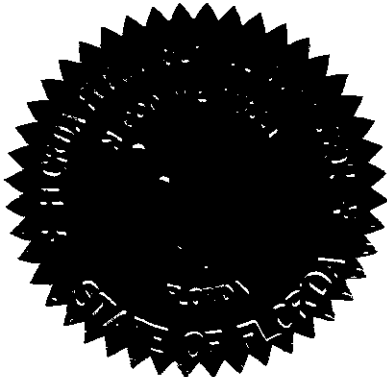


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of  
**Application for rate  
increase in Pinellas  
County by Mid-County  
Services, Inc.**  
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: **DOCKET NO. 971065-SU**  
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**PROCEEDINGS:           PREHEARING CONFERENCE**

**BEFORE:                   COMMISSIONER JULIA L. JOHNSON**  
**Prehearing Officer**

**DATE:                     Monday, June 7, 1999**

**TIME:                     Commenced at 8:30 a.m.**  
**Concluded at 9:35 a.m.**

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

**REPORTED BY:            H. RUTHE POTAMI, CSR, RPR**  
**FPSC Commission Reporter**

DOCUMENT NUMBER-DATE  
**07100 JUN-99**  
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1 **APPEARANCES:**

2                   **RICHARD D. MELSON**, Hopping Green Sams and  
3 Smith, Post Office Box 6526, Tallahassee, Florida  
4 32314, appearing on behalf of **Mid-County Services,**  
5 **Inc.**

6                   **STEPHEN C. BURGESS**, Office of Public  
7 Counsel, 111 West Madison Street, Room 812,  
8 Tallahassee, Florida 32399-1400, appearing on behalf  
9 of the **Citizens of the State of Florida.**

10                   **JENNIFER BRUBAKER**, Florida Public Service  
11 Commission, Division of Legal Services, 2540 Shumard  
12 Oak Boulevard, Tallahassee, Florida 32399-0870,  
13 appearing on behalf of the **Commission Staff.**

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1                    P R O C E E D I N G S

2                    (Hearing convened at 8:30 a.m.)

3                    **COMMISSIONER JOHNSON:** We're going to go  
4 ahead and call the prehearing to order this morning.  
5 We may have to speak a little louder than normally  
6 because our mike system is not working; it will not be  
7 working. So just make sure your voice projects so  
8 that she can get everything in on the tape recorder as  
9 well as transcribe your oral comments.

10                    Counsel?

11                    **MS. BRUBAKER:** By notice issued May 27th,  
12 1999, this time and place was set for prehearing  
13 conference in Docket No. 971065-SU, application for  
14 rate increase in Pinellas County by Mid-County  
15 Services, Inc. The purpose of the conference is set  
16 forth in the notice.

17                    **COMMISSIONER JOHNSON:** Take appearances.

18                    **MR. MELSON:** Richard Melson of the law firm  
19 Hopping, Green, Sams & Smith, P.O. Box 6526,  
20 Tallahassee, on behalf of Mid-County Services, Inc.

21                    **MR. BURGESS:** Steve Burgess for the Public  
22 Counsel's Office, 111 West Madison, Tallahassee,  
23 Florida.

24                    **MS. BRUBAKER:** Jennifer Brubaker on behalf  
25 of Commission Staff.

1                   **COMMISSIONER JOHNSON:** Are there any  
2 preliminary matters first today before we go item by  
3 item?

4                   **MR. MELSON:** Commissioner Johnson, there's  
5 one, but I don't know whether it's a preliminary  
6 matter or not.

7                   Public Counsel and the utility have a  
8 difference of opinion about the scope of the issues  
9 that are presently before you in this case. It  
10 affects several of the issues as they are stated in  
11 the draft prehearing order, and we can deal with that  
12 when we get to the first one or we can deal with it  
13 now, whatever your preference is.

14                   **COMMISSIONER JOHNSON:** I'm aware of that,  
15 and we'll handle that when we get to the issues. Are  
16 there any other preliminary --

17                   **MR. BURGESS:** Yes. Commissioner Johnson, we  
18 have also a legal issue, or a legal policy issue that  
19 we would like to raise that was not raised in any of  
20 the activity that's taken place thus far.

21                   I have given a copy to Ms. Brubaker and  
22 Mr. Melson and Staff has a copy of it. It goes also  
23 to the issue of the breadth of the issues that the  
24 Commission should examine.

25                   **COMMISSIONER JOHNSON:** Okay.

1           **MR. BURGESS:** And, Commissioner, there's an  
2 explanation on this -- the position on 1 -- that is 1,  
3 the bottom verbiage there, that's a clarification of  
4 our position, or an amendment to our position on  
5 Issue 1 as that issue exists in the prehearing  
6 statement already.

7           **COMMISSIONER JOHNSON:** Okay.

8           **MR. BURGESS:** And then the legal issue in  
9 the Issue 1a there are basically -- I mean, our  
10 positions aren't stated, but the position would be  
11 "no" and "yes," respectively.

12           **COMMISSIONER JOHNSON:** And this is an issue  
13 that you're going to request to add to the prehearing.

14           **MR. BURGESS:** That's correct.

15           **COMMISSIONER JOHNSON:** And it would be an  
16 addition to Issue 1 or in lieu of?

17           **MR. BURGESS:** An addition to.

18           **COMMISSIONER JOHNSON:** Got you.

19           Let's go through, then, the first several  
20 pages until we get to the issues, and then I think  
21 we'll go ahead and take argument as to adding and as  
22 to the issues that have already been stated.

23           Page 1, any comments, discussions, or  
24 changes? (No response.) Page 2? (No response.)  
25 Page 3? (No response.) Page 4? Understanding that

1 Page 5, no change with respect to the issues, if we  
2 change the issues. Otherwise, any additional changes  
3 at the moment?

