of access to the hunt club and for information
13 transfer.

14 Q As a professional engineer, an expert, no one in your
15 firm conducted any interviews of the Miami Tract Hunt Club
16 representatives, correct?

17 A We did not. We contacted Earl Underhill, as I
18 stated.

19 Q Mr. Underhill does not work for your firm, does he?

20 A No, he does not.

21 Q How many people currently reside in the proposed
22 service area full-time?

23 A Within the overall service area, oh, there is
24 probably 250 homes around the outside perimeter.

25 Q I'm talking about actually within the service area.

1 A In the service area there is probably -- off Miami
2 Corporation's land, if that is what you are saying --

3 Q Yes.

4 A I think there is about three or four homes out there.
5 But I don't know of any permanent residents.

6 Q So within the entire Miami Corporation property that
7 we are talking about in this case, you are not aware of any
8 permanent residents?

9 A No, it is not unusual to seasonal service that we
10 have -- the City of Sanibel, we have a lot of people who are
11 not permanent residents of the City of Sanibel. And it is
12 seasonal service, typical for utilities to provide seasonal
13 services.

14 Q The seasonal service would be for the hunt club
15 members?

16 A Well, there is seasonal service for the hunt club and
17 then there is continuous service for, if you will, the
18 commercial or residential type commercial aspects of the
19 headquarters. I think there is five to seven people working
20 there all the time. They have their water facilities there.
21 There are seven structures on the headquarters site. I have
22 been through that full area ever since our deposition.

23 Q So at the headquarters site, as I understand it,
24 there is one residence building, correct?

25 A There is a residence, and then there is a

1 headquarters building. There's equipment containment areas,
2 there's storage areas, there's tankage for land management
3 products which have, you know, water needs. There's various
4 other structures there. There are some equipment structures
5 there, garage type structures.

6 Q And I believe you just testified that the total
7 number of people that work at those Miami Corporation
8 headquarters are between five and seven people, correct?

9 A That's correct.

10 Q With respect to the Miami Tract Hunt Club, isn't it
11 true that Farmton would send the Miami Tract Hunt Club one bill
12 for water services?

13 A I don't know that. I believe that we would be
14 providing bills for each of the metered connections, and then
15 we would have the connections based on the ERC basis, which has
16 been done at the Florida Public Service Commission numerous
17 times.

18 Q You were talking about there would be four wells so
19 there would be four bills, correct?

20 A No, there is check stations, also. There would be
21 other bills for other locations.

22 Q Okay. We'll start off with the camp sites. There
23 are four camp sites, so there would be four bills for the four
24 camp sites, correct?

25 A That's correct.

1 Q You would not billing each of the 260 member families
2 that are camping out there, correct?

3 A I don't believe so. I don't believe so.

4 Q Now, you indicated that the basis for billing was
5 based on number of ERCs?

6 A Yes.

7 Q So Farmton would have essentially four bills going to
8 the hunt club and each of those bills will be based upon an
9 estimated number of ERCs?

10 A No, there are three check stations and it could be
11 future other locations also.

12 Q Let's talk initially about the four camp sites.

13 A Okay, limiting it to that.

14 Q The four camp sites you would have four bills for
15 because there are proposed to be four wells on the camp sites,
16 correct?

17 A There's four four-inch wells at those camp sites.

18 Q And as far as the check stations go, there are three
19 proposed check stations, correct?

20 A They exist.

21 Q And each of those check stations, as I understand
22 your report, represent one ERC?

23 A Initially, yes.

24 Q Is there anything in your report beyond initially?

25 A That's correct, it is initial. It is an original

1 certification, so it is the initial aspects of those check
2 stations, correct.

3 Q So there is nothing in your report to indicate
4 additional check stations in the future, correct?

5 A Or additional use at those check stations which
6 probably will occur over and above one ERC.

7 Q What is your basis for saying that?

8 A I have been out through the check stations. And in
9 talking with how they are used, many times there's 30 to 40
10 people or more. As well as they are in the process of cleaning
11 game, they weigh it, and that takes significant water. And as
12 the amenities improve, I think, as the person that you took the
13 deposition of very well stated, additional people will want to
14 use those facilities. Right now they have to bring in the
15 water to use for proper washing. So you are talking about
16 people bringing in very expensive, you know, campers and other
17 things like that and large tanks of water, which is not a good
18 situation.

19 Q And the bills for each of these check stations would
20 be sent to the Miami Tract Hunt Club, they would not be sent to
21 the individual club members, correct?

22 A Well, I don't know. I don't know exactly what the
23 arrangements for all the billing -- I don't know in the future
24 how the billing will actually end up, but I do know that the
25 points for the bill or the reading of the bill will be by the

1 meter and, therefore, there may be, you know, initially seven
2 or eight billed entities or it could be commingled.

3 Q But no more than eight, correct?

4 A Well, then also there is the fire protection that is
5 billed to --

6 Q I'm just talking about retail.

7 A Okay. Limiting to only retail, there would be about
8 eight, I guess, initially, which would then expand.

9 Q What is the basis for your saying it would expand?

10 A Oh, in driving the property and seeing the other home
11 sites that are right next to the property, the Clark Cattle
12 Ranch is in a cluster of homes, it just so happens that the
13 other homes are not within Miami Corporation property. They
14 own their own property. Power is there. And when you have a
15 good water system, it is my experience that people like to
16 drink good water, so I think that there will be usage.

17 Q But as you just said, these other homes are outside
18 the proposed certificated service area, correct?

19 A Some of them are, yes. These other homes that are
20 residences are out parcels, but are totally -- other than
21 Maytown, the extension, excuse me, to the out from Maytown
22 Road, where this cluster is that I'm talking about, yes, those
23 are outside. They are out parcels, but they are adjacent to
24 Clark Cattle Ranch, where the V in the two roads come together
25 there, and power comes right down to there. I don't see -- I

1 think they want water.

2 Q But in order to serve those, wouldn't Farmton need to
3 come back to the PSC to get a change in their service area to
4 extend it to include those properties that are outside their
5 current proposed service area?

6 A Well, I said in the future.

7 Q What we are talking about here today is the proposed
8 service area, and those houses are outside the current proposed
9 service area, correct?

10 A Yes. I guess the point I'm trying to say is that it
11 is my experience that when you have water users, if you will,
12 as an out parcel in the middle of the service area adjacent to
13 good potable water, typically they want it. And I'm saying
14 that that condition exists. So when we started the
15 application, the initial certification is just what is there
16 right now, but the potential includes many more aspects.

17 Q With respect to -- let's talk a little bit about
18 proposed bulk services. As we sit here today, there are no
19 commitments from anyone to purchase bulk water from Farmton, is
20 that correct?

21 A I do not know of management's negotiations for
22 everyone, but what I do know, I can state that there has been a
23 representative of WAV that has talked to Mr. Underhill about
24 potential service. There's no agreements. **There were**
25 discussions from the City of Titusville to Mr. Underhill

1 relative for service at one time. There --

2 Q My question, sir, is are there any commitments from
3 anyone to purchase bulk water from Farmton?

4 A I don't know of any commitments.

5 Q And there are no contracts with anyone to purchase
6 bulk water service from Farmton, correct?

7 A That's correct, of any type for any type of user,
8 industrial, private, or public user. Just like ECFS, we serve
9 Reliant Energy Corporation, which is a private bulk user.

10 Q My question was just there are no contracts for any
11 private or public bulk users at this time, correct?

12 A That is correct.

13 Q With respect to WAV and the City of Titusville, who
14 you mentioned, those are both governmental entities, correct?

15 A Yes, they are.

16 Q And provision of service to a governmental entity
17 would be exempt from PSC jurisdiction, correct?

18 A It may be. It can be.

19 Q Farmton would not need to obtain a PSC certificate to
20 serve a governmental entity, would it?

21 A If that is the only -- this is a hypothetical? I
22 don't understand your question. In the present configuration
23 it would be my opinion it would be in the public interest to do
24 so, just like we did before. I know the City of Palm Bay
25 relied upon the Florida Public Service Commission's order of

1 19.7 cents per thousand gallons for raw water in their
2 negotiations with ECFS. I do know that Reliant Energy
3 Corporation relied on the PSC's adjudication of the fair and
4 reasonable rate of return and the separation between bulk
5 customer revenues and the retail customer revenues such that
6 the customers were fairly treated. I know that Osceola County
7 Fire Department, which did not have sufficient raw water
8 supply, now has sufficient raw water supply to fight fires from
9 ECFS.

10 Q Mr. Hartman, my question was just service to a
11 governmental entity is exempt from PSC jurisdiction, correct?

12 A My answer was that there is a statute that provides
13 for that exemption as a singular situation, but that may not
14 necessarily be the only application.

15 Q Let's talk a little bit about fire protection.
16 Currently the Miami Corporation, as I understand it, has two
17 fire protection wells on the property, correct?

18 A That's correct.

19 Q And Farmton is proposing to add ten additional fire
20 protection wells?

21 A Absolutely.

22 Q And so that all of those wells will be on property
23 owned by the Miami Corporation?

24 A Yes, and leased.

25 Q But those are all on property owned by the Miami

1 Corporation, correct?

2 A As the entire parcel is.

3 Q And the Miami Corporation installed its two current
4 fire protection wells without obtaining any PSC certification,
5 correct?

6 A Yes.

7 Q And the Miami Corporation could install the
8 additional ten wells without obtaining PSC certification,
9 correct?

10 A It is the context, again. When you break out a
11 certain aspect of a singular activity things are possible, but
12 taken in the aggregate it is inappropriate.

13 MR. McNAMARA: Commissioner, the prehearing order
14 indicated that witnesses are supposed to answer a yes or no
15 question with a yes or no, and I continually have Mr. Hartman
16 giving me a rambling answer rather than a yes or no. And I
17 understand that he can explain his answer after he answers the
18 yes or no, but I would like to ask that he be directed to give
19 me a yes or no answer to a yes or no question.

20 COMMISSIONER DEASON: Mr. Hartman, to the extent you
21 can please answer yes or no, and then elaborate to the extent
22 necessary.

23 MR. DETERDING: And I apologize, Commissioner, but I
24 would also note that he is frequently interrupting the witness
25 in his attempts to answer the question. So if he would please

1 allow Mr. Hartman to finish his answer before he asks the next
2 one.

3 COMMISSIONER DEASON: I'm sure that endeavor will be
4 made.

5 THE WITNESS: To answer your question yes or no, the
6 answer would be in the hypothetical that you provided yes.

7 BY MR. McNAMARA:

8 Q So Miami Corporation could install the additional ten
9 wells on their property without PSC certification, correct?

10 A If that was the only activity, yes.

11 Q With respect to your testimony that you believe that
12 Farmton has the financial ability to obtain a PSC certificate,
13 can you tell me have you seen a financial statement for Farmton
14 Water Resources?

15 A No, I have not seen a financial statement. I do know
16 in working for them over a period of time that we have been
17 paid our bills, everyone else has been paid their bills, and to
18 my knowledge there was sufficient monies deposited into an
19 account which was much greater than most original certificates
20 typically enjoy. And also, to my knowledge, what has been
21 relayed to me, the parent corporation does not have debt, and
22 to my knowledge as has been stated in conversation the overall
23 entity has significant financial resources, much greater than
24 most developers within the State of Florida, and has tremendous
25 financial resources.

1 Q Those are Miami Corporation resources, correct?

2 A Which are committed to serving and providing those
3 financial resources when the need is made.

4 Q Have you seen any written agreement between the Miami
5 Corporation and Farmton to provide such resources?

6 A There is an affidavit, I believe, that says so.

7 MR. McNAMARA: I'm going to object to that and move
8 to strike it.

9 COMMISSIONER DEASON: Just a second. I've been
10 listening, and you are still not answering yes or no.

11 THE WITNESS: Yes.

12 COMMISSIONER DEASON: There is now an objection?

13 MR. McNAMARA: I'm just objecting to his reference to
14 the affidavit and would move to strike it. That affidavit is
15 not in evidence, it has not been stipulated into evidence, and
16 we have an objection to the affidavit that he references.

17 MR. DETERDING: Well, in response, Commissioner, he
18 asked him if he was aware of any documents, and --

19 MR. McNAMARA: No, I asked him if he was aware of any
20 agreements.

21 COMMISSIONER DEASON: I'm sorry. Please. You will
22 be given ample opportunity to respond to the response.

23 MR. DETERDING: He asked him if there were any
24 documents that showed that commitment, and I believe Mr.
25 Hartman was providing an answer that was responsive to that,

1 that he is aware of an affidavit.

