

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100330-WS

APPLICATION FOR INCREASE IN
WATER/WASTEWATER RATES IN ALACHUA,
BREVARD, DESOTO, HARDEE, HIGHLANDS,
LAKE, LEE, MARION, ORANGE, PALM
BEACH, PASCO, POLK, PUTNAM, SEMINOLE,
SUMTER, VOLUSIA, AND WASHINGTON
COUNTIES BY AQUA UTILITIES
FLORIDA, INC.

PROCEEDINGS: PREHEARING

COMMISSIONER
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
PREHEARING OFFICER

DATE: Tuesday, November 8, 2011

TIME: Commenced at 9:30 a.m.
Concluded at 11:28 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6734

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FPSC-COMMISSION CLERK

1 APPEARANCES:

2 KENNETH M. CURTIN, ESQUIRE, and DAVID S.
3 BERNSTEIN, Adams and Reese LLP, 150 Second Avenue North,
4 Suite 1700, Saint Petersburg, Florida 33701, appearing
5 on behalf of YES Companies, LLC, d/b/a Arredondo Farms.

6 D. BRUCE MAY, JR., ESQUIRE, Holland & Knight
7 LLP, Post Office Drawer 810, Tallahassee, Florida
8 32302-0810, appearing on behalf of Aqua Utilities
9 Florida, Inc.

10 JOSEPH D. RICHARDS, ESQUIRE, Pasco County
11 Attorney's Office, Pasco County Board of County
12 Commissioners, 8731 Citizens Drive, Suite 340, New Port
13 Richey, Florida 34654, appearing on behalf of the
14 Citizens of Pasco County.

15 PATRICIA CHRISTENSEN, ESQUIRE, Office of
16 Public Counsel, c/o The Florida Legislature, 111 W.
17 Madison Street, Room 812, Tallahassee, Florida
18 32399-1400, appearing on behalf of the Citizens of the
19 State of Florida.

20 RALPH JAEGER, ESQUIRE, LISA BENNETT, ESQUIRE
21 and LARRY HARRIS, ESQUIRE, FPSC General Counsel's
22 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
23 32399-0850, appearing on behalf of the Florida Public
24 Service Commission Staff.

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MARY ANNE HELTON, Deputy General Counsel,
Florida Public Service Commission, 2540 Shumard Oak
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the Florida Public Service Commission.

P R O C E E D I N G S

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2 **COMMISSIONER BRISÉ:** Good morning, everyone.
3 We are going to go ahead and call this prehearing to
4 order at this point. And this is the prehearing for
5 Docket Number 100330-WS. And we're going to ask staff
6 to read the notice at this time.

7 **MR. JAEGER:** Yes, Commissioner. Pursuant to
8 notice, this time and place has been scheduled for a
9 prehearing conference in Docket Number 100330-WS, the
10 application for increase in water and wastewater rates
11 by Aqua Utilities Florida, Inc.

12 **COMMISSIONER BRISÉ:** Thank you.

13 At this time we're going to take appearances.
14 We're going to start from my left going to the right.

15 **MR. MAY:** Thank you, Commissioner Brisé.

16 I'm Bruce May with the law firm of Holland and
17 Knight appearing on behalf of Aqua Utilities Florida.
18 To my left is Mr. Troy Rendell, also with Aqua Utilities
19 Florida.

20 **COMMISSIONER BRISÉ:** Thank you.

21 **MR. BERNSTEIN:** Good morning, Mr.
22 Commissioner. David Bernstein on behalf of the
23 intervenor YES Communities d/b/a Arredondo Farms.

24 **MR. CURTIN:** Kenneth Curtin on behalf of YES
25 Communities.

1 **MS. CHRISTENSEN:** Patty Christensen on behalf
2 of the Office of Public Counsel.

3 **MS. BRADLEY:** Cecilia Bradley on behalf of the
4 Office of the Attorney General on behalf of the Attorney
5 General for the Citizens of Florida.

6 **COMMISSIONER BRISE:** Thank you.

7 **MR. JAEGER:** Ralph Jaeger on behalf of
8 Commission staff, and also Larry D. Harris and Lisa C.
9 Bennett on behalf of Commission staff.

10 **MS. HELTON:** And Mary Anne Helton, advisor to
11 the Commission.

12 **COMMISSIONER BRISE:** Thank you.

13 At this time, are there any preliminary
14 matters that we have?

15 **MR. RICHARDS:** Joe Richards for Pasco County.
16 I'm on the phone.

17 **COMMISSIONER BRISE:** Thank you very much.

18 **MR. JAEGER:** I almost forgot about him.

19 Yes, Commissioner, since Friday we have had
20 three motions that have come in. The last one was
21 yesterday afternoon by Ken Curtin and David Bernstein
22 for YES Communities for an emergency motion to compel.
23 And I believe we can look at that, but I'm not sure that
24 it amounts to having an emergency hearing. But I
25 believe we can let Mr. Curtin address that first, and

1 then see how we want to proceed.

2 **MR. CURTIN:** The emergency nature of that,
3 Commissioner, is the fact that we need this discovery.
4 We have this technical hearing and the final hearing is
5 coming at the end of this month. And we are already in
6 the beginning of the second week of November, really
7 coming up. In order to get this done and get this
8 discovery to us and have us prepared for it, we really
9 need that discovery immediately. So that's the
10 emergency nature of it.

11 **COMMISSIONER BRISÉ:** Okay. Aqua, I don't know
12 if you have comments.

13 **MR. MAY:** Yes. Mr. Chairman, just to kind of
14 set the record, we filed our advance objections to the
15 discovery pursuant to your directions. The discovery, I
16 think, is due next week.

17 Number one, the emergency motion violates your
18 directives with respect to discovery, and we think it's
19 inappropriate to even consider it today. I would ask
20 your permission to hand out your Order Number 110384.

21 On Page 6 of that order, Commissioner Brisé,
22 you set forth a process and a protocol for discovery in
23 motions to compel in this case early on to avoid this
24 very instance that we're struggling with right here. If
25 you look at their emergency motion to compel, they

1 blatantly ignored your directives. They made no attempt
2 to contact us to try to resolve this before today, and
3 we think it's premature and it's a waste of the
4 Commission's time to deal with this today when we have
5 other business.

6 That said, I want to make it clear we are not
7 going -- we will be responding to this discovery. And
8 the objections that we made to the discovery were made
9 in good faith, and we made it very clear we'll be
10 providing the information requested to the extent that
11 it wasn't privileged, and to the extent it was not
12 covering attorney/client work product, and also to the
13 extent it didn't call for proprietary confidential
14 business information. Those are standard objections,
15 and we raised them in good faith.

16 **MR. BERNSTEIN:** Might I reply?

17 **COMMISSIONER BRISÉ:** Sure.

18 **MR. BERNSTEIN:** We appreciate the intent of
19 the order, which is, of course, to not waste time and to
20 get with counsel to go over any objections. In attempts
21 to speak with Mr. May over discovery to date, we have
22 been stone-walled. We attempted to serve a subpoena on
23 a witness, and in attempting to coordinate that subpoena
24 twice, we were told Mr. May was unavailable, out of the
25 state. No one else in his office, although he works for

1 one of the largest law firms in the country and has a
2 very able staff, was available to speak with us.
3 Despite repeated attempts both by myself and other
4 lawyers in my firm over a period of in excess of seven
5 days.

6 Now, in addition, we are as, Mr. Curtin
7 stated, in a very precarious position because Aqua is
8 refusing to cooperate every step of the way in providing
9 information that is extremely germane and without which
10 we are handcuffed coming into a final hearing in three
11 weeks.

12 I am more than happy, since we are all here
13 today, to sit outside this room and talk with Mr. May.
14 We have plenty of time today to do that, and perhaps we
15 can resolve this without taking up much of your time.
16 But I know that once we leave here today, we are going
17 to be back where we have been in any other discovery
18 attempt with Aqua, and that is completely stone-walled.

19 We are entitled to this information.
20 Discovery is supposed to flow freely, and the response
21 we're going to get will be the denial for the reasons
22 that he is asserting here with or without merit, and we
23 will not receive the responses to interrogatories and
24 requests for production we're entitled to.

25 I would note we were unable to set that

1 deposition through his office notwithstanding every good
2 faith effort to do so, and it was a key witness who we
3 ultimately did get served independent of counsel who
4 refused to accept the subpoena, and who, in fact, did
5 appear at this deposition. When he appeared, there were
6 no less than four attorneys from Holland and Knight,
7 attorneys for Aqua, who had been involved in either
8 preparing that witness for the deposition or attending
9 it.

10 So it is very curious to us, and I think very
11 important for the Commission to know that while no one
12 was available to accept the subpoena and while there was
13 an objection filed to that subpoena, and while every
14 effort was made not to cooperate with us on a witness we
15 are entitled to discovery with, when the time came
16 within a week or ten days of having to reissue a
17 subpoena and serve him personally and then have his
18 deposition, it was discovered that over seven hours had
19 been spent by lawyers for Aqua prepping him, seven
20 hours, and that several attorneys both in person and on
21 the phone were present.

22 They are very ably capable of responding and
23 cooperating. There is simply no reciprocity there. So
24 we're not trying to violate a order as is suggested. We
25 are more than happy to cooperate. But to date, it's

1 like, you know, we understand we're not going to get
2 that cooperation, so we have to deal directly through
3 the Commission on things that we will not -- or your
4 staff on things that we will not be able to gain
5 cooperation with and comply with that procedure
6 technically.

7 Like I said, we are more than happy to sit
8 today and work through this. I know that Mr. May is
9 going to say it's not due today, but he did reply to us
10 in a fashion that indicates he is not providing us the
11 objective to our discovery and is not providing us with
12 the discovery we're entitled to, and we're running out
13 of time.

14 **COMMISSIONER BRISE:** Mr. May.

15 **MR. MAY:** I'm frankly confused in that I heard
16 a 15-minute recitation of a deposition issue. What we
17 are talking about today is a request, a discovery
18 request that we filed advance objections to. I have
19 stated that we are prepared to talk with the counsel to
20 try to work this out, but I want to make it clear, I
21 practiced before this Commission for 28 years. I have
22 never been accused of withholding a document. I have
23 never been accused of stone-walling, and I think it's
24 over the top.

25 I think these guys here are trying to spin

1 this rate case out of control to litigate another issue
2 that they have sued us in circuit court in Alachua
3 County. All I'm asking is that you have established
4 some specific protocols with respect to responding to
5 discovery. We have honored those, and we expect
6 opposing counsel to honor them.

7 **COMMISSIONER BRISÉ:** Thank you.

8 Staff, do we have any direction as to the time
9 and some options here to proceed?

10 **MR. JAEGER:** Yes, Commissioner. I think in
11 their motion, in YES's motion it says they served the
12 discovery on the 17th, so the response will be due next
13 week on the 16th in 30 days. And I think then we will
14 know, and then there may have to be a very quick
15 turnaround if there is an objection. So on the 16th I
16 think we will know how to proceed, and that it is
17 premature at this time.

18 **COMMISSIONER BRISÉ:** Okay. So with that, I
19 guess I would have to deny this emergency motion. I
20 would expect that the parties would get together so that
21 the discovery can be completed. And obviously the
22 option is there that if by the date of the 16th of
23 November that you are unable to get the information that
24 you need, at that point we would then take a look at any
25 emergency motion, if necessary, at that point.

1 **MR. BERNSTEIN:** Thank you.

2 **COMMISSIONER BRISÉ:** Any other preliminary
3 matters?

4 **MR. JAEGER:** Yes, Commissioner. The Office of
5 Public Counsel has filed a motion to strike the
6 supplemental rebuttal testimony filed by Aqua on
7 November 3rd. That was in response to customer
8 testimony at the service hearings, and that's Ms.
9 Christensen's motion.

10 **COMMISSIONER BRISÉ:** Ms. Christensen.

11 **MS. CHRISTENSEN:** Yes. We have filed a motion
12 to strike the supplemental rebuttal testimony. We
13 believe that there has been no request made to file
14 supplemental rebuttal testimony, and I think there's
15 confusion over what happened early on at the service
16 hearing.

17 Mr. May in his response provided a couple of
18 the pages regarding filing a late-filed exhibit
19 response, but it did not include our objection that was
20 made at the Greenacres hearing. And I provided copies
21 to the parties and to staff yesterday. Page 6 of the
22 Greenacres transcript states that Item 2 staff would
23 like to request be reserved for a late-filed utility
24 response to the sworn testimony of customers that is
25 going to be heard at this and the other service

1 hearings.

2 Following on the next Page 7, under Ms.
3 Christensen, my response was, "And I guess as a
4 preliminary matter to the Composite Exhibit Number 2,
5 Aqua's response to customer's testimony, we would like
6 the opportunity at the time they file it to look it
7 over. And if we have any objections to the responses,
8 be able to file it at the appropriate time." Which we
9 have done. We have filed a motion to strike.

10 So contrary to Aqua's assertion in their
11 response that this was known and that there was no
12 objection made to it at the appropriate time, we
13 reserved our right to object. Simultaneously with the
14 first time it was identified they were going to provide
15 some sort of response and late-filed which, of course,
16 is the appropriate thing to do. Since it's a late-filed
17 exhibit we would have absolutely no way of knowing what
18 it would contain, and whether the information that was
19 contained therein would be objectionable or not.

20 That brings us to the second argument, which
21 is instead of filing an exhibit with some sort of
22 documentation to respond to certain customer bills,
23 providing some sort of business records, they have
24 chosen instead to file supplemental rebuttal testimony.
25 They have not made a motion to ask for permission to

1 file supplemental rebuttal testimony. They had not --
2 and the OEP is very clear. There is utility testimony,
3 intervenor testimony, and rebuttal testimony. There has
4 been no amendment to the OEP that I am aware of that
5 addresses supplemental rebuttal testimony.

6 The order that was cited by Aqua merely
7 suggests that they will be filing some sort of response
8 on November 3rd, which, you know, that's a statement of
9 a fact. There is nothing to object to, there was
10 nothing do at that point on OPC's part to have -- to
11 request that the prehearing officer reconsider his order
12 suggesting that that was not an official filing date.

13 Obviously that was addressed at the Greenacres
14 hearing and we reserved our right to object at that
15 time. So there was nothing that needed to be done
16 regarding the inclusion of that language in the order.
17 So we are here today because we believe that customers
18 most importantly are prejudiced by Aqua's attempt at a
19 third bite at this apple. None of the information that
20 was included in the supplemental rebuttal testimony, and
21 it is testimony, was not available to Aqua to file in a
22 timely manner as rebuttal testimony. But more
23 importantly, customers don't have the opportunity to
24 respond to the rebuttal testimony.

25 So we think for those reasons, and for the

1 integrity of the prehearing order and scheduling process
2 that Aqua Utilities not be allowed to come in at this
3 late date and change what was allowed by the Commission,
4 which was some sort of late-filed exhibit, which in my
5 mind always has entailed documentation and change that
6 into supplemental testimony, which is not what was
7 contemplated, I think, at the Greenacres hearing or
8 requested.

9 Thank you.

10 **COMMISSIONER BRISÉ:** Thank you.