4 **MR. MELSON:** Commissioner Johnson, we would  
5 like to add Issues 5 and 6 as matters to be discussed  
6 by Mr. Wenz. Mr. Seidman is listed for those issues  
7 on the rebuttal. Mr. Wenz -- if those issues stay in  
8 the case, Mr. Wenz would also address them.

9 **MS. BRUBAKER:** Would that be for his direct  
10 or for his rebuttal?

11 **MR. MELSON:** Probably through his direct.

12 **COMMISSIONER JOHNSON:** And Page 6,  
13 Section 7, and going then to Page 6, Section 8,  
14 Mr. Melson I think this was the issue, or at least the  
15 start of the issues, that you'd like to address.

16 **MR. MELSON:** Yes. The Public Counsel in its  
17 prehearing statement suggested this legal issue. What  
18 issues are considered to be in dispute for the purpose  
19 of Section 120.8013(b), Florida Statutes, which is a  
20 section that says a hearing on an objection to a  
21 proposed agency action before the Florida Public  
22 Service Commission may only address the issues in  
23 dispute. Issues in the proposed action which are not  
24 in dispute are deemed to be stipulated.

25 The utility in this case filed a fairly

1 narrow protest. The protest is essentially six issues  
2 and then a number of fallout issues to the extent they  
3 were directly affected by specific items protested.  
4 And it's our position that that section of the  
5 statutes means that only those issues raised by a  
6 timely protest either by the utility or by another  
7 party are in dispute. Anything not raised in the  
8 protest, as the statute says, is deemed to be  
9 stipulated.

10           Public Counsel, through its testimony and in  
11 its prehearing statement, has attempted to interject  
12 several additional issues into this case that were not  
13 the subject matter in the utility's protest; and we  
14 believe those are not appropriate issues for  
15 resolution by the Commission and would ask that you  
16 make a ruling to that effect and, in essence, take out  
17 of the prehearing order; and ultimately we would  
18 identify associated testimony.

19           So ultimately there would be a motion to  
20 strike the testimony that no longer related to issues  
21 in the case. But we would be asking to take out this  
22 Issue A and to take out several specific factual  
23 issues that we believe are beyond the scope of what's  
24 properly before the Commission at this time in this  
25 case.

1                   **COMMISSIONER JOHNSON:** Could you delineate  
2 the related issues that you had asked for us to --

3                   **MR. MELSON:** Yes, ma'am. It would be  
4 Issue 5, which is an appropriate used and useful  
5 percentage for the effluent disposal system; Issue 6,  
6 which is used and useful for wastewater collection;  
7 Issue 9, which is return on equity; Issue 10, which is  
8 overall rate of return, and that's it.

9                   While the utility raised a used and useful  
10 issue in its protest, that issue was limited solely to  
11 the wastewater treatment plant, not to the effluent  
12 disposal or to the collection system, and the utility  
13 raised -- did not protest either the cost of capital  
14 or the overall return that was included in the PAA  
15 order.

16                   Those four issues are things that  
17 essentially have been included in the testimony of  
18 Public Counsel's Witnesses Larkin and Bidy and, we  
19 believe, go beyond the scope of what's at issue.

20                   **COMMISSIONER JOHNSON:** Okay. Thank you,  
21 Mr. Melson.

22                   Before Public Counsel begins its discussion,  
23 Mr. Melson, that would be your interpretation of 13(b)  
24 of the statute. Is this a new statute? Would this be  
25 the first time in which we've had the opportunity to



1 determine what it actually means, or do you have any  
2 other cases whereby we limited the --

3           **MR. MELSON:** There is another case in which  
4 a prehearing order by the full Commission essentially  
5 construed this statute. It was in the Lake Utility  
6 Services, Inc. docket, which we called LUSI.

7           That was a very complex case in which there  
8 had been a PAA order, a protest, an offer of  
9 settlement, a PAA accepting the offer of settlement, a  
10 protest to the second PAA. And in the process of the  
11 prehearing rules on that, the Commission entered an  
12 order which delineated the matters that would  
13 ultimately go to hearing and did a fairly -- Staff, in  
14 an order issued by the Commission, did a fairly  
15 thorough analysis and essentially concluded that only  
16 matters that had been raised in the protest were on  
17 the table, and that when this was a second protest of  
18 a second order, it could only address issues contained  
19 within the second order; could not reach back and  
20 reopen issues that had been deemed stipulated in the  
21 first PAA.

22           So it dealt with a much more complicated  
23 factual situation, but we believe it is on point and  
24 would control the decision here.

25           **COMMISSIONER JOHNSON:** Thank you.

1           **COMMISSIONER JOHNSON:** Public Counsel?

2           **MR. BURGESS:** To begin with, on the factual  
3 question, depending on how you rule on this with  
4 regard to the issues for which this is applicable, I  
5 would have some disagreement.

6           I would agree that there are issues that are  
7 clearly -- that we raised that are clearly beyond the  
8 issues that were protested by the company; that's  
9 9 and 10. So, yes, this will have an application  
10 definitively.

11           On the used and useful issues, I think if we  
12 get into whether -- that they actually were brought  
13 into protest or not, I would like to either now argue  
14 or reserve the opportunity to argue that the testimony  
15 that we filed is relevant even if the Commission  
16 determines that only those issues that have been  
17 protested are in dispute; because we think that it's  
18 part of the overall issue of used and useful and that  
19 the company has been granted generous used and useful  
20 percentages, and these are relevant to that issue.

21           With regard to the legal issue, it's a  
22 curious situation for both me and, I believe,  
23 Mr. Melson and the utilities because we both need  
24 it -- the most important thing is that we get it  
25 resolved, because we're both going to be on both sides

1 of this issue.