2 COMMISSIONER DEASON: Okay. Mr. McNamara.

3 MR. McNAMARA: Commissioner, I asked him if he was
4 aware of any agreements, written agreements was the question
5 that I had asked.

6 COMMISSIONER DEASON: Okay. I believe that the door
7 has been sufficiently opened, and that the answer was
8 responsive to the question, and I will allow the answer.

9 Mr. Hartman, you may expand upon that answer if you
10 see fit.

11 THE WITNESS: Thank you. I have no additional
12 extension to answer other than the entity has always, to date,
13 provided financial support, and there has been no limitation on
14 finances relative to the construction of good potable water to
15 serve these people.

16 BY MR. McNAMARA:

17 Q But just getting back to my basic question, you are
18 not aware of any written agreements between the Miami
19 Corporation and Farmton Water Resources to provide financial
20 backing, correct?

21 A Correct, based upon what I think you are
22 characterizing specifically as a, you know, eight or ten-page,
23 you know, legal agreement that you would see in an indenture or
24 some type of financial type thing. The only thing I have seen
25 is the short affidavit, but I don't know of all of the

1 documents. But what I can say is that it is my opinion, and I
2 don't change my opinion, that they definitely have financial
3 resources. It's almost a joke to say they don't.

4 Q You have not seen a financial statement, though, from
5 Farmton Water Resources, correct?

6 A I have not seen that one document, no, I have not.

7 Q With regard to your testimony that Farmton has the
8 technical ability to provide service, isn't it true that you do
9 not know Mr. Underhill's background in actually running a water
10 utility service, correct?

11 A I do know his background. His background as a
12 manager, not as running -- my answer is no, I do know his
13 background. His background as a manager, professional manager
14 of properties, and a professional individual for land
15 management for over 25 years, and a businessman. Businessmen
16 run utilities all the time. It is just a matter of hiring
17 people to actually do the operations, and I do not know the
18 background of the various other employees. I have learned the
19 background of Mr. Underhill since our deposition. Because you
20 pointed that out to me, I have taken some time to educate
21 myself.

22 Q And his background does not include running a water
23 utility, correct?

24 A No. And as many of the utilities that come in front
25 of the Commission, the land manager is not a utility manager.

1 As I stated in my deposition, Ralph Terrero (phonetic), Deltona
2 Utilities, works for us in operations. I mean, I'm talking
3 about very seasoned, very capable people that many times we
4 have assisted in starting up utilities. We do operational,
5 engineering, management, financial, all of those services are
6 within Hartman Associates. Hartman Associates and TechraTech,
7 we have 900 people here in Florida. You know, this is a
8 significant -- they have hired us for an overall umbrella
9 agreement, as I testified in my deposition, that is more
10 comprehensive than just what you are saying.

11 Q I didn't ask anything about your company's
12 involvement, Mr. Hartman. I asked you about Mr. Underhill's
13 background in running a water utility.

14 A Oh, I'm sorry, I thought I answered that question. I
15 thought you said that there was no technical capability. I
16 misunderstood.

17 Q I would like to just ask you, a minute ago you made
18 reference to the fact that your firm had been paid by Farmton
19 Water Resources, correct?

20 A Yes.

21 Q How much have you been paid so far with respect to
22 this case?

23 A Chuck Drake knows the exact amount, but I do know
24 that it is in excess of \$200,000, much more than our original
25 estimate to do the work, simply due to the duration of this

1 case and the intervention in this case which probably increased
2 the cost of the case ten fold.

3 Q Well, do you recall what your initial estimate was?

4 A Going all through the process, I didn't make the
5 initial estimate, so I don't recall that. I think it was Chuck
6 Drake, so you would have to ask him. But typically I can state
7 to you for Heron's Glen, another one that we have been just
8 recently retained that I did quote an estimate of 25 or \$50,000
9 to do this, 25 noncontroversial. But to the extent and
10 magnitude of this case, what has happened with all the
11 different governmental entities, et cetera, has ballooned the
12 cost significantly.

13 MR. McNAMARA: Commissioner, if I could have a minute
14 to confer with my client.

15 (Pause.)

16 MR. McNAMARA: That's all I have for now.

17 COMMISSIONER DEASON: Thank you. Mr. Knox.

18 CROSS EXAMINATION

19 BY MR. KNOX:

20 Q Mr. Hartman, I can barely see you down there.

21 A I'll slide over a little bit.

22 Q Mr. Hartman, I would like to refer you to the exhibit
23 that was handed out to you at the very beginning of your
24 testimony. I believe it is revised Table 3-1. Do you have
25 that in front of you?

1 A Yes, I do.

2 Q Okay. There is a reference to a 20-gallon bladder
3 type hydropneumatic tank, a 200-gallon bladder type
4 hydropneumatic tank, and some chlorinators. Have any of these
5 items been actually constructed, or built, or used at the well
6 sites?

7 A The wells have been installed, the chlorinators and
8 the pressure tanks have not been installed, or the meters.

9 Q Okay. Can you tell me just a little bit, very short
10 succinct testimony, if you would, about how the chlorinators
11 would work?

12 A Hypochlorination based.

13 Q I'm sorry?

14 A Hypochlorination that was based on flow.

15 Q Physically, how would you go about chlorinating?

16 A Physically, you have a drum that has the hypochlorite
17 solution in it, and then what happens is the flow goes by and
18 it is evacuated and it would chlorinate.

19 Q Does that solution have to be replenished at all?

20 A Yes, it does.

21 Q Does that have to be done by someone who knows what
22 they are doing?

23 A It is usually delivered and you -- these pick up the
24 metering pump and the rotameter, and then just drop it right
25 back into the new tank. Typically the supplier does it.

1 Q Wouldn't that be something that would be contracted
2 for by Farmton?

3 A Most every utility when they buy chlorine contracts
4 for those things.

5 Q Okay. So when you say that Farmton has the technical
6 ability to provide service in the area, would the chlorination
7 be part of the technical ability that you are talking about?

8 A Yes, they have the full technical ability as a
9 utility to do that.

10 Q Okay. Now, Mr. Hartman, if Farmton did not have the
11 ability to physically put these facilities in, they would not
12 have the technical ability any longer, would they?

13 A I don't understand your question. If they don't have
14 the ability to -- they do have the ability to put them in from,
15 you know, financial, technical, operational standpoint.

16 Q Let me assume a hypothetical for you. Assume for a
17 moment that they do not have the physical ability to place
18 these facilities on that property for reasons related to the
19 county commission's requirement that they give their consent.
20 Under those circumstances, they don't have technical ability to
21 provide that service, do they?

22 A Under your hypothetical, stating that the county
23 somehow would not allow proper disinfection to potable water,
24 yes.

25 Q Now, Mr. Hartman, let's talk about the Clark

1 Cattlehouse well. You said there are some houses that are in
2 the vicinity of that well?

3 A Yes. In that area, yes.

4 Q And those aren't part of the certificated area, those
5 houses, correct?

6 A Well, there is a house there, Clark Cattle Ranch, but
7 the others are not, yes.

8 Q Now, let's assume for a moment that the Public
9 Service Commission actually certificated the area you are
10 asking for, but you didn't have that, those houses you are
11 talking about in the certificated area. You would have to
12 expand the certificated area to get those houses, wouldn't you?

13 A You may or may not. You can serve at the limit of
14 your certificated area and that could be the point of
15 connection with the meter within the certificated area.

16 Q Okay. Well, let's assume those five houses want
17 service from Farmton, you say they physically would have to
18 connect into what?

19 A They could connect into a pipeline, if they wish.

20 Q And that pipeline would go where?

21 A Back to the well.

22 Q To that single well, correct?

23 A There is a single well there right now. We are
24 building another one.

25 Q Okay. Is that well that is there now connected to

1 anything else? Is it interconnected to any other well?

2 A The existing well is not interconnected to another
3 well.

4 Q Okay. So for the purposes of providing service to
5 that particular facility, the Cattlehouse, or for the purpose
6 of providing service to any additional houses that might
7 connect into that particular house, the well at that location,
8 you wouldn't have -- you wouldn't need 50,000 acres of
9 certificated territory, would you?

10 A I don't understand the question.

11 Q If you want to provide service to the Cattlehouse or
12 to the houses that you are talking about that haven't got
13 service, you don't need 50,000 acres of certificated area to do
14 that, do you?

15 A In a hypothetical that is the limits of your
16 property, and that is the limits of your consideration, under
17 your hypothetical -- this is a stream of hypotheticals, so I
18 guess under that hypothetical that would be true. But, given
19 the present circumstances, it's not true. Present
20 circumstances is that the whole property is managed as one
21 unit.

22 Q Let me ask you another question, then. If you are a
23 hunter and you want potable water at one of the wells that are
24 going to be built in the future for the hunt camps, how
25 physically would you be able to get water from that well once

1 it is in service?

2 A It would be through a meter and then you would have a
3 connection to that distribution system.

4 Q Okay. And that well, again, is not interconnected to
5 any portion of any other well in the certificated area, is it?

6 A It may or may not be. It depends on what location
7 you are talking about. There are some existing wells there
8 that may be used, and then there is another location would not
9 be.

10 Q Did I hear you testify earlier that there is no
11 interconnection of these wells on this property?

12 A The new wells. I was asked about the new wells.

13 Q Okay. What is the answer to my question, are there
14 any interconnected wells at this time?

15 A Not at this time, no.

16 Q And you are saying the new wells are going to be
17 interconnected now?

18 A A new well could be interconnected with an existing
19 good well on serving a site such that you have two sources as
20 shown in the lease. That's possible.

21 Q Is that part of the plan that you have in this
22 proposed certificated area?

23 A Excuse me?

24 Q Is that part of the -- is that interconnection part
25 of the plan that you have in this proposed certificated area?

1 A We haven't gotten that far on tying the wells on the
2 same site together or not, but that is something we are
3 considering.

4 Q Okay. So for existing wells on the site that are not
5 interconnected today, anybody who wants to use water from those
6 wells would go to that location to get the water, would they
7 not?

8 A Or they would build a distribution system as has
9 occurred out there.

10 Q For the hunt clubs?

11 A Yes.

12 Q And how large are those systems?

13 A I don't know totally how many connections were there,
14 but they had a PVC distribution system.

15 Q Are we talking an area that covers five acres, ten
16 acres, how many acres?

17 A I mean, if you make it as gross as a five to ten-acre
18 situation, it would not be greater than, you know, probably 20
19 acres or less.

20 Q Okay. So there would be nothing to prevent Farmton
21 from coming in and asking for a certificated area at each one
22 of the wells sites that was maybe 20 acres in size. That would
23 provide the service, correct?

24 A It wouldn't make any sense to do that.

25 Q Well, that is not what I asked you. The question is

1 is it possible for Farmton to come in and ask for certificated
2 areas of 20 acres in size to serve the particular well sites
3 that are serving these hunt club individuals?

4 A Could they?

5 Q Yes.

6 A Hypothetically, there is always a possibility that
7 the people could do various different things, but that is not
8 how they operate. That is not their overall management, and it
9 would be contrary to good utility practice and contrary to good
10 overall planning and management of the resources of the
11 property, so I don't understand why they would.

12 Q All right. Well, you are providing service to 260
13 families that are members of the hunt club, aren't you? Isn't
14 that what you are going to?

15 A Oh, yes.

16 Q And it is your testimony you need 50,000 acres to do
17 that?

18 A Well, that is the property of this -- that is in this
19 application, yes.

20 Q All right. And what if -- you haven't been to the
21 county commission to get consent to put these facilities in,
22 have you? Speaking of Farmton, now.

23 A I'm sorry, that's in Brevard County?

24 Q That's correct.

25 A No.

1 Q So, you don't know whether or not Brevard County
2 might say yes, we will allow you to have the facilities, but
3 only at the well site locations; or, no, we won't let you have
4 facilities at all, do you?

5 A Well, I think that is a determination, a future
6 determination. I don't know how that works. From a legal
7 standpoint, I don't think the -- I just don't know that a board
8 of county commissioners, because I served Osceola County when
9 we had those situations, we also have similar language in
10 Orange County, and Marion County, and DeSoto County, and we
11 serve 37 different counties in the State of Florida, and I
12 believe that -- I don't know that in a certificated area, I
13 believe it was in Marion County that the board of county
14 commissioners was found -- I think it was in Windstream, or
15 Windspring, or -- I forget which case that was, but that within
16 the certificated area and public utilities and running lines,
17 that is not considered to be plant facilities under land use
18 and zoning.

