

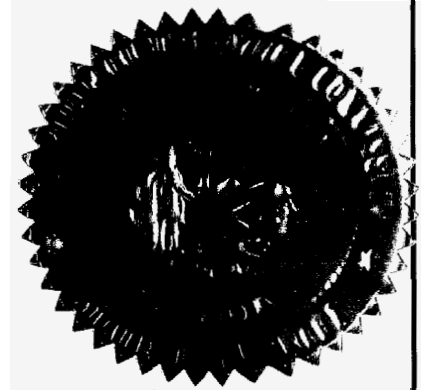
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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DOCKET NO. 030102-WS

In the Matter of

APPLICATION FOR AUTHORITY TO TRANSFER
CERTIFICATE NOS. 620-W AND 533-S
IN HIGHLANDS COUNTY FROM THE
WOODLANDS OF LAKE PLACID, L.P. TO
L.P. UTILITIES CORPORATION.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON
 Prehearing Officer

DATE: Monday, August 2, 2004

TIME: Commenced at 1:30 p.m.
 Concluded at 2:05 p.m.

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

REPORTED BY: LINDA BOLES, RPR
 Official FPSC Reporter
 (850) 413-6734

1 APPEARANCES:

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

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

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

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P R O C E E D I N G

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2 COMMISSIONER DEASON: Call the prehearing conference
3 to order. May I have the notice read.

4 MS. FLEMING: Pursuant to notice issued by the clerk
5 of the Commission on June 18th, 2004, this time and place has
6 been set for the purpose of conducting a prehearing conference
7 in Docket Number 030102-WS.

8 COMMISSIONER DEASON: Okay. Thank you. Take
9 appearances.

10 MR. FRIEDMAN: Martin Friedman of the law firm of
11 Rose, Sundstrom & Bentley. We represent L.P. Utilities
12 Corporation.

13 MR. REILLY: Steve Reilly with the Office of Public
14 Counsel.

15 MS. FLEMING: Katherine Fleming appearing on behalf
16 of the Commission.

17 COMMISSIONER DEASON: Okay. Ms. Fleming, do we have
18 any preliminary matters we need to address?

19 MS. FLEMING: No, sir, we do not. No, sir. Staff
20 will be making a change in position on Issue 3, but we can do
21 that when we get to that issue.

22 COMMISSIONER DEASON: Very well. Mr. Friedman, do
23 you have anything preliminarily?

24 MR. FRIEDMAN: I do have a, a motion, some discovery
25 that we had served on the Public Counsel to ask that the

1 customers that are going to testify provide copies of the
2 warranty deeds and their title insurance policies when they
3 acquired their properties, and the Public Counsel has advised
4 that they don't intend to do that.

5 COMMISSIONER DEASON: Mr. Reilly.

6 MR. REILLY: Yes, Commissioner. There was an OPC
7 response filed with the utility in response to their discovery
8 request.

9 COMMISSIONER DEASON: A timely response, was it, Mr.
10 Reilly?

11 MR. REILLY: It was a timely response, I understand.
12 It was filed by Steve Burgess. And as a matter of information,
13 Steve Burgess, of course, has handled this case all along.
14 This is his first day as the new Consumer Chief Advocate in
15 insurance matters under Tom Gallagher, and was not able to be
16 here today. It is his intention to try the case, however. So,
17 but he did brief me on this controversy and I do have a copy of
18 his timely response.

19 It was agreed though that -- it's my understanding it
20 was agreed by Mr. Burgess and Mr. Friedman that he didn't have
21 to file a motion to compel, that it would be a matter that
22 would be brought to your attention, and he briefed me that it
23 would occur. I'm basically today verbally going to restate
24 basically his response, and that is it's his --

25 COMMISSIONER DEASON: Is that a long response?

1 MR. REILLY: It's a short response.

2 COMMISSIONER DEASON: Could you read it, please.

3 MR. REILLY: Okay. He says, "In every rate
4 proceeding the Public Service Commission designates specific
5 times which the utility customers are entitled to present
6 testimony. The PSC has personnel who establish and direct the
7 process by which customers sign up to testify before the
8 Commission. **When the Office of Public Counsel has intervened,**
9 the PSC presents a sign-up list to the OPC representative who
10 reads the list of witnesses.

