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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and petition of :
Sandy Creek Airpark, Inc. against :
Sandy Creek Utilities, Inc. : DOCKET NO. 910111-WS
regarding provision of water and :
sewer service in Bay County :

-----:
In re: Application for amendment : DOCKET NO. 910260-WS
of Certificates Nos. 514-W and :
446-S in Bay Co by Sandy : PREHEARING
Creek Utilities, Inc. : CONFERENCE
-----:

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Florida Public Service Commission

FPSC Hearing Room 122
101 East Gaines Street
Tallahassee, FL 32399

Friday, June 28, 1991

Met pursuant to notice at 10:30 a.m.

BEFORE: COMMISSIONER BETTY EASLEY
Prehearing Officer

APPEARANCES:

WAYNE SCHIEFELBEIN, of Gatlin, Woods, Carlson
and Cowdery, 1709-D Mahan Drive, Tallahassee, Florida,
32308, Telephone (904) 877-7191, on behalf of Sandy
Creek Utilities, Inc.

F. MARSHALL DETERDING, of Rose, Sundstrom and
Bentley, 2548 Blairstone Pines Drive, Tallahassee,
Florida 32302, Telephone (904) 877-6555, on behalf of
Sandy Creek Airpark, Inc.

DOCUMENT NO.
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1 APPEARANCES CONTINUED:

2 MATTHEW FEIL, FPSC Division of Legal
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4 32399-0863, Telephone (904) 487-2740, on behalf of
5 Commission Staff.

6 PRENTICE PRUITT, FPSC Office of General
7 Counsel, 101 East Gaines Street, Tallahassee, Florida
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9 Commissioners.

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15 REPORTED BY:

CAROL C. CAUSSEUX, CSR, RPR
Chief, Bureau of Reporting
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P R O C E E D I N G S

(Hearing convened at 10:30 a.m.)

COMMISSIONER EASLEY: If everybody's here we'll call the hearing to order.

Counselor, would you read the notice, please?

MR. FEIL: Yes, ma'am. Pursuant to notice, this time and place have been set for the prehearing in Docket No. 910111-WS, complaint of Sandy Creek Airpark, against Sandy Creek Utilities; and Docket No. 910260-WS, application for amendment to certificates by Sandy Creek Utilities.

COMMISSIONER EASLEY: Thank you. We'll take appearances, please.

MR. DETERDING: F. Marshall Deterding, on behalf of Sandy Creek Airpark, Inc.

MR. SCHIEFELBEIN: I'm Wayne Schiefelbein, of the firm Gatlin, Woods, Carlton and Cowdery, appearing on behalf of Sandy Creek Utilities, Inc.

MR. DELAVAN: Greg Delavan, Sandy Creek Airpark.

COMMISSIONER EASLEY: We might as well get everybody, Mr. Schiefelbein, your people.

MS. SWAIN: I'm Debbie Swain, of the firm Milian, Swain & Associates, on behalf of Sandy Creek Utilities, Inc.

1 MR. FEIL: Matthew Feil, representing the
2 Commission Staff.

3 MR. PRUITT: And I'm Prentice Pruitt, Counsel
4 to the Commissioners.

5 COMMISSIONER EASLEY: All right, any
6 preliminary matters?

7 MR. FEIL: Well, Commissioner, there is a
8 Motion to Strike filed by the Airpark yesterday.
9 Perhaps it would be better if we picked up on that at
10 the end, after going through the Prehearing Order, I
11 suppose, or whatever you prefer we should do.

12 COMMISSIONER EASLEY: Well, I have not had a
13 chance to read it yet, so we're going to have to take a
14 recess and let me read it, or we're going to have to
15 defer it a little bit. Is there any reason not to go
16 ahead with the Prehearing Order?

17 MR. FEIL: No.

18 COMMISSIONER EASLEY: Does anybody have a
19 problem?

20 MR. DETERDING: No.

21 COMMISSIONER EASLEY: All right. You all
22 have had the draft. Based upon what you have before
23 you, does anybody have any problems with the case
24 background, et cetera, as stated in the Draft
25 Prehearing Order?

1 MR. SCHIEFELBEIN: Has the case background
2 changed from our meeting yesterday, Mr. Feil?

3 MR. FEIL: No, it has not.

4 MR. SCHIEFELBEIN: Okay, no problems.

5 COMMISSIONER EASLEY: No problems, all right.

6 We will leave the order of witnesses until we
7 get through with going through the issues. I suppose
8 then we can start with Issue No. 1.

9 The basic positions, by the way, I assume are
10 as you have filed them and nobody has any changes to
11 those?

12 MR. SCHIEFELBEIN: No changes.

13 COMMISSIONER EASLEY: No changes?

14 MR. FEIL: That's correct.

15 COMMISSIONER EASLEY: All right. Issue 1.
16 Position for Airpark?

17 MR. DETERDING: "Yes."

18 COMMISSIONER EASLEY: Issue 2? I'm going to
19 make an assumption that there are no changes as we go
20 along unless somebody speaks up.

