BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991666-WU

In the Matter of

APPLICATION FOR AMENDMENT OF CERTIFICATE NO. 106-W TO ADD TERRITORY IN LAKE COUNTY BY FLORIDA WATER SERVICES CORPORATION.

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PROCEEDINGS:	PREHEARING CONFERENCE
BEFORE:	COMMISSIONER BRAULIO L. BAEZ Prehearing Officer
DATE:	Tuesday, June 26, 2001
TIME:	Commenced at 9:30 a.m. Concluded at 9:50 a.m.
PLACE:	Betty Easley Conference Center Room 152 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR FPSC Division of Records & Reporting Chief, Bureau of Reporting (850) 413-6732

APPEARANCES:

SUZANNE BROWNLESS, 1911-B Paul Russell Road, Suite 201, Tallahassee, Florida 32301-4860, appearing on behalf of the City of Groveland.

J. STEVE MENTON, Rutledge, Ecenia, Underwood, Purnell and Hoffman, P. O. Box 511, 215 South Monroe Street, Suite 420, Tallahassee, Florida 32302-0551, appearing on behalf of Florida Water Services Corporation.

PATTY CHRISTENSEN, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

PROCEEDINGS

COMMISSIONER BAEZ: Call the prehearing to order.

Counsel, read the notice.

MS. CHRISTENSEN: By notice issued June 11th, 2001, this time and place has been set for a prehearing conference in Docket 991666-WU, application for amendment of Certificate Number 106-W to add territory in Lake County by Florida Water Services Corporation. The purpose of this prehearing conference is as set forth in the notice.

COMMISSIONER BAEZ: Appearances, please.

MR. MENTON: Steve Menton from the firm of Rutledge, Ecenia, Purnell and Hoffman on behalf of Florida Water Services.

MS. BROWNLESS: Suzanne Brownless, Suzanne Brownless P.A., appearing on behalf of the City of Groveland. And with me is Jason Yarborough, the City Manager of the City of Groveland.

COMMISSIONER BAEZ: Okay. Ms. Christensen, do we have any preliminary matters?

MS. CHRISTENSEN: Yes, Commissioner. Patty Christensen on behalf of staff. We have several motions outstanding. The first motion that staff would like to address is staff's motion to Late-file Exhibit BW-1, which I do not believe any of the parties have any objection to.

COMMISSIONER BAEZ: Okay. Do the parties have any

objection?

MR. MENTON: No, sir.

MS. BROWNLESS: No, sir.

COMMISSIONER BAEZ: Okay. Show approval of the late-filed exhibit.

MS. CHRISTENSEN: The next motion, staff would like to recommend that opening statement, if any, not exceed ten minutes per party.

COMMISSIONER BAEZ: I think that is a good idea, in case anybody has any -- no. All right. Let the prehearing order reflect ten minutes per side opening arguments.

Anything else?

MS. CHRISTENSEN: Staff notes that the other pending motions that were in the draft prehearing order, the motion for summary final order, and the city's motion for request for oral argument and their response were addressed by the Commission yesterday at agenda conference and we can address deleting those motions in the draft prehearing order when we get to that section.

COMMISSIONER BAEZ: Okay. Great. We can start going over the prehearing order. It's probably just better to take these a few sections all together. Sections I, II, III, IV, V, and VI. Do we have any changes that need to be made? Mr. Menton?

MR. MENTON: No, sir.

COMMISSIONER BAEZ: No. Ms. Brownless?
MS. BROWNLESS: No, sir.
COMMISSIONER BAEZ: No. Okay. Staff?
MS. CHRISTENSEN: No.
COMMISSIONER BAEZ: Okay. Go to Section VII, the order of witnesses. Any changes there? Will we be taking -- I'm trying to see here -- no, we don't need to take rebuttal and direct together. All right. Moving along.
MR. MENTON: I'm sorry, Commissioner, I do believe that there is one, there is rebuttal testimony for Mr. Tillman.
COMMISSIONER BAEZ: Oh, there is? That wasn't showing here. We can take that together. Is that all right?
MS. CHRISTENSEN: Yes. And we will reflect that in the order.
COMMISSIONER BAEZ: I don't remember if it was reflected or not.
MS. CHRISTENSEN: No. I'm looking at the order and it looks like that Mr. Tillman's rebuttal testimony was not outlined in the order, so we will go ahead and put that in there for Florida Water Service Corporation, and the issues that he is testifying on rebuttal, too. Is that all the same issues?
MR. MENTON: Actually there was rebuttal and then there was supplemental rebuttal that was a result of the wastewater issue. So there are two different sets of rebuttal