11 "The foregoing paragraph describes the format for
12 customer testimony which the Commission has followed in every
13 case of which the OPC is aware. OPC has no reason to believe
14 that the PSC will depart from that format in the instant case.
15 Given this format, OPC does not know all the customers who
16 intend to testify at the final hearing and will not know until
17 the final hearing itself. This process for supplying customer
18 testimony can be contrasted to the consultants and witnesses
19 with whom OPC contracts to provide testimony in rate hearings.
20 These witnesses work directly with OPC to develop discovery,
21 case theory, strategy, testimony and cross-examination. **All**
22 such professional consultant witnesses can be identified in
23 advance as intending to testify, quote, unquote, and OPC can be
24 held responsible to supply discovery and other information
25 about which they intend to testify. **In this case Donna DeRonne**

1 intends to testify on behalf of OPC."

2 That's his total response. And, of course, just to
3 add to that written response, if you look on Page 4 of the, of
4 the proposed prehearing order, at the top it, it, I think,
5 accurately reflects the testimony of all witnesses to be
6 sponsored by the parties has been prefiled, and I think that's
7 the case with Donna DeRonne. So in only the sense that we read
8 out the names could it be said, quote, unquote, that we sponsor
9 these customer witnesses. And it has been the practice of the
10 Commission to grant these people to show up and say pretty much
11 anything they want to.

12 And as a final argument, I asked Steve, does, does he
13 have the name -- does he know of any such people who will even
14 be testifying. He indicated to me he knew of one person -- I
15 said it was a he, I've been informed it's a she -- that will
16 probably testify, but he doesn't really know the contents of
17 her testimony, and we certainly have not met with her and
18 advised her what she should or should not say. That's what he
19 has told me. So we're not really in a position to even respond
20 if we were ordered to respond.

21 COMMISSIONER DEASON: Mr. Friedman.

22 MR. FRIEDMAN: Yes, Commissioner Deason. This is a
23 little bit unique than, than your typical rate case type
24 proceeding where you would have customers testifying. What we
25 have are certainly Ms. Keller, who is the woman that Mr. Reilly

1 referred to who we expect to testify and is one of the primary
2 adversaries in this case. What we have is minority members of
3 a homeowners' association who are dissatisfied with the vote of
4 the majority members of the homeowners' association to acquire
5 the utility system.

6 Now what I had asked for, the deeds and title
7 insurance for was to make clear when these people testified
8 that they, in fact, purchased their property subject to
9 covenants and restrictions of which the covenants and
10 restrictions requiring them to join the property owners'
11 association and be subject to the will of the majority are a
12 part of.

13 COMMISSIONER DEASON: Mr. Friedman, you're telling me
14 why you want the information and I --

15 MR. FRIEDMAN: I'm telling you the importance of it.

16 COMMISSIONER DEASON: It appears that he's not
17 objecting that it's not irrelevant. So he's saying he doesn't
18 have access to the information, therefore, he should not be
19 required to produce it. So if you could respond to that, I'd
20 appreciate that.

21 MR. FRIEDMAN: Well, the customers -- and I, you
22 know -- does Public Counsel know everybody that's going to
23 testify? I don't know. But they have had, as you, as you can
24 tell if you read Ms. DeRonne's prefiled testimony, she talks
25 about meetings that they have had with these customers. And I

1 would suggest to you that they have a lot of meetings with, or
2 have had a number of meetings with Ms. Keller and others, and I
3 am sure that they have some idea who's going to testify. Now
4 Ms. Keller, I guess, is a moot issue. I don't have her title
5 policy, but since I suspect she is going to testify, I was able
6 to pull her deed off the Internet and I know what her deed says
7 and I will cross-examine her appropriately on it.

8 The problem is if Ms. Jones gets up and I ask her did
9 you -- did the deed by which you acquired your property include
10 that it was subject to covenants and restrictions, she's going
11 to say, I don't know. And I think it's important from my
12 standpoint in this case is that the majority in a homeowners'
13 association rules. Whether the minority likes it or not,
14 that's what the homeowners' associations are all about and the
15 will of the minority can't control it. So what I have asked is
16 that, is that Public Counsel who sponsors these witnesses have
17 them bring with them their deeds. Now they've got a line of
18 communication because they sure did for the last six or eight
19 months since this last case, and all I've asked for them to do
20 is -- all they would have to do is to get with Ms. Keller and
21 her people and say, look, the Public Service Commission is
22 going to require that you bring your deed if you want to
23 testify or a copy of your deed so that the lawyer can look at
24 it. That's all I'm asking them to do.

