

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 080562-WU

REQUEST FOR APPROVAL OF AMENDMENT
TO CONNECTION/TRANSFER SHEETS,
INCREASE IN RETURNED CHECK CHARGE,
AMENDMENT TO MISCELLANEOUS SERVICE
CHARGES, INCREASE IN METER
INSTALLATION CHARGES, AND IMPOSITION
OF NEW TAP-IN FEE, IN MARION COUNTY,
BY EAST MARION SANITARY SYSTEMS INC.

PROCEEDINGS:

STATUS CONFERENCE

COMMISSIONERS
PARTICIPATING:

COMMISSIONER LISA POLAK EDGAR
PREHEARING OFFICER

DATE:

Wednesday, September 14, 2011

TIME:

Commenced at 10:00 a.m.
Concluded at 2:15 p.m.

PLACE:

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

REPORTED BY:

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

DOCUMENT NUMBER DATE

FLORIDA PUBLIC SERVICE COMMISSION

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1 APPEARANCES:

2 STEPHEN C. REILLY, ESQUIRE, Office of Public
3 Counsel, c/o The Florida Legislature, 111 W. Madison
4 Street, Room 812, Tallahassee, Florida 32393-1400,
5 appearing on behalf of the Citizens of the State of
6 Florida.

7 HERBERT HEIN, appearing on behalf of East
8 Marion Sanitary Systems, Inc.

9 DAVID GRECO, 1221 NE 130th Terrace, Silver
10 Springs, Florida 34488-3556, appearing on behalf of
11 himself.

12 DENNIS U. SMITH, 1384 NE 130th Terrace, Silver
13 Springs, Florida 34488-3533, appearing on behalf of
14 himself.

15 MS. TURNER, 787 NE 130th Court, Silver
16 Springs, FL 34488, appearing on behalf of herself.

17 JOSEPH M. SINGEL, 1215 NE 130th Terrace,
18 Silver Springs, Florida 34488-3556, appearing on behalf
19 of himself.

20 KEVIN POLITTE, 13075 NE 7th Loop, Silver
21 Springs, Florida 34488-3503, appearing on behalf of
22 himself.

23 MILLICENT MALLON, 1075 NE 130th Court, Silver
24 Springs, Florida 34488, appearing on behalf of herself.

25

1 APPEARANCES (continued):

2 TERRY WILL, 1385 NE 130th Terrace, Silver
3 Springs, Florida 34488, appearing on behalf of himself.

4 LISA BENNETT, ESQUIRE, Florida Public Service
5 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
6 Florida 32399-0850, appearing on behalf of the Florida
7 Public Service Commission Staff.

8 MARY ANNE HELTON, Deputy General Counsel,
9 Florida Public Service Commission, 2540 Shumard Oak
10 Boulevard, Tallahassee, Florida 32399-0850, Advisor to
11 the Florida Public Service Commission.

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P R O C E E D I N G S

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2 **COMMISSIONER EDGAR:** Good morning. I would
3 call this status conference to order. My name is Lisa
4 Edgar, and I am serving as Prehearing Officer in this
5 docket. I would like to start by asking our staff to
6 read the notice.

7 **MS. BENNETT:** Commissioner Edgar, this is Lisa
8 Bennett with General Counsel's office. We have provided
9 notice by FAW and by agency notice duly given that this
10 date and time would be held for a status conference in
11 Docket 080562, East Marion's protest of the Commission's
12 order.

13 **COMMISSIONER EDGAR:** Thank you. And we will
14 take appearances. And I'd like to go through -- I know
15 that we have a number of people who are on the phone
16 line with us that are out of town. So, for the record,
17 let's take appearances for the parties, and then I will
18 also call the names and see who is with us by phone.

19 So, Ms. Bennett, once again, why don't you
20 start us.

21 **MS. BENNETT:** On behalf of staff, Lisa
22 Bennett.

23 **COMMISSIONER EDGAR:** Thank you. And, Public
24 Counsel?

25 **MR. REILLY:** Steve Reilly with the Office of

1 Public Counsel on behalf of the ratepayers of East
2 Marion, but also on behalf of each and every one of the
3 intervenors. Although I will be speaking for them
4 today, they are, as many of them as possible, calling in
5 to listen in and to contribute if the Commissioner
6 decides it is necessary.

7 **COMMISSIONER EDGAR:** Thank you. Thank you,
8 Mr. Reilly.

9 And I understand that we have with us. Mr.
10 Hein representing East Marion Sanitary Systems.

11 Mr. Hein, can you hear me?

12 **MR. HEIN:** I can.

13 **COMMISSIONER EDGAR:** Okay, good. Thank you
14 for joining us. And I would also like to go through and
15 see who else is with us on the phone, so let me call the
16 names. Mr. and Mrs. Greco.

17 **MR. GRECO:** It's Mr. Greco, yes.

18 **COMMISSIONER EDGAR:** Mr. Greco. Thank you.

19 Mr. Smith.

20 **MR. SMITH:** Yes, Mr. Smith.

21 **COMMISSIONER EDGAR:** Thank you.

22 Ms. Turner.

23 **MS. TURNER:** Yes, I'm here.

24 **COMMISSIONER EDGAR:** Thank you.

25 Mr. Singel.

1 MR. SINGEL: Yes, I'm here.

2 COMMISSIONER EDGAR: Thank you.

3 Mr. Politte.

4 MR. POLITTE: Yes, I'm present.

5 COMMISSIONER EDGAR: Thank you.

6 And, Ms. Mallon.

7 MS. MALLON: Yes, I'm here.

8 COMMISSIONER EDGAR: Thank you.

9 Mr. Will.

10 MR. WILL: Yes, I'm here.

11 COMMISSIONER EDGAR: Thank you.

12 Is there anybody else with us by phone whose
13 name I have not called? Okay.

14 MR. HEIN: I wanted to note the name of the
15 person after Dave Greco. I didn't catch that.

16 COMMISSIONER EDGAR: And, please, if you are
17 going to speak over the phone, since we cannot see you,
18 if you would identify yourself by name so that we all
19 know who is speaking.

20 Mr. Hein, was that you?

21 MR. HEIN: That is correct.

22 COMMISSIONER EDGAR: Okay. And it was Mr.
23 Dennis Smith after Mr. Greco.

24 MR. SMITH: Yes, I'm here.

25 COMMISSIONER EDGAR: Okay. All right, then.

1 The reason we are all gathered here together today, the
2 purpose of today's status conference is to discuss the
3 status of settlement negotiations, if any; the status of
4 discovery; to allow for a preliminary identification of
5 witnesses and issues; to discuss any possible
6 stipulations; and any other procedural matters. It is
7 my intent to resolve as clearly as possible as much as
8 we possibly can while we are all here this morning.

9 And I would like to, as just a little bit of
10 background, and I'm referencing my order setting this
11 status conference, and in that we laid out some of the
12 background of this case. As we all know, the Commission
13 sometime ago issued an order that found that several
14 customers had requested irrigation meters prior to the
15 tariff being changed. The Commission directed that
16 those customers who had requested irrigation meters
17 prior to the Commission's April 7th, 2009, Commission
18 Conference be provided irrigation meters at the old
19 tariff rate. And on May 18th, 2009, as is their right,
20 East Marion protested that portion of the Commission's
21 order.

22 Office of Public Counsel and seven specified
23 customers have been granted intervention. Since that
24 point in time, it is my understanding and orders have
25 been granted extending time such that settlement

1 negotiations and discussions could take place. Where we
2 are now is that no settlement has been filed with the
3 Commission. We have a hearing set for October 13th in
4 Ocala with a prehearing conference prior to that. And I
5 understand that rebuttal testimony and exhibits, if any,
6 were due July 22nd, and that none has been received.

7 So, again, my purpose today is to understand
8 where we are, what we need to do, and to try to bring
9 some resolution or a path forward to this.

10 **MS. BENNETT:** Commissioner Edgar, may I be
11 heard at this moment? This is Lisa Bennett with the
12 General Counsel's Office.

13 **COMMISSIONER EDGAR:** Ms. Bennett on behalf of
14 PSC staff.

15 **MS. BENNETT:** The Public Service Commission is
16 greatly concerned about the expense that the state is
17 going to attend a hearing in Ocala, given the minimal
18 contact that we have had with the protesting party, East
19 Marion Sanitary Service. And we really need to
20 understand whether East Marion, Mr. Hein, will be in
21 attendance at the Prehearing Conference in Tallahassee
22 on October the 3rd, and most importantly at the hearing
23 in Ocala on October 13th.

24 When I say that we have had minimal contact,
25 we had an issue identification meeting, and we sent out

1 an informal notice. He was not required to attend. All
2 of the customers attended, and Mr. Reilly attended, but
3 Mr. Hein did not. Now, I will state clearly that he is
4 not required to attend that issue identification, but
5 that is a portion or a part of getting prepared for the
6 hearing to identify issues.

7 When I contacted him about attending the
8 status conference last week to make certain that he was
9 going to be in attendance, that he had gotten the
10 notice, he was not available. I left a message with his
11 secretary. And then again on Friday, I left a message
12 with his utility consultant, Mr. Smallridge, asking that
13 Mr. Hein, the owner of East Marion, contact me so that
14 we could make certain that he was here and/or
15 represented here.

16 Again, I did not hear from him until last
17 night at 4:15 when he stated that he was not going to
18 attend, but could he participate by telephone. And we
19 did some scrambling, and I stayed late last night to
20 make certain that he was able to attend by
21 teleconference this morning.

22 It is very important this close to hearing and
23 to the prehearing conference that he be very active in
24 the participation in this preparation for the case. For
25 instance, we have some discovery that is outstanding

1 from the Public Service Commission and it's due today.
2 I have not received it. I'm hoping that we will get by
3 the end of today, but it was addressed to East Marion,
4 served on them on August 24th. There is no reason why
5 he should not have been able to have responded to that.
6 If he doesn't, I guess I will be filing a motion to
7 compel tomorrow.

8 And I don't know if the Office of Public
9 Counsel has had like circumstances and problems with
10 contacting Mr. Hein, and so it might be appropriate to
11 hear from them. But it really would be imperative for
12 Mr. Hein to state that he's attending and intends to
13 prosecute the case that he has brought to your
14 attention.

15 **COMMISSIONER EDGAR:** Thank you, Ms. Bennett.

16 And at this point I'd like to call upon Mr.
17 Reilly and then upon Mr. Hein.

18 Mr. Reilly.

19 **MR. REILLY:** We have had a similar difficulty
20 as we were facing a hearing date and a deadline for
21 discovery date. And me looking at my schedule, I was
22 jockeying around trying to figure out when we could
23 depose the sole witness for the utility. So I did, much
24 like staff did, called several times, both cell phone
25 and the utility number to try to establish a time

1 convenient for the utility that we could depose that
2 witness. Those efforts weren't successful.

3 I did actually speak to a staff person of the
4 utility, and she assured me she would get the message to
5 him. But up to this date we have heard no response. So
6 we have not really been able to set that deposition. So
7 that was one of the things -- if we are going to
8 hearing, one of the little check-off list that I really
9 wanted to get a commitment on his part, plus maybe an
10 order, or get a subpoena issued so that we could set
11 that at a convenient time before the hearing so we could
12 talk to that witness. So, yes, we have gotten -- we
13 have not heard anything from Mr. Hein, either.

14 **COMMISSIONER EDGAR:** Thank you.

15 Mr. Hein.

16 **MR. HEIN:** Herbert Hein here on behalf of East
17 Marion. I have just come back to work (inaudible). I
18 did receive a phone message that Mr. Reilly had called.
19 I have not had an opportunity to speak to Ms. Jordan,
20 but I will be. And I will be glad to contact Mr. Reilly
21 and set up a time that is convenient for Ms. Jordan to
22 have her deposition taken.