19 Q You are not aware or are you aware of the existence
20 of Ordinance Number 3-32 in Brevard County?

21 A I believe I'm aware of that, yes.

22 Q Have you read that ordinance?

23 A I believe I have, yes.

24 Q Have you read the provision that requires that the
25 district board, which is the board of county commissioners, to

1 give their consent for water facilities that are constructed in
2 Brevard County?

3 A It says water facilities, that is correct.

4 Q All right. So to answer my other question, you don't
5 know what the county commission would do in terms of putting
6 limitations on where your water -- where Farmton's water
7 facilities could go, do you?

8 A I don't know what the --

9 Q Yes or no.

10 A I don't know.

11 MR. KNOX: I don't think I have any other questions.

12 Thank you.

13 COMMISSIONER DEASON: Mr. Bosch, how extensive is
14 your cross-examination going to be in terms of time?

15 MR. BOSCH: Five minutes.

16 COMMISSIONER DEASON: Okay. Please proceed.

17 CROSS EXAMINATION

18 BY MR. BOSCH:

19 Q Mr. Hartman, Bill Bosch with Volusia County. In
20 Volusia County you are aware that the county considers all
21 areas that are in unincorporated Volusia County that are not
22 presently served by a service agreement to be within the
23 county's service area, aren't you?

24 A As a countywide service area document, yes.

25 Q And that would include, in this case, the Farmton

1 property?

2 A Yes.

3 Q And the map that you have prepared and shown to us
4 earlier, that was prepared by yourself, correct?

5 A Yes.

6 Q And that shows that the City of Edgewater actually
7 abuts the Farmton property, does it not?

8 A Yes, it does.

9 Q Are you aware that the county and the City of
10 Edgewater have various service agreements between them?

11 A Yes.

12 Q And that, in fact, the county provides -- well, has
13 an agreement whereby it purchases wholesale water for the
14 unincorporated portions of the county that it services,
15 correct?

16 A Yes, to the south along the highway there.

17 Q And in turn the county has sold to the City of
18 Edgewater capacity for wastewater, isn't that true?

19 A I believe so.

20 Q And, in fact, the service area agreements are quite
21 common in the county, that is one of the ways that the County
22 of Volusia goes about providing these services, isn't that
23 true?

24 A Well, it is one mechanism, yes.

25 Q And the fact that the City of Edgewater abuts the

1 Farmton property, does that not mean that the county through
2 these service agreements, service area agreements, could extend
3 its service into the Farmton area if the need ever arose?

4 A I would not see that happening.

5 Q But is it not possible, sir?

6 A I don't think there is infrastructure there to
7 facilitate that.

8 Q Well, there is no infrastructure in the Farmton area
9 at all right now except for some wells, correct?

10 A There's wells, but the infrastructure that is
11 necessary are wells at specific locations within an area as the
12 initial phase. And it would be terribly inefficient, as I
13 testified earlier, to construct, I believe, within their city
14 limits and within their service area. First, the City of
15 Edgewater also would have to construct facilities to be able to
16 accommodate it. Terry Wadsworth (phonetic), the utilities
17 director there, as you know we are the engineers for their
18 water treatment plant and wellfield, so I believe that -- I
19 don't think that it is technically feasible right now. The
20 facilities just aren't there.

21 Q At this moment it is not feasible?

22 A That is correct.

23 Q But in the future it will be?

24 A I don't know if -- I don't know what the plans down
25 in the Florida Shores area all the way out to that corner,

1 whether it would be adequate to provide any services of any
2 significance.

3 Q That is something that the county could do if it
4 wanted to, if it wanted to invest the money and if it felt the
5 need?

6 A Into the City of Edgewater's utility?

7 Q Using the City of Edgewater through the service
8 agreements?

9 A My point is I don't think the City of Edgewater has
10 the facilities.

11 Q But the county could assist them in doing so if it
12 wished to?

13 A Hypothetically, over some long period of time that
14 could possibly occur as a hypothetical.

15 Q And if the county felt there were a need for service
16 in the Farmton area, then at some time down in the future the
17 county could do so, provide that water service through the City
18 of Edgewater, could it not?

19 A Under your hypothetical it is absolutely possible.
20 Is it efficient or technically feasible from a customer service
21 standpoint and cost standpoint, absolutely not.

22 Q You are familiar with the Volusia County Comp Plan,
23 correct, sir?

24 A I have reviewed it, yes.

25 Q Certain aspects of it. Well, with regard to water

1 plants, lines, pump stations, does not the comp plan call for
2 the dedication of those structures and those facilities to the
county when they are built by the developer?

4 A In a development situation that is not in a
5 certificated area, yes.

6 Q You are aware that the County of Volusia is
7 designated as a priority resource caution area for water
8 purposes?

9 A Yes, it is a sole freshwater source. We did a lot of
10 studies in the county.

11 Q And that means that the County of Volusia presently
12 with the demand does not have the supply, isn't that true?

13 A No, it means that there has to be a caution relative
14 to how the supply is being developed environmentally and
15 appropriately hydrologically. And there is some concern over,
16 you know, 50-year planning horizon or other planning horizons
17 relative to freshwater resources. But I don't think there has
18 been any statement that Volusia County cannot develop adequate
19 water resources to meet its customer base.

20 Q And is it not true that Farmton cannot join WAV,
21 which is the Volusia County planning agency for water
22 decisions?

23 A They cannot because the local governments precluded
24 investor-owned utilities and agriculture from participating.
25 The prior organization, you know, the Volusian Water Alliance,

1 allowed like Florida Water Service and Deltona to participate.
2 They allowed the major entities to participate. And this new
3 intergovernmental agreement has excluded agriculture, which is
4 a very large water need. Volusia County, as a utility, is very
5 small and has a minor water supply capability. Agricultural
6 just in the fern growing area is much greater than Volusia
7 County's entire water withdrawal.

8 Q But the bottom line is Farmton cannot join WAV, can
9 it?

10 A It can if the local governments would allow it. And
11 it is only because of their conduct and decisions to exclude
12 the entity that it is not allowed. They can. It is an
13 interlocal agreement, and it could be amended at any time to
14 allow Farmton to --

15 Q I am going to object to you testifying with regard
16 to --

17 MR. BOSCH: Commissioner, I would object to him
18 testifying with regard to legal matters as to what can be
19 amended and what the law provides as far as the establishment
20 of WAV and interlocal agreements. That calls for a legal
21 opinion.

22 COMMISSIONER DEASON: There has been an objection.

23 MR. DETERDING: Well, he asked Mr. Hartman if Farmton
24 could be a member, and I think Mr. Hartman was simply providing
25 an answer. Plus, he should at least allow the witness to

1 complete his answer before he interjects. If he wants to move
2 to strike at a later point, he can do so.

3 COMMISSIONER DEASON: Mr. Hartman, is your answer
4 based upon a legal analysis or just your experience as an
5 expert in the field of water areas?

6 THE WITNESS: Chairman, the latter.

7 COMMISSIONER DEASON: Okay. I will allow the answer.
8 You may proceed.

9 MR. BOSCH: I have nothing further, Commissioner.

10 COMMISSIONER DEASON: Okay. Staff, how extensive is
11 your cross?

12 MS. FLEMING: We have several questions,
13 Commissioners. Probably no more than five or ten minutes.

14 COMMISSIONER DEASON: Okay. You may proceed.

15 CROSS EXAMINATION

16 BY MS. FLEMING:

17 Q Good morning, Mr. Hartman.

18 A Good morning.

19 Q Referring to your Exhibit GCH-1, I'm looking on Page
20 87, Schedule 1. You included working capital allowance in rate
21 base. Does the Commission normally include a working capital
22 allowance in original certificate cases?

23 A No, they do not. Typically they don't, because --
24 the answer is no initially, and then to explain the answer, in
25 this case I believe that it is appropriate simply because it is

existing demand. It is existing customers, and it will effectuate a lag such that working capital would be appropriate. In most original certifications there is not an existing demand, and it is developed over time, and it is appropriate that the Commission does not provide for that.

Q Thank you. On the tariff sheets that you have provided, Pages 152 and 153 in your exhibit, the tariff proposed by Farmton for retail potable water service shows facility charges based on meter size, would you agree?

10 A Correct.

11 Q However, you just testified to Mr. McNamara that the
12 bills would be based on ERCs. Can you please explain this?

13 A I must have misspoke. The bills would be based on
14 meter size for the base bill, for the base charge, and then the
15 consumption would go there. That would answer that question.
16 I misspoke on that issue.

17 MS. FLEMING: We have nothing further.

18 COMMISSIONER DEASON: Commissioners, questions?
19 Redirect.

20 MR. DETERDING: Yes. Thank you, Commissioner.

21 REDIRECT EXAMINATION

22 BY MR. DETERDING:

23 Q Mr. Hartman, Mr. McNamara asked you about the
24 capacity of the wells, about the size of the wells located in
25 the Farmton property, both the present and proposed, and

1 referred to his Table 3-1. Can you tell us what the capacity
2 of those wells is in gallons per day?

3 A Yes. The capacity would be in the order of, you
4 know, 118,000 gallons per day when we restrict the capacity.
5 This is just for the retail portion. The QP on a peaking basis
6 would be multiples of that.

7 Q 118,000 gallons per day per well?

8 A No, that would be in aggregate.

9 Q This is the total?

10 A So it would only in the order of about 20,000 gallons
11 average daily flow, you know, capacity designed per well. But
12 the peaking capacity would be -- you would have maximum day
13 which is about two times that, and then peak hour which is two
14 times that. So the multiples would be around four times that
15 in actual installed facility capacity.

16 Q Mr. McNamara also asked you about the persons or what
17 was there, what is at these sites where these services are
18 provided. How many people are anticipated to utilize those
19 services?

20 A Well, in the peaking, the nine day opening up, I
21 guess, of hunt season there has been as many as a thousand
22 people out there. So, you know, you have a lot of people. And
23 that is just existing use. In a sustained long-term it is
24 around 650, which would be considered a seasonal use. And then
25 there is use throughout the year, 365 days a year, and the

1 numbers drop down on an annual average, on an annual basis.

2 Q Now, you talked a little bit about the configuration
3 of the facilities that are currently located at the well sites.
4 Is the company in the process of revising the configuration of
5 those facilities?

6 A We are considering various improvements and
7 betterments to those configurations as we go, but the
8 application stands as it is.

9 Q And what is the nature of the improvements that are
10 being considered?

11 A We're looking at the potential on more remote
12 locations of the solar power versus gasoline or diesel engine
13 situation. The gasoline engine situation is what we had costed
14 out on some generator powering situations, but the solar power
15 well sites are very possible in a couple of the locations. We
16 have gone through now the power feed and power drop situations
17 and, you know, the concrete hunt camps a half mile away from
18 power. So, you know, we have changed a little bit that we may
19 just bring electrical power to some of the sites and just do it
20 that way.

21 Power goes all the way through the site. A lot of
22 people say there is no power out there, there is a lot of power
23 out there. It is not a tremendous grid, but down Maytown Road
24 all the way down to Clark Cattle Ranch has power. So, I mean,
25 a large portion of the site has a main power feed system right

1 through it. If you drive Maytown Road you will see the power
2 lines all the way from the site of Deltona all the way down to
3 Maytown, which is a vast majority of the site, of the paved
4 road that goes right through there.

5 & And then you see the power going south. There is
6 power all the way down to the cluster of homes that I talked
7 about that is not in this initial application, but I'm sure
8 they will want service. I can't say sure. I would believe, in
9 my opinion, they probably would want service once there is a
10 good potable service out there. And there is power down to
11 Clark Cattle Ranch, and good power.

12 Q What factors would go into the decision of what
13 additional facilities above those originally proposed in the
14 application two years ago would be needed or desired?

15 A Based on customer requests. There has been a
16 customer request of the Bell Ridge campgrounds, which has 100
17 units because, you know, they look forward to getting good
18 water supply.

19 COMMISSIONER JABER: Mr. Hartman, may I interrupt
20 with a question on the previous answer you just gave. Maytown
21 Road, is that the main road that comes off of -- I can't think
22 of the name of the highway, but is Maytown Road the main road
23 that gets you into the 57,000 acres?

24 THE WITNESS: Yes, it is the one that goes straight
25 through the middle of the site. And I was expressing the power

1 coming from the Deltona side. It comes from the west side east
2 and does not come from the east side west. There is no power
3 on the eastern side.