11 Mr. May.

12 **MR. MAY:** Thank you, Mr. Chairman.

13 I am frankly astounded by the motion. If you
14 look at the motion, OPC is essentially arguing that it
15 has been blindsided by this filing. This is precisely
16 the process that was done in the last rate case three
17 years ago. This process was requested, this filing was
18 requested by your staff, it was approved by the Chairman
19 of the Florida Public Service Commission.

20 Ms. Christensen certainly is correct, she
21 reserved the right to object. We are not saying that
22 she doesn't have the right to object, but what I'm
23 arguing is that for her to argue that she has been
24 blindsided by this process, I think, is less than
25 genuine.

1 I guess, again, to begin my argument, there is
2 a process under the Uniform Rules of Procedure and
3 Motion Practice that prior to filing a motion the moving
4 party is supposed to confer with the other parties and
5 to represent in the motion that he or she has done that.
6 Nothing in this motion complies with that rule, and that
7 rule is 28-106.204(3). It states, "Motions other than a
8 motion to dismiss shall include a statement that the
9 movant has conferred with all other parties of record,
10 and shall state as to each party whether the party has
11 any objection to the motion."

12 Again, there is a purpose and a policy behind
13 that, is to avoid unnecessary protracted disputes like
14 this. Again, I think the record is very clear in this
15 case that from day one the process that was followed in
16 the last case, after the customer service hearings,
17 after the transcript was available, the company would
18 provide responsive testimony to the customer testimony.

19 Now, whether it's a late-filed exhibit or
20 whether it is prefiled testimony, I think that is a
21 distinction without a difference. We'll be glad to call
22 this a late-filed exhibit. Any exhibit that is filed in
23 an evidentiary hearing has to be sponsored by a witness.
24 So regardless, if it was an exhibit or if it is
25 testimony the way we have it laid out, again, I think it

1 is the same thing.

2 Again, this process was followed in the last
3 case. It's a process that has precedent. It's a
4 process that has been acknowledged. It's a process that
5 you in your prehearing order -- in your order of
6 October 27th expressly recognized would occur. So I
7 believe it's appropriate, and I don't think it
8 prejudices any party to this proceeding. This is
9 exactly the same process that was followed in the last
10 rate case, and there was no problem in that case.

11 **COMMISSIONER BRISÉ:** Ms. Christensen.

12 **MS. CHRISTENSEN:** Yes. Let me briefly
13 respond. I think that it is problematic of Mr. May to
14 be quoting a technicality on the motion that I failed to
15 contact him when he is technically not following a
16 late-filed exhibit. He filed supplemental response
17 testimony instead of a late-filed exhibit. I mean, you
18 know, you can't argue technicality on one side and then
19 ignore the technicality on the other.

20 Irrespective of what the Commission followed
21 in the last rate case, that's not what is governing this
22 rate case. What is governing this rate case is the
23 order establishing procedure that was filed and was
24 ordered in this rate case. And there was no
25 supplemental rebuttal testimony date listed in the OEP.

1 And while I don't dispute that there was a date set
2 aside for filing of some sort of late-filed exhibit on
3 November 3rd, I think it's clear from the record that we
4 reserved our right to object to this supposed late-filed
5 exhibit on November 3rd.

6 You know, and frankly the majority of the
7 supplemental rebuttal testimony is just that, it's
8 testimony. It's not exhibits. It's not documentation.
9 And a significant portion of Mr. Rendell's supplemental
10 rebuttal testimony is addressing the intervenor
11 testimony filed by Commissioner Mariano which was
12 available and should have been filed in a timely manner
13 with rebuttal testimony. And the only reason that I
14 could foresee having a November 3rd filing date would be
15 for the later filed service hearings. The other service
16 hearings were concluded and the transcripts were
17 available well before the rebuttal filing date. So
18 there was no necessity to not address that testimony in
19 the rebuttal testimony.

20 So I think for those reasons that the
21 testimony should be stricken. And the other reason for
22 the haste is because, you know, this was filed on
23 Thursday, and I believe that we are required under the
24 OEP to notify the Commission by the prehearing of any
25 motions to strike. So with limited time, we did the

1 best we could. And it was not our intent to thwart the
2 rule, but to try and get a motion in here in a timely
3 manner so that it could be addressed at today's
4 prehearing conference, and it was a time limitation.

5 So that is our position. And, you know, I
6 don't think testimony is technically the same thing as a
7 late-filed exhibit, and I don't think they can be called
8 the same thing. They are vastly different entities.

9 **COMMISSIONER BRISÉ:** Thank you.

10 Mr. May.

11 **MR. MAY:** Just very briefly in response.

12 Again, setting aside what she deems to be a
13 technicality, which I certainly don't agree with, but
14 the substance of what was filed on November 3rd, we were
15 given an opportunity on the first day of the customer
16 service hearings to review the transcripts, review the
17 testimony of the customers, and update the Commission
18 and the other parties as to our response to those
19 customer concerns, also the concerns in question to the
20 Commissioners.

21 If you recall, during the course of the
22 customer service hearings there were several questions
23 from the Commissioners to the company. And we are in an
24 evidentiary hearing; we are in an evidentiary
25 proceeding, and it is simply inappropriate for an

1 attorney to be testifying and to be explaining. So we
2 made it very clear during the course of the customer
3 service hearings that we would be providing testimony
4 under oath that would explain and answer the questions
5 not only of customers, but also of the Commissioners.

6 Now, substantively, I disagree with Ms.
7 Christensen. I think every part of this testimony is
8 responding to either customer questions, customer
9 concerns, or Commissioners' questions.

10 With respect to Mr. Rendell, Mr. Rendell did
11 not rebut the testimony of Pasco County Witness Mariano.
12 Mr. Rendell provided testimony responding to a customer
13 at the New Port Richey hearing that questioned whether
14 they could receive Pasco County rates if Pasco County
15 purchased the utility.

16 Mr. Rendell's testimony very clearly shows
17 that that customer was misinformed, and I think the
18 Commission should be aware of that. Again, we think
19 whether this is an exhibit or whether this is prefiled
20 rebuttal testimony I think is a distinction without a
21 difference. Assuming that if it is required that we
22 provide an exhibit, that exhibit, again, would have to
23 be sponsored by a witness, and the witness would have to
24 attest to the correctness and the veracity of that
25 exhibit. So whether we use a Q&A format or whether we

1 have just one witness or three witnesses sponsoring
2 these three exhibits, again, I think it's a distinction
3 without a difference.

4 Now, if it is the Chair's prerogative and the
5 wish of the Chair for us to convert this into an exhibit
6 and have each witness just sponsor the information
7 therein, we'll be glad to do that. But, again, I think
8 that is a distinction without a difference.

9 **MR. CURTIN:** Commissioner, if I may respond
10 also.

11 **COMMISSIONER BRISÉ:** Wait one second.

12 This is a motion that is between Aqua and OPC.
13 We had a motion --

14 **MR. CURTIN:** I realize that.

15 **COMMISSIONER BRISÉ:** Excuse me one second.
16 You had a motion, OPC did not intervene in your motion,
17 and I just want to make sure that you are allowed to
18 intervene in this motion that is between two separate
19 parties. I just want to make sure I have that
20 clarification before you move forward. One second.

21 **MS. HELTON:** Commissioner Brisé, you have the
22 discretion to hear from YES if you want to. If you
23 don't want to, it is a motion that has been, you know,
24 made by OPC and the response has been filed by Mr. May
25 for Aqua, but it's within your discretion to hear from

1 them, if you wish to.

2 COMMISSIONER BRISÉ: Okay.

3 MR. CURTIN: If I could add why, Your Honor.
4 Mr. Luitweiler in his supplemental rebuttal testimony
5 and Mrs. Chambers in the supplemental rebuttal testimony
6 specifically talk about the Gainesville hearing with
7 Arredondo Farms. That is why we would like to join in
8 that, to discuss specifically those aspects of the
9 supplemental rebuttal testimony. And it would be very
10 short, Your Honor.

11 I think Aqua's position is a little bit -- the
12 dichotomy in their position on this motion versus the
13 motion that Arredondo Farms had filed in order to have a
14 separate date and a specific date where customers can
15 come testify here during the technical hearing, which
16 was denied by the Commission, and I understand the
17 denial, I don't want to go back to that hearing. But if
18 you remember in their response to that, they said all
19 the customers had a chance to testify at that time.
20 They had a chance to cross-examine them at that time.

21 Now, OPC had a great argument here that this
22 robs the customers from coming back and testifying on
23 either cross or hence this supplemental rebuttal
24 testimony. They don't have the opportunity now to do
25 that at the hearing, which they would have had at the

1 hearing if Aqua had done their cross-examination, and
2 there could have been some redirect. And that robs
3 these customers from redirect of that testimony. And
4 the dichotomy in their position is clear from their
5 opposition to our motion where they said these customers
6 shouldn't be allowed to come back in here and testify.

7 So now we have the -- they have the
8 opportunity to put supplemental rebuttal testimony
9 against these customers, which they had the opportunity
10 at the hearing if they wanted to cross-examine them, and
11 not have the customers come back and testify on that.
12 So the dichotomy in their position is clear on this. So
13 this motion should be granted for that reason, if not
14 alone for that reason.

15 **COMMISSIONER BALBIS:** Thank you.

16 **MR. BERNSTEIN:** I would like to add one thing
17 if I might, as well. And that is Mr. May had said he
18 was puzzled at the fact -- and this is the procedural
19 aspect that was brought up. Mr. May had said he was
20 puzzled at the motion and the fact there had not been
21 communication and cited a rule of procedure with respect
22 to parties communicating prior to filing a motion and
23 reciting specifically therein that that attempt had been
24 made.

25 I would simply like to note to the Commission

1 that Mr. May himself has filed motions, including
2 motions to quash subpoenas, the subpoena I spoke to
3 earlier, without commenting or communicating or
4 attempting to deal with the issue with opposing counsel
5 prior to filing a motion. So to use his phrase, that is
6 neither a distinction nor a difference. He should not
7 be trying to use a rule of procedure when it benefits
8 him, and ignore it when it does not.

9 **COMMISSIONER BRISÉ:** Thank you.

10 Mr. May, is there anything you would like to
11 add as we close this chapter?

12 **MR. MAY:** I think I have said enough,
13 Commissioner.

14 **COMMISSIONER BRISÉ:** Thank you very much.

15 Staff, what are some of our options that we
16 have before us at this point?

17 **MR. JAEGER:** Commissioner, I believe when
18 staff at the Greenacres -- and it was mentioned several
19 times all through the service hearings, we were
20 contemplating a Late-filed Exhibit 2 that was what was
21 reserved on November 3rd, and that was because the
22 transcripts of the Lakeland and the New Port Richey
23 service hearings were not due until November 1st and
24 2nd. So that's the reason for November 3rd.

25 As for timeliness, I think Ms. Christensen's

1 motion -- she's talking about timeliness of testimony,
2 but I think basically we could have the utility convert
3 this testimony or we could treat it as an Exhibit 2, and
4 I think what we are doing here is -- I don't see why we
5 would make them jump through the hoops. It's there,
6 they say who is sponsoring it, and what -- their
7 response. So they give OPC the response, and this was
8 pretty much as Mr. May said, what we did in the last
9 rate case. We let them do the testimony and respond to
10 the customers.

11 So we could make them take away testimony and
12 sponsor an exhibit that would have this same stuff and
13 say who sponsors it, you know, Exhibit 2, and it is
14 sponsored by, but actually this is more clear because it
15 says right there where Mr. Rendell is sponsoring that
16 portion, and Mr. Luitweiler, et cetera, and those three
17 witnesses show exactly what they are doing.

18 So I don't believe there has been prejudice to
19 OPC. This is what we have always allowed the utility
20 because we require prefiled testimony, but, of course,
21 we can't do that with customers, and so we give the
22 utility a chance. And there is limited cross at the
23 service hearings, but we actually, sort of, we don't
24 look down on it, and we let them do any cross they want,
25 but we note they are going to do a more extensive

1 response in the late-filed.

2 So I don't see any need to convert this to an
3 exhibit, or we could treat this whole thing as Exhibit
4 2, or make them redo it. Those are the three options I
5 see.

6 **COMMISSIONER BRISE:** So if I understand
7 right --

8 **MS. HELTON:** Mr. Chairman, if I could add one
9 thing. If you treat it as supplemental testimony, as I
10 understand this process, the citizens of the state will
11 have an opportunity to cross-examine. They are
12 represented by the Office of Public Counsel and they are
13 represented by the Attorney General here, and there is
14 also a customer party here in this case. So there is
15 that opportunity, as well. And if I could also add that
16 this is a ratemaking proceeding, and really you're in a
17 quasi-legislative mode here. So it may be that the
18 Commission does want to hear that additional testimony.

19 **COMMISSIONER BRISE:** Okay. So much feedback;
20 a lot of feedback.

21 I'm just going to ask Aqua one question. Why
22 was this testimony filed after the due date?

23 **MR. MAY:** The testimony was filed on the due
24 date, on November 3rd. It was timely filed. It was not
25 filed -- it was filed on the exact date that it was

1 acknowledged and approved by the Chairman at the
2 Greenacres hearing.

3 **COMMISSIONER BRISE:** Okay. So it was actually
4 on time. So some of the options, staff, is to convert
5 it into an exhibit, and at that point how does the -- if
6 it were converted into an exhibit, how does that affect
7 cross, if any?

8 **MR. JAEGER:** They would still know who
9 sponsors the exhibit, and they could ask that sponsor.
10 But here, you know, it may not be as clear if they
11 convert it into an exhibit, although they could make it
12 clear, but they could still cross-examine whoever
13 sponsored that exhibit. And they could also object to
14 portions of the exhibit that they consider -- like it is
15 irrelevant or other valid objections to anything coming
16 into the record.

17 **COMMISSIONER BRISE:** This is to OPC. I mean,
18 if as staff is describing there is no real distinction
19 between having the information come in as either a
20 late-filed exhibit which then is available for cross
21 versus having it come in as testimony, why the need for
22 the distinction?

23 **MS. CHRISTENSEN:** Well, I respectfully
24 disagree with staff that they could file exactly the
25 same thing that they produced today. In reading through

1 the supplemental testimony, there's a lot of testimony,
2 but there is not a lot of documentation. I assumed when
3 they filed a late-filed response or exhibit it would, in
4 fact, be documentation that addressed some of the
5 customers' concerns. Maybe bills that showed that they
6 has been billed appropriately or, you know, boiled water
7 notices that had been produced. But there's a lot of
8 testimony in there that is just plain testimony, you
9 know, it doesn't have any sort of documentation, it
10 doesn't have -- they are not really sponsoring any
11 documentation, it's just testimony purporting to be in
12 response to the issues that the customers raised.

13 And I think that's why we are objecting to
14 this. Which it was not clear to me on November 3rd that
15 their intent was to produce additional testimony. And
16 there is a difference between testimony and documentary
17 responses. Business records that are produced to show,
18 no, you know, we have business -- or we had a payment
19 plan with this customer, or a bill that shows or a copy
20 of a check that was sent to the customer with a credit.
21 Those things are quantitatively and qualitatively
22 different than testifying by Ms. Chambers that, you
23 know, I talked to the customer and everything is fine
24 now. That is actual testimony, and that's where I think
25 we are having the disconnect.