2           In fact, this office has been on both sides  
3 of the issue already; been one -- on the one side  
4 where our adversary has protested, and we've been on  
5 the side where we are the ones who have protested. So  
6 we are in a curious situation. We're going to be  
7 arguing both sides until we find out what the answer  
8 is so that we don't give up for our client what a  
9 legal right is; and what we're looking for is a  
10 definitive answer.

11           Now, I understand what the language says; a  
12 hearing may only address issues in dispute. So  
13 whatever is decided in dispute, that applies to  
14 everybody and it's not just limited to what the  
15 parties raise. It would apply to the Staff and the  
16 Commission and everybody else.

17           So if it's limited to only those issues in  
18 protest, the one thing that I would caution the  
19 Commission, it seems to me, is there's no room for the  
20 Commission saying, well, now, in our over -- in our  
21 need to be overall regulator and approve a reasonable  
22 rate, we find that this issue needs to be raised  
23 because this other one was raised as well.

24           I don't see that there's any differentiation  
25 between party and any other authority associated with

1 it when it simply says "a hearing may only address."  
2 So whatever is in dispute is in dispute for all. And  
3 as one example, we were involved for a while in a  
4 protested PAA that has since been resolved, but one of  
5 the issues that we did not protest was rate case  
6 expense. And in discussions with the company and with  
7 Staff, it became clear that the intent was, well, rate  
8 expense, sure, it needs to be raised because of what's  
9 happened.

10 And, again, my caution is, well, if the  
11 definition is what's been protested, then it's going  
12 to be -- it seems to me it needs to be applicable to  
13 everybody and every authority in the situation. So  
14 the question -- so I make that as a caution.

15 Now, as to what I think should be done, and  
16 the proper interpretation should be -- I think it  
17 should be what we are arguing now, and that is that  
18 it's not limited to what has been protested, but  
19 rather what is brought into dispute in the normal  
20 course of the prehearing process.

21 And the reason I think that is quite simply  
22 that the practical effect of it, that it needs to be  
23 like an appeal/cross-appeal type situation so that you  
24 don't have both parties waiting out there saying,  
25 we've got to appeal.

1           You have a situation where, let's say, for  
2 example, Mr. Melson's client might be perfectly happy  
3 with a PAA, but there are two or three issues in it  
4 that they think the Commission erred in, to the favor  
5 of the customers or against them. Well, they wouldn't  
6 protest the PAA, but if they knew the only issues that  
7 could be brought into hearing if that PAA were  
8 protested were the issues that the other side raised,  
9 well, then for protection for their client they're  
10 going to have to be sitting there with a protest at  
11 4:45 on the last day of the protest.

12           And they may then go ahead and file it  
13 anyway if the other side doesn't come forward, because  
14 at that point, they -- it's nothing to lose; only the  
15 issues that they raised are protested. So that's why  
16 you have -- in reconsideration you have the ability by  
17 the other side to wait and see, and if both sides are  
18 satisfied with the overall result, then nothing  
19 happens, because you have the opportunity to address  
20 issues that you think went against you if the other  
21 side raises those.

22           It's the same thing in cross-appeal. And  
23 it's for the purpose, at least as I understand it, of  
24 avoiding the need to sit out there and protest or  
25 appeal or move for reconsideration an order that you

1 are satisfied with in the aggregate, but which you  
2 think there might be issues that go against you.

3           So I would urge you in -- for that reason to  
4 adopt an interpretation that allows for a more --  
5 sensible result, for want of a better word. Then the  
6 question is, why is it in there; why put this in  
7 there; what's the language in there.

8           Well, as I recall -- and I have not done  
9 much depth in research on this -- but as I recall, we  
10 used to have -- always have the question of, okay, if  
11 you have a proposed agency action and somebody  
12 protests it, what is the status quo? In other words,  
13 does it cancel out the entirety of the proposed agency  
14 action, or is the proposed action there except for the  
15 issues that ultimately get disputed?

16           And I think this -- the purpose of this  
17 statute was to resolve that issue to say, okay, if  
18 there's a proposed agency action and something  
19 protests it and you go through the normal process and  
20 those areas in which an issue is joined, then the  
21 Commission will hold a hearing; but for those issues  
22 where it wasn't, the status quo is not what it was  
23 before the proposed agency action, but rather it's  
24 what was in the balance of the proposed agency action.

25           And that's what I think the point of the

1 statute was, and I think that's a more logical result  
2 and more logical application.

3           **COMMISSIONER JOHNSON:** Thank you,  
4 Mr. Burgess.

5           With respect to the arguments that you  
6 made -- very good arguments with respect to resolving  
7 the position policy issues and some of the  
8 ramifications -- but with respect to the language on  
9 its face 13(b), how do we get there? When it says  
10 "may only address the issues in dispute," would we --  
11 so you're saying dispute -- how would you get there?

12           **MR. BURGESS:** Basically just the same way I  
13 would get there in any other case that wasn't a  
14 proposed agency action; those issues that are in  
15 dispute, we -- or basically through issues upon which  
16 the various parties lock horns at some point during  
17 the prehearing process.

18           This isn't a good example, because we are  
19 dealing with a PAA. But if we were dealing with just  
20 MFRs filed by the company in a seeking of a rate case  
21 on a conventional file and suspend case and we end up  
22 going through the process, those areas where we  
23 disagree, those are the areas that we -- that come in  
24 dispute and those upon which we don't -- so it's not  
25 just those which the company files or those which we

1 initially disagreed with; it's that which, in the  
2 culmination of the whole prehearing process, finally  
3 says -- crystallizes, these are the areas that the  
4 Commission wants to take evidence on because these are  
5 the areas where the parties disputed and have  
6 substantial interests involved.