4 COMMISSIONER JABER: Before the customer meeting I
5 had an opportunity to see the territory over which the
6 application covers. And as you come into Maytown Road it is my
7 recollection that there are homes on the left and on the right
8 of the road. Are those the homes that you were referencing
9 earlier?

10 THE WITNESS: No, there is another cluster that is
11 south of Maytown Road. At Maytown or just to the west of
12 Maytown there is a T, and there is a paved road going south,
13 and it is down that paved road where that cluster of homes is;
14 really right next to Clark Cattle Ranch.

15 COMMISSIONER JABER: The cluster of homes you are
16 talking about and the homes that I'm talking about --

17 THE WITNESS: Are two different clusters.

18 COMMISSIONER JABER: All right. Who provides water
19 and wastewater service to the homes you reference and the homes
20 that I'm talking about?

21 THE WITNESS: The homes that I referenced are
22 individual well and septic tank. **And I believe there is a**
23 **central -- there is a 40 unit system which comes up on the side**
24 **that has a central water system out there. It is not the**
25 **county, it is a private central system.**

1 COMMISSIONER DEASON: I'm sorry, Mr. Hartman, if you
2 are going to need to say anything you are going to need a
3 microphone.

4 THE WITNESS: I'm sorry. Come out where the
5 headquarters is right here. You see that little -- I think
6 those homes that you were walking about, Commissioner, is right
7 in here on the north side of the road, right at the edge of the
8 property.

9 COMMISSIONER JABER: Yes.

10 THE WITNESS: There is a private 40-unit subdivision
11 in there that has their own central water system.

12 COMMISSIONER JABER: A privately owned water facility
13 that is exempt?

14 THE WITNESS: It is a private homeowners association
15 type situation. They all got together right in here and built
16 their own central water system. And that is how those people
17 get their service because the water quality is not that good.

18 COMMISSIONER JABER: Okay. Is it your understanding
19 that that homeowners association is probably exempt from
20 regulation?

21 THE WITNESS: I do not know their legal status. I
22 haven't been asked that question, but I do know it is a central
23 water system and I do know that it is not Volusia County's
24 system.

25 COMMISSIONER JABER: Do you know the name of the

1 homeowners association?

2 THE WITNESS: No, I don't.

3 COMMISSIONER JABER: Okay. With the cluster of homes
4 that you referenced that have the wells and the septic tanks,
5 are there any county or city requirements that if there is an
6 available central facility in the future that they would be
7 required to interconnect?

8 THE WITNESS: There is an HRS requirement that when
9 you have central water service -- a central sewer service,
10 excuse me, on a septic tank that one year arrears notification
11 availability connection would be made giving the person some
12 time to effectuate that. And I do not know in Volusia County
where there is a central water system available if there is a
mandatory connection for those entities other than the county.

15 COMMISSIONER JABER: That is on the septic tank side.

16 THE WITNESS: On the water side. In the county I
17 don't know if there is a ordinance like that.

18 COMMISSIONER JABER: Okay. Thank you.

19 BY MR. DETERDING:

20 Q Mr. Hartman, is Farmton currently charging for
21 service?

22 A No. No, they are not currently charging. But they
23 intend to charge for service, and I have been informed that is
24 a corporate decision. They are going to do it.

25 Q You referred to, I believe, Mr. Thomas, the president

1 of the hunt club?

2 A Yes.

3 Q Is he the person you were referring to in stating
4 that there was an expected increase in demand within those hunt
5 clubs?

6 A Yes. He in his deposition testified that, you know,
7 due to the lack of water, I guess there is a little gender bias
8 here, but a lot of the women wouldn't go out there because they
9 can't take a shower and that kind of thing. And with water --
10 I shouldn't laugh. There were more men doing that and not
11 taking showers, if you know what I'm trying to say. A little
12 bit of a gender bias there.

13 And he said that, you know, these are expensive
14 facilities. Hunting is not an inexpensive endeavor, harvesting
15 wildlife. They have nice, you know, motor homes and those
16 kinds of things. And I'm sure that -- and he has testified
17 that more of the family -- you know, I have a daughter, and
18 when she was 17 I doubt strongly she would go some place for
19 three or four days without a shower. So, I mean, this is what
20 we are trying to remedy.

21 And they want to have it. It is a family hunting,
22 family wildlife, family natural experience. That is why they
23 have kept the costs so low is to encourage a family connection
24 as a very healthy outdoors experience. And right now the
25 families would -- you know, they want water service for their

1 families.

2 Q You mentioned ECFS, I believe, in responding to a
3 question concerning bulk service, did you not?

4 A Yes.

5 Q At the time of certification of the ECFS system, were
6 they aware of the customer you mentioned, Reliant Energy?

7 A No.

8 MR. BOSCH: Objection. This is getting outside the
9 scope of the cross examination. He mentioned it, but there was
10 no details and there was no question directly asked on that
11 point, so to go any further on that particular issue is
12 irrelevant.

13 MR. DETERDING: Well, he asked him about the nature
14 of the bulk service. And I'm trying to find out from this
15 witness several things about the nature of the anticipated bulk
16 service and those that may not be anticipated.

17 COMMISSIONER DEASON: I believe that the redirect is
18 within the scope of the cross-examination. I will allow the
19 question.

20 BY MR. DETERDING:

21 Q But this is a bulk customer that is served by ECFS
22 now?

23 A Yes. There are several bulk services that were not
24 envisioned at the time of the application that occur right now.
25 The Osceola County fire district station is a very strong

1 public health, safety, and welfare entity that now can have a
2 fire station out there that now has the raw water to fill those
3 tankers to put out fires. I mean, it has been a tremendous
4 benefit to the area. That bulk service is provided at, you
5 know, like 20 cents or 25 cents a thousand gallons, which is,
6 you know, very inexpensive.

7 Reliant Energy Corporation would not have a power
8 plant, a 500-megawatt merchant power plant down there without
9 adequate service of water supply, and that was a limiting
10 factor. And three of the ECFS wells were intertied to provide
11 that service. And that is a major -- you know, that is a
12 500-megawatt power plant that was not envisioned at the time.
13 And there is others. I mean, some of the stations, some
14 microwave stations and other things like that now have water
15 service that didn't have water service before.

16 And, that is just to bulk customers. But there is a
17 tremendous benefit to people who, you know, utilize the
18 property, and people that live there and people that work
19 there. People that need water to have good potable water is
20 appropriate. And that is all we are talking about here is
21 providing good potable water and a proper water supply for the
22 health, safety, and welfare of the area.

23 Q Are there other types of bulk customers that would be
24 jurisdictional, in other words, nonexempt under the statute?

25 A Oh, yes. Someone like Reliant Energy Corporation is

1 not exempt under the statute, and there's many other entities
2 that would not be exempt.

3 Q Would industrial customers requesting raw water be
4 exempt?

5 A No.

6 Q Would mobile home parks providing service to their
7 residents, who themselves are exempted entities, be exempt
8 service from a bulk provider?

9 A No. And that is one of the options in serving Bell
10 Ridge, the 100 units there. We could provide a bulk meter to
11 serve that 100 units. When I was in there, there are a lot of
12 people that live there, so, you know, that is a major enclave,
13 if you will. It must be 60 acres or something. I may be wrong
14 with the acreage, but maybe 40 acres of property. I don't know
15 exactly the acreage. I shouldn't have stated the acreage. But
16 when driving through there, it is dense. It has quite a few
17 people living there and they use -- a lot of those people use
18 the hunting there and other places. They are hunters sort of
19 wanting to get out in nature or people who want to live out in
20 the natural setting.

21 Q Mr. Knox asked you about the financial statements of
22 Farmton. Has Farmton received any revenue to this date?

23 A No, not to my knowledge other than from the parent.

24 Q Could they receive revenue for water service without
25 being certificated?

1 A No.

2 Q In your GCH-1, which is the application -- do you
3 have that handy?

4 A Go ahead.

5 Q Would you please refer to Exhibit E?

6 A I may not have that right in front of me. Thank you.

7 Q That is Exhibit E to the application?

8 A Yes.

9 Q And what is that?

10 A It's basically a statement of assets, liability, and
11 capital, and it shows that at Farmton Management, LLC, there is
12 \$1,040,000 in cash or cash equivalent assets, and then there is
13 an investment asset listing of \$10,000, for total assets of
14 \$1,050,000. So, therefore, there is about a million bucks. I
15 was made aware that there was about a million dollar transfer
16 from the parent to this entity, to Farmton Water Resources,
17 LLC, which is held for use by Farmton Water Resources.

18 Q And that is pretty much entirely liquid assets?

19 A Yes. I'm not a -- Tara Hollis is a CPA, but from an
20 engineering standpoint in utilities, 1,040,000 of that is in
21 cash or cash equivalence.

22 Q And the second page of that exhibit is an affidavit?

23 A Yes.

24 Q And that is a sworn statement from Farmton
25 Management?

1 A Yes, it is, and it is dated the 16th of December,
2 2002, that they will provide the financial resources to cover
3 all capital needs and any operating deficits of water service.

4 Q Have they done so thus far?

5 A Yes, they have.

6 Q Are you aware of a sworn affidavit from Miami Corp
7 committing similar commitment to provide necessary funding?

8 A Yes.

9 Q Does any original certificate -- utility requesting
10 an original certificate need its certificated service territory
11 in order to serve its first customers?

12 A Do they --

13 Q Well, let me back up. Let me preface that a little.
14 Mr. Knox was asking you about whether or not you needed to
15 certificate the entire area in order to serve the first
16 customers, the hunt club?

17 A Uh-huh.

18 Q As they now exist. Does any utility need its entire
19 certificated service territory the day it becomes a utility?

20 A Yes. The initial certificate area can be amended,
21 but, yes, you need the entire service area, then you can plan,
22 provide for capital funding, do all the aspects you need to do
23 as a utility to provide for services and to respond to customer
24 requests. But you also are taking on the obligation to provide
25 the services to those customers within that certificated area,

so it is not just a hallow thing. You have the obligation for
2 service as well as the certificated area for service.

Q Does Farmton intend to serve all requests for service
4 within the area requested?

5 A Yes.

6 Q Doesn't Brevard County claim all of the
7 unincorporated county as its service territory?

8 A Yes.

9 Q Doesn't Volusia County claim all of the
10 unincorporated county as its service territory?

11 A Yes, in what I would call a countywide determination.
12 And in the counties that I have participated with them in doing
13 similar things, the county commissions have made the finding
14 that it is in the public interest to have the unincorporated
15 area people to get utility service. In other words, the
16 utility service is in the public interest, public health,
17 safety, and welfare. So the public interest aspect has already
18 been determined in the counties that I served when they made
19 countywide service areas, or it is not consistent to have a
20 countywide service area and then say, no, you can't have
21 utility services.

22 In the countywide service area there is an
23 intention -- it is in the public interest to have service. And
24 many counties in the State of Florida have done that. The
25 board of county commissioners have deliberated recently in

1 Marion County and many others, DeSoto County, et cetera, have
2 deliberated and said that there is a preference to have good
3 quality water provided to their people in their county. You
4 know, not to live off wells and septic tanks.

5 Q Are there areas within Brevard and Volusia County
6 that are currently not in need of service and yet are included
7 within those territories claimed by those counties?

8 A Absolutely. I think that was testified to by Mr.
9 Martens in his deposition.

10 Q Mr. Bosch, I believe, asked you about the location of
11 Edgewater in relation to the territory of Farmton?

12 A Yes.

13 Q They are the one entity city that is immediately
14 adjacent to the territory?

15 A Yes.

16 Q Did they object to this application?

17 A Initially they had an objection, but they have
18 settled their objection, similar to many other applications and
19 settlements that they have settled with Farmton Water Resources
20 relative to this application. The City of Edgewater has a
21 settlement agreement that was entered into between the parties.

22 Q So they withdrew their opposition to this
23 certification?

24 A Yes.

25 Q You were asked about the technical feasibility of

1 Volusia providing service to the area. Do they have any
2 facilities within miles of the areas currently in need of
3 service within the Farmton territory?

4 A No, they do not. I believe, the counsel -- Mr. Bosch
5 talked about utilizing an agreement with another entity that
6 would also have to build facilities in the hypothetical to then
7 provide for service. But the other entity -- we are the
8 consultants for utilities for Deltona, which is the next
9 closest -- next closest one with their wells over here, and,
10 you know, they have no problem with this. They are the largest
11 city in the county.

12 Q You were asked about WAV and its relationship to the
13 prior entity, the Volusian Water Alliance. Can you explain the
14 difference between those two entities and who participates in
15 each and the nature of them as far as inclusion of all the
16 possible resources, water resources?