25 COMMISSIONER DEASON: Okay. Let me ask a question at

1 this point. The deeds themselves are public record. The
2 problem is you don't know who's going to testify, so you don't
3 know whose deeds to, to get a copy of off the Internet or via
4 whatever means.

5 MR. FRIEDMAN: Other than Ms. Keller. I suspect
6 she's going to testify and I was able to get that. Otherwise,
7 I'd have to get a copy of everybody in the subdivision, I
8 guess.

9 COMMISSIONER DEASON: To your knowledge,
10 Mr. Friedman, are the deeds pretty much uniform?

11 MR. FRIEDMAN: I think they are. My question is
12 whether each witness will acknowledge that.

13 MR. REILLY: I would add --

14 COMMISSIONER DEASON: Mr. Reilly, I'll allow you to,
15 to respond, and then, Mr. Friedman, I'll allow you to respond
16 to Mr. Reilly. We've kind of gone, I think, in opposite order
17 here, but -- okay.

18 MR. REILLY: I just -- discovery of these non -- I
19 don't know the exact status of these citizen customers, whether
20 they are, quote, parties. I think it's pretty established that
21 they are not parties to this proceeding and probably not
22 subject to discovery, and I would just make that argument plain
23 and simple.

24 COMMISSIONER DEASON: Staff, do you have anything to
25 add at this point before I rule?

1 MS. FLEMING: Well, as you stated previously, staff
2 would point out that these are public records. And L.P. could
3 possibly determine which customers will testify based on the
4 last hearing that we had in the area, and that's what we would
5 recommend that the L.P. do.

6 MR. FRIEDMAN: Maybe we can do this. Maybe to the
7 extent that I ask them questions at the, at the hearing and
8 they either say they don't know or deny it, maybe I can have an
9 opportunity after the hearing to get their deeds and file them
10 as some late-filed exhibit to, to hopefully substantiate my
11 point. Maybe that's the way to take care of it.

12 COMMISSIONER DEASON: Mr. Friedman, what I'm going --
13 obviously I am not going to rule that before a customer can
14 testify he or she has to have their deed with them. They have
15 the ability to come to the hearing and testify. Likewise, you
16 have the ability and the right to engage in cross-examination
17 on relevant matters of their testimony and issues pending
18 before the Commission.

19 Obviously you have the deed for Ms. Keller. I will
20 grant you some latitude, if necessary, using that as a
21 representative of the other deeds. And if the customers have
22 knowledge as to whether their deed is similar or dissimilar,
23 you may inquire about that.

24 I will also give you the opportunity that once the
25 testimony is complete, to acquire copies of the deeds and will

1 allow you the opportunity to present them as an exhibit. But I
2 will allow Mr. Burgess the opportunity at hearing to lodge
3 whatever objection to that he sees appropriate under the
4 circumstances, and we will deal with it accordingly at that
5 time.

6 MR. FRIEDMAN: Sounds reasonable.

7 COMMISSIONER DEASON: Okay. Very well.

8 Mr. Friedman, any other preliminary matters?

9 MR. FRIEDMAN: I don't have any, Mr. Deason.

10 COMMISSIONER DEASON: Okay. Mr. Reilly.

11 MR. REILLY: I guess we'll get into it on the issues,
12 but the main issue before you today will be the inclusion or
13 not including two issues that Public Counsel wants to have in
14 the prehearing order.

15 COMMISSIONER DEASON: Why don't we go through the
16 issues and then we will take up whether there need to be
17 additional issues.

18 MR. REILLY: Okay.

19 COMMISSIONER DEASON: All right. What we will do at
20 this point then is to proceed through the draft prehearing
21 order. As is customary, I intend to proceed quickly section by
22 section. If any party or staff has any concerns, questions,
23 changes or whatever, we will take that up as we proceed. If I
24 do not hear from any party, I will, I will assume that that
25 section as contained in the draft prehearing order is, is

1 sufficient.