21 Issue 2, I need a position for Airpark.

22 MR. DETERDING: "Yes."

23 COMMISSIONER EASLEY: Issue 3? Airpark?

24 MR. DETERDING: "Yes."

25 COMMISSIONER EASLEY: And Issue 4. Airpark?

1 MR. DETERDING: "No."

2 COMMISSIONER EASLEY: It would appear to me,
3 gentlemen, that we have everybody agreeing on Issues 1
4 through 4, is that correct?

5 MR. FEIL: Yes, ma'am.

6 COMMISSIONER EASLEY: Can we show
7 stipulations on 1 through 4?

8 MR. DETERDING: That's fine with me.

9 MR. SCHIEFELBEIN: Yes, ma'am.

10 MR. FEIL: Yes, ma'am.

11 COMMISSIONER EASLEY: All right, so show
12 Issues 1 through 4 as having been stipulated. Issue 5.

13 MR. DETERDING: The Airpark's position needs
14 to be revised on Issue 5, or at least added to.

15 COMMISSIONER EASLEY: All right.

16 MR. DETERDING: It should say, "No. The
17 Applicant failed to comply with the noticing
18 requirements under Section 25-30.030(6), Florida
19 Administrative Code. The Airpark did not receive
20 notice, though it is a customer of the Utility, to be
21 included in the proposed territory as filed by the
22 Utility."

23 COMMISSIONER EASLEY: Okay. You have a
24 quizzical look.

25 MR. SCHIEFELBEIN: No, no, I don't mean to.

1 Can we talk about Issue 5 at all, as far as what its
2 practical effect is in the case, or should we not do
3 that?

4 MR. DETERDING: I would suggest that if we're
5 going to do that we ought to make it a legal issue or a
6 policy issue about what the effect is of failure to
7 comply with the noticing requirements.

8 COMMISSIONER EASLEY: Well, what I need to
9 understand is are you asking to discuss the results of
10 a decision on Issue 5?

11 MR. SCHIEFELBEIN: If I may, briefly.

12 COMMISSIONER EASLEY: Yes.

13 MR. SCHIEFELBEIN: And I'm sure Marty will
14 interrupt --

15 COMMISSIONER EASLEY: He won't interrupt. He
16 may have a comment later.

17 MR. SCHIEFELBEIN: Okay. We have a situation
18 where the Utility has filed an affidavit as part of its
19 application, back before it knew it had a case on its
20 hands, that it provided notice to all its customers.
21 The Airpark has made a point that it did not receive
22 notice of the application. The Airpark has filed a
23 timely objection to the application.

24 So that's where my quizzical look comes in,
25 and I'm wondering what is the point. If we had a

1 situation, of course, where, despite our wonderful
2 affidavit there was a question as to whether the
3 Airpark was prejudiced, that would be a whole different
4 ball of wax. But I don't understand why this would be
5 an issue at this late stage of the game.

6 COMMISSIONER EASLEY: I think I understand
7 the question you're asking, but let me ask it the way I
8 think I understand it, and ask you to respond.

9 You're saying that if they didn't receive
10 notice what did they file on?

11 MR. DETERDING: I think he's saying what is
12 the result of having not received notice, since you're
13 in here as a protestant anyway.

14 COMMISSIONER EASLEY: Yes.

15 MR. DETERDING: And I think that's a legal
16 issue and I don't have an answer to it. If you want to
17 make that a legal issue, I'd say let's make it a legal
18 issue among the issues at the tail end of this.

19 COMMISSIONER EASLEY: It certainly would --

20 MR. DETERDING: I'd just say they did not
21 comply with the notice requirements, and we have
22 presented proof to demonstrate it; that we never
23 received it. We've presented testimony that we never
24 received any.

25 COMMISSIONER EASLEY: But you're in, anyway,

1 as a complainant.

2 MR. DETERDING: Absolutely.

3 COMMISSIONER EASLEY: It sounds to me like
4 it's got to be at least a legal issue if it's going to
5 be in at all.

6 MR. FEIL: Or a policy issue.

7 COMMISSIONER EASLEY: Well, no, it's not even
8 policy. It's got to be a legal issue because I can't
9 make a policy decision based on the difference of
10 opinion as to whether there's been compliance with the
11 rule, and the effect of compliance or noncompliance of
12 that rule.

13 Okay. We've going to put this -- we're going
14 to pull Issue 5 from where it is now, and it's going to
15 become a legal issue, and that may change the parties'
16 position statements.

17 I would assume it won't change yours, Mr.
18 Deterding, and I assume --

19 MR. DETERDING: Well, it won't change it as
20 to the factual question of whether or not they complied
21 with the noticing requirements; I mean, that is as
22 stated. I haven't stated a position as to what the
23 effect of that is.

24 COMMISSIONER EASLEY: Well, I think we need
25 to change Issue 5 -- well, now, wait a minute.

1 Mr. Pruitt, do we leave Issue 5 as a factual
2 matter where it is and add a legal issue as to the
3 effect?

4 MR. PRUITT: I think I'd just leave it where
5 it is and just leave it open for anybody to make any
6 argument they want to on it at any time.

