

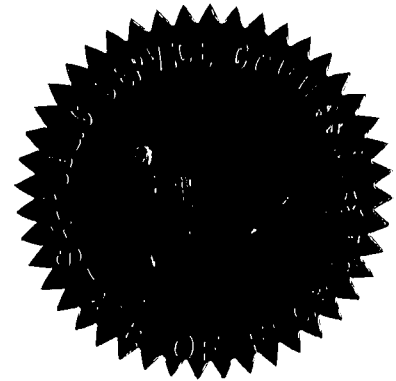
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070740-SU

In the Matter of:

JOINT APPLICATION FOR APPROVAL OF  
TRANSFER OF HUDSON UTILITIES, INC.'S  
WASTEWATER SYSTEM AND CERTIFICATE NO.  
104-S, IN PASCO COUNTY, TO NI FLORIDA,  
LLC.

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PROCEEDINGS:           AGENDA CONFERENCE  
ITEM NO. 17

BEFORE:                 CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE:                   Tuesday, March 18, 2008

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

REPORTED BY:           JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

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1 PARTICIPATING:

2 KENNETH A. HOFFMAN, ESQUIRE, representing Hudson  
3 Utilities and Ni Florida, LLC.

4 STEVE REILLY, ESQUIRE, representing Citizens of the  
5 State of Florida.

6 CAROLINE KLANCKE, ESQUIRE, and CHERYL JOHNSON,  
7 representing the Florida Public Service Commission Staff.

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

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2           **CHAIRMAN CARTER:** We are back on the record.

3           And the last time we left, Snidely Whiplash had tied  
4 the school marm to the train tracks and Underdog was flying  
5 in to -- oh, I'm sorry, that was a different agenda.

6           We are on Item 17. Staff, you are recognized.

7           **MS. JOHNSON:** Good afternoon, Commissioners. I'm  
8 Cheryl Johnson, staff analyst for Item Number 17.

9           Commissioners, Item Number 17 is the joint  
10 application filed for approval of the transfer of Hudson  
11 Utilities, Inc.'s wastewater system and Certificate 104-S in  
12 Pasco County to Ni Florida, LLC.

13           There are two issues to address in this  
14 recommendation, and the Office of Public Counsel has raised  
15 some concerns this morning that they would like to address.  
16 Mr. Steve Reilly is here on behalf of OPC, and we have  
17 Mr. Kenneth Hoffman here on behalf of the authorized parties of  
18 this application.

19           **CHAIRMAN CARTER:** Okay. Commissioners, why don't we  
20 hear from the parties first, and then we can get into our  
21 questions and discussion.

22           Mr. Reilly, you're recognized, sir. Good morning to  
23 you.

24           **MR. HOFFMAN:** Mr. Chairman, before Mr. Reilly speaks,  
25 may I just interpose an objection for the record?

1           **CHAIRMAN CARTER:** Sure.

2           **MR. HOFFMAN:** First of all, my name is Ken Hoffman.  
3 I'm here on behalf of Ni America and Hudson Utilities, the  
4 joint applicants.

5           And for the record, Mr. Chairman, I want to object to  
6 Public Counsel's participation to the extent that they wish to  
7 present an objection to this application. Under the applicable  
8 statutes, the Public Counsel was required to file any written  
9 objection within 30 days of the notice that was provided by the  
10 utilities in this proceeding. That's the statute. That's the  
11 law.

12           Public Counsel has not filed any written objection,  
13 timely or otherwise. In fact, it wasn't until this morning  
14 that we were advised of what their potential issue is, so I  
15 just wanted to place on the record our objection to their  
16 participation. I think they have waived their right to object  
17 to our application, and I would ask the Commission to simply  
18 approve the staff recommendation.

19           However, if the Chairman sees fit to allow their  
20 participation, I would certainly like the opportunity to  
21 respond.

22           **CHAIRMAN CARTER:** Commissioners, before ruling on the  
23 objection, what I would like to do is just let me hear from OPC  
24 and then we can kind of get back -- there may be a compelling  
25 reason for what happened.

1 Mr. Reilly, you're recognized.

2 **MR. REILLY:** Thank you very much.