2 And with that, we will proceed section by section
3 beginning with Section I, conduct of proceedings; Section II,
4 case background; Section III, jurisdiction; Section IV,
5 confidential information; Section V, posthearing procedures;
6 Section VI, prefiled testimony and exhibits; Section VII, order
7 of witnesses. And let me just clarify, we will be taking
8 direct and follow that by rebuttal; is that correct? We will
9 not be taking testimony simultaneously; is that correct?

10 MR. REILLY: I believe that's what this says.

11 COMMISSIONER DEASON: Okay. Section VIII, basic
12 positions; Section IX, issues and positions. We will begin
13 with Issue 1, Issue 2. Issue 3, staff, I believe you have a
14 change for Issue 3.

15 MS. FLEMING: Yes, we do, Commissioner. On Issue
16 3 staff's position should read, "No. The purchase price
17 resulting from the loan from HighVest Corporation to L.P.
18 Utilities Corporation in the amount of \$409,959 is greater than
19 the combined amount of water and wastewater rate base amount of
20 \$380,609. Therefore, pursuant to Rule 25-30.0371, Florida
21 Administrative Code, no acquisition adjustment should be made."

22 COMMISSIONER DEASON: Okay.

23 MR. REILLY: Could I address that?

24 COMMISSIONER DEASON: Yes. Since your position is
25 agreeing with staff, you need, probably do need to address

1 that.

2 MR. REILLY: Okay. Now that -- of course, we agree
3 with staff that staff's position has changed over time. We
4 were discussing this issue just before the prehearing
5 conference. I had run to Steve Burgess to get a clarification
6 of what our position should be on this, but I took to him the
7 wording, a different wording, and we worded it differently even
8 after I talked to Steve Burgess. I think what we have is a
9 probable stipulation, stipulation in this case, but I just want
10 to have an opportunity to read it back to him one last time.
11 Is that -- could we identify it as a probable stipulation?
12 Because the word "a negative acquisition adjustment should not
13 be made" was changed to "no acquisition adjustment should be
14 made." And I think we can stipulate to that, but he made a
15 point to me, and I'm not sure what the nuances of it is, that,
16 that Public Counsel -- our position would be to this issue, if
17 we didn't stipulate to it, is that Public Counsel does not
18 propose an acquisition adjustment period, and it may well be
19 that that position is --

20 COMMISSIONER DEASON: Well, I take it the change in
21 wording, that there should be no acquisition adjustment, I
22 would interpret that to mean positive or negative.

23 MR. REILLY: And I would, too, so.

24 COMMISSIONER DEASON: And it would probably be a
25 stipulation, I would think.

1 MR. REILLY: Be a stipulation.

2 COMMISSIONER DEASON: Mr. Friedman, do you have a
3 position on the changed wording?

4 MR. FRIEDMAN: That's consistent with our position is
5 we haven't asked for one either positive or negative, so we
6 don't think one is appropriate. So we could certainly agree
7 with the staff's position.

8 MR. REILLY: So with the change I think we have a
9 stipulation.

10 COMMISSIONER DEASON: Okay. I will allow you the
11 opportunity to confirm that with Mr. Burgess, which I think
12 will probably be the case. But -- and we will indicate -- when
13 do you think you can get a confirmation one way or the other?

14 MR. REILLY: I can do it today.

15 COMMISSIONER DEASON: Okay. If you will provide that
16 to staff and give -- and as a courtesy if you'd let
17 Mr. Friedman know.

18 MR. REILLY: Okay.

19 COMMISSIONER DEASON: And we will probably
20 incorporate that as a proposed stipulation if that is the case.

21 MS. FLEMING: Yes, Commissioner, we'll do that.

22 COMMISSIONER DEASON: Very well. Issue 4, Issue 5.
23 And we will proceed then to Section X, potential additional
24 issues. We have two, Issues 6 and 7.

25 Mr. Reilly, I'll allow you the opportunity to explain

1 the need for Issues 6 and 7.

2 MR. REILLY: Okay. The Office of Public Counsel
3 proposes Issues 6 and 7 need to be included in the prehearing
4 order as specific issues in dispute in this particular transfer
5 docket.