7 I was going to ask a question, and I don't
8 have it before me, but when is this case set for
9 hearing?

10 COMMISSIONER EASLEY: Next week, isn't it?

11 MR. PRUITT: Next week?

12 MR. FEIL: July 19th.

13 COMMISSIONER EASLEY: I beg your pardon, week
14 after next.

15 MR. PRUITT: The only thing I have in my
16 file, and I just got it, is a Motion to Strike or, in
17 the Alternative, Motion to Allow Rebuttal Testimony.
18 Now, if they also had a Motion to Dismiss --

19 COMMISSIONER EASLEY: That's up, too.

20 MR. PRUITT: -- which they would have the
21 whole thing, but they haven't filed a Motion to
22 Dismiss, and you don't do that orally. If they want to
23 get into a dismissal thing, they need to file a Motion
24 to Dismiss.

25 MR. DETERDING: You're saying as a result of

1 the improper notice?

2 MR. PRUITT: I'm not saying there was a
3 notice or not notice. I'm saying if you want to go for
4 -- you're the guy who's looking for procedure accuracy,
5 file a motion.

6 MR. DETERDING: You're saying as a result of
7 having not received notice, file a Motion to Dismiss?

8 MR. PRUITT: You already have made an
9 appearance in the case; you're in it.

10 MR. DETERDING: Yeah, we've been in it.
11 We've objected to the application.

12 MR. PRUITT: You've protested the
13 application.

14 MR. DETERDING: Correct.

15 MR. PRUITT: But you've made no motion to
16 dismiss it. I think you've waived it.

17 COMMISSIONER EASLEY: I'm not sure I
18 understand, Mr. Pruitt, I'm sorry. What is it that I'm
19 missing?

20 MR. PRUITT: Well, in an administrative-type
21 hearing, actual notice is notice. And if he had never
22 walked in or filed a pleading in the thing and you had
23 gone ahead with the case and give them a big rate
24 increase -- or whatever they're looking for,
25 territorial expansion or whatever -- then he could come

1 in and say, "Wait a minute, that doesn't apply to me.
2 I had no notice of it." But he has notice of it
3 because he's sitting there. This is an administrative
4 matter.

5 COMMISSIONER EASLEY: So you're saying that
6 effective notice has taken place, and his right to
7 raise the issue of notice has been waived by the fact
8 that he is a participant.

9 MR. PRUITT: That is my judgment.

10 MR. DETERDING: Drop it.

11 COMMISSIONER EASLEY: Drop Issue 5?

12 MR. DETERDING: Drop Issue 5.

13 COMMISSIONER EASLEY: Thank you very much.

14 You don't have a problem with that, I assume,
15 Mr. Schiefelbein?

16 MR. SCHIEFELBEIN: No, ma'am.

17 COMMISSIONER EASLEY: Staff, you don't have a
18 problem?

19 MR. FEIL: No, ma'am.

20 COMMISSIONER EASLEY: Issue 5 is gone. Thank
21 you, Mr. Deterding. Thank you, Mr. Pruitt.

22 All right. Issue 6? Airpark?

23 MR. DETERDING: Issue 6. Airpark's position
24 is, "While the objecting parties all own property
25 located outside the proposed territory, several of

1 those objecting parties, including Sandy Creek Airpark,
2 Inc., also own property within the proposed territory
3 and are customers of the Utility at the present time."

4 COMMISSIONER EASLEY: Mr. Deterding, do you
5 have all of these positions in writing?

6 MR. DETERDING: I have them just on a thing I
7 have given to Staff Counsel.

8 COMMISSIONER EASLEY: It would be very
9 helpful if you could give one to the court reporter,
10 one to me, and one to all the parties. I think it
11 would speed things up considerably and we wouldn't have
12 to read them into the record.

13 MR. DETERDING: We may have some revisions to
14 these, but these are rough --

15 COMMISSIONER EASLEY: That's fine. It would
16 be easier to revise -- it would be very helpful, thank
17 you. That's a lot easier, thank you. This way, if you
18 need to make amendments to these I can ask the court
19 reporter to show as it is written on the document and
20 we can amend those rather than trying to read them into
21 the record.

22 Is that going to work all right for you,
23 Carol?

24 REPORTER: I can just attach a copy of it for
25 convenience of reading the record.

1 (Copy of "Revisions to Draft Prehearing Order
2 Positions of Sandy Creek Airpark, Inc, PSC Docket Nos.
3 910111-WS and 910260-WS," attached for convenience.)