1 I don't think that they are the same. I don't
2 think you can take testimony and change it into an
3 exhibit, and they are not -- and contrary to what Mr.
4 May is saying, it is not, you know, my name is Mr.
5 Rendell and I am sponsoring, you know, FTUA's rate
6 document, which in itself would probably be
7 objectionable because it would be hearsay and he has no
8 personal knowledge of the document. But it's not that.
9 It's not I'm Ms. Chambers, and I am sponsoring the bill
10 response. It's testimony, and that is different. And
11 that's why I'm saying that this is objectionable.

12 And it may be that if they converted and
13 had some sort of documentary responses that there may be
14 documents that they are trying to produce in response to
15 the customers' complaints that are objectionable. And I
16 expect that when we get to the hearing, if they think
17 some of the customers' documents that they produced at
18 the customer service hearings are objectionable, they
19 will raise that at the time that we move to enter those
20 exhibits into the record.

21 But there is no way that my due process rights
22 can be violated by not allowing me the opportunity to
23 look at and evaluate the documents that they are trying
24 to sponsor prior to it being admitted into the record.
25 And, you know, and just frankly it is an issue of

1 fairness. I mean, this is the third prefiled testimony
2 that they are getting to file, and it's an issue of
3 fairness.

4 **COMMISSIONER BRISÉ:** Mr. May.

5 **MR. MAY:** Just very briefly. And I want the
6 parties and the record to be clear on this. What we
7 were trying to do is to provide responses to the
8 customer testimony as was done in the last case, in the
9 same format as the last case. As Ms. Helton said at the
10 technical hearing, the OPC, counsel for YES, the
11 Attorney General, and counsel for Pasco County has full
12 opportunity to cross-examine all of these witnesses on
13 this November 3rd filing. So there's no due process
14 violation, there is no deprivation of due process, there
15 is no surprise. In fact, they have over three or four
16 weeks to look at the documents, look at the testimony,
17 and to extensively cross-examine them at the technical
18 hearing. So, again, I don't believe there is any due
19 process issue there.

20 **MS. HELTON:** And, Mr. Chairman, if I could
21 just give one other option, which is probably obvious to
22 you, and that is you can take this under advisement.

23 **COMMISSIONER BRISÉ:** You took the words right
24 out of my mouth. I will take this issue under
25 advisement. Hopefully, I'll reach a decision prior to

1 the end of today's hearing. But if not, it will be part
2 of the order that will come after. Are there any other
3 issues that are preliminary?

4 **MR. JAEGER:** There is only one that it could
5 be done later, but I think we can just go ahead and do
6 it now. The county has requested that its witness
7 Commissioner Mariano be excused from the hearing on
8 November 29th and 30th, and I think all the parties say
9 that he may be just available on December 1st if he is
10 called and required to be here. And so that would just
11 be excuse Commissioner Mariano until December 1st.

12 **COMMISSIONER BRISÉ:** Sure. We'll go ahead and
13 excuse him for the 28th and 29th of November.

14 **MR. JAEGER:** 29th and 30th.

15 **COMMISSIONER BRISÉ:** 29th and 30th of
16 November, if there are no objections.

17 **MR. CURTIN:** No objection.

18 **MS. CHRISTENSEN:** No objection.

19 **COMMISSIONER BRISÉ:** All right. Now we are
20 going to proceed through the draft prehearing order.
21 Let's go through the order now and identify the
22 sections, and I want parties to let me know if there are
23 any corrections or changes that need to be made. We may
24 go rather quickly through this, so speak up if you have
25 a change or correction that needs to be made.

1 Section I, case background. Okay.
2 Section II, conduct of hearings. Section III,
3 jurisdiction. Section IV, procedure for handling
4 confidential information. Section V, prefiled testimony
5 and exhibits and witnesses. I think obviously there's a
6 preliminary matter that we have to deal with, but if
7 there is anything else.

8 **MS. BRADLEY:** Well, we have an objection. We
9 routinely make it, but they were doing fine when they
10 talked about not allowing duplicative or repetitive
11 cross-examination; that's covered by the rules of
12 evidence; we're fine with that. But then they get into
13 this friendly cross which doesn't exist. We have
14 researched it thoroughly and there is no such thing.
15 And to the extent we're asking duplicative or repetitive
16 questions, then that's appropriate to object on that
17 basis. To the extent we are asking new questions which
18 go to our concerns and the concerns of our clients, then
19 that's not appropriate. That violates our due process
20 to be restricted from asking questions because somebody
21 thinks they may be helpful to another party. That is
22 just not appropriate, and we would object to that.

23 **MS. CHRISTENSEN:** OPC supports that position.

24 **COMMISSIONER BRISÉ:** Okay. Thank you.

25 **MR. CURTIN:** Arredondo would support that

1 position, especially in the case here, Your Honor, where
2 there's multiple intervenors. So there may be witnesses
3 which may have friendly testimony to us, but we would
4 actually have to ask them questions, and they would
5 get -- it may be derived as cross, but it would be more
6 like a direct. But especially in the case here with
7 multiple intervenors.

8 **COMMISSIONER BRISÉ:** Thank you.

9 Mr. May.

10 **MR. MAY:** We believe that the friendly cross
11 prohibition is appropriate. We are asking only to be
12 treated like every other utility in the state. Ms.
13 Bradley raises this objection in virtually every rate
14 case she participates in. We think it would be unfair
15 to treat this utility different from other utilities.

16 **COMMISSIONER BRISÉ:** Mary Anne, what do we
17 typically do with these type of objections? And in
18 particular this objection, because apparently it's one
19 that comes back every time?

20 **MS. HELTON:** Commissioner, my suggestion to
21 you would be to acknowledge Ms. Bradley's objection for
22 purposes of the record, and that the presiding officer
23 at the hearing will deal with each objection as it comes
24 up. Ms. Bradley and I have had this conversation
25 before. She believes that friendly cross is

1 appropriate. I believe that it is not. And that is
2 really, I guess, a matter for the presiding officer at
3 the hearing when it comes up.

4 **COMMISSIONER BRISÉ:** Thank you.

5 And we will have the record reflect that there
6 is an objection to friendly cross, but I think that --
7 you wanted to say something?

8 **MS. BRADLEY:** Well, I was just going to say it
9 is not our objection to friendly cross, and it's called
10 friendly cross, but it's somebody deciding, well, that
11 may help one of the other intervenors, so we don't want
12 it. When, in fact, it's not a new question, it's not a
13 duplicative question, it's not a repetitive question.
14 It's something we are asking on behalf of your clients,
15 and under due process we have the absolute right to do
16 that, and we should not be cut off just because the
17 hearing is going longer than somebody wants or because
18 somebody doesn't want us to ask questions that might be
19 damaging to their case, or this type of thing. We have
20 the right to do this, and we think it is terribly
21 inappropriate, and we haven't gotten results yet.

22 **COMMISSIONER BRISÉ:** Thank you.

23 **MS. HELTON:** If I could just -- for purposes
24 of the record, if I could have two minutes.

25 **COMMISSIONER BRISÉ:** Sure.

1 **MS. HELTON:** I'm reading from Chapter 120, and
2 120.57, Subsection (1)(b), or Paragraph, I guess,
3 (1)(b), all parties shall have an opportunity to
4 respond, to present evidence and argument on all issues
5 involved -- that would be the prefiled direct
6 testimony -- to conduct cross-examination and submit
7 rebuttal evidence. And there are some other things that
8 Chapter 120 gives parties a right to do in an
9 evidentiary proceeding such as a rate case.

10 Counsel to YES said that it was okay to ask
11 questions that were more like direct. I disagree. The
12 time to put in questions and answers that are like
13 direct in our process is to file prefiled testimony. I
14 think it is perfectly within the presiding officer's
15 discretion to rule on and balance the scope of
16 cross-examination questions.

17 I felt like that that needed to be said for
18 the record, and thank you very much, Mr. Chairman, for
19 your indulgence.

20 **COMMISSIONER BRISÉ:** Thank you.

21 **MR. CURTIN:** If I could just clarify what I
22 meant by that, Mr. Commissioner. The simple fact is
23 that yes, YES Communities has filed prefiled testimony
24 of their witnesses. I'm talking about other witnesses
25 that we don't have control of, or that we have the right

1 to ask cross-examination questions of. And they may be
2 quote, unquote, friendly to our position on those
3 cross-examination questions, but they are not our
4 witnesses which we have the obligation to file prefiled
5 testimony on. So I wanted to clarify that for the
6 record.

7 **COMMISSIONER BRISÉ:** Thank you.

8 With that, I think that generally whoever the
9 presiding officer is, they will deal with that. And so,
10 therefore, the objection is duly noted. And whoever is
11 chairing, our chairperson will deal with the testimony
12 as they understand it and they see it.

13 **MS. BRADLEY:** Thank you.

14 **COMMISSIONER BRISÉ:** You're welcome. All
15 right. Moving on.

16 Section VI, order of witnesses.

17 **MR. JAEGER:** Commissioner, on Page 5, Aqua
18 wants -- has Troy Rendell listed as Issue 19, and they
19 advised me that he is not on Issue 19.

20 **COMMISSIONER BRISÉ:** Okay.

21 **MR. JAEGER:** And that would also be in his
22 rebuttal and then in the positions later in the order.
23 But anyplace where you have Rendell, and I think later
24 on we will get to where Szczygiel will replace Rendell.
25 But I think we can go forward. That would be the only

1 changes I see for witnesses for that section.

2 **MR. MAY:** Mr. Chair, just to amplify what Mr.
3 Jaeger just indicated. I think the change would be on
4 Page 5 to strike the reference to Issue 19 for Mr.
5 Rendell. And on Page 7, again, to strike the reference
6 to Issue 19 for Mr. Rendell. And then down below there,
7 also to strike the reference to Issue 19 for Mr.
8 Rendell.

9 **COMMISSIONER BRISÉ:** Okay. Are there any
10 issues with that from any of the parties?

11 **MR. CURTIN:** There is no issue with striking
12 the Number 19. As far as witnesses go, Your Honor,
13 Mr. Commissioner, we have also filed not only the
14 prefiled testimony of Mr. Kurz, Mrs. Kurz, Mr. Harpin,
15 Mr. Gray, Mrs. Starling, and Mr. Green, but we also
16 referenced as the prefiled testimony to testimony of the
17 customers at the Gainesville hearing. Some of those
18 customers may want to come here and may want to testify.

19 I know we had the order that there was not a
20 specific day set aside for them, and that is fine. They
21 realize that they may have to come at any time. But
22 those customers, we want to make sure that they are
23 added here after Mr. Green if, in fact, they do want to
24 come, the customers who testified at the Arredondo Farms
25 hearing.

1 I have specifically referenced that I have
2 heard that one customer who does want to come, Ben
3 Anderson, so he could be specifically referenced. The
4 other ones have not told us whether they are going to be
5 coming or not. In all candor, they probably will not be
6 coming, because they don't have the financial resources
7 to come. But I just want to make it clear for the
8 record that after Mr. Green we would like to have those
9 customers who are then there and ready to testify to
10 testify. And those are the customers who testified at
11 the Gainesville hearing.

12 **COMMISSIONER BRISÉ:** Okay. Staff, how do we
13 deal with that?

14 **MR. JAEGER:** I believe this goes to that
15 motion to set time for customer testimony at the
16 technical hearing, and that was denied. And now he is
17 still saying customers want to come and testify, but I
18 thought that had already been ruled on in the motion
19 denying the time for customer testimony. This is a
20 technical hearing, and it's for the prefiled testimony
21 only.

22 **COMMISSIONER BRISÉ:** Yes. Let me pose a
23 question. So there is prefiled testimony for Kim Kurz,
24 Shawn Harpin, Jeremy Gray, Mallory Starling, and Mike
25 Green. The individuals -- is it Dan Anderson or

1 Henderson?

2 MR. CURTIN: Ben Anderson.

3 COMMISSIONER BRISÉ: Is there prefiled
4 testimony for him?

5 MR. CURTIN: No. We referenced in our
6 pretrial statements the Gainesville testimony as the
7 prefiled testimony of those customers who may want to
8 come. They testified, and we reference that actual
9 transcript as their prefiled testimony. And this goes
10 back to the motion which Mr. Commissioner has taken
11 under consideration. They filed supplemental rebuttal
12 testimony talking about specific people who testified at
13 the Gainesville hearing. And, once again, granting that
14 motion and allowing us not to bring those witnesses back
15 here to give testimony to rebut what they have filed as
16 testimony, which their witnesses will put on as
17 testimony, that I have to have a witness here to rebut
18 that. And those witnesses will be the actual
19 Gainesville residents who they are trying to -- have
20 filed their supplemental testimony on, which the motion
21 to strike was about.

22 So, once again, Mr. Commissioner, I just want
23 to make clear for the record that after Mr. Green
24 testifies, if those customers are present here at that
25 point in time -- I know my understanding from the order

1 was we were only asking for a set day for them to
2 testify, and that order denied that set day, but did
3 not -- to my knowledge did not deny, and we did not ask
4 in that motion for permission for those people to come.
5 We filed it in our pretrial testimony? We referenced
6 the hearing as their prefiled testimony. So if they are
7 here, they are here. If they are not here at the time
8 they are testified to go, then they won't be here and
9 their testimony won't be going.

10 **COMMISSIONER BRISÉ:** Okay. Well, maybe I'm a
11 little confused. Before I get to staff -- I have only
12 been at the Commission for about a year. So in all the
13 hearings I have seen there is prefiled testimony, we
14 don't have testimony sort of out of the blue that
15 comes -- or a block of testimony that is taken at a
16 hearing, and then you have people that are just lining
17 up to come and testify to corroborate what is considered
18 part of the customer hearing testimony. So I'm asking
19 staff if that is their understanding, and how we deal
20 with that.

21 **MR. JAEGER:** Yes, Commissioner. As a general
22 rule, the technical hearing is all prefiled testimony,
23 and then you let them cross. And we have -- in the last
24 Aqua hearing, they did let two or three customers who
25 showed up at the technical hearing testify, and I think

1 that is what we were saying, no, we were not going to
2 allow that at this hearing, but that was because it was
3 not clear that they could not testify -- or they were
4 here, and here that we had a motion to set time for the
5 customers, and we are saying, no, there was not time set
6 aside for customer testimony.

7 But I think as a general rule, you have to
8 have in their prehearing statements who their witnesses
9 are. They only listed the five, and then they say, "YES
10 reserves the right to subpoena additional witnesses,
11 including the employees who testified at the technical
12 hearing in this matter. And then YES also reserves the
13 right to read from and use the deposition transcript of
14 Aqua employees Steven Grisham, who they took on
15 October 27th. And I do not see any other listing of any
16 customer or any other prefiled testimony, and I think it
17 would be -- that they are limited to those five
18 witnesses as they listed in their prehearing statement.

19 **COMMISSIONER BRISÉ:** So with respect to the
20 Gainesville customer hearings specifically where Mr.
21 Curtin --

22 **MR. CURTIN:** Yes.