23 **COMMISSIONER EDGAR:** Mr. Hein, we are having a
24 little bit of difficulty understanding you. And we do
25 have a court reporter who is transcribing, and I am

1 looking at our IT assistants, and they are working on
2 it. But if is there any way from your end that you can
3 help with that to make our connection a little more
4 clear, that would be greatly appreciated.

5 So, to restate, since we are having a little
6 difficulty understanding you, am I correct that what you
7 have just stated to us is that you had received a call
8 to set up and to work towards setting up deposition for
9 Mr. Reilly to conduct with your witness Beata Jordan,
10 and that you are in a position for that to proceed?

11 Mr. Hein?

12 **MR. HEIN:** Hello.

13 **COMMISSIONER EDGAR:** Mr. Hein, this is
14 Commissioner Edgar. Can you hear me?

15 **MR. HEIN:** Real faintly. I heard something
16 about Mr. Reilly.

17 **COMMISSIONER EDGAR:** Okay. Hold, if you
18 would, for just a moment. We are going to take -- if
19 you will all hold with us, we're going to take about a
20 two or three-minute break in place and see if we can
21 work on the phone line issue for a moment.

22 (Off the record.)

23 **COMMISSIONER EDGAR:** Okay. We are back on the
24 record, and we are going to try again with the phone
25 system. I appreciate everyone's patience and

1 understanding.

2 Mr. Hein, this is Commissioner Edgar. Can you
3 hear me?

4 **MR. HEIN:** I can.

5 **COMMISSIONER EDGAR:** Good. Okay. Let's try
6 again. And let me try it this way.

7 Mr. Hein, the stage that we are at is trying
8 to do prehearing preparation in response to the petition
9 that you filed on behalf of East Marion Sanitary
10 Systems. Do you intend to follow through with that
11 petition?

12 **MR. HEIN:** I do.

13 **COMMISSIONER EDGAR:** So what we need to do now
14 is get everything done that we can so that we are ready
15 to go to hearing. Ms. Bennett.

16 **MS. BENNETT:** Not to beat a dead horse, but I
17 just did want to reiterate that there are serious
18 consequences for failure to follow the next few steps in
19 the prehearing process. For instance, prehearing
20 statements are due on the 19th of September, and if he
21 does not file a prehearing statement by that date, it's
22 a waiver of issues, according to the OEP. And he is --

23 **MR. HEIN:** (Inaudible) I'm sorry to interrupt
24 you, but, again, there is a big echo, and I have a hard
25 time hearing you.

1 **COMMISSIONER EDGAR:** And, Mr. Hein, we are,
2 again, having difficulty hearing you. May I ask are you
3 speaking to us on a speaker phone?

4 **MR. HEIN:** I am not.

5 **COMMISSIONER EDGAR:** Okay. Are you speaking
6 to us on a cell phone?

7 **MR. HEIN:** Yes, I am.

8 **COMMISSIONER EDGAR:** Okay. Sometimes that
9 increases the static over the phone system with the
10 audio, of course, that we need to have here in a large
11 room. Do you have a land line --

12 (Inaudible; simultaneous conversation.)

13 **COMMISSIONER EDGAR:** Mr. Hein, allow me to
14 finish, please. Do you have a land line that you can
15 call us back on?

16 **MR. HEIN:** I do.

17 **COMMISSIONER EDGAR:** Okay. Then, Mr. Reilly,
18 is it -- and, Ms. Bennett, I'm thinking the best way to
19 proceed is to again take a very short break and allow
20 Mr. Hein to do that so that we can all understand one
21 another. Okay. I'm seeing some nods.

22 So, Mr. Hein, we are staying with this
23 proceeding, but we are going to take another very, very
24 short recess and allow you to call us back. You will be
25 hearing from our staff person here in just a second. We

1 are on break.

2 (Off the record.)

3 **COMMISSIONER EDGAR:** Okay. We are back on the
4 record. This is Lisa Edgar. Mr. Hein?

5 **MR. HEIN:** Yes, I'm here.

6 **COMMISSIONER EDGAR:** Okay. And you sound much
7 clearer at least for the time being, so thank you. And,
8 again, thank you to everyone for your patience.

9 Okay. Where we had left off for just a
10 moment, Mr. Hein, you had stated that you are prepared
11 and intending to go forward with the hearing that is
12 currently scheduled, that is scheduled and will take
13 place October 13th in Ocala.

14 There are a number of procedural requirements
15 prior to that. I'm going to go through some of them,
16 and I'm also going to ask Ms. Bennett and Mr. Reilly to
17 speak to those. Before I do that, I would like to make
18 the statement that this Commission always encourages
19 settlement discussions and settlement negotiations. A
20 settlement is often in the best interest of all parties,
21 recognizing that that is not always a possibility.

22 So, let me start here. Mr. Reilly, I
23 understand that there have been some settlement
24 discussions in the past. Is that ongoing?

25 **MR. REILLY:** There are no ongoing discussions

1 to settle the case. There was an intense effort to do
2 so back in June, May and June of 2010. I was encouraged
3 by Mr. Hein to engage in that proposal, and coordinating
4 with the seven intervenors and Mr. Hein, and
5 Mr. Smallridge, who is the field person that would
6 actually implement the settlement type of installation
7 that we were attempting to do. That was all formulated
8 and put into writing. Basically, the June 16th, 2010,
9 memorandum outlines the essential elements of that
10 settlement.

11 Unfortunately, after it was all priced out and
12 understood what it would be, I think Mr. Hein at the
13 final analysis decided he could not go forward with the
14 settlement. So at that point we informed staff and the
15 Commission that it looked like the efforts to settle the
16 case were not successful. So that's where we are at.
17 There has been no communication between Mr. Hein or
18 myself since that failed effort.

19 **COMMISSIONER EDGAR:** Mr. Hein, recognizing
20 that prior dates that had been set were extended for the
21 specific purpose of allowing settlement discussions and
22 settlement negotiations, can you speak to the status of
23 settlement discussions at this point from your
24 perspective?

25 **MR. HEIN:** As Mr. Reilly stated there, we were

1 not able to reach a settlement. We had attempted to,
2 and I guess there was some prohibitions against some of
3 the funding that was proposed.

4 **COMMISSIONER EDGAR:** I'm not sure what you
5 mean by prohibitions against some of the funding that
6 was proposed, so let me ask you this. In a moment we
7 will walk through the things that we need to do in order
8 to continue to be ready to go to hearing on
9 October 13th, as is established. Can you -- let me
10 rephrase. Will you be --

11 **MR. HEIN:** I don't want to interrupt you,
12 Commissioner, but all of a sudden it's like you have
13 gotten really distant, and I'm having a really hard time
14 understanding you. I can hear you speaking, but I can't
15 make out what you're saying.

16 **COMMISSIONER EDGAR:** Okay. I will try again.
17 And I assure you that I'm holding very still, so I'm not
18 sure why there would be that change. But let me try
19 again.

20 Per the discussion that we have had thus far
21 today, we will here in just a few moments walk through
22 all of the procedural requirements so that this
23 Commission is prepared to go to hearing on October 13th,
24 as has been established. However, I would like to ask
25 you, Mr. Hein, will you be available from this point

1 forward to continue settlement discussions with Mr.
2 Reilly?

3 **MR. HEIN:** Yes.

4 **COMMISSIONER EDGAR:** Good. Okay. There are a
5 couple of things that we need to go through. We need to
6 go through discovery, witnesses, a preliminary list of
7 issues, and potentially other procedural matters.

8 I would like to read into the record
9 statements from the original OEP that was issued that is
10 still in effect. Failure of a party to timely file a
11 prehearing statement shall be a waiver of any issues not
12 raised by other parties or by the Commission. Such
13 failure shall preclude the party from presenting
14 testimony in support of its position on each issue.

15 And, Mr. Hein, and to the customers, I am
16 specifically reading from the order establishing
17 procedure for this docket that was issued November 10th,
18 2009. Also, failure of a party or that party's
19 representative to appear shall constitute waiver of that
20 party's issues and positions, and that party may be
21 dismissed from the proceeding. Any issue not raised by
22 a party either before or during the prehearing
23 conference shall be waived by that party, except for
24 good cause shown.

25 So, Mr. Hein, do you understand that as the

1 representative in this docket for East Marion Sanitary
2 Systems, your physical presence is required here in
3 Tallahassee at the Prehearing Conference on October 3rd,
4 and then at the hearing in Ocala on October 13th?

5 **MR. HEIN:** I was planning on attending the
6 October 13th hearing. I was not aware that I needed to
7 be in Tallahassee on the 3rd. Another thing I need to
8 say is when you started reading the first part of the
9 order was not clear.

10 **COMMISSIONER EDGAR:** Mr. Hein, you, I know,
11 received a copy of the November 10th, 2009, order
12 establishing procedure. I am reading from Page 5, and I
13 will reread that beginning part again.

14 **MR. HEIN:** I'm going to write down the date.
15 It was the November 10th, 2009, order.

16 **COMMISSIONER EDGAR:** Yes.

17 **MR. HEIN:** And that was Page 5.

18 **COMMISSIONER EDGAR:** Yes.

19 **MR. HEIN:** Okay.

20 **COMMISSIONER EDGAR:** Thank you. Ms. Bennett,
21 can you speak to the requirement for the utility
22 representative to attend the prehearing conference on
23 October 3rd.

24 **MS. BENNETT:** Certainly. In the order
25 establishing procedure that you just read from, the

1 utility representative, which in this case is Mr. Hein,
2 must appear in person. Failure of him to appear in
3 Tallahassee on October 3rd is, as you read, a waiver of
4 his issues and positions and he may be dismissed from
5 the proceeding. He must attend on October 3rd in
6 Tallahassee at the prehearing conference.

7 **MR. HEIN:** So I am the only representative for
8 the utility that can appear is what you are saying.

9 **MS. BENNETT:** That is correct. We have had
10 conversations in the past, and I have sent a letter to
11 Mr. Hein explaining that he could retain a qualified
12 representative or an attorney to represent him. He has
13 declined to do so.

14 **COMMISSIONER EDGAR:** Mr. Hein, this is
15 Commissioner Edgar. It is my understanding that you
16 have retained on behalf of yourself to represent East
17 Marion Sanitary Systems in this docket that is the
18 result of the petition that you filed.

19 **MR. HEIN:** I'm sorry, I don't understand that
20 statement. Could you repeat that, please.

21 **COMMISSIONER EDGAR:** I'll try. As Prehearing
22 Officer, with all of the dockets that we have to date in
23 this case, it appears clear me that you are the
24 representative for East Marion Sanitary Systems in this
25 docket, this docket that is the result of the petition

1 that you filed on behalf of that system.

2 MR. HEIN: I have let Ms. Bennett know, or
3 attempted to, that I had retained Mr. Smallridge to help
4 represent the utility.

5 COMMISSIONER EDGAR: Ms. Bennett.

6 MS. BENNETT: On April 26th, 2010, I sent a
7 letter to Mr. Hein stating that if he was to continue
8 with the proceeding, he needed to have a request for an
9 authorized representative and an affidavit if he wanted
10 someone else to represent him, otherwise he would be
11 representing East Marion. That was a letter dated
12 April 26th, and I'm paraphrasing, I did not quote it
13 directly, but outlined his responsibility as the
14 representative of East Marion in this docket.

15 MR. HEIN: I'm not aware of that letter. That
16 doesn't mean it didn't get sent, but Mr. Smallridge had
17 been in contact with you, Ms. Bennett, and it wasn't
18 until yesterday that he let me know that you had let him
19 know that he was not going to be allowed to represent
20 the utility, which I found kind of puzzling --

21 MS. BENNETT: Mr. Smallridge is not an
22 attorney.

23 MR. HEIN: -- because he had been dealing with
24 Mr. Reilly, he had been dealing with, I thought,
25 yourself on these issues.

1 **COMMISSIONER EDGAR:** Mr. Hein?

2 **MR. HEIN:** Yes.