3 We do not object to the transfer or the application  
4 for the transfer. The problem is that -- in fact, in the  
5 application the company indicated it was not seeking an  
6 acquisition adjustment, and we thought it was pretty much a  
7 resolved issue, there would not be an acquisition adjustment.  
8 The problem is with the recommendation as it was worded, the  
9 only mention of the issue, acquisition adjustment, is found in  
10 the background portion of the recommendation, and it just makes  
11 a statement the company is not seeking an acquisition  
12 adjustment and does not in the recommendation follow through on  
13 the company's application.

14 We feel that properly the order that comes out should  
15 follow through on the company's statement that it is not  
16 seeking an acquisition adjustment. In fact, the order should  
17 not be silent on the issue of acquisition adjustment, so it is  
18 that portion of the recommendation that we would like to bring  
19 to the attention of the Commission. Per se, we do not object  
20 to the transfer, and we would want to bring to the attention in  
21 our argument, if we can go forward at least to make our  
22 argument as to what we think you should do today. Is that  
23 permissible?

24 **CHAIRMAN CARTER:** You're on a roll.

25 **MR. REILLY:** We think it is an important issue

1 because Ni Florida has made a business decision to pay a  
2 substantial premium for this utility. Ni Florida has made a  
3 business decision to pay about \$6 million for a utility that  
4 has about a 2.4 or \$2.5 million net book value. And that is  
5 not a problem for the customers, and we don't object to the  
6 transfer unless Ni Florida intends ultimately for the customers  
7 to pay for part or all of this premium price by seeking a  
8 positive acquisition adjustment that could potentially more  
9 than double the rate base of this utility without the company  
10 spending one penny to make any improvements in the utility.

11 The recommendation acknowledges in the background  
12 that the company is not now, not now seeking any positive  
13 acquisition adjustment. The problem is that under the  
14 Commission's Rule 25-30.031, the company can elect to come in  
15 later to seek recovery from customers of part or all of this  
16 premium price that they are paying for this utility.

17 I didn't really think there was much of a problem. I  
18 called staff, and they said no, they are not going to get an  
19 acquisition adjustment, there has never been a precedent of  
20 granting it. There would be all of these standards, but  
21 nevertheless -- and then I went back to the company and said,  
22 well, can you settle this concern that I have in my mind?  
23 Would you commit yourself not to later come in and ask for an  
24 acquisition adjustment that could possibly impose all or part  
25 of this burden on the customers for this business decision.

1 And the representative of company could not give me that  
2 assurance. So that is the reason why I'm coming here.

3 I believe it is a serious concern if the customers  
4 end up having to pay all or part of this premium price in the  
5 form of a positive acquisition adjustment. If that is the  
6 case, OPC believes that that later event could, in fact, really  
7 impact on this whole issue whether it is or is not in the  
8 public interest.

9 Absent this proposed transfer, the customers are not  
10 currently exposed to this potential serious increase in rate  
11 base without investing any improvement in the system. The  
12 propriety of an acquisition adjustment should be considered and  
13 included as part of the decision of whether this transfer is in  
14 the public interest, not considered after it is made.

15 We think it's a critical factor. So we are for the  
16 transfer, the company is not asking for it, we are happy with  
17 that. But the concern we have is if the company comes in after  
18 the fact, then we have a lot of exposure to the customers. I  
19 believe it is appropriate. I mean, it certainly is within the  
20 authority of this Commission to say we approve this transfer  
21 under the assumption that you, in fact, are not going to expect  
22 the customers to pay for this premium. And we have suggested  
23 language, one sentence, that could cure our concerns, and  
24 basically what we have taken is the sentence that is already  
25 found in the background portion and added several words to it.

1 It is found on Page 2, and it just basically -- the words that  
2 are already in the recommendation at the background portion  
3 are, is the wastewater facilities were purchased for more than  
4 net book value, however, the buyer is not requesting an  
5 acquisition adjustment. That's a period. We are putting a  
6 comma, and we are just settling the issue, and we believe you  
7 should, and no positive acquisition adjustment will be allowed  
8 in this transfer. Because if that is ultimately what is  
9 visited upon us, then we think that is a completely different  
10 matter.

11 **CHAIRMAN CARTER:** Thank you.

12 Commissioners, what I would like to do is let Mr.  
13 Hoffman respond, and then I would like to maybe talk to our  
14 General Counsel so we can get ourselves in the proper posture.  
15 Because we have not ruled on the objection yet, but I do want  
16 to, obviously, hear from both of the parties before we do that.

17 Mr. Hoffman, you're recognized.

18 **MR. HOFFMAN:** Thank you, Mr. Chairman.