6 Issue 6 states, "Is the transfer of L.P. Utilities to
7 Camp Florida in the public interest?" And Issue 7, "Does the
8 evidence demonstrate that Camp Florida will fulfill the
9 obligations and commitments of Woodlands?" We believe these
10 two issues must be included for a number of reasons. First, if
11 you, if you look at the citizens' prefiled testimony, the
12 entire testimony is organized. The very first of the testimony
13 states at the very beginning that Chapter 367.071(1), Florida
14 Statutes, expressly requires the Commission to approve the
15 transfer only if it first determines that the transfer is in
the public interest and that the transferee will fulfill the
commitments, obligations and representations of the utility.
18 All of OPC's prefiled testimony addresses these two specific
19 issues that are mandated by Chapter 367.071(1). So I think
20 that's a compelling reason.

21 I think another reason is this whole idea, this whole
22 process of identifying issues that should, that should be
23 included in a prehearing order involves the opposing party,
24 parties to identify specific issues that are in controversy.
25 The whole process is to join into controversy to put focus on

1 for the benefit of the Commission what are the points in
2 controversy. And through our prefiled testimony these are the
3 exact points, this is the basis -- these two, two specific
4 issues are the basis for our objection to the transfer.

5 Staff has historically claimed that they're not
6 parties to these proceedings, that they're almost referees,
7 they want to make sure the record is complete, they want to
8 make sure that all the required issues are addressed, often
9 adding boilerplate issues that are not proposed by either of
10 the litigants. And they are involved at times at limiting the
11 number of issues, especially in complex cases, Utilities, Inc.,
12 where the issues become 60, 70, 80, 90, 100 issues. The staff
13 has been known for administrative efficiency to consolidate
14 administratively issues to simplify the prehearing order.
15 Certainly that is not the case in this proceeding. We're
16 talking about whether to have five issues or seven issues. So
17 there's no real legitimate administrative efficiency argument.

18 I mean, basically analogous to, to what the staff's
19 position is in this case is by having a rate case and saying,
20 having one issue: Should the rates, should there be a rate
21 increase and, if so, how much; not allowing any of the normal
22 subissues to give the parties an opportunity to make their
23 case.

24 If you look at this prehearing order, there are five
25 issues, but two -- one of the issues has to do with acquisition

1 adjustment. The other has to do with whether this, the, the
2 association is an exempt entity. The three issues that remain
3 are really just all encompassing final issues. They -- should
4 we approve the transfer or not approve the transfer? The only
5 reason why it's three issues instead of one is because of the
6 unique fact situations of this case.

7 The current L.P. Utilities, as I understand it from
8 Mr. Burgess, came into ownership and now controls the utility
9 by virtue of some foreclosure. So they're technically
10 operating the utility but the certificates have not been
11 transferred to L.P. And then the other second and third issues
12 are merely the transferring -- once you acknowledge the
13 transfer to L.P., are you going to acknowledge the transfer as
14 to water and wastewater because there's apparently a dichotomy,
15 there's a little difference there as far as whether they will
16 be exempt or not. So literally staff has left OPC with, with
17 no handle, no way to identify the specific issues that form the
18 basis of our objection. And we think that, frankly, staff and
19 the Commission should honor Public Counsel's identification of
20 its issues to give it a due process opportunity to make its
21 case as to why the, the hearing, why the transfer should not be
22 approved.

23 I would also argue that, that your rule, Commission
24 Rule 25-30.037(2)(j) specifically requires these two points to
25 be addressed in the application. I would also point out at the

1 top of Page 4 of the prehearing order there is a statement, it
2 says pursuant to Rule 28-106.215, Florida Administrative Code,
3 a party should, in filing its posthearing brief, propose to the
4 Commission its proposed findings of fact and conclusions of
5 law. I believe identifying these two specific issues will
6 facilitate the parties' ability to brief to the Commission
7 exactly and specifically the findings of fact and the
8 conclusions they have to come to by statutory mandate before
9 they even rule on this case. So it facilitates the process of
10 the briefs and it facilitates the Commission to carry out its
11 duties to establish the proper basis for granting or not
12 granting the transfer.

13 And finally, Commissioner, I think you'd appreciate
14 this argument. I learned a little bit about the issue of
15 putting issues in or not putting issues in in prehearing
16 conferences from Jerry Gunter, and I can remember more than
17 once attending, participating in hearings and posing questions
18 to a witness and having Mr. Gunter say, now, Counselor, tell me
19 exactly, specifically what issue this question relates to. And
20 if you couldn't tie that question to that specific issue, he
21 says, move on to your next question. And, and I think that,
22 that really OPC should be granted its right to identify its
23 case and to put on its case, and I don't want to be in any way
24 in jeopardy of having a line of questioning thrown out because
25 it has failed to be identified as a, as an issue in the

1 rehearing order.