3 **COMMISSIONER EDGAR:** This is Commissioner
4 Edgar. We are going to work through what we need to in
5 order to move forward. In this docket you are the
6 representative for this system. Mr. --

7 **MS. BENNETT:** Smallridge.

8 **COMMISSIONER EDGAR:** Smallridge, I apologize.
9 Mr. Smallridge is not an attorney and is not a qualified
10 representative. He certainly should -- if you choose,
11 may assist you; however, he is not a legal
12 representative under the requirements of this
13 proceeding. You have been sent information laying out
14 the requirements for you as representative, and one of
15 those is for you to be at the Prehearing Conference on
16 October 3rd. Therefore, your presence is required on
17 October 3rd.

18 **MR. HEIN:** I understand, Ms. Edgar, that what
19 Ms. Bennett just said that a letter was sent out that
20 there was procedure that somehow could allow me to have
21 Mr. Smallridge become a qualified representative. I am
22 asking to get a copy of that or to get the procedures on
23 what it would take to appoint Mr. Smallridge as a
24 qualified representative.

25 **COMMISSIONER EDGAR:** Do I understand you to be

1 telling me that you want Mr. Smallridge to be your legal
2 representative at the hearing?

3 **MR. HEIN:** At the October 3rd hearing.

4 **COMMISSIONER EDGAR:** At the October 3rd
5 hearing, but that you plan to attend and to represent
6 yourself at the hearing on October 13th?

7 **MR. HEIN:** Correct.

8 **COMMISSIONER EDGAR:** Ms. Bennett.

9 **MS. BENNETT:** Mr. Smallridge has yet to file a
10 qualified representative request with the Commission.
11 If he were to do so and it were granted, then he could
12 attend on behalf of Mr. Hein, or an attorney could
13 appear on behalf of Mr. Hein. But Mr. Smallridge must
14 file a request for authorized qualified representative
15 status.

16 **MR. HEIN:** Is there some form, Ms. Bennett,
17 that he needs or that he needs to fill out that you
18 could provide either to me or to him so he could
19 properly fill it out to meet that requirement?

20 **MS. BENNETT:** If you refer to the letter dated
21 April 26th, 2010, it references several dockets.
22 Mr. Smallridge also is a utility consultant and I
23 believe has filed these forms before.

24 **COMMISSIONER EDGAR:** So if --

25 **MR. HEIN:** Am I to understand you that form

1 was part of that April 26th letter?

2 **COMMISSIONER EDGAR:** Mr. Hein, give us just a
3 moment.

4 **MR. HEIN:** Okay.

5 **COMMISSIONER EDGAR:** Ms. Bennett, this is my
6 understanding. Mr. Hein has notified us during the
7 status conference today that he is electing
8 Mr. Smallridge to be his qualified representative, that
9 he understands that there are requirements for that to
10 take place, and that information must be filed with the
11 Commission. If that information is filed with the
12 Commission, we will need to review it and see if it
13 meets the requirements.

14 Ms. Bennett, what does Mr. Hein and Mr.
15 Smallridge need to do in order for that matter to be
16 before me?

17 **MS. BENNETT:** The request for qualified
18 representative status needs to be filed with the
19 Commission. Generally, it's filed in docket number --
20 it will be 1100. I do not have a sample form. There
21 are examples of different forms that qualified
22 representatives have filed in the past. It is based
23 upon that representative's ability, that individual who
24 want to represent East Marion's ability to understand
25 the procedural aspects of a hearing, and he must lay

1 that out in that request. It's a petition for filing,
2 and there are samples throughout the docket files in the
3 Commission's 1100 docket that would give Mr. Smallridge
4 and Mr. Hein ideas of what needs to be filed.

5 **MR. HEIN:** How do I go about getting a copy of
6 that?

7 **COMMISSIONER EDGAR:** Okay. Mr. Hein, this is
8 Commissioner Edgar. Let me ask you this. Has
9 Mr. Smallridge agreed to take on this responsibility?

10 **MR. HEIN:** The last time I spoke to him he was
11 willing to. He had just explained to me that Ms.
12 Bennett had told him he wasn't able to, and I didn't
13 realize there was a procedure or a form he had to fill
14 out. I will be glad to contact him again today. I
15 would like to know how I can go about getting a sample
16 of the form that needs to be filed with the Commission.

17 **COMMISSIONER EDGAR:** Okay. Then, Mr. Reilly,
18 do you have anything that you would like to weigh in on
19 this particular point?

20 **MR. WILL:** Yes.

21 **COMMISSIONER EDGAR:** I'm sorry, I was asking
22 Mr. Reilly on behalf of the Public Counsel.

23 **MR. WILL:** This is Terry Will. I would like
24 to speak with Mr. Reilly on behalf of -- the intervenors
25 would like to speak with Mr. Reilly in private before he

1 answers, please. This is Terry Will.

2 COMMISSIONER EDGAR: Okay. This is
3 Commissioner Edgar.

4 Thank you, Mr. Will. Hold on just a moment
5 and let me look to Mr. Reilly, as your representative
6 here in the room.

7 MR. REILLY: With the indulgence of the
8 Prehearing Officer, if it might be possible to adjourn
9 at some point where I could talk to the intervenors.
10 They have been listening in. However, I think I can
11 safely make these comments. On a related matter of
12 personal representative or attorney, we have not only
13 the problem of someone representing Mr. Hein at this
14 prehearing conference and at the hearing, we have the
15 very important matter of OPC's necessity of deposing
16 their witness prior to hearing. I'm assuming before
17 this status conference is adjourned, we will arrive at
18 some date in our very tight time frame that will allow
19 me to go down there to do that.

20 There is the added problem of Beatrice Jordan
21 having an attorney. If you are going to depose someone
22 and you intend to use their answers to that deposition
23 to impeach them at the hearing, it's important for them
24 to either waive their right to an attorney at that
25 deposition or to have an attorney available at the

1 deposition. And it's going to further compromise our
2 ability to prepare and prejudice us to prepare for this
3 hearing if Mr. Hein is not going to make available to
4 his witness an attorney, or at minimum get with this
5 witness and agree that there is a waiver of that and
6 that she does intend to answer the questions truthfully
7 and honestly, and that her answers used in the
8 deposition may be used to impeach her at the hearing.

9 So there is the complication and the necessity
10 of having this deposition. And if we are bootstrapping
11 all these -- personally, I don't believe Mr. Smallridge
12 is going to want to attend that deposition and be her
13 legal representative at that deposition. I mean, again,
14 that's something they need to work out or the waiver.
15 So I need to put that on the table right now as we are
16 piecing something together for a case for Mr. Hein. So
17 this is the time to do that.

18 I'm looking at this very tight schedule we
19 have, and I'm hoping that she will be available in the
20 last week of September. Hopefully perhaps Wednesday.
21 I'm looking at my calendar and we will look at her
22 calendar and try to work out something. But they will
23 have to get her an attorney to advise her of the
24 importance of her testimony and the importance of, you
25 know, what she is doing at that deposition, and what she

1 will be doing at the hearing, or she will knowingly
2 waive legal representation so that her answers can, in
3 fact, be used at the hearing. I'm throwing this all at
4 Mr. Hein, but this is the time to bring that out.

5 **COMMISSIONER EDGAR:** I understand, Mr. Reilly.
6 And, yes, this is absolutely the time to bring that up
7 and any other procedural and prehearing matters. We are
8 going to for the moment set aside the issue of
9 Mr. Smallridge possibly being a qualified representative
10 for purposes of the October 3rd prehearing. We will
11 come back to that. And I am making a list of things, if
12 there are others that we will need come back to. We
13 will come back to that.

14 Other matters include discovery, witnesses,
15 list of issues. So let's move into that. And, Mr.
16 Reilly, you have teed up the first one, which is the
17 need for the deposition of the system's, the utility's
18 witness, which is, my understanding, Ms. Jordan.

19 So, Mr. Hein, to you. You said earlier in
20 this conference this morning that you would work with us
21 to make Ms. Jordan available. We need to go ahead and
22 schedule that deposition. And as Mr. Reilly has pointed
23 out, Ms. Jordan at that deposition is required to either
24 have legal counsel with her representing her or to
25 knowingly legally waive her right to that counsel.

1 So, Mr. Hein, your witness on behalf of the
2 utility, when can we schedule that deposition with Ms.
3 Jordan, and will she be represented by legal counsel at
4 that deposition?

5 **MR. HEIN:** I cannot answer that at this point.
6 I have had no contact. I will contact her today,
7 though, and see what her schedule is like and see if she
8 can be available. And I will be glad to contact Mr.
9 Reilly also to coordinate that.

10 **COMMISSIONER EDGAR:** Mr. Reilly.

11 **MR. REILLY:** Let me propose two things. Let
12 me propose, since we are really coming up on the hearing
13 date, of either the Wednesday, the 28th, or Thursday,
14 the 29th of this month, realizing that the prehearing
15 conference is that very next Monday.

16 **MS. BENNETT:** That would require an extension
17 of the discovery deadline of September 19th.

18 **MR. REILLY:** And we have another problem, and
19 I might as well put this out right now. Prior to the
20 deposition, it is critical for the Office of Public
21 Counsel to get the sworn testimony of Mr. Hein as to the
22 truth of all these interrogatory questions that have
23 been posed by staff to Mr. Hein, which were posed on
24 August 24th and were due to be filed -- answers to be,
25 truthful answers to be filed by yesterday under oath

1 with an affidavit. That has not been done. So I think
2 this is the time to ask Mr. Hein where are his answers,
3 because his answers to those interrogatory questions
4 will be critical to our deposition of his witness.

5 **COMMISSIONER EDGAR:** Mr. Hein, what Mr. Reilly
6 is informing us is that you have outstanding discovery
7 responses in the form primarily of interrogatories that
8 were due to the Office of Public Counsel -- or, excuse
9 me, were due to the Public Service Commission yesterday.
10 What is the status of your responses?

11 **MR. HEIN:** They are not complete, but they
12 will be complete by the end of the week.

13 **COMMISSIONER EDGAR:** Okay. Today is the 14th.
14 I put the end of the week as the 16th, Friday, the end
15 of the work week. So you will have that information
16 complete in its required format as sworn?

17 **MR. REILLY:** With the affidavit.

18 **COMMISSIONER EDGAR:** With the affidavit that
19 goes along with that information complete Friday.

20 Ms. Bennett.

21 **MS. BENNETT:** Is that complete and in my hands
22 on Friday, or is that complete on Friday?

23 **MR. HEIN:** It will be complete. I'm not sure
24 what Mr. Reilly is referring to as the affidavit, but I
25 will have them complete and either fax them to you or

1 overnight them to you.

2 COMMISSIONER EDGAR: Okay. Mr. Hein --

3 MR. HEIN: Is there some sort of affidavit
4 that is part of that package?

5 MS. BENNETT: Yes, the affidavit is part of
6 the package.

7 COMMISSIONER EDGAR: Yes, the affidavit is
8 included in the package of information that you
9 received, and it is basically you making the sworn
10 statement that the information that you are giving in
11 reply is the truth.

12 MR. HEIN: Okay.

13 COMMISSIONER EDGAR: Okay. So you will have
14 that complete on the 16th, this Friday. That is
15 approximately 48 hours from now. Ms. Bennett, how can
16 he get that information to the Public Service
17 Commission?

18 MS. BENNETT: If I could have him overnight it
19 so that we receive it on Monday, that would be fine.

20 COMMISSIONER EDGAR: Mr. Hein, will you do
21 that?

22 MR. HEIN: I will.

23 COMMISSIONER EDGAR: Mr. Reilly.

24 MR. HEIN: And in light of Mr. Reilly's
25 discussion on taking Ms. Jordan's deposition, what it

1 might be beneficial is to pick a date that the
2 intervenors would be available at the same time for
3 their deposition, that way it would, I guess, make it
4 easier on everybody. It could all be taken care of at
5 one time.