19 As Mr. Reilly stated, Ni America, who is the buyer,  
20 did not request a positive acquisition adjustment as part of  
21 this application for approval of the transfer. So Ni America  
22 did not raise this issue, and no party timely objected or  
23 intervened to raise the issue, but here we are at this point.

24 Now, the fact that Ni America did not ask for that,  
25 for a positive acquisition adjustment, that does not mean Ni



1 America could not ask for a positive acquisition adjustment in  
2 a future rate case. That is clearly their right. Now, whether  
3 they could -- excuse me, now whether they should, that's a  
4 completely different issue. But that is clearly their right.

5 Now positive acquisition adjustments are very  
6 difficult to establish under the Commission's rule, and the  
7 truth is they are rarely granted if you go back and look at the  
8 history over the last 20 years or so. But, I would submit to  
9 you the Commission cannot preemptively take away a utility's  
10 right to seek redress before the Commission in the future,  
11 whether that's through a future rate case request to increase  
12 rates, or a petition for a positive acquisition adjustment as  
13 difficult as that may be, or both.

14 Now, this morning, as I mentioned to you, I was  
15 approached by Mr. Reilly about this issue, and he gave me the  
16 language that is in front of you. And he told me that he  
17 wanted to clarify that the Commission was not granting a  
18 positive acquisition adjustment in this proceeding because that  
19 was not specifically said in the recommendation. And I said to  
20 him, you know, we don't need to do that because we haven't  
21 asked for one. But he wanted me to review the language, and so  
22 I reviewed his language, and I said, you know, this last piece  
23 of it is a little bit open-ended here, and I'm concerned about  
24 that. So I changed it, what you have in front of you, so that  
25 the last piece would say, "And no positive acquisition

1 adjustment is being granted in this order." He said that was  
2 fine, and so then I went to confer with my client to see if  
3 they were fine with that. And they were. And so when I went  
4 back to Mr. Reilly, I thought that we had put this issue to  
5 bed.

6 But, as things turned out, we evidently had not, and  
7 when we were talking about it, I told him my concern with this  
8 language being construed three years from now, four years from  
9 now as being interpreted in a way that would somehow prohibit  
10 Ni America, or a buyer after Ni America from pursuing a  
11 positive acquisition adjustment, which, again, is their right.  
12 Is it a good idea? Who knows. But that's their right.

13 And at that point Mr. Reilly then said, well, I want  
14 that guarantee, as well. I want that assurance, as well. So  
15 that is how this issue arose. And, again, I would say to you  
16 that that is not something that is within the Commission's  
17 authority to do. The Commission cannot preemptively preclude a  
18 utility from seeking a positive acquisition adjustment in the  
19 future, filing for a rate increase, or what have you. Why is  
20 that? The reason is that if you look at Commission precedent,  
21 ratemaking, utility ratemaking is not a judicial function. It  
22 is a legislative function. And what that means is that  
23 principles, legal principles like issue preclusion and  
24 res judicata are not strictly applied at the Commission. No  
25 one knows that better than a utility which used to appear

1 before the Commission, which Commissioner Argenziano is  
2 familiar with, and perhaps others, Southern States Utilities  
3 and Florida Water.

4           The issue of acquisition adjustments was raised on  
5 the same systems three times. Why was that allowed? Because  
6 utility ratemaking is a legislative function. So, in the same  
7 way, the fact that Ni America has chosen not to make this  
8 transfer controversial, and Ni America is in no way, shape, or  
9 form saying that it intends to seek this positive acquisition  
10 adjustment. What it is saying is that it is unlawful to  
11 preemptively preclude them and take away and divest their right  
12 to do so.

13           We think that the order that they are seeking is  
14 unprecedented. We don't think you will find one on the books.  
15 Obviously, I haven't had time to research it since I have been  
16 here all morning and it was first raised, but I don't think you  
17 have the authority to divest Ni America of these rights. I  
18 think it would be an onerous precedent to do that. I think  
19 this type of precedent would not only encroach on Ni America's  
20 rights, but I think that it would discourage utility  
21 acquisitions that are above net book value. And if you  
22 discourage acquisitions, you're discouraging consolidations and  
23 efficiencies, which, I think, are ultimately to the benefit of  
24 the customers that you protect.