23 **COMMISSIONER BRISÉ:** -- Mr. Curtin talked
24 about using, I guess, the transcript of the customer
25 hearing, and then making that, in essence, the prefiled

1 testimony and then having the individuals come to speak
2 to that.

3 **MR. JAEGER:** They listed their three
4 witnesses, their employees that testified at service
5 hearing saying that their prefiled testimony was the
6 testimony in the service hearing. And so I think the
7 only thing we would have is those could come up and
8 talk, yes. They have been listed in the prehearing
9 statement. And then all they could do, though, is adopt
10 what they said at the service hearing and then they
11 would have to tender them to cross, because they did not
12 file separate prefiled, it was just that they said they
13 have already testified at the service hearing.

14 So if they can have them here and have them
15 say, yes, we adopt that testimony that we gave at the
16 service hearing, and then they would have to tender them
17 for cross. And that's all that they could do with those
18 witnesses at the technical hearing.

19 **COMMISSIONER BRISÉ:** Is that your intention?

20 **MR. CURTIN:** That is fine, Mr. Commissioner.
21 Plus also to respond to their supplemental testimony, if
22 this Commission allows that supplemental testimony. I
23 mean, that's what they would be here for. They would be
24 here to testify on what they testified at the
25 Gainesville hearing, plus the response to their

1 supplemental testimony. Which, just for the record, is
2 a very severe financial crunch on a lot of these
3 residents to come here to testify if this supplemental
4 testimony is allowed. And then, yes, they will be
5 subject to cross and redirect. That is fine, Your
6 Honor.

7 **COMMISSIONER BRISÉ:** Mr. May.

8 **MR. MAY:** Yes.

9 Mr. Chair, this issue was raised by YES in its
10 motion. We responded to this very issue because we were
11 concerned that this is what they intended, which is an
12 aberration. It is a deviation from standard practice.

13 You issued an order denying their motion, and
14 I thought it made it very clear that, you know, the
15 customers' testimony at the service hearing, that's in
16 the record. That is in the record, it can be relied on
17 by YES and by all the parties to develop their
18 post-hearing briefs. And, we have, you know, based upon
19 your order denying that motion, YES's motion, we have
20 already issued notices of the hearing including that
21 language in there. And so I think the issue has already
22 been decided, in effect.

23 **COMMISSIONER BRISÉ:** Mary Anne.

24 **MS. HELTON:** Mr. Chairman, we go to, I
25 believe, great lengths in the ratemaking process to hear

1 from customers of utilities. You all travel all around
2 the state and hit as many service areas as you can to
3 hear from customers. Those customer service hearings
4 are noticed for that purpose. You also make it clear
5 that you want customers to write in and talk to you
6 about the service and the rates of the company. And
7 those things are also considered by you in your ultimate
8 decision for the case.

9 When I look at the long list of witnesses that
10 we have for this proceeding, and I see that we are in
11 the prehearing conference for about -- over an hour and
12 we haven't even hit the issues yet, I'm sitting here
13 wondering whether we are even going to be able to get
14 through the hearing in the time that is set aside.

15 So I'm a little bit concerned that we are
16 talking about, at this point in time, adding witnesses
17 to the hearing process that aren't even laid out in the
18 prehearing statement, which I think I'm understanding is
19 the case. So that concerns me that we are not following
20 that process.

21 With respect to your question about whether it
22 is appropriate to hear from a witness that has not
23 prefiled testimony, I think there may be limited
24 instances where that may be the case. For instance, if
25 someone wants to call an adverse witness that they don't

1 have any control over, that may be an instance. I'm
2 just trying to talk in hypotheticals here.

3 I'm not seeing where we're at that type of
4 situation in this case where they are wanting to bring
5 back a customer that testified at the service hearing.
6 All that being said, I'd like, for myself, to understand
7 better how this all interrelates with the supplemental
8 testimony that Aqua has filed with respect to customer
9 testimony at service hearings. So my suggestion to you
10 is to take it under advisement so that we can make sure
11 all the piece-parts fit together correctly.

12 **COMMISSIONER BRISÉ:** Okay. Yes, I think that
13 is what I may consider, because I am not completely
14 clear as to what the function of those witnesses would
15 be with respect to the individuals from Gainesville who
16 are not listed as part of the five that you have listed,
17 so I think I'm going to take that under advisement. I'm
18 going to give you an opportunity to sort of make that
19 clear to me, and then I will take that under advisement.

20 **MR. CURTIN:** Well, I would just --
21 Mr. Commissioner, you would look at the supplemental
22 rebuttal testimony of Susan Chambers, which is part of
23 the motion to strike, and when she goes through --
24 excuse me, I have a little bit of a cold -- when she
25 goes through the Gainesville service hearing, she

1 specifically points to say Regina Lewis, Eugene Davis,
2 Earl McKeever, Michelle Einmo. These are the people who
3 testified at the hearing. And she goes on and goes, for
4 example, based on its review, the company believes this
5 customer may not have clearly understood how to comply
6 with the payment arrangements. She is implying what she
7 thinks the customer thought.

8 Well, the customer has to come back and be
9 able to say, no, I specifically understood. I
10 specifically talked to someone at Aqua. I knew what you
11 wanted me to do, and you didn't live up to your bargain
12 of it. So that is what they have to -- if they are
13 going to file the supplemental testimony, these
14 customers have that right to come back here and be
15 redirected on that, Your Honor, or, excuse me,
16 Mr. Commissioner. This is basically a cross of
17 supplemental testimony here, and I would get a redirect
18 of those.

19 **COMMISSIONER BRISÉ:** Okay. Thank you. So I
20 will take that under advisement. I'm going to ask this
21 just because my script says to ask, if parties are
22 willing to stipulate to any witnesses? I thought that
23 would provide a little bit of comic relief for a second.

24 **MS. CHRISTENSEN:** Commissioner, Patty
25 Christensen with Office of Public Counsel. We are still

1 reviewing that process, and I think there may be some
2 DEP water management witnesses that we may not have
3 questions for, and maybe a few of the Commission
4 witnesses. But we are still in the process of reviewing
5 it and getting prepared for the hearing. I think we
6 will be in a better position to answer that question as
7 we get closer to the hearing. But we don't necessarily
8 want to bring witnesses that we don't have questions
9 for, but we are not ready to respond to that at this
10 point.

11 **COMMISSIONER BRISÉ:** Sure. Thank you.

12 Mr. May.

13 **MR. MAY:** I agree with Ms. Christensen. I
14 think that there are a number of witnesses on this list
15 that my client could stipulate to, and we are willing to
16 work with the parties in an efficient manner to try to
17 identify those as soon as possible. Because I do know
18 that the witnesses have other things going on, and to
19 accommodate their schedules we would like to do that
20 sooner rather than later.

21 **COMMISSIONER BRISÉ:** Thank you.

22 Staff.

23 **MR. JAEGER:** Staff just notes that we were
24 trying to get the prehearing order out on November 22nd,
25 and so what we need is -- you know, it would be nice to

1 have as many as you know as quickly, then as possible.
2 You can make changes after, but that would probably be
3 what would get into the prehearing order, if we had it
4 by the 22nd.

5 **MS. CHRISTENSEN:** If we can, we will certainly
6 endeavor to try and get that concluded by November 22nd.

7 **MR. JAEGER:** And, of course, we have to run it
8 through all five Commissioners, that they also agree.
9 That is always a given.

10 **COMMISSIONER BRISÉ:** All right. Moving on.

11 Section VII, basic positions.

12 Section VIII, issues and positions. And I'm
13 going to go through each issue, and you will state, you
14 know, what your position is or what your disposition is
15 with respect to that issue.

16 Issue 1.

17 **MR. MAY:** The draft order correctly states our
18 position.

19 **COMMISSIONER BRISÉ:** Okay.

20 **MS. CHRISTENSEN:** I believe it correctly
21 states OPC's position. I think we had some
22 typographical errors that we caught through the
23 prehearing order that was sent to Mr. Jaeger.

24 **MR. JAEGER:** They are supposed to have been
25 incorporated.

1 **MS. CHRISTENSEN:** Hopefully, they have. And I
2 haven't, unfortunately, had the opportunity with
3 depositions yesterday, to go back through and make sure
4 that we have gotten everything. If I find any further
5 typographical errors and some -- we had some switching
6 of monetary numbers that we may need to go back and make
7 sure we've got them absolutely correct. Otherwise, I
8 think we have captured the majority of the issues our
9 position.

10 **COMMISSIONER BRISÉ:** Okay. Thank you.

11 **MR. CURTIN:** We'll change unacceptable to
12 unsatisfactory to follow everybody else's lead on that,
13 but other than that, short and sweet for YES, sir.

14 **COMMISSIONER BRISÉ:** Okay.

15 Pasco County?

16 **MR. RICHARDS:** It's fine the way it's is
17 stated. Thank you.

18 **COMMISSIONER BRISÉ:** Okay. Attorney General's
19 Office.

20 **MS. BRADLEY:** It reflects our position. Thank
21 you.

22 **COMMISSIONER BRISÉ:** Staff.

23 **MR. JAEGER:** That's correct.

24 **COMMISSIONER BRISÉ:** Okay. One second.

25 Attorney General's Office, you don't mind if I

1 just say AG?

2 MS. BRADLEY: That's fine.

3 COMMISSIONER BRISÉ: Okay.

4 Issue 2.

5 MR. MAY: It correctly states AUF's position.

6 COMMISSIONER BRISÉ: Okay.

7 OPC.

8 MS. CHRISTENSEN: We believe that that is
9 fine.

10 COMMISSIONER BRISÉ: YES?

11 MR. CURTIN: It's acceptable.

12 MR. JAEGER: Yes.

13 COMMISSIONER BRISÉ: Okay.

14 Pasco County?

15 MR. RICHARDS: It's acceptable.

16 COMMISSIONER BRISÉ: AG?

17 MS. BRADLEY: Yes.

18 COMMISSIONER BRISÉ: Staff?

19 MR. JAEGER: Yes.

20 COMMISSIONER BRISÉ: Issue 3.

21 MR. MAY: Can you give me one second?

22 COMMISSIONER BRISÉ: Sure. No problem.

23 MR. MAY: We're fine with this.

24 COMMISSIONER BRISÉ: Okay.

25 OPC?

1 MS. CHRISTENSEN: I believe that's correct.

2 COMMISSIONER BRISÉ: YES?

3 MR. CURTIN: It's correct, Your Honor --

4 Commissioner.

5 MR. JAEGER: Commissioner, I note that there
6 is a semi-colon in the middle of Issue 3, Tomoka View
7 Twin Rivers, that should not be there. It is the second
8 to the last full line, and it says: Tomoka View,
9 semi-colon, Twin Rivers, that is all one project.

10 COMMISSIONER BRISÉ: Okay. Thank you.

11 Pasco County?

12 MR. RICHARDS: Yes.

13 COMMISSIONER BRISÉ: AG?

14 MR. MAY: Yes.

15 COMMISSIONER BRISÉ: Staff?

16 MR. JAEGER: Yes.

17 COMMISSIONER BRISÉ: Issue 4.

18 MR. MAY: Yes.

19 COMMISSIONER BRISÉ: OPC?

20 MS. CHRISTENSEN: It's correct.

21 COMMISSIONER BRISÉ: YES?

22 MR. CURTIN: It's correct.

23 COMMISSIONER BRISÉ: Pasco County?

24 MR. RICHARDS: Yes.

25 COMMISSIONER BRISÉ: AG?

1 MS. BRADLEY: Yes.

2 COMMISSIONER BRISÉ: Staff?

3 MR. JAEGER: Yes.

4 COMMISSIONER BRISÉ: Issue 5.

5 AUF?

6 MR. MAY: It's correct.

7 COMMISSIONER BRISÉ: OPC?

8 MS. CHRISTENSEN: It appears to be correct.

9 COMMISSIONER BRISÉ: YES?

10 MR. CURTIN: It's correct.

11 COMMISSIONER BRISÉ: Pasco County?

12 MR. RICHARDS: It's correct.

13 COMMISSIONER BRISÉ: AG?

14 MS. BRADLEY: Yes.

15 COMMISSIONER BRISÉ: Staff?

16 MR. JAEGER: Yes.

17 COMMISSIONER BRISÉ: Issue 6.

18 AUF?

19 MR. MAY: Correct.

20 COMMISSIONER BRISÉ: OPC?

21 MS. CHRISTENSEN: It appears OPC left Village

22 Water at 64 percent off of the list, and we can

23 double-check that number and provide it to Mr. Jaeger.

24 COMMISSIONER BRISÉ: Okay.

25 YES?

1 MR. CURTIN: Acceptable.

2 COMMISSIONER BRISÉ: Okay.

3 Pasco County?

4 MR. RICHARDS: It's fine.

5 COMMISSIONER BRISÉ: AG?

6 MS. BRADLEY: As amended, yes.

7 COMMISSIONER BRISÉ: Staff?

8 MR. JAEGER: Yes.

9 COMMISSIONER BRISÉ: Issue 7.

10 AUF?

11 MR. MAY: Correct.

12 COMMISSIONER BRISÉ: OPC?

13 MS. CHRISTENSEN: It appears to be correct.

14 COMMISSIONER BRISÉ: YES?

15 MR. CURTIN: Correct.

16 COMMISSIONER BRISÉ: Pasco?

17 MR. RICHARDS: Yes.

18 COMMISSIONER BRISÉ: AG?

19 MS. BRADLEY: Yes.

20 COMMISSIONER BRISÉ: Staff?

21 MR. JAEGER: Yes.

22 COMMISSIONER BRISÉ: Issue 8.

23 AUF?

24 MR. MAY: Correct.

25 COMMISSIONER BRISÉ: OPC?

1 MS. CHRISTENSEN: It appears to be correct.

2 COMMISSIONER BRISÉ: YES?

3 MR. CURTIN: Correct.

4 COMMISSIONER BRISÉ: Pasco?

5 MR. RICHARDS: Yes.

6 COMMISSIONER BRISÉ: AG?

7 MS. BRADLEY: Yes.

8 COMMISSIONER BRISÉ: Staff?

9 MR. JAEGER: Yes.

10 COMMISSIONER BRISÉ: Issue 9.

11 AUF?

12 MR. MAY: Correct.

13 COMMISSIONER BRISÉ: OPC?

14 MS. CHRISTENSEN: It appears to be correct.

15 COMMISSIONER BRISÉ: YES?

16 MR. CURTIN: Correct.

17 COMMISSIONER BRISÉ: Pasco County?

18 MR. RICHARDS: Yes.

19 COMMISSIONER BRISÉ: AG?

20 MS. BRADLEY: Yes.

21 COMMISSIONER BRISÉ: Staff?

22 MR. JAEGER: Yes.

23 COMMISSIONER BRISÉ: Issue 10.

24 AUF?

25 MR. MAY: Correct.

1 COMMISSIONER BRISÉ: OPC.
2 MS. CHRISTENSEN: It appears to be correct.
3 COMMISSIONER BRISÉ: YES?
4 MR. CURTIN: It appears to be correct.
5 COMMISSIONER BRISÉ: Pasco?
6 MR. RICHARDS: Yes.
7 COMMISSIONER BRISÉ: AG?
8 MS. BRADLEY: Yes.
9 COMMISSIONER BRISÉ: Staff?
10 MR. JAEGER: Yes.
11 COMMISSIONER BRISÉ: Issue 11.
12 AUF?
13 MR. MAY: Correct.
14 COMMISSIONER BRISÉ: OPC?
15 MS. CHRISTENSEN: It appears to be correct.
16 COMMISSIONER BRISÉ: YES?
17 MR. CURTIN: Correct.
18 COMMISSIONER BRISÉ: Pasco?
19 MR. RICHARDS: Yes.
20 COMMISSIONER BRISÉ: AG?
21 MS. BRADLEY: Yes.
22 COMMISSIONER BRISÉ: Staff?
23 MR. JAEGER: Yes.
24 COMMISSIONER BRISÉ: Issue 12.
25 Aqua?