6 **COMMISSIONER EDGAR:** We certainly want to use
7 as many practical efficient measures as we can for
8 everybody's schedules and resources. Mr. Reilly.

9 **MR. REILLY:** My intention was to do both, to
10 meet with the clients, you know, down there to prepare
11 for the hearing as well as depose Ms. Jordan. So,
12 again, maybe when we take our recess I can go over those
13 dates. I propose the 28th and 29th. While we are
14 recessing, maybe Mr. Hein can likewise confirm a date
15 with his witness and maybe before the status conference
16 we can settle on a date.

17 **COMMISSIONER EDGAR:** Mr. Hein.

18 **MR. HEIN:** I'm sorry?

19 **COMMISSIONER EDGAR:** Okay. So what Mr. Reilly
20 was saying is that scheduling -- we think it is possible
21 to schedule on the same day the deposition of Ms. Jordan
22 and deposition of the customers who are intervenors in
23 this case. We think that is possible. We are going to
24 go over a couple of other matters, and then we will
25 recess so that everybody can look at their calendars and

1 make phone calls. And then we will come back to see how
2 much we can schedule today. So I appreciate your
3 suggestion that we try to do all of that on the same
4 day, and I know you will work with us to do so and we
5 will work with you to do so.

6 Okay. Ms. Bennett, are there other
7 outstanding discovery matters?

8 **MS. BENNETT:** No. We have received the
9 discovery responses from all of the staff -- the staff
10 has received the discovery responses from all of the
11 intervenors. I am waiting for two affidavits from two
12 of the intervenors, but I believe I will get those
13 today.

14 **COMMISSIONER EDGAR:** And, Mr. Reilly, you are
15 working on that?

16 **MR. REILLY:** We are working on that, right.

17 **COMMISSIONER EDGAR:** Okay.

18 **MR. HEIN:** Now, do I get copies of those? Or
19 what do I have to do to request copies of those?

20 **COMMISSIONER EDGAR:** Mr. Reilly?

21 **MR. REILLY:** I believe we have sent copies to
22 you on our responses to staff's requests. I will
23 confirm that.

24 **COMMISSIONER EDGAR:** Mr. Hein, this is
25 Commissioner Edgar. My understanding from Mr. Reilly is

1 that it is his belief that five of those affidavits have
2 been sent to you. Two will be coming to the Commission
3 today or tomorrow. Copies of those will be sent to you,
4 and Mr. Reilly will verify that you were sent the five
5 prior.

6 **MR. HEIN:** Okay.

7 **COMMISSIONER EDGAR:** Okay. Rebuttal
8 testimony. Ms. Bennett, is that an outstanding issue or
9 not?

10 **MS. BENNETT:** There was no rebuttal testimony
11 filed.

12 **COMMISSIONER EDGAR:** Okay. So my
13 understanding is that we have addressed all outstanding
14 matters regarding discovery. That brings me to the
15 witnesses, which we have discussed. We are in the
16 process of scheduling depositions with the single
17 utility witness, Ms. Jordan, and with making available
18 the customers for depositions by the utility. We need
19 to next go over the preliminary lists of issues. Before
20 we do that, Ms. Bennett, anything else that we should
21 take up prior to that?

22 **MS. BENNETT:** I do want to note for the record
23 that Shannon Hudson for Commission staff did provide
24 testimony in this docket and will be appearing on
25 October 13th in Ocala.

1 **COMMISSIONER EDGAR:** Thank you. Mr. Reilly.

2 **MR. REILLY:** We have two matters on witnesses.
3 In the ensuing years, one of the intervenors has passed
4 away, Mr. Turner, and OPC did file a motion last Friday
5 to substitute his widow as his substitute intervenor,
6 and to substitute her testimony for his. I think Mr.
7 Hein has till Friday to respond to that, or maybe he has
8 no objections to it, and we can get that resolved today
9 for the substitute.

10 **COMMISSIONER EDGAR:** Mr. Hein, recognizing
11 that Mr. Turner has passed away, his wife is in the
12 position to supply testimony on their behalf. That is a
13 request of the Office of Public Counsel, that appears
14 reasonable to me under the circumstances. You do have
15 the opportunity to object. Are you in a position to be
16 able to tell us today whether you have any objection to
17 that?

18 **MR. HEIN:** I am not. I'd like to see the
19 motion. I was not aware that Mr. Turner had passed away
20 and my condolence to his wife.

21 **MS. TURNER:** Thank you.

22 **MR. REILLY:** We provided copies of our motion
23 to him and, I think, to Mr. Smallridge, as well. And it
24 is also on line at the PSC web page, the docket file.

25 **COMMISSIONER EDGAR:** Okay. Mr. Hein, that

1 motion, as Mr. Reilly has said, has been sent to you by
2 mail.

3 **MR. REILLY:** Well, he doesn't have an e-mail,
4 so it was just sent by mail to him, but I believe it was
5 e-mailed and mailed to his representative,
6 Mr. Smallridge.

7 **COMMISSIONER EDGAR:** Okay. That information
8 has been sent to you, Mr. Hein, by mail and also by hard
9 copy mail and e-mail to Mr. Smallridge. It is also
10 available on-line that you can pull up. And I know Ms.
11 Bennett will be getting with you later today on a number
12 of items, so that will be one that we will make sure
13 that you can find it on-line, as well. And then
14 absolutely you have the opportunity to review that
15 motion, and any objection needs to come to the
16 Commission by Friday, Ms. Bennett?

17 **MS. BENNETT:** The motion was filed Friday, the
18 9th, so seven days would be the 16th, Friday.

19 **MR. HEIN:** Wait a minute. It was filed when?

20 **COMMISSIONER EDGAR:** Last Friday.

21 **MR. HEIN:** Last Friday?

22 **COMMISSIONER EDGAR:** Yes, sir.

23 **MR. HEIN:** That might explain why I don't have
24 it yet, if he mailed it. But that's okay. I will look
25 for it, or I'll go on-line.

1 **COMMISSIONER EDGAR:** Okay. It is my
2 expectation that you will review that and we will hear
3 from you by Friday if you have any objection to that
4 motion. Mr. Reilly, anything else?

5 **MR. REILLY:** A very minor matter relating to
6 witnesses and testimony. Mr. Politte filed his prefiled
7 testimony sometime ago. Unlike all the other witnesses,
8 he just didn't attach his letter requesting service. He
9 references it and dates it, the May 2, '08 letter
10 requesting --

11 **MR. HEIN:** Mr. Reilly, I don't mean to
12 interrupt, but I'm missing half of what you're saying.
13 You're fading out.

14 **MR. REILLY:** Okay. I'm just requesting that
15 Mr. Politte's letter actually be attached as an exhibit
16 to his testimony. It is referred to, but somehow he
17 didn't attach it to his testimony, and I think it would
18 be good for the Commission to have the actual copy, true
19 and correct copy of the document as part of its record.

20 **COMMISSIONER EDGAR:** Ms. Bennett?

21 **MS. BENNETT:** Staff has no objection.

22 **MR. HEIN:** Mr. Reilly, could -- I only heard
23 something about some letter. I didn't hear the --

24 **COMMISSIONER EDGAR:** Mr. Hein, Commissioner
25 Edgar. Mr. Reilly, I am going to ask you to go through

1 that one more time, and if you would, a little more
2 slowly.

3 MR. REILLY: Okay. When Kevin Politte filed
4 his testimony, in the testimony he makes reference to
5 his May 2, '08 letter requesting service from the
6 utility. Unlike all the other intervenors, he failed to
7 actually attach a copy of the letter as an exhibit to
8 his testimony. I am requesting that that be allowed to
9 be done today, and I will file a true and correct copy
10 of that letter and attach it to his testimony, with no
11 objection.

12 COMMISSIONER EDGAR: Mr. Hein.

13 MR. HEIN: I understood that he failed to file
14 something, and Mr. Reilly is asking for some sort of
15 permission to attach that or something?

16 MR. REILLY: That's correct.

17 MR. HEIN: I don't have a problem with that.

18 COMMISSIONER EDGAR: Thank you, Mr. Hein.

19 It is purely procedural and a courtesy
20 generally extended within this forum. So thank you for
21 your cooperation with that.

22 Mr. Reilly, any other matters at this time?

23 MR. REILLY: Not on testimony.

24 COMMISSIONER EDGAR: Okay.

25 MR. POLITTE: Mr. Reilly, this is -- excuse

1 me.

2 COMMISSIONER EDGAR: That's okay. Who is
3 speaking?

4 MR. POLITTE: I was just getting ready to say
5 this is Mr. Politte. You do have a copy --

6 MR. HEIN: I'm having a hard time hearing
7 whoever is speaking. I didn't hear the name.

8 COMMISSIONER EDGAR: Okay. Mr. Politte is
9 asking to make a brief comment.

10 Mr. Politte, you're recognized.

11 MR. POLITTE: Thank you. There was a letter
12 attached (inaudible) two plus years ago when I did get
13 in the process of all this. I have recently sent
14 another copy to Mr. Reilly. I just want to confirm he
15 has that copy.

16 MR. REILLY: Thank you. In fact, that is the
17 copy I'm going to use to file with the Commission.

18 MR. POLITTE: Okay. I just wanted to make
19 sure you did have that.

20 MR. REILLY: I did receive it.

21 COMMISSIONER EDGAR: All right. Thank you.

22 We have worked our way through discovery
23 items, items regarding witnesses on behalf of all
24 parties. That brings me to the preliminary list of
25 issues. I am going to look to Ms. Bennett to tee that

1 up for us.

2 **MS. BENNETT:** Commissioner Edgar, and to the
3 parties, and Mr. Hein, and Mr. Reilly, the staff
4 provided a preliminary list of issues last week in hopes
5 that we could use this today in today's status
6 conference to hammer out these issues because the
7 prehearing statements are due, I believe, on
8 September 19th, and we would like to use these as the
9 prehearing statement -- as part of the prehearing
10 statement.

11 Mr. Reilly today provided a preliminary list
12 of issues for the intervenors. They are slightly
13 different than the ones that staff provided. I am
14 wondering if it would be a good idea to fax this to Mr.
15 Hein if he was at a position, or e-mail it to him so
16 that he could look at them when we take an adjournment.
17 We have had an opportunity, technical staff and I, to
18 look at Mr. Reilly's issues and like the way that they
19 are stated. They are a little bit -- stated a little
20 bit differently than the one I provided to Mr. Hein and
21 to Mr. Reilly last week with the exception of Issue 6.
22 So I'm wondering if it would facilitate the discussions
23 for Mr. Hein to have this in front of him as we talk
24 about it. If so, I can run upstairs and get this faxed
25 if he is at a point where I can fax it.

1 **MR. HEIN:** Yes, I would appreciate them being
2 faxed to me, both Staff's and Mr. Reilly, if possible.

3 **COMMISSIONER EDGAR:** Okay. We will do so here
4 in just a moment. Right now my understanding is that we
5 have a couple of items that we are still wanting to
6 address today. One is the information to Mr. Hein for
7 him to work with Mr. Smallridge as to the possibility of
8 Mr. Smallridge being a qualified representative for the
9 October 3rd prehearing. A second is dates for
10 depositions, and we are looking at the end of the couple
11 of days -- work days at the end of September that we are
12 hoping to be able to schedule that. The third is to go
13 through the preliminary list of issues, and we will get
14 that information to Mr. Hein here in a few moments.

15 **MR. HEIN:** I would like to bring up one issue.
16 I have not finished going through the interrogatories.
17 I will, and I will have them done. But in looking at
18 them, there are some that I would like to present to the
19 staff. I guess I'd like to know how they would like for
20 me to deliver them to them, and I'm not sure if I will
21 have interrogatories for the intervenors at this point
22 yet, but I should know by Friday.

23 **COMMISSIONER EDGAR:** Ms. Bennett.