25           Finally, I think that this type of ruling that

1 Mr. Reilly is seeking would be in violation of your acquisition  
2 adjustment rule, which consistent with your precedent does not  
3 preclude a party from seeking a positive acquisition  
4 adjustment, or for that matter, the Office of Public Counsel  
5 from seeking a negative acquisition adjustment after a transfer  
6 proceeding in a future rate case. So to wrap it up, Mr.  
7 Chairman, I would just, again, ask that you approve the staff  
8 recommendation.

9 **CHAIRMAN CARTER:** Before you say anything, let me  
10 just kind of let everybody know where we are. We are not on  
11 the case yet. We are determining whether or not to grant the  
12 objection, and there is a lot of whole things going on. But,  
13 first, Commissioner Argenziano, let me listen to you and hear  
14 your questions and concerns, and then I will go back to Mr.  
15 Cooke and any other Commissioners that have any comments on  
16 this. But right now we are dealing with whether or not to  
17 grant Mr. Hoffman's objection based upon OPC's late filing in  
18 this case. You're recognized.

19 **COMMISSIONER ARGENZIANO:** I'll have other comments  
20 later, but to that point, Mr. Hoffman, did you mention  
21 statutorily OPC's time frame or rule?

22 **MR. HOFFMAN:** Commissioner Argenziano, OPC's time  
23 frame is established. The 30-day time frame deadline is  
24 established under Section 367.071, Subsection 3 of the Florida  
25 Statutes, which incorporates the 30 days in Section 367.145.

1           **CHAIRMAN CARTER:** You are recognized.

2           **MR. HOFFMAN:** I'm sorry, .045.

3           **COMMISSIONER ARGENZIANO:** .045. And if OPC, let's  
4 say in their remaining time -- in the in-between time finds  
5 something additional, then in the past has it been deferred or  
6 allowed? Has there been times when it has been allowed if  
7 something additional comes up beyond that 30-day period?

8           **MR. HOFFMAN:** The only thing that I can say in  
9 response to that, Commissioner Argenziano, is I don't know of  
10 any situations where the Commission has typically allowed  
11 someone to file an objection after that 30-day time line. The  
12 statute doesn't allow for exceptions, and that's the way the  
13 Commission, I think, has traditionally applied it.

14           **COMMISSIONER ARGENZIANO:** And then, Mr. Chairman, at  
15 the proper time, I may have a solution which we all may be  
16 thinking of the same thing to the problem, when the right time  
17 comes.

18           **CHAIRMAN CARTER:** Okay.

19           Commissioner Skop, you're recognized.

20           **COMMISSIONER SKOP:** Thank you, Mr. Chair. And I will  
21 make my comments, or at least my take on the objection before  
22 us, and then maybe look to General Counsel as you have  
23 suggested. But I know Mr. Reilly is a strong advocate for the  
24 consumer, and I appreciate that, and it seems that this all  
25 turns with respect to a question of whether the acquisition was

1 in the best interests of ratepayers, and that is determinative  
2 on whether the company is willing to acquiesce to this revised  
3 language saying that no acquisition adjustment will be allowed  
4 in this transfer.

5 I strongly support a stipulation by the parties.  
6 That's an excellent thing for them to do. But it clearly seems  
7 in this case that OPC may have missed the window of opportunity  
8 in being able to negotiate the proposed language. And with  
9 respect to the procedural due process arguments raised by Mr.  
10 Hoffman, I mean, legally it seems on the face that the  
11 objection is valid, so I just kind of want to throw that out  
12 there, and hopefully look to Mr. Cooke to see what insight our  
13 legal staff may provide.

14 **CHAIRMAN CARTER:** Mr. Cooke, can you help us on this?  
15 It probably goes to standing. Well, no, you go ahead. You're  
16 lawyer, you tell us. I just play one on TV.

17 **MR. COOKE:** I think Mr. Hoffman makes some good  
18 arguments. I would tend, however, to recommend overruling the  
19 objection about making comments. I think that the notice  
20 requirements that are in this transfer section, I really --

21 **CHAIRMAN CARTER:** Wait a second now. The objection  
22 is not necessarily over the comments, the objection is  
23 modifying.

24 **MR. COOKE:** Well, that's the substance of it,  
25 Commissioner. If we are going to talk about substance, I share

1 Mr. Hoffman's concerns about the substance of what is  
2 being offered. I'm just dealing with the question of whether  
3 Mr. Reilly should be allowed to speak or not.

4 **CHAIRMAN CARTER:** Okay. Okay.