17 A Yes. The first one, the Volusia Alliance
18 organization was a planning and water resource group that had
19 scientific and technical capabilities with their membership,
20 and they had meetings with agriculture, with private utilities,
21 with all of the water users. It was a stakeholders type group.
22 The major water users, if they wanted to participate, they
23 could participate in this group for comprehensive water
24 resource planning capability. There was no preclusion to
25 eliminate agriculture, there was no preclusion to eliminate

1 industry, there was no preclusion to eliminate commerce, there
2 was no preclusion to eliminate power and power water needs.
3 There was no preclusion for investor-owned utilities. There
4 was no preclusion for other activities which now under the
5 interlocal agreement has been limited solely to public
6 government.

7 Q That latter, that limitation is --

8 A Under WAV. But a lot of information that WAV uses
9 was some information that was developed under the prior
10 organization. I mean, they use some of the documents.

11 Q WAV was only created recently?

12 A Yes.

13 Q In your opinion, is this new configuration better or
14 worse than the prior configuration under the Volusia Water
15 Alliance as far as planning for water resource management and
16 demands?

17 A Well, I wouldn't characterize it as -- it is a
18 governmental planning, which is only a small portion. Power
19 plant water use is huge. I mean, agricultural water use is
20 huge. In Volusia County it is probably bigger than the
21 governmental water use. So they are really missing the boat.
22 If you are planning for water resources you would think that
23 you would use the major users of water use in the organization
24 for planning those water resources. But I think it has its --
25 it is superior in a fashion that it can build facilities and

1 have some other rights and privileges conveyed to it through
2 the interlocal agreement of government, but it is limited to
3 only including government and governments, you know, public
4 government's wishes and desires as they would meet and discuss
5 it, and it precludes so many other water uses.

6 Under the water management district they have -- if
7 you look at Volusia County, there is more water uses in Volusia
8 County outside of government than inside government. So it is
9 a minority, if you will, or a small portion, I guess. It is a
10 minor part of the overall water uses in the county that are
11 represented by that organization versus the majority of water
12 resources and planning that has all the other uses. And I
13 think that is a failing, if you will, if you were asking about
14 that. I think that it doesn't include all the aspects that
15 should be included, but that is just my opinion.

16 It has benefits that it has more teeth. It has
17 more -- for government it has benefits that they can bond
18 together and do things as a stronger entity for alternative
19 water supplies. It has a voice. It is stronger. It is more
20 similar to the Tampa Bay water situation where you have a
21 stronger voice with the water management district, with all
22 governments getting together. So as a public interest group,
23 if you will, and developer of future sources, I think that WAV
24 has a benefit, I mean, for government. But it is not all
25 things, and it is definitely not the majority. And it is not

1 going to have good planning for the entire county. I think the
2 water management district now has more responsibility because
3 of the exclusions. The planning aspect I think is very weak
4 from that standpoint.

5 MR. DETERDING: That's all I have, Commissioner.

6 COMMISSIONER DEASON: Exhibits.

7 MR. DETERDING: Yes. Are we going to need to move
8 each of these, or are they stipulated into the record?

9 COMMISSIONER DEASON: No, we are going to need to
10 move each of these. They have identified within Exhibit 1, but
11 we need to move each exhibit individually as witnesses take the
12 stand.

13 MR. DETERDING: Okay. I would move GCH-1 and GCH-2
14 into the record.

15 COMMISSIONER DEASON: That would be Exhibits 3 and 4?

16 MR. DETERDING: That is correct.

17 COMMISSIONER DEASON: Okay. Without objection?
18 Hearing no objection, show Exhibits 3 and 4 are admitted.

19 (Exhibits 3 and 4 admitted into the record.)

20 COMMISSIONER DEASON: We earlier had a document that
21 was utilized during cross-examination, there was no exhibit
22 number requested. What is the status of this?

23 MR. McNAMARA: Commissioner, I don't know what the
24 appropriate procedure would be. Normally, I would introduce it
25 during our case in chief, but I would be happy to introduce it

1 as an exhibit now. I think it was properly identified by the
2 witness.

3 COMMISSIONER DEASON: Just so the record is clear, we
4 will go ahead and identify this. Is this going to be -- let me
5 ask this. This is going to be introduced at a later time by
6 another witness?

7 MR. McNAMARA: I would be happy to have it introduced
8 through Mr. Hartman. But normally the process in the other
9 administrative hearings I have been involved with is you have
10 the witness properly identify the exhibit and then you actually
11 move it into evidence during your case in chief. I would be
12 happy to move it into evidence now if there is no objection
13 from Farmton's counsel.

14 MR. DETERDING: Commissioner, we have no objection to
15 it being moved in, but it is already a component of -- I
16 believe, of the GCH-1, which is now Exhibit 3.

17 COMMISSIONER DEASON: Okay.

18 MR. McNAMARA: Commissioner, it was my understanding
19 that this is a May 6th, 2004, change which was not included in
20 the original application.

21 MR. DETERDING: I apologize. It is a revised version
22 of that, and we have no objection to it being moved in.

23 COMMISSIONER DEASON: Okay. We will identify it as
24 Hearing Exhibit Number 38, and there is no objection to its
25 admittance, therefore, show that Exhibit 38 is admitted.

1 (Exhibit Number 38 marked for identification and
2 admitted into the record.)

3 COMMISSIONER DEASON: Thank you, Mr. Hartman.

4 THE WITNESS: Thank you.

5 COMMISSIONER DEASON: We are going to take a
6 ten-minute recess, and we will reconvene. We will probably be
7 breaking for lunch sometime after 1:00 o'clock, so just for
8 planning purposes, to put you on notice. But we will take a
9 ten-minute recess at this point.

10 (Recess.)

11 COMMISSIONER DEASON: Let's call the hearing back to
12 order. Okay. During the break I was informed that there may
13 be a possibility of going ahead and moving all of the exhibits
14 that are identified within Hearing Exhibit 1, moving the entire
15 list and the exhibits into the record. Staff, is that your
16 understanding?

17 MS. FLEMING: Yes, that is correct, Commissioner.

18 COMMISSIONER DEASON: It is my intent then that would
19 be exhibits -- we already have it identified and admitted -- 1,
20 2, 3, and 4, and that would constitute Exhibits 5 through 37.
21 So, unless I hear an objection, I am going to go ahead and
22 admit Exhibits 5 through 37. Hearing no objection, show then
23 that Exhibits 5 through 37 are admitted into the record. **Maybe**
24 that will expedite things. And I appreciate that being brought
25 to my attention.

1 (Exhibits 5 through 37 admitted into the record.)

2 COMMISSIONER DEASON: Mr. Deterding or Mr. Wharton,
3 you may call your next witness.

4 MR. WHARTON: Yes. We would call Mr. Howard Landers.

5 HOWARD M. LANDERS

6 was called as a witness on behalf of Farmton Water Resources,
7 LLC, and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WHARTON:

10 Q Sir, would you please state your name and
11 professional address for the record.

12 A Howard M. Landers, 326 Settlers Lane, Charlotte,
13 North Carolina 28202.

14 Q Have you previously been sworn today?

15 A Yes, I have.

16 Q All right. Have you been retained by Farmton to
17 provide testimony and expert opinions in this proceeding?

18 A Yes, I have.

19 Q And did you prepare on behalf of Farmton prefiled
20 direct testimony consisting of four pages?

21 A Yes, I did.

22 Q And if I asked you those same questions here today,
23 would your answers be the same?

24 A Yes.

25 Q Sir, do you have any corrections or modifications to

1 make to that testimony at this time?

2 A No, I do not.

3 Q All right. Did you also prepare in conjunction with
4 the preparation of that testimony an exhibit, which is your
5 resume, which has now been stipulated as Exhibit 5?

6 A Yes, sir.

7 Q All right. Sir, would you please summarize your
8 direct testimony.

9 A Yes. My direct testimony consists of approximately
10 six points. First of all, in my opinion Farmton is proceeding
11 in the proper order to go to the Public Service Commission for
12 a certification of a water territory as a first step in
13 commencing any activity related to providing a water service.

14 Secondly, I have stated that Florida's planning
15 statute, Chapter 163, Part 2, does not enable local government
16 to supersede Public Service Commission authority. At 163.3211,
17 conflict with other statutes says, paraphrasing, that nothing
18 in this act is intended to withdraw or diminish the legal
19 powers and responsibilities of other state agencies, their
20 established powers.

21 Third, the creation of a Public Service Commission
22 service territory is not development as defined in Chapter
23 380.04 where development is defined, which is cross-referenced
24 by Chapter 163, the comprehensive planning statute. And,
25 therefore, the creation of a public service territory is not

1 subject to the comprehensive planning statute.

2 Even if Farmton -- point four is even if Farmton were
3 proceeding with development, the comp plans of Brevard County
4 and Volusia County are not as limited as statements made by the
5 counties' witnesses would lead us to believe, and I do have two
6 exhibits that I would like to refer to very briefly.

7 Exhibit HML-2 is from the Brevard County land
8 development regulations, and it provides a linkage between
9 agricultural land use designation and a variety of zoning
10 classifications. And when you look at that then there are --
11 you look through those zoning classifications, there are a
12 large number of uses other than residential and agricultural
13 which the county has alluded to.

14 Similarly, Exhibit HML-4, which is from the Volusia
15 County land development regulations, provides a similar type of
16 cross-reference between the three categories of -- three land
17 use designations or categories, and then cross-references those
18 to different zoning categories that can be -- zoning categories
19 that are consistent with the comprehensive plan. And all of
20 that is pursuant to state statute that the land development
21 regulations are one of the implementing entities or
22 implementing tools of comprehensive plans. And, therefore,
23 statements that have been made that low density residential or
24 very large lot residential is what the comp plan allows is not
25 the case. That these plans through the land development

1 regulations do allow a great variety of uses that would benefit
2 from or actually require central water services.

3 These provisions of the comp plan are also responsive
4 to state rules on the prevention of urban sprawl. Both of
5 those county plans are in compliance. They, therefore, have
6 been judged by the State of Florida, Department of Community
7 Affairs, to meet all requirements related to -- contained under
8 Rule 9J-5. Therefore, references to sprawl, the comprehensive
9 plans contain numerous provisions as required by statute to
10 prevent sprawl and nothing that would occur through the
11 creation of a Public Service Commission service territory would
12 in any way hinder or obviate those sprawl-preventing
13 provisions.

14 Fifth, the counties' testimony has acted as though
15 planning is a static process. It is not. Chapter 163 provides
16 at least three means through which a comprehensive plan can be
17 amended, and amendments to the comprehensive plan are very
18 common.

19 And then, finally, in my direct, a Public Service
20 Commission certificate does not create any impacts on natural
21 resources. And that is parallel to my statement that creation
22 of a public service certificate is not development. I believe
23 that any reference to a water service territory creating any
24 impacts on natural resources can be seen on the map that Mr.
25 Hartman has prepared and been using, his large exhibit. Every

1 one of those water service areas, utility districts, or
2 whatever they are that are shown on there are a solid color.
3 They cover the entire area. There are numerous provisions in
4 every comprehensive plan that protects the natural resources of
5 that jurisdiction, and the mere fact that you can provide water
6 within -- or any other utility in no way constrains or limits
7 the application of those protections of natural resources.

8 That's a summary of my original statement.

9 MR. WHARTON: Commissioner Deason, we would request
10 that Mr. Landers' prefiled direct testimony be inserted into
11 the record as though read.

12 COMMISSIONER DEASON: Without objection it shall be
13 so inserted.

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2 APPLICATION OF FARMTON WATER RESOURCES, LLC
3 FOR AN ORIGINAL WATER CERTIFICATE
4 DOCKET NO.
5 ON BEHALF OF FARMTON WATER RESOURCES, LLC
6 DIRECT TESTIMONY OF HOWARD M. LANDERS

- 7 **Q.** Please state your name, business affiliation and address.
- 8 **A.** I am Howard M. Landers. I practice as an individual consultant as Howard M. Landers,
9 AICP, Urban Planning Consultant. My address is 326 Settlers Lane, Charlotte, NC
10 28202.
- 11 **Q.** Briefly, please state your educational background.
- 12 **A.** I hold a Bachelor of Architecture degree from Virginia Polytechnic Institute, granted in
13 1965, and a Master of Science in Urban and Regional Planning from Florida State
14 University, granted in 1966. In addition, I completed the course work and had an
15 accepted dissertation prospectus for the PhD in Urban and Regional Planning from
16 Florida State University from 1969 through 1971. I did not complete the degree.
- 17 **Q.** How many years and where have you practiced as an urban planner?
- 18 **A.** I have 37 years of professional experience, 31 of which were accrued in Florida, three in
19 Denver, Colorado, and in Charlotte, North Carolina, for the past three. However,
20 throughout these last three years, I have continuously served clients in Florida.
- 21 **Q.** Do you hold any professional registrations?
- 22 **A.** I am Certified as an Urban Planner by the American Institute of Certified Planners and am
23 actually a Charter Member of AICP.
- 24 **Q.** Have you ever testified as an expert before courts, administrative tribunals, or in quasi-
25 judicial venues?