testimony.

MS. BROWNLESS: And I guess, Steve, my question is are we going to put Mr. Tillman on once and he can do his whole --

MR. MENTON: That would be fine.

COMMISSIONER BAEZ: We can take Mr. Tillman's testimony, direct and rebuttal together. But if you can provide staff with the issues that Mr. Tillman will be providing rebuttal testimony on. Okay. Any changes to the basic positions? Florida Water. That's a no. None, Ms. Brownless?

MS. BROWNLESS: No, sir.

COMMISSIONER BAEZ: Staff?

MS. CHRISTENSEN: No, sir.

COMMISSIONER BAEZ: And the separate issues, let me just start by saying I saw some issues here, I think there are about a handful where there doesn't seem to be any controversy. Has there been any conversation, any discussion of intent to stipulate?

MS. BROWNLESS: As we go through there we can let you know what is what.

COMMISSIONER BAEZ: Starting with Issue 1.

MS. BROWNLESS: Do you want me to start, or --

COMMISSIONER BAEZ: Yes.

MS. BROWNLESS: Okay. With regard to Issue 1, we

believe that there is a need for service, so we could stipulate to that. But as for the requested date that service is required, I don't think we can stipulate to any date.

COMMISSIONER BAEZ: So we can amend the issue? Staff, is that how we would do it?

MS. BROWNLESS: Or we can just amend our position on that, which I think is what we would like to do.

COMMISSIONER BAEZ: Okay.

MS. CHRISTENSEN: Can you clarify what the city's new position should be?

MS. BROWNLESS: Well, basically in the application the developer requested service by July 1 of the year 2000. Obviously we have long since passed that. And we have been unable and are in the process of trying to figure out exactly when service would be needed.

So I guess our basic position is is there still a developer of this territory? Yes. Will he eventually need service? Yes. Exactly when that date will be, six months from now, four months from now, that is at issue.

COMMISSIONER BAEZ: And you are proposing just amending your position as to the issue, the timing of the issue?

MS. BROWNLESS: As to say it is unclear as to what the date the need would be.

COMMISSIONER BAEZ: Mr. Menton?

MR. MENTON: Well, the only concern that I have is that I don't believe there is any prefiled testimony that directly relates to that other than what has been submitted. The original request obviously was for July 1st, 2000. That date hasn't been met, mainly or to a large degree because of this proceeding. But I don't know that there is anything that directly contradicts that the developer has a need for service.

MS. BROWNLESS: Well, I think we have offered testimony as to the fact that at least as of the date that we filed our rebuttal testimony there were no permits pulled, no building permits, no construction permits, no development orders, none of the things that one needs to do in order to effectuate an approved PUD.

And so I do think it is at issue in the case. And we do have testimony, at least that has been filed in our testimony in the case, and, of course, we have the right to ask Mr. Tillman on the stand. I mean, it is a legitimate identified issue and certainly a very fundamental one.

COMMISSIONER BAEZ: Staff, is it possible to stipulate in part this issue, and just leaving the issue of the timing and have that --

MS. CHRISTENSEN: I would think --

COMMISSIONER BAEZ: I mean, what is your preference, I don't have -- we can go through the whole --

MS. CHRISTENSEN: Can you give me one second?

COMMISSIONER BAEZ: Sure, take your time. (Pause).