1 **MR. MAY:** Commissioner Brisé, this is
2 certainly correct. I think that from our perspective it
3 looks like this issue could be stipulated.

4 **COMMISSIONER BRISÉ:** Okay.

5 OPC?

6 **MS. CHRISTENSEN:** I think in the spirit of the
7 fuel docket, we can change our petition to no position
8 and it could be -- if staff is in agreement with AUF, it
9 could be categorized as a Type B stipulation, where we
10 take no position on the issue and staff and the utility
11 agree on the issue.

12 **COMMISSIONER BRISÉ:** Okay.

13 YES?

14 **MR. CURTIN:** We would defer to the Office of
15 Public Counsel.

16 **COMMISSIONER BRISÉ:** Okay.

17 Pasco County?

18 **MR. RICHARDS:** Yes.

19 **COMMISSIONER BRISÉ:** Okay.

20 AG?

21 **MS. BRADLEY:** We would concur with the B
22 stipulation.

23 **COMMISSIONER BRISÉ:** Staff?

24 **MR. JAEGER:** We concur.

25 **COMMISSIONER BRISÉ:** Okay. So we can turn

1 that into -- Issue 12 into what was used as a Type B
2 stipulation in the last set of hearings. So we would
3 have to define what a Type B stipulation is and what a
4 Type A stipulation is, and we will do that as part of
5 the document as we finalize the document.

6 Issue 13.

7 **MR. MAY:** Correct.

8 **COMMISSIONER BRISÉ:** OPC?

9 **MS. CHRISTENSEN:** OPC would change our
10 position to state that this is a fallout calculation
11 that's subject to the resolution of other issues and
12 should be resolved consistent with OPC's recommended
13 adjustment.

14 **COMMISSIONER BRISÉ:** Okay.

15 YES?

16 **MR. CURTIN:** We would defer to OPC's position.

17 **COMMISSIONER BRISÉ:** Pasco?

18 **MR. RICHARDS:** We would defer to OPC on this.

19 **COMMISSIONER BRISÉ:** AG?

20 **MS. BRADLEY:** We concur as amended.

21 **COMMISSIONER BRISÉ:** Okay.

22 Staff?

23 **MR. JAEGER:** And if Ms. Christensen could just
24 give that in an e-mail to me, their position. And what
25 I would like to say right here is any changes to

1 positions, just give them to me. We are going to try to
2 get the order out on the 22nd, so we would like to have
3 those prior to that. And we concur.

4 COMMISSIONER BRISÉ: All right. Issue 14.

5 Aqua?

6 MR. MAY: Correct.

7 COMMISSIONER BRISÉ: OPC?

8 MS. CHRISTENSEN: It appears to be correct.

9 COMMISSIONER BRISÉ: YES?

10 MR. CURTIN: Correct.

11 COMMISSIONER BRISÉ: Pasco?

12 MR. RICHARDS: Correct.

13 COMMISSIONER BRISÉ: AG?

14 MS. BRADLEY: Yes.

15 COMMISSIONER BRISÉ: Staff?

16 MR. JAEGER: Yes.

17 COMMISSIONER BRISÉ: Issue 15.

18 Aqua?

19 MR. MAY: Correct.

20 COMMISSIONER BRISÉ: OPC?

21 MS. CHRISTENSEN: It appears to be correct.

22 COMMISSIONER BRISÉ: YES?

23 MR. CURTIN: Correct.

24 COMMISSIONER BRISÉ: Pasco?

25 MR. RICHARDS: Correct.

1 COMMISSIONER BRISÉ: AG?

2 MR. JAEGER: I was going to address that.

3 COMMISSIONER BRISÉ: Okay. I think we are
4 going back to OPC.

5 MR. JAEGER: This is one that Ms. Christensen
6 had amended to the numbers. In typing the numbers we
7 went back and just typed the numbers in, and we reversed
8 the numbers. And the 4,784,757 should be for
9 wastewater, and the 8,756,984 should be for water. Is
10 that correct?

11 MS. CHRISTENSEN: I believe that's correct.

12 MR. JAEGER: So it's just reversing those
13 numbers in OPC's position.

14 COMMISSIONER BRISÉ: Okay.

15 MS. CHRISTENSEN: That's correct.

16 COMMISSIONER BRISÉ: Okay. Thank you.

17 MS. BRADLEY: And we concur as amended.

18 COMMISSIONER BRISÉ: Okay. So, YES, you
19 concur as amended?

20 MR. CURTIN: Yes.

21 COMMISSIONER BRISÉ: Pasco, you concur as
22 amended?

23 MR. RICHARDS: Yes.

24 COMMISSIONER BRISÉ: Okay. Issue 16. Did I
25 ask staff?

1 MR. JAEGER: Yes.

2 COMMISSIONER BRISÉ: Issue 16.

3 Aqua?

4 MR. MAY: Correct.

5 COMMISSIONER BRISÉ: OPC?

6 MS. CHRISTENSEN: It appears to be correct.

7 COMMISSIONER BRISÉ: YES?

8 MR. CURTIN: Correct.

9 COMMISSIONER BRISÉ: Pasco?

10 MR. RICHARDS: Correct.

11 COMMISSIONER BRISÉ: AG?

12 MS. BRADLEY: Yes.

13 COMMISSIONER BRISÉ: Staff?

14 MR. JAEGER: Yes.

15 COMMISSIONER BRISÉ: Issue 17.

16 Aqua?

17 MR. MAY: Correct.

18 COMMISSIONER BRISÉ: OPC?

19 MS. CHRISTENSEN: OPC would correct the first

20 line of our position, and it would read: "Yes.

21 Affiliated costs and charges allocated to AUF's systems

22 should be reduced by \$976,845." And delete the

23 "million."

24 COMMISSIONER BRISÉ: Okay.

25 MS. CHRISTENSEN: That would be one heck of an

1 adjustment.

2 MR. MAY: That's what I call an adjustment.

3 COMMISSIONER BRISÉ: YES?

4 MR. CURTIN: Correct, as amended by OPC.

5 COMMISSIONER BRISÉ: Are you sure you can
6 agree with the amendment? (Laughter.)

7 MR. CURTIN: I agree with OPC's position.

8 COMMISSIONER BRISÉ: Okay. Pasco?

9 MR. RICHARDS: Correct.

10 COMMISSIONER BRISÉ: AG?

11 MS. BRADLEY: We concur as amended.

12 COMMISSIONER BRISÉ: Staff?

13 MR. JAEGER: Yes, as amended.

14 COMMISSIONER BRISÉ: All right. Issue 18.
15 Aqua?

16 MR. MAY: Correct.

17 COMMISSIONER BRISÉ: OPC?

18 MS. CHRISTENSEN: It appears to be correct.

19 COMMISSIONER BRISÉ: YES?

20 MR. CURTIN: Correct.

21 COMMISSIONER BRISÉ: Pasco?

22 MR. RICHARDS: Correct.

23 COMMISSIONER BRISÉ: AG?

24 MS. BRADLEY: Yes.

25 COMMISSIONER BRISÉ: Staff?

1 **MR. JAEGER:** Yes.

2 **COMMISSIONER BRISÉ:** Issue 19.

3 Aqua?

4 **MR. MAY:** The position, Commissioner Brisé, is
5 correct. The sponsoring witness is incorrect. I would
6 ask that with all due respect, remove reference to
7 Mr. Rendell, and insert in parentheses -- and this is a
8 toughy to spell. His name is Stanley Szczygiel. So it
9 would be, paren, Szczygiel. That's spelled
10 S-Z-C-Z-Y-G-I-E-L.

11 **COMMISSIONER BRISÉ:** All right.

12 OPC?

13 **MS. CHRISTENSEN:** It appears to be correct.

14 **COMMISSIONER BRISÉ:** YES?

15 **MR. CURTIN:** Correct.

16 **COMMISSIONER BRISÉ:** Pasco?

17 **MR. RICHARDS:** Correct.

18 **COMMISSIONER BRISÉ:** AG?

19 **MS. BRADLEY:** Yes.

20 **COMMISSIONER BRISÉ:** Staff?

21 **MR. JAEGER:** Yes.

22 **COMMISSIONER BRISÉ:** Issue 20.

23 Aqua?

24 **MR. MAY:** Correct.

25 **COMMISSIONER BRISÉ:** OPC?

1 MS. CHRISTENSEN: It appears to be correct.
2 COMMISSIONER BRISÉ: YES?
3 MR. CURTIN: Correct.
4 COMMISSIONER BRISÉ: Pasco?
5 MR. RICHARDS: Correct.
6 COMMISSIONER BRISÉ: AG?
7 MS. BRADLEY: Yes.
8 COMMISSIONER BRISÉ: Staff?
9 MR. JAEGER: Yes.
10 COMMISSIONER BRISÉ: Issue 21.
11 Aqua?
12 MR. MAY: Correct.
13 COMMISSIONER BRISÉ: OPC?
14 MS. CHRISTENSEN: It appears to be correct.
15 COMMISSIONER BRISÉ: YES?
16 MR. CURTIN: Correct.
17 COMMISSIONER BRISÉ: Pasco?
18 MR. RICHARDS: Yes.
19 COMMISSIONER BRISÉ: AG?
20 MS. BRADLEY: Yes.
21 COMMISSIONER BRISÉ: Staff?
22 MR. JAEGER: Yes.
23 COMMISSIONER BRISÉ: Issue 22.
24 Aqua?
25 MR. MAY: Correct with one caveat. We can go

1 here, but just to make all parties on record, I think
2 staff has requested an updated exhibit regarding rate
3 case expense as a result of Mr. Szczygiel's deposition
4 tomorrow, so this number could change depending on the
5 updated exhibit to that deposition. But we're good to
6 go with that, with that understanding.

7 COMMISSIONER BRISÉ: OPC?

8 MS. CHRISTENSEN: It appears to be correct.

9 Of course, based on whatever update the company provides
10 we may also need to update our numbers, as well.

11 COMMISSIONER BRISÉ: Okay.

12 YES?

13 MR. CURTIN: We would defer to any updates by
14 OPC.

15 COMMISSIONER BRISÉ: Okay.

16 Pasco?

17 MR. RICHARDS: We would defer to OPC.

18 COMMISSIONER BRISÉ: AG?

19 MS. BRADLEY: Yes, as may be amended.

20 COMMISSIONER BRISÉ: Staff?

21 MR. JAEGER: Yes.

22 COMMISSIONER BRISÉ: Issue 23.

23 Aqua?

24 MR. MAY: That's correct.

25 COMMISSIONER BRISÉ: OPC?

1 MS. CHRISTENSEN: On 23 it appears correct.

2 COMMISSIONER BRISÉ: Okay.

3 YES?

4 MR. CURTIN: Correct.

5 COMMISSIONER BRISÉ: Pasco?

6 MR. RICHARDS: Yes.

7 COMMISSIONER BRISÉ: AG?

8 MS. BRADLEY: Yes.

9 COMMISSIONER BRISÉ: Staff?

10 MR. JAEGER: Yes.

11 COMMISSIONER BRISÉ: Issue 24. Okay.

12 Aqua?

13 MR. MAY: Commissioner Brisé, I believe this
14 is the issue that you asked the parties to file
15 memoranda on as far as the appropriateness of the
16 inclusion of this issue in this case. We filed our
17 memoranda on November 3rd, and we don't believe that
18 this is an appropriate issue to be included. I am
19 prepared to argue our memoranda, but I will certainly
20 take my directions from you.

21 COMMISSIONER BRISÉ: Sure.

22 OPC?

23 MS. CHRISTENSEN: Well, the position in the
24 issue is correctly stated.

25 COMMISSIONER BRISÉ: Okay. I'll take the

1 other positions.

2 YES?

3 MR. CURTIN: We would defer to OPC on this.

4 COMMISSIONER BRISÉ: Okay.

5 Pasco County?

6 MR. RICHARDS: Yes.

7 COMMISSIONER BRISÉ: And, AG?

8 MS. BRADLEY: I would certainly concur with
9 OPC on this.

10 COMMISSIONER BRISÉ: Okay.

11 Staff?

12 MR. JAEGER: Our position is as stated.

13 COMMISSIONER BRISÉ: Okay. On this issue,
14 since it is an issue that I have to determine whether we
15 will allow this issue or not, when do I need to render a
16 ruling on this one?

17 MS. HELTON: I think you could do that when
18 you issue the prehearing order.

19 COMMISSIONER BRISÉ: Okay. And you all are
20 comfortable with the briefs and feel comfortable with
21 not having to reargue what is in the brief?

22 MS. CHRISTENSEN: I will do whatever is the
23 prehearing officers's discretion. I mean, I think our
24 brief is well-supported and well-reasoned. And I'm
25 certainly prepared to speak to that issue today, or to

1 allow the briefs to stand as filed.

2 I would note that whatever the Commissioner's
3 ruling is, you know, we may -- we'll have to decide
4 whether or not we want to appeal to the full Commission
5 or not prior to the hearing, depending on what the
6 ruling is. But, you know, I'm willing to allow -- or
7 not willing to allow, but I'm comfortable with the
8 prehearing officer making the decision based on our
9 filings or presenting, like I said, argument today.

10 **COMMISSIONER BRISÉ:** Okay. Thank.

11 You. So we will avoid the argument on that,
12 and we'll just go from the briefs.

13 AG?

14 **MS. BRADLEY:** I would note that a similar
15 issue was included in one of the rate hearings a couple
16 of years ago. It was tweaked by agreement of the
17 counsel, but that a similar issue has been on a rate
18 case utility, because we raised it at that time.

19 **COMMISSIONER BRISÉ:** Okay. Thank you.

20 **MR. CURTIN:** YES would only add that they have
21 not filed a memorandum, but they will adopt the OPC's
22 memorandum.

23 **COMMISSIONER BRISÉ:** Okay. Thank you.

24 Issue Number 25.

25 **MR. MAY:** Commissioner Brisé, could we get

1 some clarification from the Attorney General, because
2 I'm not aware of any case where the Florida Public
3 Service Commission has used this issue in a water and
4 wastewater rate case. I just -- could you provide a
5 citation to that Ms. Bradley?

6 **MS. BRADLEY:** I'm trying to remember which
7 case it was. I don't know whether staff remembers it,
8 but it was one of, I believe, the rate cases.