1 A. Yes. I have testified before the Public Service Commission. I have served as an expert
2 witness both for and against the Florida Department of Transportation on several eminent
3 domain judicial proceedings. I have served as an expert witness on several
4 Development of Regional Impact (DRI) and comprehensive planning issues in the State
5 of Florida's administrative hearing process. I have testified in quasi-judicial venues
6 before planning commissions, and county and city commissions and councils on
7 numerous rezoning, DRI and comprehensive plan amendment cases.

8 Q. What is the purpose of your testimony in this proceeding?

9 A. I have been asked by Farmton Water Resources, LLC, to render an opinion related to the
10 Farmton Application for PSC Certification of a Water Utility and its consistency with
11 applicable local government comprehensive plans.

12 Q. In responding to that request, what documents have you reviewed?

13 A. In considering the Application and the PSC criteria, I have reviewed Farmton's application
14 materials. I have reviewed and analyzed selected elements of the Comprehensive
15 Planning and Land Development Regulation documents of Brevard County and Volusia
16 County (the two applicable local governmental jurisdictions); including those elements
17 and sub-elements related to Future Land Use, Potable Water Supply, Conservation, and
18 others for general interest. I have reviewed the Land Development Regulations of both
19 Counties. I have also reviewed the Protests to the Farmton Application that have been
20 filed by Brevard County, Volusia County, and the Cities of Titusville, Edgewater and New
21 Smyrna Beach.

22 Q. Based upon those reviews and your experience as a professional urban planner, what is
23 your professional opinion concerning the consistency of Farmton's request with the
24 comprehensive plans of Brevard County and Volusia County?

25 A. Based upon this review, it is my professional opinion that granting of this proposed

1 certificate to Farmton Water Resources, LLC, is consistent with the Comprehensive
2 Plans of both Brevard County and Volusia County.

3 Q. What elements from your review and experience support this opinion?

4 A. There are several points to support this opinion:

5 First, Farmton is proceeding in proper order as required by Florida Statutes. An
6 "Application for Original Water Certificate" with the PSC has been filed and all affected
7 jurisdictions have been notified of the Application. This is the first step in a process.
8 Second, Florida's Planning Statute, Chapter 163 Part II, does not enable local
9 governments to regulate private utility certificated service areas through the
10 comprehensive planning process. In fact, Chapter 163 at 163.3211, Conflict with other
11 Statutes, specifically provides that: "Nothing in this act is intended to withdraw or diminish
12 any legal powers or responsibilities of state agencies or change any requirement of
13 existing law that local regulations comply with state standards or rules." In other words,
14 the Comprehensive Planning process does not and cannot supercede the authority of the
15 PSC to regulate Private Utility Certificated Service Territories. Upon approval by PSC,
16 other steps as may be regulated by Brevard and Volusia Counties will be followed.
17 Third, the creation of a regulated Water Utility and designation of its Service Territory by
18 the PSC is not development subject to comprehensive plan regulation and does not in
19 itself stimulate development.
20 Fourth, there are provisions in the land use elements and the respective land use
21 designations applied to Farmton's lands in the plans of both Counties through which
22 development that requires or can greatly benefit from central water service can be
23 pursued and potentially implemented. Additionally, these provisions are specifically
24 responsive to State Rules related to the prevention of urban sprawl.
25 Fifth, as defined by Chapter 163, planning is not a static process. Amendments to all

1 aspects of the local comprehensive plan are provided for and actually required.
2 Sixth, the PSC certification of Farmton does not create any impacts on natural resources.
3 The plans of both Counties, as well as the rules and regulations of other agencies,
4 contain extensive provisions for the protection of natural resources including wetlands,
5 surface waters and the aquifers with which any development potentially related to
6 Farmton will have to comply. That is true for any water service utility – county, municipal
7 or private – that would be installing or extending any facilities.

8 Q. Do you have a resume?

9 A. Yes, my resume is attached as Exhibit HML-1.

10 Q. Do you have any further testimony in this regard at this time?

11 A. No, I do not.

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1 MR. WHARTON: We would tender the witness.

2 COMMISSIONER DEASON: Mr. McNamara, do you wish to
3 go --

4 MR. McNAMARA: I believe Mr. Knox will go first.

5 COMMISSIONER DEASON: Okay. Very well. Mr. Knox.

6 MR. KNOX: Thank you.

7 CROSS EXAMINATION

8 BY MR. KNOX:

9 Q Mr. Landers, you are familiar with the Brevard County
10 comprehensive plan potable water element?

11 A Yes.

12 Q And you have read Policy 3.4 and 3.5?

13 A Yes.

14 Q Then you are aware that Policy 3.4 requires newly
15 proposed service areas to come before the board of county
16 commissioners for approval as well as any other applicable
17 agencies?

18 A That is what it says. And in my opinion we are in
19 that process now. As I said earlier, the Public Service
20 Commission is the first step in a process.

21 Q Okay. Well, we will get to that in a second. But
22 you agree that is what it says, correct?

23 A Yes, sir, I believe that is what it says.

24 Q Okay. And you will acknowledge -- have you read
25 Ordinance Number 3-32?

1 A I believe I read a draft of it before it was adopted.

2 Q Okay. So you are familiar with the fact that the
3 county commission has created a special district to approve the
4 creation of water and sewer service, or water and sewer systems
5 in the county?

6 A The ordinance that I have read created a county-wide
7 water district.

8 Q Okay. And under that ordinance the county
9 commission, acting as the district board, has to consent before
10 a water system can be constructed, does it not?

11 A Before a water system can be constructed?

12 Q Yes.

13 A I believe that it does say that as an extension to
14 existing water systems, et cetera.

15 Q Okay. So if Farmton succeeds in certificating 50,000
16 acres in accordance with the application it has filed, it will
17 have an obligation to provide service, will it not?

18 A Yes.

19 Q Well, Mr. Landers, tell me, how is Farmton going to
20 be able to guarantee that it is going to provide service if it
21 hasn't gone before the Board of County Commissioners to obtain
22 their consent to building facilities that will provide those
23 services?

24 A Well, in my opinion -- again, as I stated, the
25 primary authority here is the Public Service Commission. We

1 are at the first step of what could be a series of steps, and
2 the Public Service Commission can grant that authority. Then
3 as Farmton proceeds there may be any variety of other steps
4 that have to be approved for a variety of agencies.

5 Q Okay. Well, would you agree with me that until
6 Farmton has gone to the Board of County Commissioners under
7 Ordinance 3-32, it will not have received the county consent to
8 build water facilities on its property?

9 A Sir, I don't believe --

10 MR. WHARTON: Objection, Commissioner. I don't blame
11 Mr. Knox at all because it is difficult to be in his chair, but
12 I think we are getting into the rebuttal. I don't think there
13 is anything in these four pages of direct about this county
14 ordinance, and I don't think Mr. Landers commented upon it in
15 any way, shape, or form. I think it is beyond the scope of
16 direct. I think he does talk about it in rebuttal.

17 COMMISSIONER DEASON: There has been an objection it
18 is beyond the scope of the direct testimony.

19 MR. KNOX: Well, if we want to wait for the rebuttal,
20 I will be glad to do it. Otherwise, I can get it all done
21 right now.

22 MR. WHARTON: Well --

23 COMMISSIONER DEASON: Do you withdraw your objection?

24 MR. WHARTON: No. I think we should wait and do it
25 in the proper order, just so that there is a little more

1 cohesiveness to it.

2 COMMISSIONER DEASON: Mr. Knox, you concede that your
3 questions are outside the scope of the prefiled direct?

4 MR. KNOX: I will concede they go to the rebuttal.

5 COMMISSIONER DEASON: Okay. I would just ask you to
6 save your questions then for the rebuttal.

7 MR. KNOX: Okay.

8 COMMISSIONER DEASON: Very well.

9 BY MR. KNOX:

10 Q Mr. Landers, let's talk a little bit about your
11 assessment of urban sprawl, if you would. Have you been out to
12 see this property at all?

13 A Yes, I have.

14 Q And how would you characterize it?

15 A As rural, agricultural, civil cultural lands.

16 Q And there is no residential development out there at
17 this time is there?

18 A Well, there is some.

19 Q No significant residential development?

20 A No, not within the bounds of the property.

21 Q Would you agree with me that there are wetlands on
22 this property?

23 A Yes, I would.

24 Q And are you familiar with the county comprehensive
25 plan policies and regulations governing wetlands?

1 A Yes, I have read them.

2 Q And do you have any opinion as to whether or not the
3 wetlands would be able to be developed?

4 A Well, there is a whole -- as I said in my summary,
5 there is a whole body of regulation both by the county, the
6 State of Florida, and the United States government that
7 regulates impacts upon wetlands and other natural resources.
8 And within the constraints of those regulations, those natural
9 resources are properly managed. But to say that no development
10 is allowed in wetlands areas is not true. There are ways of
11 mitigating impacts on wetlands for development. But I go back
12 to my basic premise that creation of a Public Service
13 Commission certificated area in and of itself does not impact
14 wetlands. It does not obviate or negate the other regulations
15 on wetlands.

16 Q Okay. That's fair. But we are dealing with 50,000
17 acres here, correct?

18 A Yes, sir.

19 Q And we are dealing with the proposal to establish a
20 water system in that 50,000 acres, correct?

21 A That's correct.

22 Q And in the future sometime, who knows when that is
23 going to be, there is a chance that large scale commercial or
24 residential development may occur on this 50,000 acres, is that
25 correct?

1 A I didn't hear that as a question, I'm sorry. In the
2 future there is that potential?

3 Q Yes.

4 A That development would occur, yes, sir.

5 Q Now, under those circumstances, there are going to be
6 areas that are preserved, is that your experience?

7 A Yes, sir.

8 Q And under those circumstances there would be higher
9 density developments that may occur sometime in the future,
10 correct?

11 A There could be, yes, sir.

12 Q And a water system, a potable water system would be
13 required basically in order to serve those particular kinds of
14 developments, wouldn't it?

15 A If that is a choice of the owner to develop or to
16 sell to others to develop, yes, sir.

17 Q And, in fact, you have indicated in your direct
18 testimony that the current regulations would even require a
19 central water system of some kind if they were going to be
20 developed to their full potential?

21 A I believe I have. I don't know that I did that in my
22 direct. I would have to look back and see.

23 Q Well, I thought you just told us that in your
24 summary?

25 A That's fine.

1 Q All right. So since that was part of your summary,
2 and since that was part of your direct testimony, I will once
3 again raise the issue as to how Farmton is going to be able to
4 guarantee that that service is going to be available at
5 some time in the future if they have not come to the county
6 commission for approval?

7 A Well, again, there are all sorts -- if they want to
8 develop facilities that are regulated by the county, they will
9 have to come to the county to get those approvals. And, you
10 know, there is a whole array of approvals that have to be
11 obtained in order for anybody to develop under Chapter 163
12 under anybody's comprehensive plan.

13 You are asking the question as though the existence
14 of those plans prohibit development. In my opinion that is not
15 the case at all. The comprehensive planning process is
16 established as a growth management tool, and I put emphasis on
17 that word management. It is to manage how growth and
18 development occur, not to prohibit growth and development. **And**
19 each of the counties involved has a comprehensive plan that
20 sets forth a very complex set of rules as required by Florida
21 Statutes on how any landowner or any developer can go about
22 developing their land. And, yes, there is a whole variety of
23 regulations that play out if and as anybody were to develop
24 regulated development on this land.

25 Q Okay. Well, if we assume that the future is six

1 months from now and somebody walked into Miami Corporation
2 headquarters and proposed to buy 10,000 acres to build a
3 development of regional impact, how would Miami Corporation or
4 Farmton be able to ensure them they would be able to get
5 central water?