MS. CHRISTENSEN: Staff would be fine with stipulating part of the issue and just narrowing the issue down to an issue of timing of service. It appears to staff that there is no controversy as to whether there is a need, and the timing issue really would be something that we could address at the hearing. So, yes.

COMMISSIONER BAEZ: I agree. Ms. Brownless, then you can amend your position as to what the issue is and we will have the issue modified just to take up the timing issue.

MR. MENTON: Commissioner, if I could, I would ask for leave to at least review my position, in view of this. I may need to make a small amendment to mine, as well.

COMMISSIONER BAEZ: You have it.

MR. MENTON: Thank you.

MS. BROWNLESS: And let me just make sure that I understand what we are doing. Are we going to leave the issue as stated here and just craft a stipulation which addresses need? Do you understand what I'm saying?

MS. CHRISTENSEN: Yes. And I guess if the Commissioner doesn't mind, I envision what the Commissioner had intended was to reword the issue to reflect when is there a need for service rather than is there a need for service.

COMMISSIONER BAEZ: Well, we can do it -- there is a thousand ways to skin this cat, Ms. Christensen. And I think

as long as one way or another we are reflecting the fact that there is no issue as to whether there is a need for service and that the only remaining dispute or question is when the need for service arises, or when it would arise. We can rewrite the issue or not rewrite the issue and just rely, based on the positions and whatever testimony is going to be --

MS. BROWNLESS: We can come up with a stipulation that says the parties stipulate that there is a need for service, however, the timing of such service is in dispute. I mean, something even that simple.

COMMISSIONER BAEZ: There may be no need to rewrite the issue.

MS. CHRISTENSEN: I think that may be the simplest way to do it is to stipulate the first part of it and then amend the responses the other way.

MS. BROWNLESS: Okay.

COMMISSIONER BAEZ: Issue 2. This is another one of those issues.

MS. BROWNLESS: Now, this issue we can stipulate to.

COMMISSIONER BAEZ: Okay. Show Issue 2 stipulated unless, Mr. Menton, you have any objection.

MR. MENTON: I don't think so.

COMMISSIONER BAEZ: Sorry. Issue 3.

MS. BROWNLESS: I just need to ask a question about Issue Number 3. Usually in these cases one proves that there

is the technical, managerial, and financial ability to serve. And we have kind of taken Issue Number 3 to include both technical and managerial. I mean, we have kind of rolled it into one, you know what I mean? So do we believe that Florida Cities has the technical ability to serve? Sure.

COMMISSIONER BAEZ: Florida Water.

MS. BROWNLESS: Florida Water, sorry. I'm still on Southern States is how old I am here.

COMMISSIONER BAEZ: A lot of us are.

MS. BROWNLESS: That Florida Water has the technical ability, yes. Do we believe that they have -- or the managerial ability, yes. Do we believe they have the technical ability to provide service from this plant, with that we have an issue. Now, Issue Number 4 goes to the plant capacity.

COMMISSIONER BAEZ: That's right.

MS. BROWNLESS: So in a sense that is a redundant issue, but do you understand my confusion here?

COMMISSIONER BAEZ: I understand where you are coming from. And I guess I have a question. I mean, if this is -- the technical ability, is that in the same sense that we would use for certification? Because otherwise, then, I don't have a -- I'm not sure we have a use for this issue.

MS. CHRISTENSEN: Yes, I believe we used them in the same vein.

COMMISSIONER BAEZ: Same context.

MS. CHRISTENSEN: Technical ability goes to the staffing and the ability to staff the facilities, which I believe Florida Water Service would have. I think the plant capacity goes to more the issue of whether or not the facility is there to meet --

COMMISSIONER BAEZ: Ms. Brownless, I think that Issue 4 actually covers whatever issue you might have.

MS. BROWNLESS: My issue is can they manage a water facility? Sure. Do they have appropriate personnel to run it? Of course.