4 MR. SCHIEFELBEIN: Excuse me. On Issue 6, we
5 would like to change our position to "Agree with
6 Staff."

7 COMMISSIONER EASLEY: All right. Mr.
8 Deterding, does that affect your submission?

9 MR. DETERDING: No.

10 COMMISSIONER EASLEY: Okay. Issue 7?
11 Everybody is saying "Yes," so is that a stipulation?

12 MR. SCHIEFELBEIN: May I have one moment,
13 please?

14 COMMISSIONER EASLEY: Please. (Pause)

15 MR. SCHIEFELBEIN: I appreciate the time.
16 Our position remains "Yes."

17 COMMISSIONER EASLEY: Okay, and does that
18 mean a stipulation, since we've got three yeses?

19 MR. FEIL: Yes, ma'am.

20 COMMISSIONER EASLEY: Issue 7 is stiuplated.
21 How about Issue No. 8? Airpark is --

22 MR. DETERDING: As stated.

23 COMMISSIONER EASLEY: -- as stated, with the
24 addition of the wording on the document.

25 MR. DETERDING: Right.

1 COMMISSIONER EASLEY: The Utility remains the
2 same?

3 MR. SCHIEFELBEIN: Correct.

4 COMMISSIONER EASLEY: And Staff remains the
5 same?

6 MR. FEIL: Yes, ma'am.

7 COMMISSIONER EASLEY: All right. Issue 9.
8 Utility, I need a position.

9 MR. SCHIEFELBEIN: We'll need a minute on
10 that one, if we may.

11 COMMISSIONER EASLEY: Okay. What do we mean
12 by "a minute"? Does that mean five minutes?

13 MR. SCHIEFELBEIN: Well there are two issues
14 that, unless there are any surprises in this draft from
15 the lateness of the hour yesterday of meeting to
16 discuss the prior draft, there are two issues that I
17 think Ms. Swain and I may need a few minutes to
18 properly word our position. So I respectfully suggest
19 that we may want to temporarily pass those two issues
20 and then take a short break, if it pleases you, to most
21 efficiently use our time.

22 COMMISSIONER EASLEY: All right, I think
23 that's a wonderful idea. Issue 9 is one of them, and
24 what's the other?

25 MR. SCHIEFELBEIN: I believe that it is Issue

1 11.

2 COMMISSIONER EASLEY: All right. We will go
3 to Issue 10 then. Airpark has added to their position,
4 as stated in the Prehearing Order, with the language on
5 this sheet. Any changes for the Utility?

6 MR. SCHIEFELBEIN: No, ma'am.

7 COMMISSIONER EASLEY: Any changes for Staff?

8 MR. FEIL: No, ma'am.

9 COMMISSIONER EASLEY: All right, so then we
10 come to issues of law. Issue 12. The only position I
11 don't see on this one is Staff's.

12 MR. FEIL: Yes, ma'am. Staff's position
13 should be, "The standing issue will be determined by
14 the Commission at its July 2nd Agenda Conference, when
15 the Commission considers the Utility's Motion to
16 Dismiss."

17 COMMISSIONER EASLEY: All right. Issue 13?
18 No changes in any positions?

19 MR. FEIL: Staff would like to add to its
20 position.

21 COMMISSIONER EASLEY: All right.

22 MR. FEIL: After the "No," we're simply
23 summarizing the section of the statute. It should
24 read, "No. Section 367.045(5)(a), Florida Statutes,
25 states that the Commission may grant an amendment

1 application in whole or in part, or with modifications
2 in the public interest, but may not grant authority
3 greater than that requested in the application and
4 noticed for."

5 COMMISSIONER EASLEY: All right. Mr.
6 Deterding, I kind of overlooked something. Let me back
7 up to Issue 12, please. The sheet you have handed out
8 shows Airpark's position eliminated.

9 MR. DETERDING: Yeah. We may have a
10 difference in numbering here. Let me look at my --

11 MR. FEIL: I'm sure we do, because some of
12 the issues after yesterday's meeting were eliminated.

13 MR. DETERDING: All right, then we may have
14 to renumber those on my sheet from this point forward.

15 COMMISSIONER EASLEY: As a matter of fact,
16 look at Issue 11, which we have also temporarily
17 passed, but you have a notation on that. So where does
18 the renumbering begin, with Issue 12?

19 MR. DETERDING: I believe at Issue 12. What
20 I have as Issue 12 -- as 13, I'm sorry -- should now be
21 12 on my list.

22 COMMISSIONER EASLEY: The one that says,
23 "Issue 13, Airpark position, yes," is Issue 12?

24 MR. DETERDING: Correct.

25 COMMISSIONER EASLEY: Do we strike the line

1 saying "Issue 12, Eliminated"?

2 MR. DETERDING: Right, strike that.

3 COMMISSIONER EASLEY: Okay. Issue 14 then
4 becomes what, 15?

5 MR. DETERDING: 13. The one listed on my
6 list of positions that says "Issue 14" should be "Issue
7 13."

8 COMMISSIONER EASLEY: Okay. Do I go down
9 your list and --

10 MR. DETERDING: There may be another -- I
11 believe there's at least a couple of other changes so
12 we're going to have to renumber them one by one.

13 COMMISSIONER EASLEY: Okay, we're do them as
14 we get to them, then.

15 All right, so we're up to Issue 14 on the
16 prehearing draft. The Airpark position is what, Mr.
17 Deterding? Is that the same as is in the Prehearing
18 Order?

19 MR. DETERDING: Issue 14?

20 COMMISSIONER EASLEY: Issue 14.

21 MR. DETERDING: That would be what I have for
22 Issue 15.

23 COMMISSIONER EASLEY: All right. And that
24 would be the same as the Prehearing Order, with the
25 additional language?