7           And it seems to me, just taking that perhaps  
8 one step farther -- and I wouldn't make too much of  
9 this, but it seems like if the Legislature wanted it  
10 to be protested, they could have said "protested."

11           **COMMISSIONER JOHNSON:** Got you. Mr. Melson,  
12 I'm going to allow you rebuttal.

13           And I'll allow you surrebuttal if necessary.  
14 But let me tell you what I'm thinking now and I'd like  
15 for you to address these thoughts also.

16           I think that we would all agree that the  
17 Commission's implementation of this section, of what  
18 we think it means, needs to be resolved so that all  
19 parties, including the Commission, that we're on  
20 notice as to what this means. So I agree with what  
21 you've stated.

22           In order to do that, one of the things that  
23 I'd like to see us do, in addition to the very helpful  
24 argument that you've presented thus far, would be to  
25 take this provision and for you all to file something



1 in writing, because I'm assuming either way we go on  
2 this someone may appeal it, and we need the best  
3 record we can for that and for Commissioners to look  
4 down on the arguments that you've raised, Mr. Burgess,  
5 and the arguments you've raised, Mr. Melson; for us to  
6 reflect upon the law and the policy ramifications of  
7 those and to try -- and I know it would be a panel,  
8 but that's better than just me, and it gives a more  
9 clear direction of the Commission to have a  
10 three-member panel determine what the law means so  
11 that it can be used in more of a precedential way in  
12 the future hopefully and so that it gives you the  
13 guidance you need, Mr. Melson, or Public Counsel, to  
14 know whether you need to appeal that. So I'd like to  
15 see us do that, for you all to brief these issues  
16 before the hearing.

17           Public Counsel, you've raised two issues,  
18 though, which may also -- it would be helpful if we  
19 had something in writing in this regard. Mr. Melson  
20 raised 5, 6, 9, and 10 as issues that were not -- or  
21 issues that they did not raise, that were clearly  
22 issues beyond the issues raised.

23           You've stated that you would agree that that  
24 applies to 9 and 10.

25           **MR. BURGESS:** That's correct.

1           **COMMISSIONER JOHNSON:** But not to 5 and 6.

2           **MR. BURGESS:** That's correct.

3           **COMMISSIONER JOHNSON:** I'm going to need  
4 some delineation as to why it doesn't apply to 5  
5 and 6. On its face, just as one Commissioner, I  
6 didn't see the nexus there, so I had picked those same  
7 four issues as to if we rule as Mr. Melson suggested,  
8 those four would all go away. So I'm going to need  
9 some more information as to how you tie those in and  
10 how those are not beyond the issues that were  
11 protested.

12           **MR. BURGESS:** Would I be able to address  
13 that sometime this morning?

14           **COMMISSIONER JOHNSON:** That would be  
15 helpful, too.

16           **MR. BURGESS:** Basically all I'm getting was  
17 that is -- I guess I would say that if you rule, for  
18 example, that "in dispute" means those issues that  
19 were protested, then I would agree that these specific  
20 issues would not be issues, but the testimony wherein  
21 we've presented evidence on it would be.

22                   And my point being that the relevance of the  
23 testimony on the used and useful of some of these  
24 areas that they didn't protest is indicative of the  
25 overall level of used and useful which the company got

1 on the entirety of its plant is reasonable, even  
2 though in some sections they might be able to go in  
3 and pull out areas that they say this is not  
4 reasonable.

5           It's just an overall area of whether that  
6 portion of the plant that the company is allowed a  
7 return from current customers on is a reasonable  
8 amount for these customers to be presented. And I  
9 guess in its simplest form would be, if the  
10 Commission -- if we demonstrate that the Commission  
11 were overly generous in an area here in our  
12 estimation, then I think that goes to the issue of  
13 judgment on the overall amount if it considers itself  
14 to have been perhaps unreasonably restrictive in  
15 another area.

16           **COMMISSIONER JOHNSON:** Thank you.

17           **MR. BURGESS:** So it would -- yes, these  
18 issues would be stricken, what's the used and useful  
19 for this. We'd say, yeah, that can't be done, but we  
20 can present testimony showing that the --

21           **COMMISSIONER JOHNSON:** It's still relevant.

22           **MR. BURGESS:** Yes.

23           **COMMISSIONER JOHNSON:** Got you. And, also,  
24 at the appropriate point -- which may not be today --  
25 but it would definitely -- and I'd like for us to

1 resolve this issue before the hearing, even if you all  
2 are making oral arguments on the day of the hearing.

3           And if you're doing that, I'd like for you  
4 to be prepared, Mr. Melson particularly if we rule in  
5 your favor, to tell us exactly line and verse and have  
6 written what we need to strike if we rule that way.  
7 If we don't and -- Mr. Burgess, we're ready to just go  
8 forward. And it's my understanding that this wouldn't  
9 necessitate any unreasonable travel, because the same  
10 witnesses would be used whether we say yes or no to  
11 this issue.

12           **MR. MELSON:** (Nodding head.)

13           **MR. BURGESS:** (Nodding head.)

14           **COMMISSIONER JOHNSON:** Okay. So we'll be  
15 set there. But do be prepared so that we can have a  
16 real clear record no matter which way we go, and we  
17 can, if necessary, strike those items that need to be  
18 stricken.

19           On the points that you just made,  
20 Mr. Burgess, with respect to some of the used and  
21 useful testimony, that will probably go more to the  
22 relevance.

23           So, Mr. Melson, you'll probably be  
24 addressing some of those points as to relevance as we  
25 go through that.

1           **MR. MELSON:** Just so I'm clear on what  
2 Mr. Burgess has said -- I think I understand it --  
3 assuming the Commission were to rule in the utility's  
4 favor, it sounds as though he's agreeing that  
5 Issues 5, 6, 9 and 10 would be off the table, but I  
6 understand him to say that testimony that he has  
7 offered that goes to Issue 5 and 6 he believes is also  
8 relevant to Issue 4.