5 **MR. COOKE:** I thought that Mr. Hoffman was objecting  
6 of the opportunity to really essentially take comment on this  
7 issue at all.

8 **CHAIRMAN CARTER:** Okay.

9 **MR. COOKE:** By OPC. And I would tend to -- I mean,  
10 it is a very -- there is a reasonable argument under the  
11 statute that we could take that position, but I'm also  
12 comfortable that the notice requirements that are in the  
13 statute that Mr. Hoffman is referring to is intended to set up  
14 a process for a 120 hearing, and I don't think anybody is  
15 suggesting we are going in that direction.

16 In other words, the notice is intended to go out to  
17 recipients and give them an opportunity to object to the  
18 transfer and thereby set up a 120 type of evidentiary hearing.  
19 Second, I don't think OPC is objecting to the transfer. They  
20 are trying to impose a condition. And, again, if we are going  
21 to get into the substance of what they are trying to propose, I  
22 agree with Mr. Hoffman on that. But I'm just talking about  
23 whether or not to overrule the objection. Also, our rules  
24 regarding informal participation, I think would be consistent  
25 with allowing informal participation on this.

1           **CHAIRMAN CARTER:** So by allowing Mr. Reilly to, as I  
2 did earlier, you know, make his statements and make his case,  
3 you are saying that you would recommend that we have the  
4 discretion to do that.

5           **MR. COOKE:** To listen to that.

6           **CHAIRMAN CARTER:** Okay. Commissioners, let's deal  
7 with that and then we will get back to -- because then we are  
8 going to -- that is where the curveball comes in, so we  
9 probably need to deal with this issue first in terms of the  
10 objection. I believe based upon the ruling of our General  
11 Counsel, I think it is okay to allow Mr. Reilly's comments to  
12 be made. Does any Commissioner object to that?

13           Now, Mr. Cooke, let's get in the posture where we  
14 need to be.

15           **MR. COOKE:** Well, I think on the substantive issue, I  
16 agree with Mr. Hoffman. I'm really concerned about preempting  
17 their right to ask for an acquisition adjustment. This is  
18 regarding the transfer of the certificate and whether it is in  
19 the public interest. I think that under our rules -- I also  
20 don't think that the concern raised by OPC warrants doing this.  
21 If I can move my books around a little bit.

22           **CHAIRMAN CARTER:** Take a minute. Take a minute.

23           **MR. COOKE:** We do have a rule on acquisition  
24 adjustments and it clearly says -- it's 25-30.0371,  
25 Subparagraph 2. It says a positive acquisition adjustment



1 shall not be included in rate base absent proof of  
2 extraordinary circumstances, and that the entity that believes  
3 that this acquisition adjustment has been made has the burden  
4 to prove the existence of the extraordinary circumstances.

5 **COMMISSIONER ARGENZIANO:** Mr. Chairman.

6 **CHAIRMAN CARTER:** You're recognized, Commissioner  
7 Argenziano.

8 **COMMISSIONER ARGENZIANO:** Wouldn't it be prudent to  
9 look at it at this point? The problem is there is a late -- I  
10 was going to say filed amendment, but I guess that is what it  
11 is, a late-filed amendment by OPC. Mr. Hoffman indicated that  
12 there was an agreement before, and it seemed that the concern  
13 was now with OPC that the authorization of positive acquisition  
14 funding be part of this transfer. So what if the language went  
15 back and just said that the wastewater facilities were  
16 purchased for more than net book value, however, the buyer is  
17 not requesting acquisition adjustment at this particular time  
18 of the transfer, which means it doesn't close the door to  
19 later, which they have the right to do. I don't know if that  
20 solves the problem.

21 **MR. HOFFMAN:** The way that you stated it would be  
22 acceptable, because I think it is accurate and it doesn't leave  
23 any room for future interpretations or misinterpretations that  
24 could potentially adversely effect Ni America's rights.

25 **COMMISSIONER ARGENZIANO:** And possibly would solve

1 the problem of OPC's concern that it would somehow be included  
2 in today's transfer.

3 **MR. HOFFMAN:** Correct.

4 **CHAIRMAN CARTER:** Thank you, Commissioner.  
5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Chairman Carter.