6 A Well, again, there is a whole series of steps that
7 would have to be gone through. First of all, they have a
8 Public Service -- let's assume that by that time they have a
9 Public Service certificate to provide water, they are a
10 bona fide water service utility. I have worked in numerous
11 cases on behalf of developers where a contract or an option to
12 purchase land contained any number of conditions that had to be
13 satisfied before that contract were executed. So that, say,
14 XYZ Development Company wants to buy those 10,000 acres, as a
15 prudent buyer they would have a number of conditions. Some of
16 those which they may go forth and satisfy, some of which the
17 landowner would have to go forth and satisfy.

18 You just mentioned if they wanted to do a DRI. I
19 have worked in many cases where a developer was buying property
20 and the purchase contract on that property was subject to the
21 obtaining of a development order under 380.06 as a development
22 of regional impact. I have worked on many situations where the
23 provision of -- the successful provision of utilities,
24 extension of utilities, or provision of utilities was a
25 condition precedent to concluding a sale on that property. So

1 that is not at all uncommon.

2 You can't go out and accommodate -- I mean, conclude
3 all of these requirements under a variety of development
4 regulations without some specific development in mind. It is
5 not an abstract world. You have to start with something
6 specific and proceed to work through a number of approvals that
7 would be required to meet the specifics of that development
8 interest.

9 Q Okay. The beginning of your answer to my question
10 assumed that there was a certificated area that would allow
11 Farmton to provide that water system, correct?

12 A Yes.

13 Q All right. Would you agree with me that Farmton
14 could not guarantee that it had the ability to provide water
15 service until it came to the county commission to obtain their
16 consent to build the facilities?

17 MR. WHARTON: Objection, it calls for a legal
18 conclusion, and a darn complicated one, too. It is certainly
19 part of what we will brief, that this county has set up an
20 ordinance saying they can override your jurisdiction, in our
21 opinion. And we are going to brief that issue, and I think you
22 are going to have to decide it. But this witness can't help
23 you out there.

24 COMMISSIONER DEASON: You heard the objection. Is
25 there a response to the objection?

1 MR. KNOX: My response, Mr. Chairman, is that a
2 planner who is providing that kind of advice to his client is
3 going to have to know his limitations and what they can and
4 cannot do. And I think it is within his confidence to answer
5 that question.

6 COMMISSIONER DEASON: I will allow the response
7 within the confines of the witness' expertise.

8 THE WITNESS: Well, again, I'm not an expert on what
9 exactly that new ordinance says. I will stand with what I have
10 said previously. There are any number of approvals that may
11 have to be obtained, and a prudent buyer and a prudent seller
12 would understand those and move forward to satisfy those.
13 Whether this particular one which may be contrary to Public
14 Service Commission authority applies, I can't say specifically.
15 But I will in the general say that there are a whole variety of
16 regulations that have to be met prior to development.

17 BY MR. KNOX:

18 Q Okay. Well, I think I need a yes or no answer to the
19 question. And the question is simply this: If the
20 certificated -- if Farmton has a certificated area that
21 requires them to provide service, how are you, as a planner,
22 going to advise your client that they have that ability to
23 provide service if they haven't gone to the county commission
24 to obtain consent?

25 MR. WHARTON: Objection, it is outside the scope,

1 well outside the scope.

2 COMMISSIONER DEASON: There has been an objection,
3 outside the scope of the prefiled direct testimony.

4 MR. KNOX: I think it goes right to his prefiled
5 direct testimony, which is the ability to use this property
6 for future --

7 MR. WHARTON: I withdraw the objection.

8 COMMISSIONER DEASON: Okay. You may answer the
9 question.

10 THE WITNESS: Would you repeat the question, please,
11 sir?

12 MR. KNOX: I will try and remember it.

13 BY MR. KNOX:

14 Q If Farnton is required to provide service once it is
15 certificated for this 50,000 acres, are they going to be able
16 to guarantee that they will be able to provide water service
17 without having gone to the county commission for consent to
18 build those facilities?

19 A Absolutely guarantee, I don't think they necessarily
20 can. But, again, within the scope of many real estate
21 transactions and development actions, there are any number of
22 regulations that no one can absolutely guarantee are going to
23 be met. But you have to go forward step-by-step through a
24 process. And the county's comprehensive plan lays forth a
25 whole array of steps that a developer would have to go through

1 or the landowner if they wanted to be a developer.

2 Q Thank you. I think you answered my question. Let's
3 go on to a different area. Have you ever in your -- you have
4 had a lot of experience in planning in Florida, haven't you?

5 A I believe going on 38 years.

6 Q Have you ever come across the term strict compliance
7 as it applies to planning activity?

8 A Strict compliance?

9 Q Strict compliance.

10 A I don't recall use of strict compliance as a term, as
11 a general term.

12 Q Okay. Thank you. Would you agree with me that
13 having a water system is a prerequisite almost to having any
14 kind of substantial residential or commercial development?

15 A Repeat that, I didn't hear the last few words. You
16 said something development and commercial development.

17 Q Is having a central water system a prerequisite to
18 having any kind of substantial commercial or residential
19 development?

20 A In most cases, yes.

21 Q Now, refresh my memory real quickly. Do you recall
22 whether you referred to the ECFS project or certificated area
23 in your direct testimony?

24 A Not in my direct testimony.

25 MR. KNOX: I will pick that up later, then. I have

1 no other questions.

2 COMMISSIONER DEASON: Mr. Bosch.

3 CROSS EXAMINATION

4 BY MR. BOSCH:

5 Q Mr. Landers, good afternoon.

6 A Good afternoon.

7 Q Sir, you haven't -- you haven't worked in Volusia
8 County since late '70s or early '80s, have you?

9 A No.

10 Q And that was prior to the growth management act that
11 was passed by the state legislature?

12 A Prior to 1985, the amendments that were called the
13 Growth Management Act after the 1973/'74 original local
14 government planning act.

15 Q But you have read and reviewed the county's comp plan
16 recently, correct?

17 A Yes, I have.

18 Q And will you agree with me that the guiding
19 principles of the comp plan -- at least I would assume for most
20 comprehensive plans, but particularly Volusia County, are to
21 accommodate projected population growth in a contiguous compact
22 pattern?

23 A Well, the comprehensive plan does say that, but the
24 comprehensive plan also provides provisions for clustering
25 development, for other opportunities to develop that is not

1 immediately contiguous and compact.

2 Q But as a general principle, a guiding principle for
3 the comp plans, is not growth supposed to be centered around
4 existing urban areas?

5 A Not necessarily, no, sir. I don't agree with that.

6 Q All right. The guiding principles that I just
7 mentioned that you don't agree with, will you agree with me
8 that certain guiding principles have been used by the county to
9 draft up various goals, objections, and policies that are
10 stated in the comp plan?

11 A I believe that is true, yes.

12 Q And that growth within the county has to be
13 consistent with these goals, policies, and objectives, correct?

14 A Yes.

15 Q With the exception that you just gave us, would you
16 agree with me that future urban areas within the county under
17 the comp plan should be concentrated within existing urbanized
18 cities, centered around those cities?

19 A Again, that is stated as a major theme or a major
20 objective or goal, but it is not exclusive.

21 Q Okay. And currently in Volusia County the existing
22 cities and most of the development is along the ocean on the
23 east, correct?

24 A Well, Deltona is the largest city in Volusia County
25 and it sits on the western side of the county.

1 Q So we have it on the east, and you have it on the
2 west along the St. Johns or toward that area, correct?

3 A That is the current --

4 Q And in the middle, in the center where Farmton is
5 located you have less development. And, in fact, you have a
6 lot more wilderness, forest, agricultural uses, correct?

7 A Those are the physical conditions of the county, or
8 the demographic conditions of the county, or however you want
9 to characterize it at this point.

10 Q And the entire property that forms the Farmton
11 proposed service area is actually considered within the NRMA --
12 do you know what the NRMA is?

13 A Yes, I do.

14 Q And would you just tell us what the NRMA is?

15 A Natural Resources Management Area.

16 Q And under the Natural Resource Management Area,
17 aren't there certain additional restrictions on land use?

18 A Well, there are three land use classifications
19 contained under the NRMA, or there are three that apply to the
20 Farmton; the environmental systems category, the forestry
21 resources category, and the --

22 Q And the agriculture?

23 A Yes, thank you. The agricultural category. And
24 those have various regulations and requirements, yes, sir.

25 Q There is various regulations, but all of those in

1 common have low density usages, don't they?

2 A They all -- yes, they all as a basic, as a basic
3 premise have low density uses. But as I said in my cross
4 reference to my Exhibit HML-4, there are also the opportunities
5 within the comprehensive plan to cluster that development, to
6 use planned unit development regulations to concentrate those
7 what you might call low density developments into a very
8 concentrated or multiple concentrated locations. And so there
9 are some 2,000 residential units permitted under your
10 comprehensive plan that all could be theoretically concentrated
11 in 10, 20, 30 acres.

12 Q Okay. But these 2,000 or so residential units, they
13 are not increased as a result of concentrating them, are they?
14 They are still just an absolute number, a maximum that you can
15 put in there on these 40-something-thousand acres in Volusia
16 County?

17 A Yes, sir.

18 Q And the purpose of the NRMA, the Natural Resource
19 Management Area, the purpose of that overlay is to protect and
20 manage these areas, these environmentally sensitive lands?

21 A In part.

22 Q And it does that by limiting the uses and limiting
23 the residential densities as we just discussed, correct?

24 A In part, yes.

25 Q Let's talk about urban sprawl. Urban sprawl is

1 something which is undesirable, isn't that true, from a
2 planning standpoint?

3 A A lot of people believe that. Generally I think our
4 profession accepts that it is.

5 Q Okay. And, in fact, a lot of what goes on in the
6 planning, the planning sector is actually to avoid urban sprawl
7 within developing counties, correct?

8 A That is correct.

9 Q And to do that, isn't it true that the planners like
10 to direct growth into existing urban areas?

11 A In part. Your comprehensive plan would allow those
12 2,000 dwelling units to be spread across the entire property in
13 10, 20, or 25-acre parcels, which to me is absolutely the worst
14 kind of sprawl.

15 Q Okay. But right now you are talking that you can do
16 this, this clustering, correct? And that would still put the
17 same number of units on this 42,000 acres?

18 A Yes. And your comprehensive plan through the land
19 development regulations and the linkages that I just cited also
20 allows within those areas a whole array of usages. **Public and**
21 private recreational facilities, schools, fire stations,
22 heliports, waste disposal facilities. We are getting into my
23 rebuttal testimony at this point, but your comprehensive plan
24 through the land development regulation would permit a whole
25 variety of uses beyond just those residential uses.

1 Q Well, there are certain uses that can be put in
2 there, but still the overriding principle that is applied in
3 NRMA land is the protection of the existing agricultural and
4 forest land, correct?

5 A As I said, that is one of the underlying principles.

6 Q So any of the developments that you talked about that
7 are possible would still have to be coordinated through the
8 county and be consistent with its comp plan and be determined
9 to not affect these agricultural, and forest, and natural
10 resource areas?

11 A Yes. And your plan contains provisions through the
12 planned unit development, through clustering, through
13 references to developments of regional impact to do that very
14 thing so the resources would be protected.

15 Q All right. And, sir, do you agree that placing a
16 water system, a central water system in a nonurban, rural,
17 forested, uninhabited area would be the first step towards
18 urban sprawl?

19 A No. You have already taken the first step toward
20 urban sprawl, sir.

21 Q How is that, sir?

22 A By allowing residential development to be built at
23 25 -- on 25 acres, 20 acres, or 10 acres. Farmton could go out
24 there right now, and Maytown Road has been discussed, it is
25 possible right now for something on the order -- I have the

1 numbers here -- 646 150-foot wide lots to be sprawled right
2 down Farmton Road based on the electricity service that is on
3 that road right know that Mr. Hartman discussed. That to me is
4 the worst, absolute worst kind of sprawl, and your plan
5 currently permits that.

6 Q Would such development require a central water
7 system?

8 A Not necessarily, but 150-foot wide lots could
9 definitely be served by a central water system.

10 Q Under the comp plan for Volusia County under the
11 potable subelement, potable water subelement, isn't it true
12 that central water systems are not required for these nonurban
13 areas?

14 A That central water service is not required for
15 nonurban, I believe that is true.

16 Q And, in fact, doesn't the comprehensive plan prohibit
17 such central water systems in nonurban areas?

18 A I don't believe it does.

19 MR. BOSCH: I have nothing further.

20 CHAIRMAN BAEZ: Mr. McNamara.

21 CROSS EXAMINATION

22 BY MR. McNAMARA:

23 Q Mr. Landers, I just have a few questions. Currently,
24 as we sit here today, you are not aware of any efforts by
25 Farmton or the Miami Corporation to request Brevard County to

1 change its comprehensive plan, is that correct?