9           **MR. BURGESS:** That's correct.

10          **MR. MELSON:** All right.

11          **COMMISSIONER JOHNSON:** Any suggestions,  
12 Mr. Melson, or any rebuttal? And Mr. Burgess you can,  
13 too, at the appropriate time tell me how you feel  
14 about doing the written testimony, how that impacts  
15 your witnesses or your case. But I'm thinking that's  
16 the best way to proceed.

17          **MR. BURGESS:** That's fine.

18          **MR. MELSON:** I guess obviously, Commissioner  
19 Johnson, I would prefer a ruling today. I'm reading  
20 between the lines that you are not so inclined, and if  
21 that's the case, probably leaving the issues as they  
22 are with the legal issue that identifies the dispute  
23 between Public Counsel and ourselves is fine with the  
24 understanding, I guess, that that issue would be --  
25 your intention, at least, is to recommend that the

1 panel deal with that issue at the outset of the  
2 hearing before taking testimony.

3           From a policy point of view, I think, like  
4 Mr. Burgess, I probably could argue both sides of this  
5 from a policy point of view. I have always read the  
6 statute to mean -- as issues in dispute meaning issues  
7 raised by a protest. To the best of my knowledge,  
8 that's the way the Commission has construed it to  
9 date.

10           In a way, the reconsideration/  
11 cross-reconsideration, appeal/cross-appeal scenario  
12 that Mr. Burgess lays out sounds reasonable, and if  
13 the Commission were to adopt that sort of an  
14 interpretation by rule, you know, that interpretation  
15 might very well stand.

16           At this point, though, we don't have that,  
17 so we're unlike a reconsideration where a party who  
18 wants to file a cross-motion has got seven days for an  
19 appeal, or a party who wants to file a cross-appeal  
20 has got 10 days. We're in a situation where we're  
21 told we file a protest and we don't necessarily know  
22 what the issues are for 30 days or, in this case, you  
23 know, a substantial period of time until testimony is  
24 filed.

25           So while those might be good models, they're

1 not a model the Commission has adopted and not the way  
2 this statute has been construed today.

3 **COMMISSIONER JOHNSON:** Any --

4 **MR. BURGESS:** No, I have none.

5 **COMMISSIONER JOHNSON:** I'd like for us,  
6 then, to -- I'd like for you all to prepare written  
7 briefs on the legal issue on Issue 1. How much time  
8 do you need? Do you need more than a week to get  
9 something to the Commission? Because I'd like for the  
10 Commissioners to have at least an opportunity to read  
11 those briefs, be prepared to hear your oral arguments,  
12 and ask any questions that we might have.

13 How much time would you all need to codify  
14 the statements that you made here and maybe cite to  
15 some of the cases, Mr. Melson, as you did today?

16 **MR. MELSON:** If we could do that by next  
17 Wednesday, if that would be soon enough for the  
18 Commission. That's due to some out of town hearings  
19 I've got and, frankly, some family plans for this  
20 coming weekend. I could do it by next month if I had  
21 to, but next Wednesday would be much more convenient  
22 if that was quickly enough to meet the Commission's  
23 needs.

24 **MR. BURGESS:** I could certainly do it by  
25 Wednesday. I can do it by Monday if you prefer.

1                   **COMMISSIONER JOHNSON:** I was thinking  
2 Monday, but I don't want to interfere with family  
3 plans. Wednesday is fine. That gives the  
4 Commissioners a couple days and the weekend. And we  
5 will allow oral argument, so that will give them  
6 another opportunity. I don't think you'll need more  
7 than 10 minutes. We'll put 10 minutes aside for the  
8 oral argument.

9                   **MS. BRUBAKER:** Commissioner, just as a  
10 clarification, you had stated that "Issue 1." I  
11 believe, you meant "Issue A."

12                   **COMMISSIONER JOHNSON:** Did I say 1? I did  
13 mean Issue A. Thank you for that clarification.

14                   And, again, be prepared, Mr. Melson, to --  
15 I'm not certain as to how the Commission is going to  
16 rule, but we'll need what you'd like to have stricken.

17                   **MR. MELSON:** And I will do that in the legal  
18 memorandum I file as an attachment to that. I will  
19 identify the testimony that I think goes beyond the  
20 scope.

21                   **COMMISSIONER JOHNSON:** That would be great.  
22 Again, the purpose will be to give the Commissioners  
23 an opportunity to hear the full and complete debate,  
24 to have a really good record so that when we rule,  
25 individuals will know where we stand on this issue,



1 and to the extent it needs to be appealed, we'll have  
2 a nice record for that.

3           And, also, if in discussions we determine  
4 that the law says one thing but the policy should be  
5 something else, it lays a foundation for us the next  
6 legislative session; we don't think this process  
7 works, but we think we're bound by it to have a good  
8 record and the rationale to go forward.

9           So I'd like us to try to do that. So in the  
10 meantime we'll leave those issues, understanding for  
11 all parties to be on notice that they may not stay,  
12 but it will depend upon the written briefs and the  
13 oral arguments. We will make a decision before we  
14 start into the hearing, so they will either be in or  
15 out and everyone will be on notice.

16           I guess we can go through each of these  
17 issues as they currently stand. Mr. Burgess, you have  
18 to help me with this.

19           **MR. BURGESS:** Do you want to deal with this  
20 first or last or --

21           **COMMISSIONER JOHNSON:** We'll deal with it  
22 last. Let's walk through all of these, and then we'll  
23 get to that.

24           (Brief recess for technical difficulties.)

25           **COMMISSIONER JOHNSON:** We're going to go

1 back on the record.