24 **MS. BENNETT:** It's a little late to be filing
25 interrogatories. The discovery cutoff was

1 September 19th, and we made sure that ours were out so
2 that he would be permitted -- or that I would have the
3 responses back in time for the prehearing statements to
4 be filed. There's a 20-day turnaround. You know, I can
5 do my best to get the information back to him by
6 October the 3rd, the prehearing conference, but there
7 are reasons why the order establishing procedure sets
8 deadlines and outlines the procedures that a party is to
9 follow. Now, I know that we are granting an extension
10 for the deposition for Ms. Jordan and evidently for the
11 intervenors.

12 **MR. REILLY:** I would weigh in on this, if
13 possible.

14 **COMMISSIONER EDGAR:** Mr. Reilly.

15 **MR. REILLY:** The extension of time has been
16 done because of Mr. Hein not responding to discovery and
17 not responding to numerous phone calls trying to set
18 these depositions up. It is only as a result of his
19 failure to act that we have extended the time for him to
20 respond. So all these extensions of time is a direct
21 result of East Marion not performing under our schedule.
22 So I believe with a hearing upon us, that to get
23 discovery out now at the eleventh hour of the eleventh
24 hour is prejudicial and something that we would be
25 opposed to.

1 **COMMISSIONER EDGAR:** Mr. Hein, you missed the
2 deadline.

3 **MR. HEIN:** Well, I would like to address that,
4 though. This whole procedure was set up -- again, the
5 time frame was set up in discussion with Mr. Reilly and
6 the Public Counsel with no discussion at all with the
7 utility. It was to everybody else's schedule that this
8 whole procedure was tailored, not taking in the utility
9 at all. It's not like I'm asking for three months.

10 **MR. REILLY:** I would respond to that by saying
11 staff and the Public Service Commission in no way
12 communicated with my office to set up any dates. We
13 were just informed of what the hearing dates were
14 available to the Commission and what worked for staff.
15 So any suggestion that staff communicated with our
16 office to set this scheduling up is not true.

17 **COMMISSIONER EDGAR:** Ms. Bennett.

18 **MS. BENNETT:** Like a court proceeding, the
19 hearing dates and the prehearing schedule are set based
20 upon the Commissioners availability and their calendar.
21 This year, this fall has been a very difficult time to
22 set hearings, because we have got so many other hearings
23 going on at the same time. We did not talk with any
24 party. We set the hearings and the prehearings based
25 upon the Commission's calendar.

1 **MR. HEIN:** Would it be all right for me to ask
2 for two days or four days max to file my interrogatories
3 really isn't being unreasonable in this matter.

4 **MS. CRAWFORD:** Commissioner Edgar, may I?

5 **COMMISSIONER EDGAR:** Yes, you may.

6 **MS. CRAWFORD:** Thank you. And for the benefit
7 of those on the phone, I'm Jennifer Crawford. I'm Ms.
8 Bennett's supervisor. I work in the General Counsel's
9 Office with the Public Service Commission.

10 I would like to point out that this case has
11 been pending for a number of years at this point, and
12 that the initial order establishing procedure went out,
13 I believe, in November of 2009. Was that correct,
14 Commissioner?

15 **COMMISSIONER EDGAR:** Yes, ma'am.

16 **MS. CRAWFORD:** And that discovery has been
17 available since that time. And, yes, the case has been
18 extended a number of times. Discovery has been
19 available. And the implication that there is something
20 irregular or inappropriate happening by all parties
21 being expected -- staff, OPC, and the utility being
22 expected to comply with those deadlines is just not so.
23 And it's unfortunate that the discovery for the utility
24 hasn't gone out in a more timely fashion, but the
25 deadlines are those with which all parties must comply.

1 So I would simply like to state that for the record.

2 Thank you.

3 **MR. HEIN:** (Inaudible) -- on the utility's
4 part (inaudible).

5 **COMMISSIONER EDGAR:** Mr. Hein, Commissioner
6 Edgar. I did not understand what you just said. Would
7 you please repeat.

8 **MR. HEIN:** Are you speaking to me?

9 **COMMISSIONER EDGAR:** Mr. Hein?

10 **MR. HEIN:** Yes.

11 **COMMISSIONER EDGAR:** I did not understand what
12 you said.

13 **MR. HEIN:** I said there was no implication on
14 my part that there was anything irregular in the
15 scheduling.

16 **COMMISSIONER EDGAR:** Thank you. And I
17 appreciate you repeating that.

18 Okay. This is what we are going to do. We
19 are going to take -- I have 11:14, so I'm going to call
20 that 11:15. We are going to take a recess. We are
21 going to allow Mr. Reilly to speak with the customers
22 that he is representing. Mr. Hein, we are looking to
23 you to talk to your witness to find out when we can go
24 ahead and schedule that deposition. We need to get
25 information so that we know how we can contact you here

1 in the next few minutes so that Ms. Bennett can follow
2 up with you by phone about the information required for
3 Mr. Smallridge to file with us the request to be a
4 qualified representative, and also in order to fax you
5 the list of preliminary issues so that we can discuss
6 that. So, again, it is 11:15. How much time do we
7 need? I'm looking to Mr. Reilly just because he is
8 right here in front of me.

9 Mr. Reilly.

10 **MR. REILLY:** I'm not sure logistically how I'm
11 going to be able to communicated with these seven people
12 in seven locations. If I had the time to set up a
13 conference call, I have just got to work out the
14 logistics of doing that. I have an office here, and
15 maybe I can get my secretary to set up a conference
16 call, and then -- you know, that is going to take a
17 little bit of logistics to get ahold of everybody, but
18 that is the only way I think I can do it. So I'm not
19 sure how long that's going to take.

20 **COMMISSIONER EDGAR:** I understand. And I
21 realize I'm pushing a little bit, but while we all are
22 here together and today focused on these issues that are
23 before us, I would like us to accomplish as much as we
24 can.

25 **MR. REILLY:** Absolutely. And maybe in 30

1 minutes time we can -- basically, I'm going to try to
2 get their availability on the 28th or 29th to be
3 available for deposition, if the company chooses to
4 depose them, and that we try to set it up on the same
5 date. And it's my understanding Mr. Hein is going to
6 check with his witness' availability on one of those two
7 dates, and, very importantly, her willingness to sit for
8 the deposition and either have a counsel or waive
9 counsel so that it will be a meaningful deposition that
10 could be used at hearing.

11 **COMMISSIONER EDGAR:** Mr. Hein, we will need a
12 phone number and a fax number. If you are comfortable
13 sharing that with us now on the record, realizing that
14 that will go into the record, we can do that. If for
15 some reason you are uncomfortable with that, I'm going
16 to ask you when we go off --

17 **MR. HEIN:** I will contact Ms. Bennett as soon
18 as this phone conference ends.

19 **COMMISSIONER EDGAR:** Well, what I'm going to
20 suggest, again, because we are all right here, is you
21 have been talking with Mr. Staden, who is a member of
22 our IT staff, and here in a moment I'm going to put him
23 on the line with you again so you will be speaking just
24 directly to him not on the audio system, and I'm going
25 to ask Mr. Staden to get from you a land line phone

1 number and also a fax line number so that Ms. Bennett
2 will follow up with you then as soon as -- within just a
3 short period when we are on break.

4 Mr. Hein, how much --

5 **MR. HEIN:** That would be --

6 **COMMISSIONER EDGAR:** No, let me finish. Mr.
7 Hein, how much time would you like before we come back
8 together on the record here in a little while today?

9 **MR. HEIN:** It's hard to say. As soon as I am
10 done with Ms. Bennett, I will contact Ms. Jordan. I
11 don't know whether she is available or not, but I will
12 attempt to contact her immediately.

13 **COMMISSIONER EDGAR:** I understand. And thank
14 you for doing that. It is kind of the lunch hour, so
15 how about I throw out 1:00 o'clock.

16 **MR. HEIN:** That would be acceptable to me.

17 **COMMISSIONER EDGAR:** Okay.

18 **MS. BENNETT:** That's fine.

19 **COMMISSIONER EDGAR:** Ms. Bennett, can you work
20 with us with that time frame and our staff, as well?

21 **MS. BENNETT:** Yes.

22 **COMMISSIONER EDGAR:** Okay. Then we are going
23 to go on break. Mr. Staden is going to get on the line
24 with you, Mr. Hein, off of our audio system. Before
25 that, Mr. Reilly.

1 **MR. REILLY:** While we have all seven people
2 listening, I'm going to have Phyllis set up a conference
3 call, and I will probably have time to run back to my
4 office and do that. So everybody be looking for a call
5 here in the next few minutes as to what number to call
6 in and --

7 **MR. HEIN:** It is my understanding we are
8 supposed to call back at 1:00 p.m., is that correct?

9 **COMMISSIONER EDGAR:** This is Commissioner
10 Edgar. Who just asked that question, just so I know?

11 **MR. HEIN:** I'm sorry?

12 **COMMISSIONER EDGAR:** Can you tell us your
13 name?

14 **MR. HEIN:** Herbert Hein.

15 **COMMISSIONER EDGAR:** Mr. Hein, thank you.
16 Yes, we will be coming back together at 1:00 o'clock.
17 We would ask that you call in again at 1:00 o'clock. In
18 the meantime, while we are on recess, Mr. Reilly's
19 office will be contacting each of you to see if there is
20 a call that you can have with Mr. Reilly while we are on
21 recess. And so with that, we are on break. We will be
22 back here on the record at 1:00 o'clock today.

23 (Recess.)

24 **COMMISSIONER EDGAR:** Okay. Good afternoon.
25 We are back from break. It is approximately 10 after

1 1:00, and I have back here with me our staff, and Ms.
2 Bennett, and Mr. Reilly, with Public Counsel, our court
3 reporter, as well. And I understand that we have with
4 us on the phone Mr. Hein?

5 **MR. HEIN:** That is correct.

6 **COMMISSIONER EDGAR:** Good. Thank you.

7 And I also understand that we have a number of
8 the customers on the phone with us again, as well. So
9 I'm hopeful that we were able to all have a little lunch
10 and make some good use of the time that we were on
11 break.

12 Mr. Reilly, I'm going to start with you.

13 **MR. REILLY:** I guess the first thing will be
14 to hear from Mr. Hein as to whether the availability of
15 his witness, whether he has an attorney or not. I know
16 he had expressed a desire to depose the same day, you
17 know, our intervenors. I do have some response to that
18 today.

19 **COMMISSIONER EDGAR:** Okay.

20 **MR. REILLY:** But in the break, I was thinking
21 about asking him a question. Who does he propose to be
22 deposing the intervenors?

23 **COMMISSIONER EDGAR:** Okay. Let's start at
24 witnesses. Mr. Hein, were you able to get us a date for
25 Ms. Jordan?

1 **MR. HEIN:** I was not. I did contact her. All
2 I received or reached was her answering machine. I left
3 her an in-depth message asking her to return my call. I
4 have not heard back from her.

5 **COMMISSIONER EDGAR:** Mr. Reilly.

6 **MR. REILLY:** Well, we continue to be greatly
7 compromised and prejudiced by Mr. Hein's failure to
8 follow any of the procedures and time schedules of the
9 Commission. Efforts were made for a period of time.
10 Phone calls were made by me over a period of time trying
11 to set this deposition up. Here we are, a request to
12 participate by phone, within minutes before 5:00 o'clock
13 of the day. He hasn't even made any effort to get ahold
14 of his witness to be deposed, and he knew, in fact, I
15 did speak to a live person telling them we want to
16 depose her, we needed to in anticipation of the hearing.
17 No efforts all of these days and weeks gone by and
18 nothing has been done. And here we are at the status
19 conference, and he is still trying to ahold of her, and
20 it just becomes --

21 **MR. HEIN:** Mr. Reilly, I can appreciate your
22 frustration. I'm just as frustrated. However, I need
23 to bring to the Counsel's or the Commission's attention
24 that Ms. Jordan lost her husband recently. I do not
25 know her status of what's going on with her. I have had

1 no contact, even though I have attempted to contact her.
2 I have made other phone calls today after the Commission
3 asking somebody to go by her house and see if she is
4 there or what her status is. You know, I am not trying
5 to prejudice Mr. Reilly being able to contact her in any
6 way. He is welcome to try to contact her. But I know
7 her husband did pass away, but I do not know what her
8 life consists of or where she is at this point in time.