2 A I am not aware of any such activity.

3 Q And would the same be true that you are not aware of
4 any requests by Farmton or Miami Corporation to request Volusia
5 County to make any changes to its comprehensive plan, is that
6 correct?

7 A I'm not aware of any, no, sir.

8 Q Do you know how many people currently reside on the
9 Farmton property within the proposed service area?

10 A I do not know the exact number. There have been
11 discussions of the staff and others that there may be something
12 on the order of ten people residing there within the property
13 itself. There are others who reside within enclaves that are
14 totally encompassed by the property.

15 Q But as far as within the proposed service area
16 itself, the Miami Corporation property, you believe it is ten
17 or fewer, correct?

18 A I may be wrong on that, but it is not a significant
19 number, or a large number.

20 Q You are aware that one of the things that a public
21 service commission needs to consider when considering an
22 application is whether the application is consistent or
23 inconsistent with local comprehensive plans, correct?

24 A That's why I'm here, sir.

25 Q But it is your opinion that an application can never

1 be inconsistent with comprehensive plans, isn't that correct?

2 A I believe that is true, yes. I think it would be
3 very difficult to write a comprehensive plan that says that a
4 public service commission authority that would grant a
5 territory would be inconsistent with that plan.

6 Q So no application could ever be inconsistent with any
7 comprehensive plan, correct?

8 A I believe that is possible. And that stems back to
9 my earlier statement, the Chapter 380.04 definition of
10 development that is used in 163 and thereby referenced then in
11 both the county comprehensive plan does not define a Public
12 Service Commission territory as development.

13 MR. McNAMARA: No further questions.

14 COMMISSIONER DEASON: Staff.

15 MS. FLEMING: Commissioners, we don't have any
16 questions.

17 COMMISSIONER DEASON: Commissioners? Redirect.

18 MR. WHARTON: Yes.

19 REDIRECT EXAMINATION

20 BY MR. WHARTON:

21 Q Mr. Landers, you have been asked several questions
22 about sprawl or urban sprawl. Do you recall those questions?

23 A Yes, sir.

24 Q Is it your opinion that the comprehensive plans of
25 Volusia and Brevard County currently prevent a sprawl-like

1 pattern of development on the Farmton properties?

2 A Yes, they do, with the exception of my statement that
3 I believe professionally that allowing residential development
4 on 10, 15, 20, and 25-acre lots is sprawl. And, in fact, the
5 State of Florida, Department of Community Affairs has stated
6 that.

7 Q Have you created a demonstrative that could help the
8 Commissioners understand your testimony in that regard?

9 A Another consultant to Farmton has created a
10 demonstrative that does that, yes, sir.

11 Q And you have independently reviewed that and agree
12 with the representations thereon?

13 A I reviewed that and advised them on the preparation
14 of it.

15 Q Why don't you explain to the Commissioners the basis
16 of your testimony using that demonstrative?

17 A I think it is easier if I hold it here, Mr. Wharton,
18 so I can use the microphone.

19 This demonstrative, which was prepared by the Ivey
20 Planning Group, has taken all of the existing roadways on the
21 Farmton property, and following the guideline that we just
22 discussed under the -- in Volusia County, this has only been
23 applied to Volusia County at this point. On the agricultural
24 at two units to the acre, so in this yellow area here that is
25 agriculture, the Ivey Planning Group has laid out ten-acre

1 lots, all that currently have a road access that are facing
2 onto roads. And, theoretically, if you were just to take that
3 acreage and divide it by ten, you would get 232 lots. They
4 have been able to lay out 190 lots on that property.

5 Under the forestry resources area, which is some
6 22,000 acres, that is at 20 units to the acre. It is
7 theoretically possible, just in my mathematical -- and if we
8 were doing clustering, Farmton would have rights to 1,134
9 residential units.

10 Similarly, the Ivey Group has laid out 751 lots on
11 the environment systems category. There are 22,500 acres, and
12 the lot size is 25, theoretically, or the density would allow
13 905. They have laid out 878. So you have here, as I said
14 earlier, the ability to go out there and create some 1,700 lots
15 that meet the comprehensive plan covering that entire property.
16 In my mind that is the worst type of sprawl. The Department of
17 Community Affairs in a technical memorandum in the early '90s
18 said essentially the same thing. It is the type of sprawl that
19 is occurring all over the State of Florida, and is the type of
20 sprawl that is occurring largely because of fragmented land
21 ownership.

22 We are sitting on one of the best examples that I can
23 think of of the responsibility of a very large landowner and
24 the potential for a very large landowner to manage their
25 property. At 6:30 yesterday morning I drove down Woodville

1 Highway to the St. Marks Wildlife Refuge because my wife likes
2 to go birding, and that is one of our favorite birding places,
3 and has been for 30-something years. And driving down
4 Woodville Highway at 6:30 in the morning there was a steady
5 flow of traffic coming north. And I observed that, which I
6 knew, that the majority of that traffic was entering Woodville
7 Highway from the west, and along the western side of the road
8 there are all types of mobile homes, a variety of other small
9 uses down the left-hand side -- I mean, down the west side.
10 Down the east side there are far less.

11 If you look at a map of the area, there are numerous
12 road to the west of Woodville Highway, and to the east there
13 are very few permanent roads, there are some farm roads. The
14 difference is that we are sitting on land that did belong to
15 St. Joe, St. Joe Paper Company, now the St. Joe Company. These
16 land ownerships are about 250,000 contiguous acres that extend
17 from the corner of Old St. Augustine Road and Capital Circle
18 well into Jefferson County, down through Wakulla County, all
19 the way to the St. Marks Wildlife Refuge.

20 And St. Joe has chosen not to sell off land in this
21 type of parcels, while the land on the west side, the owners,
22 the fragmented owners on the west side of Woodville Highway in
23 two counties are selling off land under this very same type of
24 land use provisions. So I think right here we are sitting on
25 what I would say is one of the best examples that I could think

1 of of the ability of a large landowner to do what Volusia
2 County and the Brevard County comprehensive plans contemplate,
3 and that is aggregate, cluster, consolidate development on
4 limited lands in a way that they are preserving large areas of
5 land rather than those large areas of land being carved up in
6 these hundreds of 25, 20, 15-acre, 10-acre parcels.

7 So this to me is a very clear demonstrative
8 illustration of a flaw in the comprehensive planning process of
9 allowing large lot residential as a basic use. Certainly it
10 provides a base of development rights that Farmton or any
11 landowner enjoys, but it also allows the type of what I would
12 call the worst type of sprawl that we have, and it is
13 characterized -- I don't know which way I'm directing -- I
14 think down that way, right down Woodville Highway. You can go
15 see it and you can see the contrast on the opposite side. That
16 background comes from having worked for St. Joe Company almost
17 continually from 1973 to -- from 1983 to 2000, and having
18 prepared a strategic plan for all of their properties.

19 Q Just so the record is clear, in your demonstrative
20 you were illustrating the potential for development in Volusia
21 County. Do you believe that the Brevard County comprehensive
22 plan would allow for a similar pattern of development?

23 A Yes, I do. The Ivey Group is doing that study right
24 now, but looking at the Delorme maps, which show the same types
25 of roads, and just doing ratios to the potential development.

1 Yes, I believe in Brevard County at five units to the acre
2 under their agriculture you could develop, again, around 2,000
3 units. The Ivey Group got about 80 percent of yield, so I
4 believe Brevard would come in somewhere around 1,600-plus
5 units.

6 Q Is the purpose of planning to prevent development of
7 land such as the Farmton property?

8 A No, not at all. No, not at all.

9 Q What is the purpose of planning in that regard?

10 A It is to provide a framework from which local
11 government can manage growth and manage development of property
12 and real estate in some orderly, or reasonable, or some fashion
13 that protects a variety of resources, a number of reasons.

14 Q Mr. Landers, you have been talking about the
15 potential for development under the comprehensive plans, you
16 have also been answering some questions about clustering and
17 other types of development. Do you recall generally all of
18 that testimony?

19 A Yes, sir.

20 Q All of that testimony was rendered given your opinion
21 about the existing comprehensive plan as opposed to what could
22 be accomplished with an amendment?

23 A That is correct.

24 Q If, in fact, the owners of the Farmton property ever
25 approached Volusia or Brevard County to seek amendment of the

1 comprehensive plans, do you think that it is possible they
2 might hire you or an individual like you to explain the kind of
3 things you are explaining today in order to seek that
4 amendment?

5 A Yes, that's possible.

6 Q I want to make sure that the record is clear. Did
7 you indicate that you had an opinion whether or not central
8 water systems were prohibited under the comprehensive plan of
9 Volusia County?

10 A I don't believe they are, no, sir. I don't believe
11 central water systems are prohibited.

12 Q You were asked questions by counsel for the City of
13 Titusville, does the City of Titusville have a comprehensive
14 plan that is at issue here?

15 A No, sir.

16 Q In fact, is the City of Titusville's utility area
17 isolated from the Farmton property by the Brevard County
18 utility service area?

19 A Yes. As Mr. Hartman's map shows, the Farmton area,
20 proposed Farmton territory is in yellow. Titusville is this
21 light tan in this area. This brown is Brevard County
22 utilities. This gray is area that is not included in any water
23 service area. So, I don't know the scale of this map.

24 MR. HARTMAN: One inch is about three miles.

25 THE WITNESS: It has one inch equals two miles, so I

1 would say that the nearest point in Titusville to the nearest
2 point in Farmton is probably five to seven miles.

3 BY MR. WHARTON:

4 Q Sir, in preparation for your opinions today, have you
5 reviewed Chapter 367?

6 A I have read portions of 367 as it related to the
7 Public Service Commission's jurisdiction.

8 Q Do you recall questions on cross-examination about a
9 hypothetical of how a developer on Farmton would be able to
10 assure someone in the future that water service would be
11 available?

12 A Yes, sir.

13 Q Do you know whether or not Chapter 367 provides that
14 the Florida Public Service Commission shall have exclusive
15 jurisdiction over each utility with respect to its authority,
16 service, and rates?

17 A That is my understanding, and I referred to that in
18 my direct.

19 Q As a planner, if the PSC grants Farmton a certificate
20 in this case, is that your understanding of what Farmton needs
21 to hold itself out as a water utility which provides or
22 proposes to provide water service to the public for
23 compensation?

24 A That is my understanding.

25 Q Finally, sir, Mr. McNamara asked you questions about

1 whether you believe that any comprehensive plan could be
2 inconsistent with the certification of a utility by the PSC.
3 Do you recall that line of questioning?

4 A Yes.

5 Q What do you understand the fact of certification
6 taken alone in and of itself to represent?
7 A Just that, it is certification It is a license, if
8 you will. It is a permission, a piece of paper, a license,
9 that says that the State of Florida has allowed the entity, in
10 this case Farmton, to service a water territory.

11 Q Do you understand the application of Farmton Water
12 Resources, LLC, to be one that is being filed in tandem with
13 applications or permit requests from the developer to develop
14 the property more intensely than the comprehensive plans would
15 allow?

16 A No, it is not, and I believe I have already stated
17 that.

18 Q Do you know whether or not the certification of
19 Farmton Water Resources, LLC by the Commission would cause to
20 appear on the Farmton properties things such as roads,
21 developments, the need for emergency services, et cetera?

22 A It would not and it could not.

23 Q In order for those things to be placed upon the
24 property, would the owner of the property still have to jump
25 through all the hoops that you have talked about that exist or

1 the regulatory framework to control growth in those two
2 counties?

3 A Yes, they would. Including county, state agencies,
4 federal agencies, regional agencies.

5 Q Is it your opinion that the granting of a certificate
6 by the PSC to Farmton would in any way tie the county's hands
7 in that regard or restrict their abilities to properly control
8 growth in their counties under their comprehensive plans?

9 A It would not.

10 MR. WHARTON: That's all we have.

11 COMMISSIONER DEASON: Thank you, Mr. Landers.

12 THE WITNESS: Thank you.

13 COMMISSIONER DEASON: We are going to recess for
14 lunch and we will reconvene at 2:00 o'clock.

15 (Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

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

7

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

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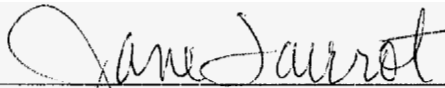
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DATED THIS 29th day of June, 2004.



JANE FAUROT, RPR

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