7 Just going back to Mr. Cooke, and I agree, I think  
8 that's an excellent suggestion by Commissioner Argenziano. I  
9 guess what I'm struggling with is oftentimes these issues arise  
10 late, and for my own edification, I just want our General  
11 Counsel to have the parties in the appropriate time agree to  
12 stipulate that no acquisition adjustment would ever be sought  
13 in the future. Certainly at the appropriate time they could  
14 have stipulated to that, but because of the late-filed request  
15 or whatever, that window is now gone. Is that your  
16 understanding?

17 **MR. COOKE:** I agree that the parties can stipulate to  
18 it. In that case the petitioner or the requester would be  
19 agreeing to that voluntarily, but I do think it raises certain  
20 due process type questions to tell them at this point that they  
21 don't have a right to ask for that.

22 **COMMISSIONER SKOP:** And I agree whole-heartedly. I  
23 think that is the point I'm trying to make is that the time for  
24 using a lever might have been later rather than the present.  
25 And I think, again, that window of opportunity has clearly been

1 missed, and, you know, I have seen this more than once. I know  
2 that we need to zealously protect the interests of consumers,  
3 but, again, there is procedural due process. And I have kind  
4 of seen this 12th hour a couple of times. And I respect Mr.  
5 Reilly wholeheartedly for doing that, but at the end of the  
6 day, you know, we have to apply the rule of law, and procedural  
7 due process carries the day. But Commissioner Argenziano's  
8 suggested modifications, I think, is an excellent compromise to  
9 the extent that it doesn't preclude seeking a future  
10 acquisition adjustment, which is the right of the utility in  
11 the current procedural posture we're in. Thank you.

12 **CHAIRMAN CARTER:** Thank you. And Commissioner  
13 Argenziano.

14 **COMMISSIONER ARGENZIANO:** That is what I would  
15 suggest. But I have a question to counsel just to clarify on  
16 the 30 days. If you do go to 367.045, Paren 3, and I guess  
17 maybe I'm looking at it wrong. If you can help me, does that  
18 preclude anyone from after 30 days? It says if within 30 days  
19 after the last day that notice was mailed or published by the  
20 applicant, whichever is later, the Commission does not receive  
21 written objection to the notice, the Commission may dispose of  
22 the application without hearing. If the applicant is  
23 dissatisfied with the disposition, it may bring a proceeding  
24 under the statutes. I don't see where it also precludes, or  
25 maybe I'm reading it wrong, anything after the 30 days.

1           **MR. COOKE:** I don't see where it precludes. I'm  
2 sorry, I'm not sure I understand the question.

3           **COMMISSIONER ARGENZIANO:** I'm trying to find out  
4 where it really is at 30 days and that's it.

5           **MR. COOKE:** Well, I'm not reading that way, that OPC  
6 is precluded from speaking today, if that's what you're asking.

7           **COMMISSIONER ARGENZIANO:** Okay. I just wanted to  
8 clarify that, because I'm reading the statute, and I understand  
9 that it is written here as within 30 days this takes place, but  
10 it doesn't say that after that 30 days there is, you know --

11           **MR. COOKE:** I think what the statute contemplates is  
12 if there is not a written -- if there is a written notice of  
13 objection about -- in this case it is really in the  
14 certificate, the initial certificate, but it is  
15 cross-referenced in the transfer, there would be a hearing.  
16 There would be a right to a hearing.

17           **COMMISSIONER ARGENZIANO:** Okay.

18           **CHAIRMAN CARTER:** Commissioners, I shouldn't be  
19 thinking aloud, that is always dangerous. But listening to Mr.  
20 Cooke, Commissioner Argenziano, and knowing that the company  
21 does have due process rights, Mr. Hoffman, if your client would  
22 voluntarily -- that doesn't mean that we are forcing them to do  
23 that, and that puts us in a different posture, right, Mr.  
24 Cooke, so we are not violating our rules and all? And I think  
25 that the language that Commissioner Argenziano read to Mr.

1 Hoffman, he said that that would be, and I'm not putting words  
2 in your mouth, but I think that you said that your client would  
3 voluntarily accept that language. I say voluntarily for a  
4 reason.

5 **MR. HOFFMAN:** Mr. Chairman, that's correct.

6 Just so the record is clear, I think Commissioner  
7 Argenziano revised this language to say the wastewater  
8 facilities were purchased for more than net book value,  
9 however, the buyer is not requesting an acquisition adjustment  
10 at this time, period, and we can agree to that.