9 **MR. REILLY:** Well, setting aside for just a
10 moment the availability of Bea Jordan, let's go to the
11 next issue. Is Mr. Hein prepared to contact an
12 attorney, to quickly, very quickly arrange for the
13 retaining of an attorney to depose our witnesses, or is
14 it his intention that he is going to carry out that
15 deposition, or Mr. Smallridge is going to carry out that
16 deposition. Is Mr. Hein --

17 **MR. HEIN:** Well, Mr. Reilly, I will address
18 that. While we were on break, I made two phone calls to
19 attorneys to see if they would represent not only Ms.
20 Jordan, but the utility in handling this deposition.

21 **MR. REILLY:** Okay. Because otherwise we would
22 be unwittingly possibly participating in an unauthorized
23 practice of law, which we didn't want to do.

24 **COMMISSIONER EDGAR:** Mr. Hein, this is
25 Commissioner Edgar. I am appreciative of your efforts

1 today and over the break. And I understand everyone's
2 frustration. I have some of my own, but surely you
3 recognize that none of these items that we are
4 discussing today are new. If we are going to hearing,
5 and you have expressed the desire to continue to do so,
6 if we are going to hearing, then surely you understand
7 that your witness needs to be deposed, and at your
8 request to depose the OPC customers that they are
9 representing the intervenors, which is your right, and
10 we want to facilitate as a matter of right, that issues
11 such as finding counsel certainly should have been
12 handled prior to this morning's conference.

13 **MR. HEIN:** I was not aware that I would be
14 required to have an attorney available or that there was
15 an issue in deposing the intervenors without an attorney
16 present.

17 **MR. REILLY:** My only response to that would be
18 staff, it is my understanding, pretty much articulated
19 his need for representation or other alternatives
20 sometime ago. If you could refresh my memory on the
21 date that that was done.

22 **MS. BENNETT:** Again, the --

23 **MR. HEIN:** Well, Mr. Reilly, maybe the --

24 **COMMISSIONER EDGAR:** Mr. Hein?

25 **MR. HEIN:** Go ahead.

1 **COMMISSIONER EDGAR:** Let me have Ms. Bennett
2 reply and --

3 (Inaudible, simultaneous conversation.)

4 **MR. HEIN:** -- prevent her from speaking to Mr.
5 Reilly or being deposed.

6 **COMMISSIONER EDGAR:** Mr. Hein. Mr. Hein,
7 please.

8 (Inaudible, simultaneous conversation.)

9 **MR. HEIN:** -- and to what authority I have to
10 compel her. And I would like her to attend, I would
11 like to participate in that deposition just as much as
12 Mr. Reilly would.

13 **MR. REILLY:** Let me ask one question of Mr.
14 Hein.

15 **MR. HEIN:** I'm sorry?

16 **MR. REILLY:** Is Ms. Jordan still a willing
17 witness in this proceeding and have you spoken to her
18 recently?

19 **MR. HEIN:** Mr. Reilly, I will reiterate. I
20 have not spoken to her since prior to her husband's
21 death. I don't know what her status is. I have
22 attempted to contact her. I attempted to contact her
23 today, and I have sent somebody by to try to speak to
24 her in person.

25 **MS. BENNETT:** Commissioner Edgar, this is Lisa

1 Bennett.

2 COMMISSIONER EDGAR: Yes.

3 MS. BENNETT: Might I offer a solution?

4 COMMISSIONER EDGAR: You may offer a
5 suggestion.

6 MS. BENNETT: A suggestion, I'm sorry.
7 Perhaps the Office of Public Counsel can utilize the
8 subpoena process and subpoena Ms. Jordan for a
9 deposition, and perhaps they can identify in that
10 deposition some special instructions that she may need
11 to have an attorney present. And there is a process
12 that the Commission has for subpoenaing witnesses. If
13 she does not appear, this is Mr. Hein's witness, and so
14 OPC could file for whatever sanctions it felt necessary
15 if she did not appear at the deposition, which could
16 include, I believe, striking the witness' testimony.
17 She is the only witness that East Marion has presented.
18 There is no other witness for East Marion.

19 COMMISSIONER EDGAR: Mr. Reilly.

20 MR. REILLY: The concern I have about that
21 remedy, and I was going to do all of that if she didn't
22 appear after we went through all this, was before we
23 even get to that, I don't want to go to the expense and
24 everything to set up a deposition if she doesn't have
25 counsel, and according to my understanding, if I can't

1 use that deposition in the way that I need to use it at
2 the hearing. So my suggestion would be to give whatever
3 leave of the prehearing officer decides whatever length
4 of time to determine whether Mr. Hein, in fact, can
5 secure and does secure an attorney for purposes of
6 representing her at deposition and for the purposes of
7 conducting any deposition he chooses he wants to on the
8 same day.

9 And by the way, I have committed that the
10 other seven people will make themselves available on the
11 afternoon that we would propose to depose Bea Jordan,
12 either on the 28th or the 29th at 10:30 a.m. We hope to
13 do that at the County Library, which is close to the
14 service territory, although we haven't set that up yet.
15 At the conclusion of that deposition we would have
16 lunch, and then starting at 2:00 p.m. we would
17 coordinate and work with the attorney, whoever he
18 selects, to make the other seven people available in
19 some sequence, because some of them work, and we will
20 try to, you know, work them in in an orderly fashion so
21 they can talk to whoever they want to talk to the same
22 afternoon of the day, either the 28th or the 29th. So
23 we would put that out.

24 And then we would hope that maybe the
25 Commission would give Mr. Hein 24 hours, 48 hours, you

1 know, whatever to see if he is able to secure and wants
2 to secure an attorney to do all this. And failing
3 that --

4 **MR. HEIN:** Well, Mr. Reilly, I don't have a
5 problem with most of that. I do have a little bit of a
6 problem with the fact that even though I have made a
7 call to an attorney and I hope to have an answer yet
8 today, many times attorneys don't respond that quickly
9 or they have conflicts in their schedule. So to sit and
10 impose a 48-hour deadline just isn't reasonable.

11 **MR. REILLY:** Well, I leave that to the
12 Commissioner to decide what is a reasonable length of
13 time. But we are at the precipice of this cliff for one
14 reason and one reason only, it is the continuous and
15 unending failure of East Marion to do anything to
16 prosecute its case. And there comes a time when there
17 is a failure --

18 (Inaudible, simultaneous conversation.)

19 **COMMISSIONER EDGAR:** Whoa, whoa, whoa.

20 (Inaudible, simultaneous conversation.)

21 **COMMISSIONER EDGAR:** Mr. Hein. Mr. Hein.

22 **MR. HEIN:** -- it was also my understanding
23 that there was some sort of mediation going to be set
24 up. That hasn't been set up.

25 **COMMISSIONER EDGAR:** Mr. Hein, hold on.

1 If you continue to speak over me, I am going
2 to put you on mute and you will only be able to listen.
3 That is not what I want to do. I want us to all work
4 forward on everything as we did this morning
5 cooperatively and see what needs to be done. But I need
6 to ask you to work with me and to go through the Chair,
7 and Mr. Reilly, as well.

8 **MR. REILLY:** Yes.

9 **COMMISSIONER EDGAR:** And we will move forward.

10 Mr. Hein, I understand when dealing with
11 others and scheduling matters, a 48-hour time period can
12 go by very quickly, especially when the return of phone
13 calls is not always in your control. I think many of us
14 in this room have experienced that frustration.

15 However, I must point out that this is a
16 docket that was initiated upon your petition, as is your
17 right, but it was initiated at your petition, that you
18 have been given orders setting dates so that we may move
19 through this. None of what we are discussing today is
20 new today. We need to make sure that everybody is in
21 the proper posture for hearing on the date that has been
22 set. So you have a number of things that are due Friday
23 and Monday. Let's talk through that for a moment.

24 You have committed to having interrogatories
25 complete by Friday, September 16th, and to have them

1 sent by overnight mail so that they will be at the
2 Commission by, at the latest, Monday morning,
3 September 19th. You have committed to review the
4 material in the motion to substitute Ms. Turner's
5 testimony for Mr. Turner's, to let the Commission know
6 by close of business on Friday if you have any objection
7 to that. If no objection is received, I will deem that
8 as no objection.

9 You also have prehearing statements that are
10 due to the Commission by close of business on
11 September 19th. Ms. Bennett will walk you through,
12 again, the steps necessary to get that information to
13 us, because I would point out that a fax does not meet
14 the requirements.

15 We have three other issues that we need to
16 move forward on today. One is the steps for
17 Mr. Smallridge or for you on his behalf, the two of you
18 to file the information for us so that he may be
19 considered as a possibility for your qualified
20 representative for the prehearing conference on
21 October 3rd. We need to determine how we are going to
22 do depositions of witnesses in a timely manner so that
23 due process for all parties is assured. And then we
24 will look at the preliminary list of issues with the
25 understanding that we will have more detailed discussion

1 available to us at that prehearing conference on
2 October 3rd.

3 Now, Mr. Reilly has offered to have the
4 intervenor customers available for you or your
5 representative to depose in Ocala, Mr. Reilly, did you
6 say?

7 **MR. REILLY:** I would say he or the attorney,
8 not a qualified representative. I am going to check
9 with the Florida Bar, but I think to conduct that
10 deposition it is going to have to be an attorney. I
11 will check on that.

12 **COMMISSIONER EDGAR:** Okay. And, Ms. Bennett
13 or -- I was going say Brubaker. I apologize for that.
14 Can you speak to that point, or is that something that
15 we need to --

16 **MS. CRAWFORD:** Not authoritatively. I believe
17 that Mr. Reilly has correctly stated that there are some
18 restrictions on the use of depositions unless they are
19 taken in accordance with the full panoply of protections
20 for the witness as much as for the party taking the
21 deposition, but I would also need to confirm that. I
22 can do so now, if you wish, or I can confirm that once
23 we are concluded with the conference and make sure all
24 parties are apprised.

25 **COMMISSIONER EDGAR:** Mr. Reilly.

1 **MR. REILLY:** That would be helpful. I can see
2 that maybe he could someone to be a qualified
3 representative in an administrative proceeding, but then
4 to actually conduct that deposition, I don't know the
5 precedence on whether that constitutes an unauthorized
6 practice of law.

7 **MS. CRAWFORD:** I would have to confess I do
8 not know the details myself.

9 **COMMISSIONER EDGAR:** Okay. And let me ask,
10 Mr. Hein -- and I may have confused that point
11 unnecessarily. Mr. Hein, if -- and, again, the material
12 needs to be filed, it needs to be considered, and it
13 would actually go to our Chairman's office to determine
14 if the qualifications for a qualified representative are
15 met. If all of that were to occur, and Mr. Smallridge
16 were to be qualified as a qualified representative, is
17 it your intention to have him, if possible, perform the
18 depositions, or are you planning to hire an attorney to
19 do those depositions on either the 28th or 29th?

20 **MR. HEIN:** It is my intent to hire an attorney
21 to do those depositions.

22 **COMMISSIONER EDGAR:** Okay. So that may be a
23 moot point that I inadvertently injected. But, Mr.
24 Reilly, I appreciate the specification so that we are
25 all clear moving forward.