2 And we were on Page 6, Issue A. Anything  
3 need to be changed in terms of the wording or the  
4 positions? (No response.) Page 7? (No response.)  
5 Page 7, Issue 1 and Issue 2?

6 **MR. BURGESS:** Commissioner, for Issue 1, I  
7 would like to amend the position that's listed for us  
8 to read as I've got on the last position that -- of  
9 the sheet I handed you.

10 **COMMISSIONER JOHNSON:** And everyone has a  
11 copy of OPC's revised position on Issue 1?

12 **MR. BURGESS:** It was typed as Issue 1a and  
13 I've stricken the "a" out.

14 **COMMISSIONER JOHNSON:** We'll make that  
15 change.

16 **MR. BURGESS:** Thank you.

17 **COMMISSIONER JOHNSON:** Issue 2? (No  
18 response.) Issue 3, no changes? (No response.)  
19 Issue 4? (No response.) 5, 6?

20 **MR. MELSON:** On 5 and 6, I would just say  
21 "Mr. Wenz" in parentheses after the end of the issues,  
22 along with Mr. Seidman.

23 **MR. BURGESS:** I don't -- my concern is I  
24 didn't see anything in his testimony that addressed it  
25 in his direct, that addressed it.

1           **MR. MELSON:** Actually --

2           **MR. BURGESS:** Yeah. He says that  
3 Mr. Seidman will present the testimony on used and  
4 useful. So I don't --

5           **MR. MELSON:** Slow down. I'll withdraw that.  
6 In light of your decision that the Commission is going  
7 to rule whether these issues are in or out, I don't  
8 need Mr. Wenz, because all he was going to say is from  
9 the company's perspective why they should be out. But  
10 since that will have been ruled on, on further  
11 reflection, I don't need Mr. Wenz on these issues.

12           **COMMISSIONER JOHNSON:** Okay. Issues 7  
13 and 8? No changes there. 9, 10? (No response.)  
14           11, 12? (No response.) 13 through 15?  
15 (No response.) 16 and 17? (No response.) Issue 18?  
16 (No response.)

17           Okay. That concludes the revisions  
18 necessary for Issues A through 18. Now there's an  
19 issue that Public Counsel asked that we add to the  
20 issue list. Public Counsel?

21           **MR. BURGESS:** Yes, Commissioner; actually  
22 two issues. And if you'll indulge me, I'll go ahead  
23 and tell you the factual underpinning of this.

24           The proposed agency action on the issue of  
25 CWIP, the proposed agency action granted the company

1 what it sought. Now, there was a minor modification  
2 on an issue that has nothing to do with whether it  
3 should be year-end or the general amount. But in its  
4 aggregate, the Commission allowed the company all of  
5 the revenue requirement associated with the CWIP that  
6 the company sought.

7           So 1 -- that was the point of Issue 1A, just  
8 the factual question. Now, if everybody agrees that  
9 that happened, then perhaps it could be a factual  
10 stipulation. The proposed agency action gave all  
11 the -- gave the company all the revenue requirement it  
12 sought for the CWIP was seeking to have incorporated  
13 in rate base.

14           Then the question is if they did that, is it  
15 proper for the Commission to entertain evidence from  
16 the company protesting the PAA that gave the company  
17 what it sought. What is it protesting? I mean,  
18 suppose this were the only issue there were. The  
19 company comes in, files for something. The Commission  
20 says, we grant it. Company says, we protest; we want  
21 more.

22           And that's the problem I have with it  
23 particularly if we're talking about in dispute. How  
24 can it be in dispute? The PAA is what the company  
25 sought. So, you know, it seems to me to be not a

1 proper issue for the Commission to take evidence on  
2 because there's not anything really in dispute.

3           **COMMISSIONER JOHNSON:** Got you. Mr. Melson,  
4 any comments?

5           **MR. MELSON:** Yes, ma'am. We do not have a  
6 problem including the two issues that Mr. Burgess has  
7 proposed, although I would like to reword one of them  
8 slightly. And essentially the company in its filing  
9 included CWIP in the MFRs at an average balance when  
10 it intended to, and it is appropriate from a  
11 rate-making perspective under the circumstances, to  
12 include a year-end balance.

13           That became apparent to us when we saw the  
14 way the PAA handled an adjustment that essentially  
15 left the company with a negative CWIP balance.  
16 Accordingly, since we were protesting other issues, we  
17 included a protest of the treatment of CWIP as well,  
18 recognizing that it was an oversight in the filing  
19 that may have contributed to the way that the matter  
20 was handled in the PAA order.

21           It is our position that the Commission is  
22 well within its authority to correct errors, to allow  
23 a company to correct errors, so long as at the end of  
24 the day the total revenues awarded do not exceed the  
25 original requested revenues. And in this case,

1 because of other adjustments that the utilities  
2 accepted, we are in a situation where we would not be  
3 exceeding the originally requested revenues.

4 So I guess I have to agree with Mr. Burgess  
5 that these issues are probably fair game, but our  
6 position on them will obviously differ from his.

7 **COMMISSIONER JOHNSON:** Now, with respect to  
8 the way that Mr. Burgess said we should do 1(a), could  
9 that be stipulated? Is it even necessary to have it  
10 as an issue? And the issue goes more to the legal  
11 issue.

12 **MR. MELSON:** My understanding is his  
13 position is "No, the Commission should not," and my  
14 position is "Yes, the Commission should."

15 **COMMISSIONER JOHNSON:** No -- I'm sorry;  
16 1(a).

17 **MR. MELSON:** Oh, I'm sorry; 1(a).

18 **COMMISSIONER JOHNSON:** Should we stipulate  
19 that it granted the entire revenue requirement  
20 associated with the CWIP sought by Mid-County in its  
21 original filing --

22 **MR. MELSON:** I would rather answer that with  
23 a "yes" and an explanation rather than a simple "yes"  
24 which could be --

25 **COMMISSIONER JOHNSON:** Okay.