1 MR. DETERDING: Correct.

2 COMMISSIONER EASLEY: Utility, any changes on
3 14?

4 MR. SCHIEFELBEIN: No, ma'am.

5 COMMISSIONER EASLEY: And no changes for
6 Staff?

7 MR. FEIL: Yes, ma'am, that's correct.

8 COMMISSIONER EASLEY: Issue 15. The Utility,
9 no changes. Airpark?

10 MR. DETERDING: As stated at Issue 16 on my
11 list.

12 COMMISSIONER EASLEY: That is a change then.
13 We'll strike the language in the draft Prehearing Order
14 and substitute the language in the addendum, is that
15 correct?

16 MR. DETERDING: That is correct.

17 COMMISSIONER EASLEY: All right.
18 Carol, are we doing this where you can keep
19 up with us?

20 REPORTER: Yes, ma'am, I'll just attach it.

21 COMMISSIONER EASLEY: All right. No change
22 in Staff's?

23 MR. FEIL: Correct.

24 COMMISSIONER EASLEY: Issue 16. Utility's
25 all right?

1 MR. SCHIEFELBEIN: Yes, ma'am.

2 COMMISSIONER EASLEY: Airpark?

3 MR. DETERDING: Issue 16, which is what I
4 have as 18, that's 16.

5 COMMISSIONER EASLEY: All right, and we would
6 strike the Issue 17 language on the addendum sheet; it
7 just doesn't need to be there, is that right?

8 MR. DETERDING: That is correct.

9 COMMISSIONER EASLEY: All right. Staff, no
10 changes. Issue 17? Utility?

11 MR. SCHIEFELBEIN: If we may have a minute on
12 that one.

13 COMMISSIONER EASLEY: Do you want to TP this
14 one with the other one? (Pause)

15 MR. SCHIEFELBEIN: If we could include that
16 in our TP. I think this may be a possible stipulation.

17 COMMISSIONER EASLEY: That seems like a good
18 idea. Airpark?

19 MR. DETERDING: What I have on my addendum
20 sheet as Issue 20 should be 17.

21 COMMISSIONER EASLEY: And we will strike the
22 reference to Issue 19 on your addendum sheet.

23 MR. DETERDING: Correct.

24 COMMISSIONER EASLEY: All right, Issue 18.
25 Utility?

1 MR. SCHIEFELBEIN: Our position is "No."
2 COMMISSIONER EASLEY: Airpark, is this the
3 one shown as Issue 21, as stated?
4 MR. DETERDING: Correct.
5 MR. FEIL: Staff does have one change and one
6 question.
7 COMMISSIONER EASLEY: All right.
8 MR. FEIL: I assume for the Utility on Issue
9 18 that Swain will be the witness?
10 MR. SCHIEFELBEIN: That's correct.
11 MR. FEIL: Staff's addition to their position
12 on Issue 18 would be, after the word "Yes," to add,
13 "The appropriate rates and charges to be applied to the
14 additional territory would be the approved rates and
15 charges within the Utility's tariff."
16 COMMISSIONER EASLEY: All right, Issue 19.
17 Any change for the Utility?
18 MR. SCHIEFELBEIN: No, ma'am.
19 COMMISSIONER EASLEY: Airpark?
20 MR. DETERDING: As listed on my addendum as
21 Issue 22 is the response to 19.
22 COMMISSIONER EASLEY: Okay.
23 MR. DETERDING: Let me make one change to
24 that. Under subparagraph (4) of my addendum --
25 COMMISSIONER EASLEY: Which is on Page 4?

1 MR. DETERDING: Right, on Page 4. Let me see
2 how it should be worded. (Pause) After the paragraph
3 where it says "Paragraph 4" I would insert the words,
4 "to the extent that information is available, or has
5 not already been provided to the Utility."

6 MR. FEIL: Where was that going to be
7 inserted?

8 MR. DETERDING: Right after the word -- I'm
9 sorry. In the first sentence of subparagraph (4),
10 right before the comma it says "Paragraph 4," referring
11 back to the exhibit that this all refers to.

12 COMMISSIONER EASLEY: All right. This would
13 be insert on the second line --

14 MR. DETERDING: Correct.

15 COMMISSIONER EASLEY: -- after the comma
16 which follows "Paragraph 4."

17 MR. DETERDING: Correct.

18 COMMISSIONER EASLEY: It will be, "To the
19 extent that the information is available, or has not
20 already been provided -- "

21 MR. DETERDING: Correct, "to the Utility."

22 COMMISSIONER EASLEY: " -- to the Utility,
23 assuming that..."

24 MR. DETERDING: Correct. I know it's a bit
25 of a run-on but I think the point is made.

1 COMMISSIONER EASLEY: It is a tad, yes. As a
2 matter of fact, as long as we're Tping some other
3 things, you may want to take another look at that and
4 see if maybe you could break it down into two sentences
5 that are easier to follow.

6 MR. DETERDING: I will.

7 COMMISSIONER EASLEY: Thank you. Because I
8 don't understand what that now says, as a matter of fact.

9 MR. DETERDING: Okay.

10 MR. FEIL: On Staff's position on 19,
11 Commissioner, we have two typographical errors.

12 COMMISSIONER EASLEY: All right. We don't
13 like "appropriated service"?

14 MR. FEIL: I don't think "appropriated
15 service" would be appropriate. (Laughter) I believe
16 it's the fifth sentence in Staff's position, it says,
17 "The appropriated service availability charges," and it
18 should be "The appropriate service availability
19 charges."