2 So in summary, it's statutorily mandated, mandated by
3 the, by your Commission's rules, it should be given deference
4 to us because we've identified it as an issue, and, frankly, it
5 will facilitate the Commission in meeting its responsibilities
6 to either grant or not grant this transfer on the basis of is
7 it in the public interest, which should be a specific issue,
8 and does the company -- is this transferee going to be in a
9 position to meet the obligations of the existing utility?

10 Thank you.

11 COMMISSIONER DEASON: Mr. Friedman.

12 MR. FRIEDMAN: Thank you, Commissioner Deason.

13 I believe that the two issues which Public Counsel
14 wants separately identified are subsumed in the issues that
15 we've already identified. Mr. Reilly or Mr. Burgess can argue
16 whatever they want of these two issues as part of the, the
17 overall issues of should the Commission approve it. If you
18 start identifying other issues, I mean, there's an issue about
19 whether the majority, whether the majority members -- minority
20 members of a homeowners' association are subject to the rules
21 of the majority members of a homeowners' association. I mean,
22 there are a lot of issues that are subsumed in here and
23 obviously I'm going to argue that. I mean, one of the
24 arguments that I'm going to make in this case is that a
25 majority rules in a homeowners' association decision. And just

1 because you're -- you don't like it, doesn't mean that it's not
2 in the, quote, public interest.

3 That's, as I see it, that argument is subsumed in
4 Issues 4 and 5. And I don't feel that I've got to separately
5 identify that issue as one in order to make my argument, and I
6 don't think Mr. Reilly or Mr. Burgess are any different. The
7 issue is about whether to approve the transfer, whether it's in
8 the public interest. And, in fact, that's -- if you look at
9 our positions in Issues 4 and 5, that's exactly what we say.
10 Yes, they should be approved because they're in the public
11 interest. And I just think it's needless to add those two
12 other issues. Thank you.

13 COMMISSIONER DEASON: Staff, do you have anything to
14 add at this point?

15 MS. FLEMING: I'd just like to point out that in
16 considering a transfer application, the Commission is required
17 by statute to make a public interest determination and to
18 determine whether the transferee will fulfill the obligations
19 of the transferor. Those issues are covered in Issues 4 and 5,
20 and we believe that having the additional issues of 6 and
21 7 would just be duplicative information.

22 COMMISSIONER DEASON: Okay. I'm going to allow the
23 issues for this reason: I agree that the two additional issues
24 are and may be addressed within the context of other issues.
25 However, I think adding the two additional issues adds clarity

1 to the prehearing order and does not add any degree of
2 confusion, and it is my goal to try to make the prehearing
3 order as clear as possible for the parties and the
4 Commissioners who will be utilizing it in preparing for the
5 hearing. So for those reasons I will allow the inclusion of
6 Issues 6 and 7.

7 Mr. Friedman, I will give you a reasonable
8 opportunity to provide a position on those. I think your
9 position on Issue 5 certainly would address the Issue 6 since
10 that's your -- you include the term "public interest" in your
11 response. But I will give you the opportunity to formulate a
12 position on Issue 7 as well. How long will it take for you to
13 do that?

14 MR. FRIEDMAN: 20 seconds.

15 COMMISSIONER DEASON: Okay. That's certainly quick
16 enough.

17 MR. FRIEDMAN: Sufficient time?

18 COMMISSIONER DEASON: Absolutely. So if you can
19 just -- you don't have to do that right now, but just give that
20 to staff.

21 MR. FRIEDMAN: As soon as we're over, I'll just, I'll
22 give it to her.

23 COMMISSIONER DEASON: Very well.

24 MS. FLEMING: Commissioner, if I may. Since we're
25 going to be adding in these two additional issues, staff would

1 like to renumber the issues.

2 COMMISSIONER DEASON: Okay. What is your proposed
3 numbering scheme?

4 MS. FLEMING: OPC Issue 6 will become Issue 4. OPC
5 Issue 7 will become Issue 5. The prior Issue 4 will be Issue
6 6, and the prior Issue 5 will be Issue 7.