9 **MS. HELTON:** I think it was either the
10 Progress or Power and Light case. Is that what you're
11 referring to?

12 **MS. BRADLEY:** Yes.

13 **MS. HELTON:** And I remember having the
14 discussion and, quite frankly, I can't remember which
15 one it was.

16 **MR. MAY:** I think if it's --

17 **MS. BRADLEY:** It's the FPL.

18 **COMMISSIONER BRISÉ:** Okay.

19 **MR. MAY:** I think if it's referring to the FPL
20 case, that request to include that issue was denied by
21 Prehearing Officer McMurrin.

22 **MS. BRADLEY:** No, it was stipulated to by
23 counsel.

24 **COMMISSIONER BRISÉ:** Mr. Jaeger.

25 **MR. JAEGER:** I looked at one FPL, and I think

1 Ms. Bennett was involved in that case, but I thought
2 there was like an Issue 171 and that was denied. There
3 may have been another one. I'm not familiar with the
4 FPL case enough to say what went on in that case.

5 **COMMISSIONER BRISÉ:** Okay. Mr. May.

6 **MR. MAY:** If the referral is to the FPL
7 docket, I would just ask that Order Number PSC-09-0573
8 speak for itself.

9 **COMMISSIONER BRISÉ:** Okay. Thank you. All
10 right. We are on Issue 25.

11 **MS. CHRISTENSEN:** I guess just for
12 clarification, excuse me, on Issue 24, it looks like in
13 the Florida Power and Light there may have been some
14 renumbering and retweaking of the issue. So it may
15 not -- 171 may have been dropped, and it may have been
16 renumbered and put in as a different issue with some
17 slightly different wording, I think is what Ms. Bradley
18 is saying. So that may be -- I just don't want to
19 create confusion, because I did cite the issue in my
20 memorandum. But if there is a subsequently worded issue
21 or a separately worded issue that also addressed it,
22 that may be more germane. So I just wanted to make sure
23 we were clear.

24 **MS. BRADLEY:** I think there was an agreement
25 of counsel, and I think it was tweaked, so the issue was

1 preserved.

2 COMMISSIONER BRISÉ: Okay. Thank you. Issue
3 25.

4 AUF?

5 MR. MAY: This is -- we're on 25 now?

6 COMMISSIONER BRISÉ: 25.

7 MR. MAY: That's correct.

8 COMMISSIONER BRISÉ: OPC?

9 MS. CHRISTENSEN: It appears correct.

10 COMMISSIONER BRISÉ: Thank you.

11 YES?

12 MR. CURTIN: Correct.

13 COMMISSIONER BRISÉ: Pasco?

14 MR. RICHARDS: Yes.

15 COMMISSIONER BRISÉ: AG?

16 MS. BRADLEY: Yes.

17 COMMISSIONER BRISÉ: Staff?

18 MR. JAEGER: Yes.

19 COMMISSIONER BRISÉ: Issue 26.

20 AUF?

21 MR. MAY: I guess our position is correctly
22 stated, but I was looking at this issue and wondering if
23 this is an issue that is ripe for stipulation.

24 MS. CHRISTENSEN: OPC. We have stated a
25 position on this. I know that it's indicated as a

1 fallout issue, but it was raised -- I agree that it was
2 raised by Ms. Sullivan on behalf of Lucy Wambsgan, but
3 it was still an issue that was raised in the case, and
4 we are at the prehearing, and I'm taking an affirmative
5 position on it. And our position in the prehearing
6 order is correct.

7 **COMMISSIONER BRISÉ:** Okay.

8 **MR. MAY:** May I?

9 **COMMISSIONER BRISÉ:** Sure.

10 **MR. MAY:** I think that Ms. Wambsgan has
11 withdrawn as a party from this proceeding. The issues
12 that she brought to this proceeding went with her.

13 **MS. CHRISTENSEN:** I don't know of any
14 Commission rule or precedent that says that if a party
15 withdraws and the issue was protested that the protest
16 goes away if they withdraw if we take a position on it.
17 And we have taken a position on it, and I don't -- and
18 that's what I'm suggesting is the issue still remains
19 live as long as we are at the prehearing and we are
20 taking an active and live position on it.

21 We're not, you know, just taking no position
22 or no position at this time. We have a thoroughly
23 worded and carefully thought-out position on the issue.
24 And I don't know anything in the statutes or rules that
25 say that, you know, once an issue is protested that it

1 cannot be addressed fully by any other party and that
2 they become automatically withdrawn if that party leaves
3 the proceeding. It's still a live issue as far as I'm
4 concerned.

5 **COMMISSIONER BRISÉ:** Okay. Mary Anne?

6 **MS. HELTON:** I'm looking for the exception
7 language in Chapter 120. If you will give me just one
8 minute.

9 **COMMISSIONER BRISÉ:** Sure.

10 **MS. CHRISTENSEN:** And I would agree, the
11 exception language says anything that is not protested
12 is deemed stipulated, but the issue was protested. It
13 was protested by a different party, but I don't think
14 that's irrelevant as to whether or not at this stage of
15 the proceeding I can take a position on all the
16 protested issues. And I believe in my protest I
17 reserved the right to take a position on protested
18 issues by other parties, and I have done so. And, thus,
19 the issue remains alive.

20 **COMMISSIONER BRISÉ:** Okay.

21 **MS. HELTON:** Just for purposes of the record,
22 Mr. Chairman, Chapter 120.80, Subsection 13, which lists
23 the exceptions to Chapter 120 for the Florida Public
24 Service Commission, the first -- the second exception,
25 notwithstanding Sections 120.569 and 120.57, a hearing

1 on an objection to proposed agency action of the Florida
2 Public Service Commission may only address the issues in
3 dispute. Issues in the proposed action which are not in
4 dispute are deemed stipulated.

5 **MS. CHRISTENSEN:** Yes.

6 **MS. HELTON:** I think I disagree with
7 Ms. Christensen in the way she reads the statute. I
8 know that, for instance, if only OPC had protested the
9 Commission's decision, and they, for whatever reason,
10 withdrew their protest and the other parties here had
11 just intervened, I believe then that that protest, in
12 effect, becomes nonexistent. And we would go back --
13 the Commission would go back and adopt the order as it
14 had been voted as proposed agency action.

15 So my inclination is to say that you cannot
16 address issues that were protested by a party that is no
17 longer a part of the proceeding, but I'd like to go back
18 and think about that and talk to Ms. Cibula, who is our
19 appellant expert, and have a further conversation with
20 you about that before you issue the prehearing order.
21 But just for purposes of the record, my reaction is that
22 I disagree with Ms. Christensen.

23 **MS. CHRISTENSEN:** May I briefly respond, and
24 then.

25 **COMMISSIONER BRISÉ:** Sure.

1 **MS. CHRISTENSEN:** Two issues. First, in my
2 protest I specifically reserved the right to take
3 positions and to actively litigate any issue as
4 protested by any other parties, and I have done so. So,
5 therefore, I'm actively adopting an issue that was
6 protested. And 120 does not say that you can't -- that
7 the issue goes away if a disputed party falls out of the
8 proceeding. It just says that the issue has to have
9 been disputed, and this issue clearly was disputed. And
10 it is clear that we have taken a position on the issue,
11 and we have clearly articulated -- and we have testimony
12 that, I think, addresses the issue.

13 So this is not an issue that there is no
14 evidence that can be produced at hearing to address and
15 that can be used by the Commissioner to take a decision
16 on this particular issue. So, I respectfully, I guess,
17 suggest that this issue was adopted and protested by the
18 Office of Public Counsel in our protest by the inclusion
19 of our language saying that we would take positions and
20 present testimony on any of the other issues that were
21 protested by other parties.

22 And that was at the beginning of the case, and
23 I think that reserves and addresses any concerns that
24 Ms. Helton has raised that OPC is not a party to that
25 disputed protest. I think by that language we are. But

1 I think even despite, and even if we had not included
2 that language, which we did, I think when an issue has
3 been raised by whomever, another party is free to
4 address that disputed issue. And so long as there is
5 evidence in the record and testimony on the issue, that
6 issue remains live. And I think it's irrelevant who
7 particularly raised the issue to begin with.

8 I think to go to Ms. Helton's example, if we
9 had protested and raised a bunch of issues in our
10 protest suggesting YES Community filed testimony on the
11 quality of service issue, even if we dropped out of the
12 case there would still be live testimony or prefiled
13 testimony on which the Commission could render a
14 decision. So I think that's my response to that.

15 **MR. CURTIN:** Briefly. YES understands the
16 procedural posture of this case, too. Ms. Wambsgan, I'm
17 pronouncing that terribly wrong, filed the initial
18 petition. Our petition is a cross-petition where we,
19 once again, used the same language that OPC used
20 adopting the same issues of any of the other petitions
21 that have been filed already. So at that point in time
22 when the petition was filed that issue was at issue.
23 The cross-petition was filed by YES Communities putting
24 up their own positions on various issues, but adopting
25 the positions that had already been taken.

1 So that position of Ms. Wambsgan is still at
2 issue by YES's cross-petition. So it never left that
3 issue, regardless of whether Ms. Wambsgan dropped or
4 dismissed her claim. So just procedurally that is how
5 it happened, and I think that's an important issue for
6 staff to consider when taking into consideration whether
7 this issue is still alive today.

8 **MS. HELTON:** And I agree with that,
9 Mr. Chairman.

10 **COMMISSIONER BRISÉ:** Mr. May.

11 **MR. MAY:** Again, not to belabor the point, but
12 our position is that to the extent that the OPC and YES
13 tried to bootstrap themselves onto Ms. Wambsgan's
14 petition and to dispute or to litigate the issues raised
15 by that party, the issues raised by that party are now a
16 nullity. The issues raised by that party has withdrawn
17 from the proceeding, and we believe that OPC and others
18 can't use a pleading to circumvent the clear language in
19 Chapter 120.

20 **COMMISSIONER BRISÉ:** Okay. Thank you.

21 So I will take that under advisement, and I
22 guess we need to do a little more research on that one.

23 Where were we? We are still on Issue 26. I
24 believe that YES said that they defer to the position of
25 OPC?

1 **MR. CURTIN:** Yes. We would defer to their
2 position with the additional caveat, as I just
3 discussed, that we are the cross-petitioner. We adopted
4 Ms. Wambsgan's or any other petitions, including OPC's
5 petition, at the time of cross-petition.

6 **COMMISSIONER BRISÉ:** Okay.

7 Pasco?

8 **MR. RICHARDS:** We support OPC's position.

9 **COMMISSIONER BRISÉ:** AG?

10 **MS. BRADLEY:** Yes.

11 **COMMISSIONER BRISÉ:** Staff?

12 **MR. JAEGER:** Yes.

13 **COMMISSIONER BRISÉ:** Okay. Issue 27.

14 Aqua?

15 **MR. MAY:** The draft order correctly states our
16 position. Again, I would observe that this appears to
17 be an issue that would be ripe for stipulation.

18 **COMMISSIONER BRISÉ:** Okay.

19 OPC?

20 **MS. CHRISTENSEN:** Well, it appears for the
21 remaining issues, I guess this is 27 through --
22 discussing the ratemaking, I think it's up through Issue
23 38, we took no position at this time, and we could
24 change our positions on those issues to no position.
25 And, you know, at some point I guess prior to the

1 hearing, if staff is in agreement with AUF's position,
2 then that would make it a Type B Stipulation, otherwise
3 we would remain with no position at this time on the
4 remaining ratemaking positions.

5 **COMMISSIONER BRISÉ:** Okay. So then -- and it
6 seems as I am going through this that YES, Pasco, and AG
7 through -- from issue -- I guess that would be --

8 **MS. CHRISTENSEN:** 27.

9 **COMMISSIONER BRISÉ:** -- 27 through 38, are in
10 a similar position to OPC. So, therefore, I'm going to
11 ask if for Issues 27 through 38, if there are no
12 adjustments to the other positions, that those could be
13 considered as Type B Stipulations unless staff has
14 something.

15 **MR. JAEGER:** We did have one problem.

16 **COMMISSIONER BRISÉ:** Okay.

17 **MR. JAEGER:** If they are listed as fallout
18 issues, then they are not really stipulated, they are
19 dependent upon the resolution and it's a fallout. And
20 so the rate structure is still at issue what it's going
21 to ultimately become. And so I think every time we say
22 a fallout issue, that we would probably want to keep
23 that issue.

24 **COMMISSIONER BRISÉ:** Sure.

25 **MR. JAEGER:** And then I haven't looked at how

1 many of them are fallout. I think most of them are, but
2 not all.

3 MS. CHRISTENSEN: I think they're all
4 fallouts.

5 COMMISSIONER BRISÉ: Almost all of them are,
6 so we will go through them one-by-one.

7 MS. CHRISTENSEN: All right.

8 COMMISSIONER BRISÉ: All right.

9 MS. CHRISTENSEN: Issue 27, OPC changes the
10 position to no position.

11 COMMISSIONER BRISÉ: Okay. All right.

12 AUF, you've already stated your position.

13 MR. MAY: It correctly states our position.

14 COMMISSIONER BRISÉ: Okay.

15 OPC, no position?

16 MS. CHRISTENSEN: Correct.

17 COMMISSIONER BRISÉ: YES?

18 MR. CURTIN: We will concur with OPC's change
19 in position to no position.

20 COMMISSIONER BRISÉ: Okay. Pasco?

21 MR. RICHARDS: Yes. We're following OPC,
22 also.

23 COMMISSIONER BRISÉ: Okay. AG?

24 MS. BRADLEY: Yes, as amended.

25 COMMISSIONER BRISÉ: Staff?

1 MR. JAEGER: As stated.
2 COMMISSIONER BRISÉ: Okay. Issue 28.
3 Aqua?
4 MR. MAY: It correctly states the position.
5 COMMISSIONER BRISÉ: OPC?
6 MS. CHRISTENSEN: Change to no position.
7 COMMISSIONER BRISÉ: No position.
8 YES?
9 MR. CURTIN: YES defers to OPC.
10 COMMISSIONER BRISÉ: Pasco?
11 MR. RICHARDS: Yes, we're following OPC.
12 COMMISSIONER BRISÉ: AG?
13 MS. BRADLEY: Yes, as amended.
14 COMMISSIONER BRISÉ: Okay. Staff?
15 MR. JAEGER: As stated.
16 COMMISSIONER BRISÉ: Issue 29.
17 Aqua?
18 MR. MAY: It's correct.
19 COMMISSIONER BRISÉ: OPC?
20 MS. CHRISTENSEN: No position.
21 COMMISSIONER BRISÉ: YES?
22 MR. CURTIN: Defer to OPC.
23 COMMISSIONER BRISÉ: Pasco?
24 MR. RICHARDS: Yes, as amended.
25 COMMISSIONER BRISÉ: AG?