20 And on the top line of the next page it
21 should say, "the utility may refuse any," not "and."
22 Spell-Check doesn't pick these things up.

23 COMMISSIONER EASLEY: You're looking
24 quizzical again, Mr. Schiefelbein. Is there something
25 you wish to --

1 MR. SCHIEFELBEIN: I think it's something I
2 ate for breakfast, Commissioner, I'm sorry. (Laughter)
3 I'm just having trouble finding the "an" and the "any."

4 COMMISSIONER EASLEY: At the first line on
5 Page 15, at the very end of the line.

6 MR. SCHIEFELBEIN: That explains it, I was
7 looking for an "an."

8 COMMISSIONER EASLEY: It's a-n-d, should be
9 a-n-y.

10 MR. SCHIEFELBEIN: Okay, I'm caught up now.

11 If I may interject a comment, if all parties
12 are agreeable perhaps it might be appropriate, once
13 we've been through the current draft of the Order, to
14 have longer than a five-minute TP for the principal
15 parties in the case, with Staff, to go over the list of
16 specific positions given to us by the Airpark on the
17 various conditions of service. Because perhaps we
18 might be able to stipulate to most of those and
19 simplify the scope of that issue. I'm sure that would
20 take --

21 COMMISSIONER EASLEY: If you think I'm going
22 to stand in the way of that kind of progress -- that
23 would be great.

24 MR. DETERDING: We were hoping for a great
25 deal more progress.

1 COMMISSIONER EASLEY: Well, I'll tell you
2 what --

3 MR. DETERDING: I don't know if we're going
4 to get that today.

5 COMMISSIONER EASLEY: How much time do you
6 need to accomplish that kind of progress?

7 MR. DETERDING: I don't know that they have
8 the authority to do that today, though.

9 MR. SCHIEFELBEIN: I'm not suggesting that,
10 although I would be delighted, that we could make it
11 all go away. What I am suggesting is that we might be
12 able to narrow the scope of what this dispute seems to
13 be about, as far as these conditions. And that would
14 be of benefit, I think, to all parties and the
15 Commission.

16 COMMISSIONER EASLEY: All right. Then let me
17 ask you about -- would that include the Motion to
18 Strike? Do I need to -- I mean, does that then have an
19 impact on the Motion to Strike?

20 MR. DETERDING: No.

21 COMMISSIONER EASLEY: No? Okay. I will take
22 the Motion to Strike and read it, then, is the reason
23 I'm asking the question. It sounds to me -- and let me
24 ask you a question.

25 MR. SCHIEFELBEIN: Yes, ma'am.

1 COMMISSIONER EASLEY: It sounds to me like
2 you all are relatively close on part of this; and if
3 that's what I'm hearing, then I'm going to encourage
4 you all to talk to each other. I'll give you the time
5 you need, until after lunch of whatever, my day is
6 yours.

7 MR. SCHIEFELBEIN: On the Motion, I don't
8 know if -- I'm sure all parties are very desirous of
9 settling it. I think, trying to be bipartisan in my
10 comments here, I think there's probably, in a mutual
11 sense, not a whole heck of a lot of trust, without
12 pointing any fingers. So I can't represent to you that
13 we'll walk out of here hand-in-hand today, but I think
14 we can, for the mutual benefit of everyone, cut to the
15 chase on that.

16 So I appreciate what you're saying very much.
17 I think, though, unless we're all very surprised, I
18 think what we will accomplish is perhaps narrow the
19 scope of the proceeding. And that might be helpful, as
20 far as the negotiations that might continue after
21 today, as far as sitting down. There would be less
22 opportunity for everyone to get spread out on these
23 things.

24 If I might monologue a moment --

25 COMMISSIONER EASLEY: Can I stop you?

1 MR. SCHIEFELBEIN: Yes, ma'am. (Laughter)

2 COMMISSIONER EASLEY: No, go ahead, Mr.

3 Schiefelbein.

4 MR. SCHIEFELBEIN: You always have that
5 authority.

6 COMMISSIONER EASLEY: I'm just needling.

7 MR. SCHIEFELBEIN: A raised eyebrow is all
8 that's required.

9 On the Motion to Strike, given -- we received
10 this yesterday, it was very timely. There hasn't been
11 a great deal of time but I think, since we have
12 consolidated proceedings here in the amendment to the
13 complaint, since we have the opportunity to file
14 rebuttal testimony today in the amendment docket and,
15 given the similarity of the testimony that might be
16 rebutted, I don't think we need to put you through
17 reading the motion and ruling on it.

18 I'm going to withdraw voluntarily our
19 rebuttal testimony that we prefiled in the amendment
20 case and we will be prepared today, by today's deadling
21 under the orders, to file the rebuttal in the amendment
22 case.

23 COMMISSIONER EASLEY: Does that withdraw your
24 motion, or reach your motion?

25 MR. DETERDING: That's fine. I mean, there's

1 nothing to move to strike if he withdraws it.