COMMISSIONER BAEZ: If we have been doing our job right, I think the answer to all of those questions would wind up being yes. I don't think that technical ability for purposes of this issue, at least, means what --

MS. BROWNLESS: Can they do it at this particular facility. And if that is covered in 4, then --

COMMISSIONER BAEZ: I believe it is. I mean, I would agree that it is. And if it is not, it should reflect that that should be the spirit of Issue 4. So with that we can stipulate Issue 3. Mr. Menton?

MR. MENTON: That's fine with me.

COMMISSIONER BAEZ: Show Issue 3 stipulated by the parties. Issue 4. Any changes?

MR. MENTON: No, sir.

MS. BROWNLESS: No, sir.

COMMISSIONER BAEZ: Staff.

MS. CHRISTENSEN: No, sir.

COMMISSIONER BAEZ: Issue 5. Ms. Brownless, any changes?

MS. BROWNLESS: No, sir.

COMMISSIONER BAEZ: Mr. Menton?

MR. MENTON: No, sir.

MS. CHRISTENSEN: No.

COMMISSIONER BAEZ: Staff? Getting ahead of me there.

Issue 6. Can we discuss stipulating Issue 6?

MR. MENTON: No, sir, I don't think --

COMMISSIONER BAEZ: Oh, I'm sorry. Well, that's fine. Forgive me, I misspoke. Any changes to Issue 6?

MS. BROWNLESS: No, sir.

COMMISSIONER BAEZ: Mr. Menton?

MR. MENTON: No.

COMMISSIONER BAEZ: Staff?

MS. CHRISTENSEN: I don't anticipate any change at this time. I know that we have requested the 2000 financials, so that may change the position as we get closer to hearing.

COMMISSIONER BAEZ: Okay. Issue 7. Any changes?

MS. BROWNLESS: No, sir.

MR. MENTON: No, sir.

COMMISSIONER BAEZ: Okay. Staff, you don't have any

changes?

MS. CHRISTENSEN: No, sir.

COMMISSIONER BAEZ: Issue 8. Any changes?

MS. BROWNLESS: No, sir.

MR. MENTON: No, sir.

COMMISSIONER BAEZ: Okay. Issue 9.

MS. BROWNLESS: No, sir.

MR. MENTON: No changes.

MS. CHRISTENSEN: No, sir.

COMMISSIONER BAEZ: Staff, did you have a problem with this issue?

MS. CHRISTENSEN: Well, it is staff's position, and I know this was an issue that Florida Water Service wanted to be addressed in this, but as I think the staff has pointed out in its response, land owner's preference or preference by a customer is not something that generally is taken into account in such cases under Storey v. Mayo, so we would not consider this as a determinative issue, if really an issue at all, that should be addressed in this case.

COMMISSIONER BAEZ: Mr. Menton, you proposed this issue. What is your position on it?

MR. MENTON: Commissioner, we believe that there are some recent or decisions that have come down since Storey v. Mayo that do indicate that the landowner preference is an issue that should be considered in certain types of cases. And we

can cite you to some of those cases. They are not listed here in the prehearing stip, but I do believe there is legal authority for consideration. Is it conclusive? No. I would agree with that. But I do think it is a factor that the Commission should take into account.

COMMISSIONER BAEZ: Ms. Brownless, any comment?

MS. BROWNLESS: Well, I think to the extent that it is a fact to be considered in this case, sure. But should it be an issue? I don't think so. I think I agree with the staff on that. Because I think the case law is very settled that customer preference cannot dictate who provides service.

COMMISSIONER BAEZ: Who is the witness on this issue?

MR. MENTON: Mr. Tillman, I believe.

COMMISSIONER BAEZ: We will just leave it in for now. I mean, if anybody has any strong objections to it, we can probably address it in the hearing.

Issue 10. Any changes?

MS. BROWNLESS: No, sir.

COMMISSIONER BAEZ: None here. 11A. Actually 11A and 11B sound a lot like the same issue. Why are they split? And I'm pretty sure you had --

MS. BROWNLESS: Yes. The reason we did it this way was because we had the factual issue, which is Issue 10, which is will the expansion duplicate or compete with the system, and then depending on how you answer that factual question there is

two legal issues associated with it. And if you answer that question it will duplicate, then you have to say, okay, if it will duplicate or be in competition with, is the City of Groveland unwilling, unable, et cetera, to provide timely service.