1 MS. BRADLEY: Yes, as amended.

2 COMMISSIONER BRISÉ: Staff?

3 MR. JAEGER: As stated.

4 COMMISSIONER BRISÉ: Issue 30.

5 Aqua?

6 MR. MAY: Correct.

7 COMMISSIONER BRISÉ: OPC?

8 MS. CHRISTENSEN: No position.

9 COMMISSIONER BRISÉ: YES?

10 MR. CURTIN: Defer to OPC.

11 COMMISSIONER BRISÉ: Pasco?

12 MR. RICHARDS: Yes, as amended.

13 COMMISSIONER BRISÉ: AG?

14 MS. BRADLEY: Yes, as amended.

15 COMMISSIONER BRISÉ: Staff?

16 MR. JAEGER: As stated.

17 COMMISSIONER BRISÉ: Issue 31.

18 Aqua?

19 MR. MAY: Correct.

20 COMMISSIONER BRISÉ: OPC?

21 MS. CHRISTENSEN: No position.

22 COMMISSIONER BRISÉ: YES?

23 MR. CURTIN: Defer to OPC.

24 COMMISSIONER BRISÉ: Pasco?

25 MR. RICHARDS: Yes.

1 COMMISSIONER BRISÉ: AG?
2 MS. BRADLEY: Yes, as amended.
3 COMMISSIONER BRISÉ: Staff?
4 MR. JAEGER: As stated.
5 COMMISSIONER BRISÉ: Okay. Moving on to other
6 issues. Issue 32.
7 Aqua?
8 MR. MAY: That's correct.
9 COMMISSIONER BRISÉ: OPC?
10 MS. CHRISTENSEN: No position.
11 COMMISSIONER BRISÉ: Okay.
12 YES?
13 MR. CURTIN: Defer to OPC.
14 COMMISSIONER BRISÉ: Pasco?
15 MR. RICHARDS: Yes.
16 COMMISSIONER BRISÉ: Yes, as in defer to OPC?
17 MR. RICHARDS: Yes.
18 COMMISSIONER BRISÉ: Okay.
19 AG?
20 MS. BRADLEY: Yes, as amended.
21 COMMISSIONER BRISÉ: Staff?
22 MR. JAEGER: As stated.
23 COMMISSIONER BRISÉ: Issue 33.
24 Aqua?
25 MR. MAY: Correct.

1 COMMISSIONER BRISÉ: OPC?
2 MS. CHRISTENSEN: No position.
3 COMMISSIONER BRISÉ: YES?
4 MR. CURTIN: Defer to OPC.
5 COMMISSIONER BRISÉ: Pasco?
6 MR. RICHARDS: Defer to OPC.
7 COMMISSIONER BRISÉ: AG?
8 MS. BRADLEY: Yes, as amended.
9 COMMISSIONER BRISÉ: Staff?
10 MR. JAEGER: As stated.
11 COMMISSIONER BRISÉ: Issue 34.
12 Aqua?
13 MR. MAY: Correct.
14 COMMISSIONER BRISÉ: OPC?
15 MS. CHRISTENSEN: No position.
16 COMMISSIONER BRISÉ: YES?
17 MR. CURTIN: Defer to OPC.
18 COMMISSIONER BRISÉ: Pasco?
19 MR. RICHARDS: Defer to OPC.
20 COMMISSIONER BRISÉ: AG?
21 MS. BRADLEY: Yes, as amended.
22 COMMISSIONER BRISÉ: And, Staff?
23 MR. JAEGER: As stated.
24 COMMISSIONER BRISÉ: Issue 35.
25 Aqua?

1 MR. MAY: Correct.

2 COMMISSIONER BRISÉ: OPC?

3 MS. CHRISTENSEN: No position.

4 COMMISSIONER BRISÉ: Thank you.

5 YES?

6 MR. CURTIN: Defer to OPC.

7 COMMISSIONER BRISÉ: Pasco?

8 MR. RICHARDS: Defer to OPC.

9 COMMISSIONER BRISÉ: AG?

10 MS. BRADLEY: Yes, as amended.

11 COMMISSIONER BRISÉ: And, Staff?

12 MR. JAEGER: As stated.

13 COMMISSIONER BRISÉ: Issue 36.

14 Aqua?

15 MR. MAY: Correct.

16 COMMISSIONER BRISÉ: OPC?

17 MS. CHRISTENSEN: No position.

18 COMMISSIONER BRISÉ: YES?

19 MR. CURTIN: Defer to OPC.

20 COMMISSIONER BRISÉ: Pasco?

21 MR. RICHARDS: Defer to OPC.

22 COMMISSIONER BRISÉ: AG?

23 MS. BRADLEY: Yes, as amended.

24 COMMISSIONER BRISÉ: Staff?

25 MR. JAEGER: As stated.

1 COMMISSIONER BRISÉ: Issue 37.

2 Aqua?

3 MR. MAY: Correct.

4 COMMISSIONER BRISÉ: OPC?

5 MS. CHRISTENSEN: No position.

6 COMMISSIONER BRISÉ: YES?

7 MR. CURTIN: Defer to OPC.

8 COMMISSIONER BRISÉ: Pasco?

9 MR. RICHARDS: Defer to OPC.

10 COMMISSIONER BRISÉ: AG?

11 MS. BRADLEY: Yes, as amended.

12 COMMISSIONER BRISÉ: Staff?

13 MR. JAEGER: As stated.

14 COMMISSIONER BRISÉ: Issue 38.

15 Aqua?

16 MR. MAY: Can I take a moment to confer with
17 my client?

18 COMMISSIONER BRISÉ: Sure.

19 MR. MAY: We would like to change our position
20 and agree with staff's position on this issue.

21 COMMISSIONER BRISÉ: Okay.

22 OPC?

23 MS. CHRISTENSEN: No position.

24 COMMISSIONER BRISÉ: Okay.

25 YES?

1 MR. CURTIN: Defer to OPC.

2 COMMISSIONER BRISÉ: Pasco?

3 MR. RICHARDS: Defer to OPC.

4 COMMISSIONER BRISÉ: AG?

5 MS. BRADLEY: Yes, as amended.

6 COMMISSIONER BRISÉ: Staff?

7 MR. JAEGER: As stated.

8 COMMISSIONER BRISÉ: Issue 39.

9 Aqua?

10 MR. MAY: Correct.

11 COMMISSIONER BRISÉ: OPC?

12 MS. CHRISTENSEN: It's correct.

13 COMMISSIONER BRISÉ: Okay.

14 YES?

15 MR. CURTIN: Defer to OPC.

16 COMMISSIONER BRISÉ: Pasco?

17 MR. RICHARDS: Pasco would like to change its
18 position and defer to OPC.

19 COMMISSIONER BRISÉ: Okay.

20 AG?

21 MS. BRADLEY: Yes.

22 COMMISSIONER BRISÉ: Staff?

23 MR. JAEGER: As stated.

24 COMMISSIONER BRISÉ: Okay. Moving on to Issue
25 (sic) IX, the exhibit list.

1 Staff?

2 MR. JAEGER: Of course, this will be dependent
3 upon our resolutions of the prefiled testimony and
4 everything, but we know of no changes at this time from
5 the parties for all exhibits listed.

6 MS. CHRISTENSEN: That would appear to be
7 correct.

8 COMMISSIONER BRISÉ: Okay.

9 AG?

10 MS. BRADLEY: That's fine.

11 COMMISSIONER BRISÉ: YES?

12 MR. CURTIN: It appears to be correct, other
13 than we do have outstanding requests to produce and
14 items (inaudible) to Aqua, so it may be amended based
15 upon what response we get from Aqua.

16 COMMISSIONER BRISÉ: Sure. Thank you.

17 Pasco?

18 MR. RICHARDS: That's correct.

19 COMMISSIONER BRISÉ: Okay.

20 Aqua?

21 MR. MAY: It appears to be correct.

22 COMMISSIONER BRISÉ: Okay. Section X,
23 proposed stipulations.

24 Staff?

25 MR. JAEGER: I believe we have one Stipulation

1 B that I will put in the order just to use the leverage
2 graph that is just between the utility and staff, and
3 the parties do not -- are not a part of that
4 stipulation, but do not protest it. And we'll have to
5 work out that language. I will see what's there.

6 And then the other stipulations that are not
7 in dispute deemed stipulated pursuant to 120.80(13)(b),
8 and we had that question -- was it on Issue 25 or 26,
9 whether that would be deemed stipulated, also. That has
10 been taken under advisement.

11 I don't think there's any dispute on whether
12 it's deemed stipulated. That has been sent to all the
13 parties and nobody said anything.

14 **MS. CHRISTENSEN:** I don't believe we have any
15 objection -- not objections, but we don't have any
16 disagreement as to the issues that are deemed
17 stipulated, but we would like the opportunity to go
18 through the draft prehearing order and make sure that
19 everything is correctly transferred from the prehearing
20 order to make sure that we are in agreement, that it's
21 copied correctly. Sometimes things can happen in the
22 copying process. But I don't think there's a
23 disagreement as to the issues that were not protested in
24 the -- from the prehearing order other than the ones we
25 have already talked about today.

1 **COMMISSIONER BRISÉ:** Okay. Any other
2 comments?

3 **MR. MAY:** With respect to Issue Number 3, I
4 guess, on Page 66, in our prehearing statement we
5 identified the table summary of pro forma plant
6 adjustments, particularly with respect to Water Band
7 Number 4. We simply couldn't reconcile our numbers with
8 the table here, and we had asked the staff, and would
9 ask the parties if it would be acceptable for us to take
10 a look at staff's work papers just to give ourselves the
11 assurance that this is correct. We think we can
12 stipulate to it, but we would ask if we could see the
13 work papers to kind of get comfortable with that number.
14 I don't know where that stands, but that's what we
15 identified in our prehearing statement.

16 **COMMISSIONER BRISÉ:** OPC.

17 **MS. CHRISTENSEN:** No objection to them
18 reviewing the Commission staff work papers. That is the
19 backup for this particular pro forma adjustment table.
20 We would like to be able to, obviously, review the same
21 information.

22 **MR. MAY:** Certainly.

23 **MS. CHRISTENSEN:** Although this is, you know,
24 from the PAA order, so I'm not sure procedurally what
25 you could do even if there was a mistake.

1 **MR. MAY:** This table -- Ms. Christensen, with
2 all due respect, this table is not from the PAA order.

3 **MS. CHRISTENSEN:** Well, if it's not from the
4 PAA order, but based on numbers from the PAA order, then
5 that may be an issue. But if not, then that's fine. I
6 mean, we will just take it as it comes, but we would
7 like to see the same information.

8 **COMMISSIONER BRISÉ:** Sure. Staff?

9 **MR. JAEGER:** Staff will see how the numbers
10 were calculated. And we have already been talking to
11 the utility on that, but we'll look at it further and
12 try to reach a resolution.

13 **COMMISSIONER BRISÉ:** Okay. Is that good for
14 all the parties?

15 **MS. CHRISTENSEN:** So long as whatever
16 calculations or work papers they are relying on that we
17 get to review them as well, or we're included on the
18 e-mail discussions, I think that would be a fair
19 process.

20 **MR. MAY:** Absolutely.

21 **COMMISSIONER BRISÉ:** Okay. Issue XI, pending
22 motions.

23 **MR. JAEGER:** I think we've taken quite a few
24 under advisement. The motion to strike, and what else
25 was there?

1 **COMMISSIONER BRISÉ:** A motion to strike.

2 **MR. CURTIN:** Issue Number 24, the
3 affordability.

4 **COMMISSIONER BRISÉ:** 24 and then 26. Okay.
5 Issue (sic) XII, pending confidentiality motions.

6 **MR. JAEGER:** There are none pending at this
7 time.

8 **COMMISSIONER BRISÉ:** Okay. Section XIII,
9 post-hearing procedures.

10 **MS. CHRISTENSEN:** Yes. OPC would request that
11 the position statement of 50 words or more be increased.
12 I request 100, but knowing that that is unlikely to be
13 approved, I would take half of that, and split the
14 difference at 75. It's just very difficult for some of
15 these more complicated issues to be able to set them off
16 in 50 words or less and get the essence of what the
17 issue is. And it's supposed to be a helpful guide for
18 the Commissioners to be able to read and, like, just
19 basically a brief paragraph summary of what the issue
20 is. But 50 words is like two or three sentences, and
21 some of these longer and more complicated, especially
22 quality of service and the affiliate transactions
23 issues, which is really the issues that I'm most
24 concerned with, are much more complicated. And, you
25 know, I'm not asking for significantly more, but, you

1 know, from three to four sentences to five, six, or
2 seven sentences is not a significant increase. And we
3 are still limited by our page limit, I think, of -- did
4 you say 40 pages?

5 COMMISSIONER BRISÉ: Fifty.

6 MR. JAEGER: Fifty.

7 MS. CHRISTENSEN: Fifty pages. So, I mean, we
8 are still limited by the 50-page limit. So, trust me,
9 I'm not interested in making this any longer than
10 necessary, but I think the position statement needs to
11 be clear.

12 COMMISSIONER BRISÉ: Okay. Staff.

13 MR. JAEGER: If the parties have no objection,
14 then we can live with the 75.

15 COMMISSIONER BRISÉ: Okay. Parties, are there
16 any objections to the 75?

17 MR. CURTIN: No objection from YES.

18 COMMISSIONER BRISÉ: Okay. All right.

19 MR. MAY: Do we have to go 75?

20 COMMISSIONER BRISÉ: Absolutely not.

21 MS. CHRISTENSEN: I was going to say we
22 certainly will only use it when necessary.

23 COMMISSIONER BRISÉ: All right. Section XIV,
24 rulings. Staff?

25 MR. JAEGER: I think one ruling was opening

1 statements, if any, shall not exceed ten minutes per
2 party. I think there was another part in the order, I
3 can't remember if we addressed it, about witness
4 summaries being limited to five minutes. That was in
5 the order, and I can't remember if we had any problem
6 with that.

7 **COMMISSIONER BRISÉ:** No. Five minutes are
8 perfectly fine.

9 **MS. CHRISTENSEN:** I would ask that witness
10 summaries be increased to ten minutes, particularly for
11 the longer witness testimonies that were filed in this
12 case. It's not a significantly increased amount of
13 time, but since we don't do direct questioning of
14 witnesses, which would probably be half an hour to an
15 hour's worth of direct questioning, I don't think ten
16 minutes for the witness to summarize 100 pages worth of
17 testimony, plus more than several hundred pages worth of
18 exhibits is asking for an excessive amount of time.

19 So I would ask that they be increased to ten
20 minutes per witness. And, you know, to the extent that
21 they have shorter testimony, we will endeavor to keep
22 the summaries shorter.

23 **COMMISSIONER BRISÉ:** Okay. I'm going to stick
24 to five.

25 **MS. CHRISTENSEN:** 65, what?

1 **COMMISSIONER BRISÉ:** I'm going to stick to
2 five.

3 (Laughter.)

4 **MS. CHRISTENSEN:** Such wishful thinking.

5 **MR. CURTIN:** We'll take 65.

6 **COMMISSIONER BRISÉ:** Right. Yes, opening
7 statements, and we are at the summaries now. Summaries,
8 five minutes.

9 And, other matters?

10 **MR. JAEGER:** None than what we have discussed
11 here today. That's all I have.