11 **CHAIRMAN CARTER:** Okay. Mr. Cooke, I think we're  
12 on -- since they voluntarily did that, we are not violating our  
13 rules by going back after the fact or anything like that, are  
14 we?

15 **MR. COOKE:** I think voluntarily agreeing to it is  
16 icing on the cake, because I think it restates what the facts  
17 are in this case.

18 **CHAIRMAN CARTER:** Okay. Excellent, excellent.

19 Okay, Commissioners, I think we are homeward bound.  
20 Commissioner Argenziano.

21 **COMMISSIONER ARGENZIANO:** I guess I will make a  
22 motion --

23 **CHAIRMAN CARTER:** You're recognized.

24 **COMMISSIONER ARGENZIANO:** -- with the revised  
25 language that Mr. Hoffman just read, if OPC is agreeable to

1 that, and we have agreement on both sides, then we adopt that.

2 **COMMISSIONER SKOP:** Second.

3 **MR. REILLY:** May I just clarify. You said an  
4 agreement. We certainly don't agree with the new language, but  
5 we understand that is the will of the Commission. Our view  
6 would be --

7 **COMMISSIONER ARGENZIANO:** Let me put it to you this  
8 way: Are you okay with this language or do you want to just  
9 not have the language and just vote down what you have brought  
10 in, because that is what --

11 **MR. REILLY:** I would say that that doesn't offer  
12 anything to it.

13 **COMMISSIONER ARGENZIANO:** Excuse me, Mr. Chair, but I  
14 thought you said that your concern was that there was no  
15 acquisition -- what word am I looking for?

16 **CHAIRMAN CARTER:** Adjustment.

17 **COMMISSIONER ARGENZIANO:** Adjustment upon this  
18 transfer. So I thought this would help you there. It would  
19 say -- well, then you are really saying we just don't want any  
20 acquisition at all, period, and --

21 **MR. REILLY:** Part of the determination that it is in  
22 the public interest is that the customers would not have to  
23 bear that premium price, and I thought would be part of the  
24 decision today.

25 **COMMISSIONER ARGENZIANO:** If I may, Mr. Chairman.

1           **CHAIRMAN CARTER:** Let me follow up on your statement,  
2 Commissioner, because I think from what Mr. Cooke was saying is  
3 that this does not forestall later on if that issue comes up,  
4 OPC can raise that issue in another proceeding.

5           **COMMISSIONER ARGENZIANO:** Exactly.

6           **CHAIRMAN CARTER:** I'm reading you where you are.  
7 You're recognized.

8           **COMMISSIONER ARGENZIANO:** And just because that is  
9 what I thought I heard you saying, and because due process and  
10 the company has a right to go for that acquisition, I couldn't  
11 in good conscience, even though I may not agree with it at this  
12 time, I don't know, but I thought the language would at least  
13 give you that comfort that today they are not asking for that,  
14 because that is what I thought I had heard.

15           Thank you, Mr. Chair.

16           **CHAIRMAN CARTER:** Commissioner Skop.

17           **COMMISSIONER SKOP:** Thank you, Mr. Chair.

18           I would like to second Commissioner Argenziano's  
19 motion. But also, too, I think the lesson learned to  
20 Mr. Reilly is if OPC has concerns, negotiate them earlier in  
21 the process. We bend over backwards to protect the interests  
22 of consumers on this Commission, but, again, you know, we have  
23 to respect those procedural due process issues.

24           **MR. REILLY:** And the wording of this recommendation  
25 was just a few days ago that we learned it, and, you know, we

1 didn't object to the application as filed, but we get it just a  
2 few days before you get it, and that's when we determined --

3 **COMMISSIONER SKOP:** And I do respect --

4 **MR. REILLY:** -- to negotiate with.

5 **COMMISSIONER SKOP:** And I do respect all of your hard  
6 work and effort. Just procedurally, from a legal standpoint,  
7 due process, I think, prevails here on Mr. Hoffman's argument.  
8 And I would like to second Commissioner Argenziano's motion.

9 Thank you.

10 **CHAIRMAN CARTER:** And we do thank you, Mr. Hoffman,  
11 for your company voluntarily accepting that.

12 Commissioners, I have a motion and a second on the  
13 floor. All in favor.

14 (Unanimous affirmative vote.)

15 **CHAIRMAN CARTER:** Those opposed, like sign? I think  
16 that completes all items in Tab 17.

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CERTIFICATE OF REPORTER

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 25th day of March, 2008.

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JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
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