And so there are, you know, it is a three-part analysis, basically. And obviously our position is, yes, it is in competition and duplication of the City of Groveland's service. And the City of Groveland can adequately and reasonably supply the requested utility service. And, therefore, an amendment to Florida Water's certificate should not be granted.

COMMISSIONER BAEZ: Mr. Menton, I am inclined to leave them as is unless you have a very, very strong objection.

MR. MENTON: I think there is some duplication there, but that's fine. We can break it down that way if that is the way you want to do it.

COMMISSIONER BAEZ: Staff can probably go either way on this.

MS. CHRISTENSEN: (Indicating yes.)

COMMISSIONER BAEZ: All right. Any changes to either of the issues?

MS. BROWNLESS: No, sir.

MS. CHRISTENSEN: No, sir.

MR. MENTON: Commissioner, that may be one that I

would like to go back and reword my position a little bit on.

COMMISSIONER BAEZ: Do you have any changes that you can make right now?

MR. MENTON: I don't have them right now. Maybe if I could get with Patty afterwards. I have made notes here and I need to just --

COMMISSIONER BAEZ: Which issue is that?

MR. MENTON: 11A.

COMMISSIONER BAEZ: 11A. 11B. Anyone?

MS. BROWNLESS: No, sir, we're fine.

COMMISSIONER BAEZ: Okay. Issue 12. Any changes?

MR. MENTON: No, sir.

MS. CHRISTENSEN: No, sir.

COMMISSIONER BAEZ: All right. On the exhibit list, is the staff witnesses additional -- does the additional exhibit have to be reflected here?

MS. CHRISTENSEN: Yes, sir. I would ask that we go ahead and reflect Ms. Winningham's exhibit in this section.

COMMISSIONER BAEZ: Is that BW-1?

MS. CHRISTENSEN: BW-1. And that would be -- she is already listed as adopting Mr. Gauthier's testimony. I would just add that underneath Mr. Gauthier's testimony as BW-1 and resume.

MS. BROWNLESS: Are we going to just exclude Mr. Gauthier's resume since he is not going to be part of this

process?

COMMISSIONER BAEZ: That is probably appropriate.

MS. CHRISTENSEN: It's really up to the parties whether or not they are going to -- I mean, if they have no objection to him being considered an expert, I mean, I would leave the resume in there for that to supplement his testimony. But if that is not going to be an issue, I don't think we need it in there.

MS. BROWNLESS: Well, let me think about that. Let me think about that, okay.

MS. CHRISTENSEN: And, Commissioner, may I ask one question to follow-up with an earlier one?

COMMISSIONER BAEZ: Yes.

MS. CHRISTENSEN: Mr. Tillman, did he have any exhibits with his rebuttal testimony?

MR. MENTON: I don't believe so, but I will check that and call you as soon as I get back to my office. I don't believe so, though.

MS. BROWNLESS: I don't think so.

COMMISSIONER BAEZ: All right. We will clear that up after, and we will make the necessary changes. Stipulations as we have discussed. And the pending motions, I think we have dispensed with all of them.

MS. CHRISTENSEN: Yes. I would go and just move, or remove, or delete the one about the final summary judgment

since that was addressed yesterday. And the other ones for which we have rulings, we will just move those to the rulings section.

COMMISSIONER BAEZ: Okay. No confidential matters. I think we are done.

Is there anything else from the parties?

MR. MENTON: No, sir.

MS. BROWNLESS: No, sir. Thank you.

COMMISSIONER BAEZ: Staff?

MS. CHRISTENSEN: No, sir.

COMMISSIONER BAEZ: All right. Quick work. We're adjourned. Thank you all.

MR. MENTON: Thank you.

(The hearing concluded at 9:50 a.m.)

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

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting FPSC Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 29th day of JUNE, 2001.

JANE FAUROT, RPR
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