12 **COMMISSIONER BRISÉ:** Okay. If there are no --

13 **MS. BRADLEY:** Sorry to stop you at that point,
14 but in looking through the exhibits list, and I
15 apologize I didn't get all the way through it at that
16 time, but the Citizens introduced a lot of exhibits at
17 the public hearings, and I just want to be clear that
18 those are part of the record, and we can use those for
19 cross and everything else.

20 **MR. JAEGER:** One thing staff will do, we're
21 going to do a Comprehensive Exhibit List, and it will
22 list all the known exhibits that were identified at the
23 service hearings and identified in the prefiled
24 statements. And so they will be listed, and then they
25 will be offered to be moved into the record at the

1 hearing itself. That's the normal procedure.

2 And, also, staff will try to do a composite
3 exhibit of what we think -- you know, what we will do is
4 show all the exhibits we want, and if there are
5 objections, we will pull them out. What we want is like
6 a stipulated composite exhibit.

7 **COMMISSIONER BRISÉ:** Does that satisfy you?

8 **MS. BRADLEY:** Yes. Thank you.

9 **COMMISSIONER BRISÉ:** Thank you. If there are
10 no additional matters at this time, we stand adjourned.
11 Thank you very much.

12 **MR. MAY:** Thank you.

13 **COMMISSIONER BRISÉ:** Have a great remainder of
14 the day.

15 (The prehearing concluded at 11:28 a.m.)
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STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

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

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

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

DATED THIS 14th day of November, 2011.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

DOCKET NO. 100330-WS
ORDER NO. PSC-11-0384-PCO-WS
ISSUED: September 13, 2011

ORDER GRANTING IN PART
OFFICE OF PUBLIC COUNSEL'S MOTION TO COMPEL AND
MODIFYING ORDER ESTABLISHING PROCEDURE

Background

Aqua Utilities of Florida (AUF) filed an application for increase in water and wastewater rates, seeking Commission approval through the Commission's Proposed Agency Action (PAA) process. By Order No. PSC-11-0256-PAA-WS, issued June 13, 2011, we granted in part AUF's application. Several parties to the proceeding, including the Office of Public Counsel (OPC) and AUF, protested portions of our decision. Accordingly, an Order Establishing Procedure was issued and hearing dates were scheduled.

OPC has conducted discovery through both the PAA and hearing portions of this docket. On August 9, 2011, OPC served its Sixth Set of Interrogatories (Nos. 204-244) and its Sixth Set of Requests for Production of Documents (Nos. 132-172) on AUF. On August 29, 2011, AUF filed both general and specific objections to OPC's August 9, 2011 discovery requests. On September 6, 2011, OPC filed a Motion to Compel Aqua's Responses to Discovery. This order is issued pursuant to Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the Prehearing Officer has authority to issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

AUF's Objections

While, AUF filed general and specific objections to OPC's Sixth Sets of Discovery, this Order addresses the specific objections. AUF's objections can be categorized as objections to requests for legal and work product, and objections to discovery requests that extend beyond the protested issues to those that are deemed stipulated. In addition, AUF responded that it would limit certain of its responses to the information requested only as it relates to the expenses allocated to AUF by its affiliates.

AUF
Parties/Staff Handout
event date 11 / 8 / 11
Docket No. 100330-WS

DOCUMENT NUMBER DATE

06557 SEP 13 =

FPSC-COMMISSION CLERK

Production of Documents Request No. 133 asks AUF to provide copies of all documents that were relied upon to make the claim that the Commission has never reduced a utility's return on equity based on a finding that the utility's quality of service is marginal. AUF objects to this request alleging that the request seeks legal research or information protected by the attorney/client privilege and work product doctrine.

The remainder of AUF's objections to the discovery requests are based on AUF's belief that these requests involve issues that have not been protested. AUF argues that pursuant to Section 120.80(13)(b), Florida Statutes (F.S.), and Rule 25-22.029(3), F.A.C., issues in a PAA order that are not identified in the protest petition or cross-petition shall be deemed stipulated. AUF's position is that the discovery relating to these unprotested issues is irrelevant to the protested proceeding. AUF expresses concern that by permitting this type of discovery, the scope of the proceeding is improperly expanded and rate case expense will be increased. Furthermore, AUF argues that expanding the scope of the proceeding runs contrary to the purpose of the statutory and rule framework governing PAA proceedings.

AUF objects to production of document requests 134, 159, 160-162, and interrogatories 209, and 212 on the grounds that these discovery requests seek information regarding "Legal Expenses." AUF states that "Legal Expenses" is not a particular protested issue identified by any party to the proceeding. Furthermore, AUF argues that as to interrogatories 209 and 212 and production of document request 134, AUF has previously responded to OPC's discovery requests that these "Legal Expenses" are not allocated to AUF by its affiliates. AUF also states that its Minimum Filing Requirements, Vol. 1, Appendix 1, reflects that "Legal Expenses" are not allocated to AUF by its affiliates.

AUF objects to production of document requests 143, 146, and interrogatories 224 and 225, which relate to direct expense allocations. AUF states that "Direct Expenses" have not been identified as a protested issue by any party. Likewise, AUF objects to production of document requests 157, 165-168, and interrogatories 210, 211, and 215, which relate to "Miscellaneous Expenses." AUF asserts that "Miscellaneous Expenses" have not been identified as a protested issue by any party. AUF states that while it objects to production of document requests 165-168, and interrogatories 210, 211, and 215, it will provide the discovery requested to the extent a "Miscellaneous Expense" is allocated to AUF by its affiliates.

AUF objects to production of document requests 141, 142, and 144-154, and interrogatories 219, 222 and 225-240. These requests seek information relating to variance reports provided by AUF to OPC in response to prior discovery requests. AUF argues that these new requests are based on the erroneous assumption that budget variance reports are used to determine or normalize the historic test year. According to AUF, budget variance reports are used to determine or normalize the historic test year and are irrelevant when an historic test year is used because actual data is used to determine the historic test year. AUF also argues that the historic test year of 2010 was not protested and therefore is deemed stipulated. AUF concludes that information from the variance report is irrelevant to the current proceeding. Additionally, AUF argues that questions that relate to billing determinants are based on the erroneous assumption that billing determinants are established using budget variance reports. AUF argues

that budget variance reports are irrelevant to establishing the appropriate billing determinants where an historic test year is used because the determinants are based on actual not estimated data. While AUF objects to interrogatories 239 and 240 on the stated grounds, it does affirm that it will answer the interrogatories.

AUF did not object to interrogatories 204-208, 213-214, 216-218, and 220-221. AUF did not object to document requests 132, 135-140, 155-156, 158, 169-172. AUF objected to interrogatories 224, 239, and 240 and document requests 143, 163, and 164, but stated that it would respond without waiving the objections.

OPC's Motion to Compel

OPC argues that pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure, a party is required to provide responses to discovery that is reasonably calculated to lead to the discovery of admissible evidence. OPC asserts that its Sixth Set of Discovery is based upon previously served discovery and upon pre-filed testimony. OPC contends that it is not on a fishing expedition but rather is in the process of refining its positions and prefiled testimony on the protested issues in the case.

OPC states that discovery requests (such as those relating to "Legal Expenses") are permissible because they may lead to admissible evidence. OPC assures that it is not proposing adjustments to expense categories that are not part of the protested issues. OPC explains that year-to-year fluctuations in accounts are relevant to the understanding and testing of a utility's proposed representative financial statements. OPC concludes that because it needs a complete picture, it is entitled to propound discovery that is broader than just the limited protested issues. OPC states that a complete and consistent financial picture is relevant and necessary to set rates using accounting information that directly impacts the protested issues on a forward-looking basis.

OPC asserts that AUF should be required to respond to the discovery regarding "Legal Expenses" because these requests are designed to obtain information that is related to and may impact affiliate transactions and/or rate case expense. OPC contends that AUF's parent company's "Legal Expenses" are affected by the allocations of affiliate legal expenses which in turn impacts AUF's regulated affiliated expenses. OPC points to a prior AUF response to OPC interrogatory 130 and Schedule B-7 of AUF's Minimum Filing Requirements which appear to indicate that legal expenses and costs are charged pursuant to allocated legal expenses from the parent.

OPC contends that AUF should be compelled to respond to OPC's discovery requests relating to budget variances. OPC asserts that it should not be limited to asking for information limited to the 12-month historic test year period. OPC contends that the Commission has not traditionally held that budgets are only relevant for the test year period. OPC asserts that budgeting is a normal annual process that companies use to prioritize spending, compare current revenue and expenses to budgeted ones, and for which companies create budgeting documents. OPC claims that the variance reports and analysis is the sort of budgeting documents that OPC is

seeking from AUF. OPC concludes that this type of year-to-year budgeting information can be used to test the reasonableness of the historical test year expenses. Additionally, OPC argues that the explanations on budget variances can lead to evidence explaining why certain expenses might be deferred into or out of a given financial reporting period. Finally, OPC, argues that AUF asks for pro forma adjustments that are outside of the test year and so cannot now argue that other information outside of the test year is irrelevant.

OPC asks that AUF be compelled to completely respond to OPC's discovery requests regarding "Direct Expenses" and "Miscellaneous Expenses." OPC claims that AUF has impermissibly and arbitrarily limited its responses to those discovery requests. As to the direct expense discovery request, OPC contends that it is requesting information about the affiliate Aqua Customer Service Organization, which is a division of Aqua Services, Inc., because the direct expense may impact recommended adjustments on affiliate costs, which is a protested issue. OPC states that as to "Miscellaneous Expenses," AUF has shifted costs allocated from affiliates between accounts such as between "Miscellaneous Expense" and "Management Fees" and "Contractual Services-other." OPC states that in response to its interrogatory 130, AUF explained that part of the increase in test year management fees is due to shifting expenses from one account to another. OPC explains that it seeks information not only in the "Management Fee" account, but also in the accounts AUF claims are responsible for the increase to management fees. OPC argues that even if the accounts no longer hold expenses from the affiliate, the information as to how the shifting of the expenses impacted test year management fees and other shared costs is relevant to understanding the increase in management fees in the test year. OPC concludes that it should have the information to test the reasonableness of the level of test year affiliate charges including the causes of increases.

OPC also contends that AUF should be compelled to provide full and complete responses, without limitations, to its discovery request. AUF asserts in some of its responses that it will provide a response "to the extent a 'Miscellaneous Expense' is allocated to AUF by its affiliates." OPC contends that the impact on regulated AUF expenses and the substantial increase in affiliate charges to AUF regulated expenses are affected not only by the allocation of expenses, but also the movement of expenses from other expense accounts to the "Management Fee" account.

OPC counters AUF's assertions of increased rate case expense by explaining that its requests are ordinary and necessary for the prosecution of the case. OPC asserts that if discovery is limited as AUF has argued, parties would be chilled from limiting protested issues for fear of being artificially prevented from gathering relevant information to prosecute their case. OPC argues that this could lead to an unnecessary increase in rate case expense.

AUF's Response to Motion to Compel

AUF states it finds itself in a Catch 22 position. AUF asserts that it does not wish to delay OPC's case preparation, but if AUF does not object to certain requests, it believes that recovery of those rate case expenses associated with responding to those discovery requests will be in jeopardy. AUF asserts that the consultant, administrative, and legal time in preparing and

reviewing the discovery responses may be substantial. AUF states that it has already responded to 450 interrogatories from OPC in this docket and over 150 requests to produce documents. AUF believes that to contain rate case expense, it must bring to the Commission's attention discovery requests that it believes are outside the scope and irrelevant to the current proceedings.

AUF states that a PAA rate case proceeding is designed to save rate case expense by limiting the issues to be litigated to those identified in a party's protest petition. AUF contends that OPC, as a petitioner, had the opportunity to define the scope of the proceeding.

AUF acknowledges OPC's need for discovery to address the issues raised in the protest petition but is concerned that it be designed for those issues which are relevant to the protested proceeding. One instance AUF points to are OPC's assumptions that budget variance reports are used to determine or normalize the historic test year. AUF states that OPC argues that budget variances generally could be relevant to other issues which are in dispute. AUF contends that if this argument is taken to its ultimate conclusion, any area of discovery would be open and the narrow protest would convert into a full-blown rate proceeding. AUF warns that would impose the associated rate case expenses on ratepayers.

AUF stresses that each of its objections is a good faith objection to what it believes are discovery requests outside of the scope of the current proceeding. AUF concludes its response by asking that OPC's Motion to Compel be denied. AUF does state that if the Motion to Compel is granted, it will endeavor to provide the requested discovery responses by Thursday, September 15, 2011.

Analysis and Ruling

I have reviewed the arguments of both OPC and AUF. It appears that the discovery requested by OPC does fall within the ambit of discoverable material with the exception of its Request for Production of Documents No. 133, which seeks attorney/client privileged and work product information. The remaining discovery requests seek information that appears to be reasonably calculated to lead to the discovery of admissible evidence.

Having acknowledged that OPC may need the responses to its Sixth Set of Discovery requests, I am cognizant that one of the purposes of a PAA rate case proceeding is to limit rate case expense. As the Prehearing Officer, my responsibilities include the promotion of the just, speedy, and inexpensive determination of all aspects of the case. Based upon OPC's motion, and AUF's responses, it appears that some discovery disputes may be resolved by informal meetings between the parties, rather than the more extensive and formal discovery process.

Accordingly, I direct OPC and AUF to meet and attempt to resolve in good faith, any questions regarding the need for complete responses to OPC's Sixth Set of Discovery requests. The meeting's goal shall be to limit discovery requests that are unnecessary in an effort to limit rate case expense. This meeting shall occur no later than September 14, 2011. At the conclusion of the informal meeting, OPC shall file a report with the Commission listing the remaining Sixth Set of Discovery responses for which it still has need. To the extent OPC

determines that it must have the responses to those Sixth Set of Discovery requests, I direct that AUF provide those responses on or before September 16, 2011.

Furthermore, pursuant to Rule 28-106.211, F.A.C., I find it appropriate to modify the Order Establishing Procedure, Order No. PSC-11-0309-PCO-WS as follows: with respect to all parties to this proceeding and to Commission Staff, prior to any additional motion to compel being brought to the Prehearing Officer's attention, I direct the parties in dispute to meet and attempt in good faith to resolve their discovery disputes. Any motion to compel must include a statement that a meeting was held and must include the results of that meeting.

Based on the foregoing it is

ORDERED that Aqua Utilities Florida, Inc. and the Office of Public Counsel shall conduct an informal meeting on or before September 14, 2011 to discuss Aqua Utilities Florida, Inc.'s responses to the Office of Public Counsel's Sixth Set of Interrogatories and Production of Documents. It is further

ORDERED that upon the conclusion of the informal meeting the Office of Public Counsel shall file a list with the Commission of all of the Sixth Set of Discovery responses that it still needs from Aqua Utilities Florida, Inc. It is further

ORDERED that Aqua Utilities Florida, Inc. shall respond to those discovery requests listed by the Office of Public Counsel, except for Production of Document No. 133, on or before September 16, 2011. It is further

ORDERED that the Office of Public Counsel's Motion to Compel is granted, except for production request number 133, and as subject to the conditions set out in this Order. It is further

ORDERED that the Order Establishing Procedure, Order No. PSC-11-0309-PCO-WS shall be modified as set forth herein.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 13th day of September, 2011.



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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.