1 Okay. Then this is where I think we are. I
2 think we are at Mr. Reilly making the customers
3 available for depositions on the 28th or the 29th. I
4 think we can leave it at those two days for now. Mr.
5 Hein is in the process of retaining an attorney to
6 conduct those depositions. And, Mr. Hein, those are the
7 dates that they are available, so the attorney that you
8 retain will need to be prepared and able to conduct
9 those depositions on one of those two dates in that
10 area.

11 I am at a little bit of a loss as to how to
12 proceed with Ms. Jordan. Mr. Reilly, do you have a
13 suggestion?

14 **MR. REILLY:** I think it's fair for us to
15 provide our intervenors to be deposed if Bea Jordan has
16 been made available and made available in a way that we
17 can use it. So it might be since so many things are
18 coming due by 5:00 p.m. on Monday, the 19th, the
19 prehearing statement, we have the interrogatories due
20 that morning, it may be that this opportunity for him to
21 commit and hire an attorney, get the name and address
22 and everything of the attorney, that it is going to make
23 us able to depose his witness, as well as him to be able
24 to depose our witnesses, perhaps that deadline could be
25 pushed all the way back to 5:00 o'clock on Monday, the

1 19th. Then we will know where the case sits, whether he
2 has or has not secured an attorney to prosecute his case
3 for him. Or if he chooses not to, then he just won't
4 have depositions. He can prosecute it himself at the
5 hearing on the 13th. Or if he gets one qualified, maybe
6 his qualified representative will do it, but we will
7 know yea or nay on the depositions by 5:00 o'clock on
8 the 19th.

9 If, in fact, we don't get to depose his
10 witness, and I've got to research between now and then
11 whether I can even get a waiver. I don't know the
12 answer to that question, whether that is even effective
13 or not. So I will have to find out between now and 5:00
14 o'clock on Monday whether his failure to be able to get
15 an attorney to protect his witness so we can ask her
16 might just totally preclude our ability to go forward
17 with our case.

18 So I think it's critical that we find out
19 whether he is going to be able to get an attorney or not
20 by 5:00 o'clock. If he doesn't, or he doesn't do any
21 one of these other things, then we are looking at our
22 motion to dismiss this case.

23 **COMMISSIONER EDGAR:** Ms. Bennett.

24 **MS. BENNETT:** I believe that Mr. Reilly's
25 suggestion that we have until the 19th to hear from Mr.

1 Hein about retaining an attorney for the depositions and
2 whether he is willing to make a deposition is a good
3 suggestion. It does leave unanswered if no attorney is
4 provided what is the remedy that the Commission should
5 permit. We don't have a subpoena for Ms. Jordan, so you
6 don't have a motion to compel, and I'm a little bit
7 uncertain if you don't have some official activity to
8 act upon where that leaves us. I do believe that there
9 needs to be some sort of instructions, whether it's an
10 order from you or a subpoena from the Clerk requiring
11 depositions.

12 **MR. REILLY:** I will be happy to go ahead with
13 the idea that it could be moved, you know, depending
14 upon convenience of the witness to set the deposition
15 for 10:30 a.m. on the 28th at a certain time. And I
16 will get a subpoena, and we will get that done before
17 the end of the week. That will address your concern
18 there.

19 But if I find out that I can't really get a
20 waiver, then that won't help me on my problem of using
21 the deposition, then I still think we will want to file
22 a dismissal of the case because of the circumstances we
23 have been pushed up against. And then it will be the
24 Commission's decision, you know, what to do with that
25 motion to dismiss, and staff to weigh in on whether it

1 is appropriate or not.

2 **COMMISSIONER EDGAR:** Mr. Reilly, you are very
3 familiar with our rules and procedures. I see it as my
4 job today to lay out the time frames and all of those
5 things that need to occur in order for us to hold that
6 hearing on October 13th. If deadlines are missed, or if
7 there are other items that come to the attention of any
8 party or to me in my role here in this docket, then
9 certainly you need to research and file whatever items
10 you think are best for your case on behalf of your
11 clients and those will be given due consideration.

12 **MR. REILLY:** Very good.

13 **COMMISSIONER EDGAR:** Mr. Hein, I think where
14 are is if this matter is to proceed, we need to know if
15 Ms. Jordan is going to be available for deposition and
16 the attorney that will be representing her. So we have
17 talked about close of business on Monday. That would
18 give you the remainder of today when we are finished,
19 and three work days plus the weekend. Do you have a
20 response?

21 **MR. HEIN:** It was my understanding it was
22 Monday, the 19th.

23 **COMMISSIONER EDGAR:** Is that not what I said?
24 Monday, the 19th, yes. Close of business on Monday, the
25 19th, which would give you three work days, Thursday,

1 Friday, and Monday.

2 **MR. HEIN:** I will attempt to do that. Like I
3 said, I made the call during the break and I will follow
4 up when we are done with this conference call, and I
5 will have an answer. Whether I have been successful or
6 not by the 19th, I don't see that as being a problem.

7 **COMMISSIONER EDGAR:** Okay. Good.

8 Ms. Bennett.

9 **MS. BENNETT:** It struck me that perhaps we
10 should remind Mr. Hein that he also would be required to
11 file subpoenas for those witnesses that he wishes to
12 depose. And even though Mr. Reilly said that he would
13 make them available, it's still common practice before
14 the Commission to subpoena witnesses. Also, Mr. Hein
15 needs to be aware that it is his responsibility or the
16 parties responsibility to work out the details of hiring
17 a court reporter to attend those depositions. I know
18 that traditionally the party who schedules the
19 deposition is responsible for hiring that court
20 reporter. So just dotting the Is and crossing the Ts.

21 **COMMISSIONER EDGAR:** Mr. Hein, do you have any
22 comment or question?

23 **MR. HEIN:** Well, just I'm not familiar with
24 that. I know in a civil process that if a subpoena is
25 issued, I don't, as a nonattorney, have the authority or

1 power to compel that. So that just adds an additional
2 layer of burden, and in getting the subpoenas done in
3 time for the 28th or 29th would have to wait until the
4 attorney is actually retained.

5 **COMMISSIONER EDGAR:** Yes, and that is part of
6 the process. Okay.

7 **MR. HEIN:** So what I'm understanding is that
8 Mr. Reilly is not willing to make his clients available
9 without a subpoena, that's what I'm hearing.

10 **COMMISSIONER EDGAR:** Mr. Reilly, could you
11 speak to the requirements?

12 **MR. REILLY:** I didn't say that. I think that
13 if you do hire an attorney -- I wanted to make available
14 our witnesses, if you made your witness available.
15 There is no reason why our witnesses should sit and have
16 you arrange someone to depose them when you -- in fact,
17 if you don't make your witness available, I will be
18 filing a motion to dismiss this case if she is not
19 available for hearing and not available for deposition,
20 starters.

21 If she does show up for her deposition, yes, I
22 have said that I have contacted my clients and they said
23 they are willing voluntarily to make themselves
24 available. So I think that is why that 5:00 o'clock on
25 Monday, the 19th, is so critical to me. If you still

1 haven't gotten an attorney, and I will go ahead and I
2 will notice it, and I will subpoena her, but I don't
3 know that she is going show up, and I don't know that
4 there is any attorney, and I don't know that I can use
5 that deposition. So it might be just an exercise in
6 futility.

7 So the hiring of an attorney is critical to
8 this matter. And if we get all the way up to the
9 deadline, past the deadline, past the deadline, and you
10 still don't have an attorney at 5:00 o'clock on Monday,
11 and we are pushing right up against the hearing, you
12 know, we are just -- we don't know what to do at the
13 Office of Public Counsel to get ready for that hearing.
14 We are prejudiced and compromised, and be expecting a
15 motion to dismiss this case.

16 **MR. HEIN:** Mr. Reilly, I can tell you this
17 that I will do everything in my power to make Ms. Jordan
18 available. I have taken extra steps to have other
19 parties physically go to her home and if she is present
20 and speak to her. I will take those steps. It is to
21 the utility's benefit to have her deposition and have
22 her as a witness, but I will take those steps to see
23 what I can do to make her available.

24 **COMMISSIONER EDGAR:** Mr. Reilly, to the Chair.
25 Mr. Hein, it is my strong belief that if you

1 retain counsel on this matter and we are notified of
2 that by close of business on Monday, that even though we
3 have a very short time frame in front of us, that even
4 with that that the procedural issues, such as a
5 subpoena, court reporter requirement, et cetera, can be
6 worked through.

7 I know that Ms. Bennett on behalf of the
8 Commission, and Mr. Reilly on behalf of the Office of
9 Public Counsel will work closely and diligently with the
10 counsel that you retain in order to work through all of
11 those issues such that we can all be prepared to move
12 forward.

13 Mr. Reilly.

14 **MR. REILLY:** I agree with your statement
15 completely. We will cooperate and work, subpoena or no
16 subpoena, get the dates, everything will run smoothly.
17 But if we at 5:00 o'clock on Monday have no one to even
18 talk to and work on, and we are up against the wall on
19 this hearing, that is the time to say -- and we will say
20 and allege to this Commission that this case should be
21 dismissed for failure to prosecute.

22 **COMMISSIONER EDGAR:** Mr. Hein, do you
23 understand the statement that Mr. Reilly just made?

24 **MR. HEIN:** I do.

25 **COMMISSIONER EDGAR:** Okay.

1 Ms. Bennett.

2 **MS. BENNETT:** I believe that we are at the
3 point of talking about the issue list. We have had an
4 opportunity to look at the Office of Public Counsel's
5 proposed list of issues as compared to the Commission
6 staff's list of issues, and Commission staff believes
7 that Issues 1, 2, 3, 4, and 5 provided by Office of
8 Public Counsel are acceptable.

9 **COMMISSIONER EDGAR:** Ms. Bennett, let me ask
10 you to hold off for just a moment.

11 Mr. Hein, I know that when we took a break for
12 further discussion and for lunch just a little while
13 ago, Ms. Bennett or from other office sent you by fax a
14 document entitled Office of Public Counsel Preliminary
15 List of Issues. Do you have that?

16 **MR. HEIN:** I did. I did receive them.

17 **COMMISSIONER EDGAR:** Good. Good. I just
18 wanted to make sure that you had the document that Ms.
19 Bennett is now referring to.

20 So, Ms. Bennett, Issues 1 through 5, and
21 then --

22 **MS. BENNETT:** Staff agrees with Issues 1
23 through 5. And if Mr. Hein agrees, then we can go ahead
24 and use those for the prehearing statement. And the
25 problem we have is with Office of Public Counsel's Issue

1 6; we don't believe that is appropriately worded. We
2 would like to use Commission Staff's Issue 6, but maybe
3 I'm getting ahead of myself.

4 **COMMISSIONER EDGAR:** Let's pause for a moment.
5 Mr. Reilly.

6 **MR. REILLY:** I have an easy solution to this
7 problem. I also studied this over the break, and I do
8 believe -- by the way, you will see OPC's Issue 8 is
9 blank. It was, in fact, Staff's Issue 6 in all respects
10 except for the little bit of language at the end when it
11 says that we are going to open up a show cause because
12 of failure to follow this rule and the statute. I had a
13 comma, and I said and for failure to comply with other
14 Commission orders, rules, and statutes.

15 If we put that little additional language in
16 staff's Issue 6, it takes care of OPC's Issue 6 because
17 if, in fact, we have an order that comes out of this
18 that eventually orders the utility to do these
19 installations, and they fail to do it, well, then that
20 would be failing to follow an order, and it could be
21 part of the show cause, which would be a whole separate
22 proceeding, and the company would be given an
23 opportunity to say why it shouldn't be fined, because it
24 has some reasonable reason why it didn't do within the
25 deadline or whatever.

1 I think the utility would be protected in a
2 show cause proceeding to give their reasons why they
3 shouldn't be subject to a fine, but we do have some sort
4 of a -- my concern is if we just -- to have some, you
5 know, follow-up on any order and some procedure for
6 consequences of failing to do what the order says.