2 MR. SCHIEFELBEIN: All right.

3 COMMISSIONER EASLEY: Can we continue this
4 spirit of cooperation and give you all time to eat, me
5 time to eat? How about 1:00 o'clock? It's now 11:00.
6 Does that give you enough time? I can make it later if
7 you like.

8 MR. SCHIEFELBEIN: That would be great, 1:00
9 o'clock would be great.

10 MR. PRUITT: Madam Chairman --

11 COMMISSIONER EASLEY: You have a problem,
12 don't you?

13 MR. PRUITT: I would like to be here, too, so
14 could we possibly make it 1:30?

15 COMMISSIONER EASLEY: Does anybody have a
16 problem with that?

17 MS. SWAIN: 1:30 is fine. I have a 2:40
18 flight out of here, but other than that, fine.

19 COMMISSIONER EASLEY: I suspect if all goes
20 well we should be through in plenty of time for you to
21 make that flight. We'll give you tips on getting to
22 airplanes on time.

23 MR. SCHIEFELBEIN: She has a personal caddy.

24 COMMISSIONER EASLEY: Actually, there should
25 not be a problem in making that airplane. Staff, any

1 problems?

2 MR. FEIL: No, ma'am.

3 COMMISSIONER EASLEY: All right, then we are
4 in recess until the hour of 1:30.

5 (Thereupon recess was taken at 11:03 a.m.)

6 - - - - -

7 (Hearing reconvened at 1:48 p.m.)

8 COMMISSIONER EASLEY: All right, we are back
9 on the record, and we are going to let Ms. Swain make
10 her airplane.

11 Are we ready to go back to the issues?

12 MR. FEIL: I think so, Commissioner, but I'm
13 not exactly sure where we left off. I think we were on
14 19.

15 COMMISSIONER EASLEY: We left -- well, we had
16 two that we had temporarily passed. Do you want to go
17 to those first? That first one was Issue 9?

18 MR. SCHIEFELBEIN: Yes, ma'am.

19 COMMISSIONER EASLEY: All right. Shall we
20 start there? Is that a good place?

21 MR. SCHIEFELBEIN: Issue 9, the Utility is
22 now prepared to give its position.

23 COMMISSIONER EASLEY: All right.

24 MR. SCHIEFELBEIN: I apologize, I didn't have
25 access to a word processor, but I will be glad to

1 follow up with a letter to all parties.

2 COMMISSIONER EASLEY: That will be fine.

3 MR. SCHIEFELBEIN: But what the position is,
4 is "So long as the Airpark is required to bear its fair
5 share of costs of plant capacity and connecting to the
6 Utility's mains, no significant additional Utility
7 investment is necessary."

8 COMMISSIONER EASLEY: All right. Airpark,
9 does that change anything in yours?

10 MR. DETERDING: No.

11 COMMISSIONER EASLEY: So Issue 9 remains as
12 stated. Staff, does that make any changes for you?

13 MR. FEIL: No, ma'am.

14 COMMISSIONER EASLEY: All right. The next
15 issue then is Issue 11.

16 MR. SCHIEFELBEIN: The Utility's position is
17 that we agree with Staff as their position is stated in
18 this draft.

19 COMMISSIONER EASLEY: All right. Airpark?

20 MR. DETERDING: "Yes."

21 COMMISSIONER EASLEY: Which is as stated in
22 your addendum sheet?

23 MR. DETERDING: Correct.

24 COMMISSIONER EASLEY: All right, then I think
25 we go to --

1 MR. SCHIEFELBEIN: Issue 17, ma'am.

2 COMMISSIONER EASLEY: Issue 17, right.

3 MR. SCHIEFELBEIN: I have, again, a few
4 sentences, which I will read slowly and will follow up
5 in writing.

6 "No. However, following approval of the
7 pending application, and resolution of the pending
8 complaint, the Utility is willing to promptly file an
9 amendment application to add, subject to available
10 capacity, all lots adjacent to existing lines."

11 COMMISSIONER EASLEY: Airpark?

12 MR. DETERDING: Issue 17 is my 20 on my
13 addendum sheet.

14 COMMISSIONER EASLEY: All right, as stated on
15 the addendum sheet, Page 2. Which brings us to --

16 MR. SCHIEFELBEIN: And on Issue 19, Madam
17 Commissioner, our position is as stated.

18 COMMISSIONER EASLEY: All right. Airpark?

19 MR. DETERDING: I was trying to -- as in my
20 addendum with the change to (4) there, subparagraph
21 (4), the second line after the comma, "To the extent
22 that information is available and hasn't already been
23 provided to the Utility." Scratch the word "assuming,"
24 and then begin the next sentence with capitalizing the
25 word "The," and it will read, "The warranty required

1 under subparagraph (8) is --"

2 COMMISSIONER EASLEY: Mr. Deterding, I have a
3 suggestion.

4 MR. DETERDING: Sure.

5 COMMISSIONER EASLEY: You're not changing the
6 content of that paragraph, you are simply restructuring
7 it, is that correct?

8 MR. DETERDING: I'm just trying to make less
9 of a run-on out of it.

10 COMMISSIONER EASLEY: Would you be so kind as
11 to submit that in writing so that we're not sitting
12 here writing it as we go? And then it will be in the
13 proper form?