1           **MR. MELSON:** -- the effect of the  
2 stipulation, because I think the explanation is  
3 important. And, in fact, the explanation is included  
4 in Mr. Wenz's direct testimony.

5           **COMMISSIONER JOHNSON:** Okay. Staff, any  
6 comments? The parties are saying we should add these  
7 then as issues.

8           **MS. BRUBAKER:** Frankly, Commissioner, it  
9 seems to me that this is something that would  
10 essentially fall out, but -- through the other  
11 issues -- but Staff has no objection to including them  
12 as issues.

13           **MR. MELSON:** Commissioner Johnson, on the  
14 legal issue, that's really stated at this point as a  
15 policy issue, "Should the Commission." I prefer to  
16 say, "Can the Commission," or "Can and should the  
17 Commission," so that we get to argue it completely.

18           **MR. BURGESS:** Commissioner, I don't intend  
19 to take up the issue of whether the Commission can. I  
20 intend to argue that the Commission should not. So I  
21 don't want to get into the issue of -- I agree with  
22 him that it's a policy -- more of a policy issue than  
23 a legal issue, but, I don't want to be constrained to  
24 the argument of whether the Commission can. For me  
25 the issue is simply whether the Commission should. So

1 I guess what I'm saying is I'm not raising the  
2 question of the Commission -- whether the Commission  
3 can do this. If Mr. Melson wants to raise it, that  
4 may be fine; but I'm only raising the issue of whether  
5 the Commission should do this as a matter of policy.

6 **COMMISSIONER JOHNSON:** Does that mean that  
7 you think we have a legal authority to do this?

8 **MR. BURGESS:** It means that I'd rather not  
9 argue to the Commission that it does not have the  
10 legal authority to do this.

11 **COMMISSIONER JOHNSON:** Okay.

12 **MR. BURGESS:** I would rather argue to the  
13 Commission that as a matter of policy it should not do  
14 this.

15 **MR. MELSON:** And, Commissioner Johnson, I  
16 believe if you were to word the issue, "can and  
17 should," then it would allow him to argue "should" and  
18 to finesse the "can" issue any way he wants to finesse  
19 it.

20 **MR. BURGESS:** But I'm not making -- see, we  
21 start with no issue at all, and I want to make an  
22 issue. And I'm not making the issue of "can." And if  
23 we stipulate on this case that the issue of whether  
24 the Commission has the authority is not something  
25 we're bringing into dispute, then there's no point in



1 putting it into the issue. The only question is  
2 whether the Commission should.

3 **COMMISSIONER JOHNSON:** Any suggestion as to  
4 wording, Staff? How can we word this so that they  
5 can --

6 **MS. BRUBAKER:** I suppose in part it would  
7 depend upon Mr. Melson's preference to have the  
8 "can --

9 **MR. MELSON:** Commissioner Johnson, I've got  
10 no objection to wording the issue simply "should," so  
11 long as I have the representation on the record from  
12 Mr. Burgess that his position is the Commission does  
13 have the legal authority to do it and he is not  
14 raising the issue of legal authority and will not  
15 raise it subsequently.

16 **MR. BURGESS:** You've got -- I'll make the  
17 representation for his last two statements, but I am  
18 not acquiescing that the Commission does have the  
19 legal authority, but I am saying that I don't intend  
20 to raise that as an issue in this case.

21 **COMMISSIONER JOHNSON:** Let's try to address  
22 both. It would be -- so how do we do that? Do we do  
23 it "can/should or -- (inaudible overlap) --

24 **MS. BRUBAKER:** -- (inaudible overlap) -- it  
25 seems to me that just the secondary "should they" is

1 dependent on whether they can.

2           **COMMISSIONER JOHNSON:** Two issues or just  
3 one?

4           **MS. BRUBAKER:** I think it could be dealt  
5 with one issue.

6           **COMMISSIONER JOHNSON:** Okay. And it will  
7 read --

8           **MS. BRUBAKER:** "Can and should the  
9 Commission take evidence on the protested issue --  
10 (inaudible) --

11                   (Court reporter asked for clarification.)

12           **MS. BRUBAKER:** If the preference is simply  
13 to have two issues, we can certainly break it out into  
14 two issues, (b) and (c), "can the Commission" and  
15 "should the Commission." I think it could probably be  
16 dealt with adequately, although the parties may take  
17 different viewpoints on it. So perhaps for that  
18 reason we should break it out into two issues.

19                   The first would be a legal issue (b): "Can  
20 the Commission take evidence on a protested issue when  
21 the PAA granted the utility all the revenue it sought  
22 on that issue?" And legal issue (c): "Should the  
23 Commission take evidence on a protested issue when the  
24 PAA granted the utility all the revenue it sought on  
25 that issue?"

1           **COMMISSIONER JOHNSON:** Maybe rewording the  
2 first one, "Does the Commission have the legal  
3 authority."

4           **MS. BRUBAKER:** Certainly.

5           **COMMISSIONER JOHNSON:** Just for  
6 clarification. And then we'll also address the  
7 "should." "Shall". "Should."

8           Is that it? So we will add those issues.

9           **MR. BURGESS:** Okay.

10          **COMMISSIONER JOHNSON:** And we've already  
11 clarified your position on Issue 1. Any other  
12 questions with respect to other issues?

13          **MR. MELSON:** Commissioner Johnson, do you  
14 want the utility to state its position on these issues  
15 for the record?

16          **COMMISSIONER JOHNSON:** Yes.

17          **MR. MELSON:** And then I will get with  
18 Ms. Brubaker and read them to her again.