7 COMMISSIONER DEASON: Very well. Show those issues
8 renumbered accordingly.

9 MS. FLEMING: Thank you.

10 COMMISSIONER DEASON: Okay. Section XI, exhibit
11 list; Section XII, proposed stipulations. I believe we may
12 have one.

13 MR. REILLY: Correct.

14 MS. FLEMING: Yes. That's correct, Commissioner.

15 COMMISSIONER DEASON: XIII, pending motions. There
16 are no pending motions at this time. That still is the case;
17 correct?

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

19 COMMISSIONER DEASON: Very well. Section XIV,
20 pending confidentiality. None. And XV, other matters. Here
21 we address the length of opening statements. Let me inquire of
22 the parties, are opening statements desired?

23 MR. FRIEDMAN: I do intend to make one.

24 COMMISSIONER DEASON: Is 10 minutes sufficient?

25 MR. FRIEDMAN: Oh, absolutely.

1 COMMISSIONER DEASON: Very well.

2 MR. REILLY: I'll volunteer Mr. Burgess for an
3 opening statement. He's not here to defend himself.

4 COMMISSIONER DEASON: Very well. Just let him know
5 that I'm going to allow Mr. Friedman the opportunity to make an
6 opening statement which will not exceed 10 minutes in length,
7 and Mr. Burgess, if he desires, may also present an opening
8 statement that does not exceed 10 minutes.

9 And rulings, to the extent there's been rulings made,
10 they need to be incorporated in some way. Staff, please do so.

11 MS. FLEMING: Okay.

12 COMMISSIONER DEASON: Are there any other matters to
13 come before the prehearing officer?

14 MR. FRIEDMAN: Not on behalf of L.P. Utilities.

15 MR. REILLY: None on behalf of the customers.

16 COMMISSIONER DEASON: I just want to, for a moment,
17 review the schedule. We begin the hearing with customer
18 testimony. At the conclusion of that we can proceed into the
19 technical phase of the hearing. And then there is also an
20 evening customer testimony session; is that correct?

21 MS. FLEMING: Yes, that's correct. Customer service
22 hearings are scheduled to start at 10:00 and one that starts at
23 6:00 p.m.

24 COMMISSIONER DEASON: Okay. Just let me inquire, I
25 know that the issues are limited; even though we've added

1 issues, they're essentially the same. We have a limited number
2 of, of witnesses on the, in the technical phase. Assuming that
3 we can conclude customer testimony by noon and hopefully way
4 before noon, but assuming we finish customer testimony by noon,
5 is the afternoon sufficient to cover the technical phase of the
6 hearing? Mr. Friedman, do you have a feel for that?

7 MR. FRIEDMAN: Yeah. I mean, they've only got one
8 witness and I don't have a whole lot of cross-examination of
9 that witness. I can't imagine my cross-examination lasting
10 more than 30 or 40 minutes tops.

11 COMMISSIONER DEASON: Okay. Mr. -- has Mr. Burgess
12 indicated --

13 MR. REILLY: He's not indicated that to me at all.
14 But, again, I can get an answer on that feeling even again by
15 today.

16 COMMISSIONER DEASON: If you can communicate that to
17 staff and as a courtesy to Mr. Friedman as well. I'm just
18 trying to make some preliminary travel plans as to how many
19 days or, you know, how many nights we're going to be staying
20 down.

21 MR. FRIEDMAN: Well, I can't imagine it going into
22 the second day, to tell you the truth.

23 COMMISSIONER DEASON: Very well. Well, then I will
24 react accordingly in my travel plans. Anything else?

25 MR. REILLY: Nothing further.

1 MS. FLEMING: We have nothing further.

2 COMMISSIONER DEASON: Thank you all. Mr. Reilly,
3 thank you for filling in for Mr. Burgess.

4 MR. REILLY: Thank you.

5 COMMISSIONER DEASON: This prehearing conference is
6 adjourned.

7 (Prehearing conference adjourned at 2:05 p.m.)

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1 STATE OF FLORIDA)
 :
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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


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

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

12 DATED THIS 5th DAY OF AUGUST, 2004.

13

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LINDA BOLES, RPR
FPSC Official Commission Reporter
(850) 413-6734

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