14 MR. DETERDING: Be happy to.

15 COMMISSIONER EASLEY: Fine, with the
16 understanding that all we are doing is construction.

17 MR. DETERDING: Absolutely.

18 COMMISSIONER EASLEY: That, I think, would
19 solve the problem, Mr. Deterding. What else?

20 MR. SCHIEFELBEIN: I'm sorry?

21 COMMISSIONER EASLEY: What else?

22 MR. SCHIEFELBEIN: We have nothing further at
23 this time.

24 MR. FEIL: Staff wanted to note that in the
25 exhibit section that it was going to ask that the

1 Commission take administrative notice of the service
2 availability rules, if anybody has a problem with that.

3 MR. SCHIEFELBEIN: No objection.

4 COMMISSIONER EASLEY: All right. And there
5 may be a need to -- Staff, will you assign issue
6 numbers to these witnesses based on the new numbers, or
7 do you need the parties to --

8 MR. FEIL: I will make an attempt to; but if
9 they have not given me witnesses for any of their
10 positions, I will have to contact them.

11 COMMISSIONER EASLEY: All right, then that
12 should be the next step and should be done fairly
13 quickly so the Prehearing Order can properly reflect
14 that. Do we need a time frame on that?

15 MR. FEIL: By Tuesday.

16 COMMISSIONER EASLEY: Is that satisfactory?

17 MR. SCHIEFELBEIN: Close of business?

18 COMMISSIONER EASLEY: Close of business.

19 MR. FEIL: Close of business.

20 MR. SCHIEFELBEIN: Yes.

21 COMMISSIONER EASLEY: Anything else?

22 MR. FEIL: I believe the only thing remaining
23 that we had skipped over at first was the order of
24 witnesses.

25 COMMISSIONER EASLEY: All right.

1 MR. SCHIEFELBEIN: We have a suggestion.

2 COMMISSIONER EASLEY: I'm listening.

3 MR. SCHIEFELBEIN: We would suggest that
4 since the amendment application -- and let me rephrase
5 this so I don't get into any trouble here.

6 We would suggest that the order of witnesses
7 be Mr. Delavan, Ms. Swain and Mr. Walker.

8 MR. DETERDING: I don't have a problem with
9 that.

10 COMMISSIONER EASLEY: Okay. Do you want to
11 take direct and rebuttal together?

12 MR. DETERDING: That would be my understanding.

13 COMMISSIONER EASLEY: So it would be Mr.
14 Delavan, Ms. Swain, followed by Mr. Walker; and we will
15 take direct and rebuttal together. Anything else?

16 MR. FEIL: I believe that's all.

17 COMMISSIONER EASLEY: Let me ask you all a
18 question. And I'm not asking to be informed as to, but I
19 don't know the nature of the discussions and I simply need
20 to know if there's any reason why the discussions that
21 you're having would affect the fact that there is a Motion
22 to Dismiss on Tuesday's Agenda; that if the Motion to
23 Dismiss on Tuesday's Agenda be deferred, should we
24 continue with it? Is there any impact on that?

25 MR. SCHIEFELBEIN: I would like to proceed with

1 the Motion to Dismiss on the calendar on Tuesday. I do
2 not believe that, if that Motion were granted, that it
3 would have any practical effect on the availability of
4 service under the present situation to --

5 COMMISSIONER EASLEY: Without getting into
6 that, I'm just really asking procedurally. I don't
7 want to put the Commission in any kind of a box by
8 having something on the Agenda that may or may not need
9 to be there.

10 MR. SCHIEFELBEIN: Right, I understand. We
11 would ask that the Motion be continued as scheduled,
12 and it may be after Monday's meetings, and so forth,
13 that that may change.

14 COMMISSIONER EASLEY: All right, that will be
15 fine.

16 MR. SCHIEFELBEIN: Thank you.

17 COMMISSIONER EASLEY: That having been said,
18 the meeting is recessed and you will make your
19 airplane.

20 MR. SCHIEFELBEIN: Thank you, Commissioner.

21 MR. DETERDING: Thank you.

22 (Thereupon, hearing was adjourned at 1:55
23 p.m.)

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1 F L O R I D A)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, CAROL C. CAUSSEAU, CSR, RPR, Official
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Prehearing Conference
7 in the captioned matters, Dockets No. 910111-WS and
8 910260-WS, was heard by the Florida Public Service
9 Commission Prehearing Officer at the time and place herein
10 stated; it is further

11 CERTIFIED that I reported in shorthand the
12 proceedings held at such time and place; that the same has
13 been transcribed under my direct supervision, and that
14 this transcript, consisting of 35 pages, inclusive,
15 constitutes a true and accurate transcription of my notes
16 of said proceedings; it is further

17 CERTIFIED that I am neither of counsel nor
18 related to the parties in said cause and have no interest,
19 financial or otherwise, in the outcome of this docket.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 at Tallahassee, Leon County, Florida, this 11th day of
22 July, A.D., 1991.

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24 CAROL C. CAUSSEAU, CSR, RPR
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