19                 For the legal issue, "Does the Commission  
20 have the authority," our answer would be "Yes".

21                 For the issue, "Should the Commission," our  
22 answer would be, "Yes, the Commission should allow the  
23 utility to correct oversights in its filing so long as  
24 the revenues ultimately granted do not exceed those  
25 requested."

1           And then on the factual issue, the utility's  
2 position would be, "Yes, but the original filing  
3 mistakenly included only an average balance for CWIP  
4 instead of the appropriate year-end balance."

5           **COMMISSIONER JOHNSON:** On your answer in  
6 this -- we'll probably ask this question later and  
7 I'll ask it now: On your second "should," that kind  
8 of presupposes that we do have the discretion. Do we  
9 have the discretion?

10           **MR. MELSON:** Yes, ma'am, I believe you do.

11           **COMMISSIONER JOHNSON:** Okay. Thank you.

12 And Mr. Burgess we'll allow you to provide your  
13 answers to Staff. You don't have to do that right  
14 now.

15           **MR. BURGESS:** Thank you.

16           **COMMISSIONER JOHNSON:** Exhibit list; any  
17 changes there?

18           **MR. MELSON:** No, ma'am. I would point out  
19 when the utility filed Mr. Wenz's rebuttal testimony  
20 we inadvertently admitted Exhibit CJW-4, and I believe  
21 we're going to be filing that today.

22           We've also identified a CJW-6, which is  
23 something we discussed with the Staff and the parties  
24 during the pre-prehearing. The Staff wanted to make  
25 sure the utility provided a detailed exhibit that

1 included all of the rate case expense backup, and we  
2 intend to file that by Friday of this week.

3 **MS. BRUBAKER:** Commissioner, if I may just  
4 for a minute go back for a clarification. Would you  
5 like Staff to state its positions on these issues for  
6 the record, or shall we simply fold that into the  
7 prehearing order?

8 **COMMISSIONER JOHNSON:** You can put it in the  
9 prehearing order, but if you want to state it now,  
10 that's fine, too.

11 **MS. BRUBAKER:** With regard to issue -- legal  
12 issue (b) -- (inaudible) --

13 (Court reporter asked for clarification.)

14 **MS. BRUBAKER:** The answer would be, "Yes."  
15 Our position would be "Yes."

16 Legal issue (c): "Agree with utility."

17 Issue 1(a): "Agree with utility."

18 **COMMISSIONER JOHNSON:** Okay.

19 **MS. BRUBAKER:** And the order will reflect  
20 those positions.

21 **COMMISSIONER JOHNSON:** Mr. Melson, were  
22 there any other changes or additions on the exhibits?

23 **MR. MELSON:** No, ma'am.

24 **COMMISSIONER JOHNSON:** Okay. Proposed  
25 stipulations. There are the four that we have here.

1 Anything else to add?

2           **MR. MELSON:** I've got, I guess, a  
3 clarification of two of them. I want to make sure  
4 that I'm not inadvertently stipulating to more than I  
5 think I am.

6           On the stipulation No. 1 regarding the  
7 testimony of Staff Witness Winston, we're making that  
8 stipulation with the understanding that Mr. Davis of  
9 the Staff is the appropriate witness to testify about  
10 the ratemaking treatment of construction work in  
11 progress.

12           **COMMISSIONER JOHNSON:** Okay.

13           **MR. MELSON:** And with regard to Issue 3,  
14 that stipulation is with the understanding that the  
15 stipulation does not affect the utility's position on  
16 the proper allocation methodology for common costs.  
17 The Staff has said that in their mind the two issues  
18 are somewhat related. And by stipulating to the rate  
19 structure aspect of it, we are not stipulating  
20 anything having to do with the allocation methodology.

21           With those understandings the stipulations  
22 are acceptable to the utility.

23           **COMMISSIONER JOHNSON:** The record reflects  
24 those clarifications and no objection as to the  
25 understanding, so let that stand.

1 No other pending motions or rulings?

2 MR. BURGESS: Commissioner, I guess my  
3 question would be with regard to the legal policy  
4 issue that we have now incorporated. It also, similar  
5 to the other legal issue, is a threshold issue as to  
6 whether the Commission would take evidence that.

7 Do you categorize it, then, with the others  
8 as far as you would like the panel to examine the  
9 issue, rule on it prior to the hearing and, therefore,  
10 like written comment on it?

11 COMMISSIONER JOHNSON: I'm glad you raised  
12 that, because when I read those, that was my original  
13 thought on the matter. So let's do that; let's add  
14 those.

15 MR. BURGESS: Okay.

16 COMMISSIONER JOHNSON: That would be  
17 helpful.

18 MS. BRUBAKER: These would also be due on  
19 the --

20 COMMISSIONER JOHNSON: Wednesday.

21 MS. BRUBAKER: Wednesday the 16th.

22 COMMISSIONER JOHNSON: Uh-huh. Thank you  
23 for raising that.

24 Anything else? (No response.) Okay.

25 Seeing no other matters, this prehearing is adjourned.

1 Thank you very much.

2 (Thereupon, the prehearing concluded

3 at 9:35 a.m.)

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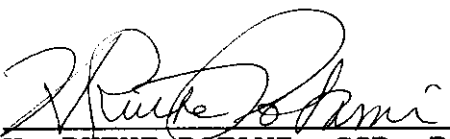
1 STATE OF FLORIDA)  
: CERTIFICATE OF REPORTER  
2 COUNTY OF LEON )

3 I, H. RUTHE POTAMI, CSR, RPR, FPSC  
4 Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing  
6 Conference in Docket No. 971065 was heard by the  
7 Prehearing Officer at the time and place herein  
8 stated; it is further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed by me; and that this transcript,  
12 consisting of 40 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 8th day of June, 1999.

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