7 So I propose dropping OPC's Issue 6, adopting
8 staff's Issue 6 with just a little bit of words, comma,
9 and for failure to comply with other Commission orders,
10 rules, and statutes. I think that will solve that
11 problem.

12 **COMMISSIONER EDGAR:** Give me just a moment.

13 **MR. HEIN:** Am I to understand there is an
14 Issue 8 on the Commission's preliminary list of issues,
15 because mine does not show that?

16 **COMMISSIONER EDGAR:** No. No, Mr. Hein, there
17 is not. We are going kind of back and forth between two
18 documents, and I will do my best to walk you through it.
19 So give me a moment. Before we do that, Mr. Reilly, I
20 want to make sure that I am understanding you. And you
21 are proposing to substitute the language on the staff's
22 preliminary list of issues for Issue 6, and with one
23 slight wording change. And if you would for me read
24 Issue 6 with the additional language from beginning to
25 end for the record and for my benefit as to what you

1 would propose that language to be.

2 **MR. REILLY:** Okay. New Issue 6 reads, "Should
3 the Commission initiate a show cause proceeding to
4 determine if East Marion should be fined up to \$5,000
5 per day for failure to provide service in its territory
6 in a timely manner pursuant to Rule 25-30.310, Florida
7 Administrative Code, and Section 367.11, Florida
8 Statutes, and for failure to comply with other
9 Commission orders, rules, and statutes." And you could
10 drop the word other. Just and failure to comply with
11 Commission orders, rules, and statutes. Not other, drop
12 that.

13 **COMMISSIONER EDGAR:** Ms. Bennett.

14 **MS. BENNETT:** At first blush I was comfortable
15 with adding that language, but really Issue 6 is the
16 show cause procedure, proceedings for prior failures.
17 What Mr. Reilly is suggesting is a show cause proceeding
18 for possible future failings, and we don't know that
19 that would happen, and we need to send notice to the
20 utility and give them an opportunity to correct that.
21 So I'm a little concerned about adding and failure to
22 comply with other -- I mean, certainly we will bring
23 show cause proceedings against a utility who fails to
24 comply with a Commission order. We have and will
25 continue to do that, but this discreet issue was dealing

1 with his prior conduct in this case.

2 **COMMISSIONER EDGAR:** Mr. Reilly.

3 **MR. REILLY:** I understand. So she is saying
4 that there would be still another separate show cause
5 proceeding if future conduct warranted.

6 **MS. BENNETT:** Only if, yes.

7 **MR. REILLY:** And I guess speaking for the
8 intervenors, their concern has been that this has gone
9 on and he didn't do the settlement, you know, a year or
10 year and a half ago, and it has inured to his benefit
11 because the customers have continued to pay extra
12 charges for wastewater on their water consumption.
13 Anyway, they were trying to figure out some way that
14 there will be consequences for all of these delays. But
15 I do understand your comment, and I guess that we will
16 just be diligent at the appropriate time and ask for a
17 show cause prospectively.

18 **MS. BENNETT:** So I think that staff's Issue
19 6 would be the more appropriate language, and I think I
20 just heard Mr. Reilly agree.

21 **MR. REILLY:** I think you did.

22 **MS. BENNETT:** I haven't heard if Mr. Hein
23 agrees with those issues.

24 **COMMISSIONER EDGAR:** And, Mr. Hein, I was
25 planning on coming back to you next. So the document

1 that was faxed to you just a little while ago that has
2 these issues laid out, what our staff counsel and Mr.
3 Reilly are proposing is to use for the issues for the
4 hearing would be the language that you have for Issues
5 1, 2, 3, 4, and 5, and then to not use the language for
6 Issue 6 that is in that document, but to substitute the
7 language that was on the Commission staff's preliminary
8 list of issues. Do you have that document?

9 **MR. HEIN:** I do.

10 **COMMISSIONER EDGAR:** Okay. Good. So you
11 understand that what we are proposing, what is before us
12 for discussion?

13 **MR. HEIN:** Right. And I do have a problem
14 with that. I do think the one that is in the Public
15 Counsel's would make more sense than the one the staff
16 is proposing. I do think there is two other issues that
17 need to be added that I have not provided to the
18 Commission, and I don't know if there is still time to.
19 But other than that, I don't have a problem with the
20 issues as outlined in the Public Counsel's.

21 **COMMISSIONER EDGAR:** Okay. My understanding
22 is that there was a conference call. Ms. Bennett, I
23 don't know if you have the date before you. I don't,
24 but that there was a conference call scheduled for all
25 parties to discuss this language, list of issues, and

1 that you did not participate in that. So that would
2 have been an opportunity. However, today is an
3 opportunity, as well. So if you have -- you said two
4 other issues that you would like to propose. Do you
5 have that -- do you have suggested language on those
6 issues to share with us today, or is that something that
7 you would be sending us in the next day or two?

8 **MR. HEIN:** I can, and it speaks to Issue 2 on
9 the Office of Public Counsel issue in the wording of
10 that. I think the wording needs to be changed slightly.
11 I don't know if the Commission wants to hear it at this
12 point in time or if they want me to provide it in
13 writing. It goes to the heart of this matter.

14 **COMMISSIONER EDGAR:** Okay. If you have a
15 suggested language change for Issue 2 that you would
16 like to share with us now, you certainly can do that.
17 We will have an opportunity today to discuss language
18 and see if we can reach agreement on some of it, but
19 there is time to continue to work on the issues and the
20 issue language between now and the October 3rd
21 prehearing conference when we will, at that point in
22 time, come to agreement, or if lack of agreement, by my
23 decision, as to what the exact wording of the issues
24 will be. So do you have a suggestion for Issue 2?

25 **MR. HEIN:** Yes, I do. On Issue 2, I think the

1 wording should be changed to, "Did the intervenors
2 provide sufficient evidence to the utility that they
3 requested an irrigation meter."

4 **COMMISSIONER EDGAR:** Would you say that just
5 one more time for me?

6 **MR. HEIN:** Did the intervenors provide
7 sufficient evidence that their request for an irrigation
8 meter was submitted to the utility.

9 **COMMISSIONER EDGAR:** Give us a moment. We are
10 all looking at it.

11 Ms. Bennett.

12 **MR. HEIN:** Because the heart of the matter
13 goes to whether the intervenors actually contacted the
14 utility to have irrigation meters installed. That is
15 the whole heart of the matter, not just whether they
16 initiated something. Whether they actually made
17 application or contacted the utility for irrigation
18 meters. And Issue 2 is too vague and unclear.

19 **MS. BENNETT:** I understand where he's coming
20 from. I think if we take that same phrase and put it in
21 just a slightly different spot it would make -- it would
22 work. Perhaps we could say did Intervenors Smith,
23 Politte, Mallon, and Will provide sufficient --

24 **MR. REILLY:** Are you on Issue 1? Are we on 1
25 or 2?

1 **MS. BENNETT:** Two. On OPC's list.

2 **MR. REILLY:** Oh, OPC's 2.

3 **MS. BENNETT:** That their request for an
4 irrigation meter was initiated with the utility prior to
5 April 7th.

6 **MR. HEIN:** That would make sense.

7 **COMMISSIONER EDGAR:** At this point, realizing
8 there will be time for all of us to continue to look at
9 the specific language. But, Mr. Reilly is nodding and,
10 Mr. Hein, that is Ms. Bennett's attempt right now to try
11 address the point that you just raised with us. So do I
12 have this right, what --

13 **MR. REILLY:** I'll talk to my clients on that
14 one, but it's something that we can get resolved at the
15 prehearing conference.

16 **COMMISSIONER EDGAR:** Okay. So what we are
17 looking at is making a slight addition to the language
18 on Issue 2 to read, "Did Intervenors Smith, Politte,
19 Mallon, and Will provide sufficient evidence that their
20 request for an irrigation meter was initiated with the
21 utility prior to April 7th, 2009, as required by Order
22 Number PSC, et cetera.

23 **MS. BENNETT:** Yes, that's correct.

24 **COMMISSIONER EDGAR:** Okay. Then we are going
25 to use that as our language for Issue 2 for these

1 purposes going forward today.

2 **MR. REILLY:** This might be the time to ask for
3 a stipulation, because it gets into the issue if
4 there -- if it is stipulated that the company is
5 prepared to reinstall two meters for two of the
6 intervenors and to install Ms. Turner's meter, if he can
7 stipulate to that today, then that gets rid of Issue 1,
8 plus it means I don't have to worry about the language
9 on Issue 2 to pick up these other people, if there is
10 something deficient on Issue 1.

11 So I guess my quick question would be is it
12 Mr. Hein's continued position that he is prepared at the
13 appropriate time to reinstall Mr. Greco's and
14 Mr. Singel's meter as well as install Ms. Turner's?

15 **MR. HEIN:** Mr. Reilly, I don't have a problem
16 letting the Commission know or you that I have agreed to
17 reinstall the meters for Greco and Mr. Singel. I was
18 not aware of an agreement from Ms. Turner, but I think
19 there was some correspondence at one time regarding
20 that, and I would have to review that.

21 **MR. REILLY:** No, I think if you refer to your
22 protest you expressly exclude -- you expressly admit
23 that you will provide a meter to Ms. Turner. And our
24 position in this case has been since it was not
25 protested, there is an outstanding order requiring you

1 to do so. Because it was in the order and it was not
2 protested, therefore, you are in violation of the order,
3 even in the status conference.

4 **MR. HEIN:** Well, I disagree with that, Mr.
5 Reilly. I think there was a stipulation that she had
6 made that Mr. Turner had made an application and
7 provided the funds back then.

8 **MR. REILLY:** And that's fine. Then if you can
9 stipulate the two, then that's fine. That's what we
10 will do today. If you can't stipulate as to Ms. Turner,
11 then we need to -- I will need to think about tweaking
12 the language on 2, because she either gets it because it
13 is not under protest, or she has to prove up that she
14 did make a -- that she did ask for the meter before the
15 deadline. So I'll work on that, some alternative
16 language on 2.

17 **COMMISSIONER EDGAR:** I understand. Thank you.

18 **MR. REILLY:** If we, for some reason, don't
19 prevail on Issue 1.

20 **COMMISSIONER EDGAR:** This is nonsubstantive,
21 but for my benefit. I see two different spellings
22 for -- is it Greco, Mr. Reilly?

23 **MR. REILLY:** It is Greco, G-R-E-C-O, I
24 believe. Is it misspelled? Yes, I see Greco. It is
25 C-O, I believe.

1 **COMMISSIONER EDGAR:** Okay. And obviously we
2 can clean up.

3 **MR. REILLY:** Right.

4 **COMMISSIONER EDGAR:** Okay. So, Mr. Hein, you
5 have raised a point with Issue 2, and we are going to
6 tweak that language. And I know that Mr. Reilly has
7 raised the potential of a stipulation regarding specific
8 customer meters per the petition that you filed as it
9 reflects upon the order that the Commission had
10 previously issued. Do you have any other suggested
11 language changes to what is before us for Issues 1
12 through 5?

13 **MR. HEIN:** I do not at this point in time. I
14 haven't had much time to read them.

15 **COMMISSIONER EDGAR:** I understand.

16 **MR. HEIN:** But by Monday, along with the
17 answers to the interrogatories, I will have several
18 issues that I think need to be added to this. I don't
19 have the language completely spelled out here to share
20 with the Commission, but I will have them by Monday.

21 **COMMISSIONER EDGAR:** Mr. Reilly.

22 **MR. REILLY:** I would suggest that Issue 1
23 would have to be reworded to delete Greco and
24 Mr. Singel, given the continued stipulation that he is
25 prepared to go ahead and reinstall those meters. So

1 assuming you continue to be committed to that, I would
2 suggest a change in language. Well, we will put it in
3 the appropriate place in the prehearing statement.
4 There is a place in the prehearing statement for
5 stipulations, and it will say the parties stipulate that
6 the utility is obligated to reinstall those two meters.
7 And with that stipulation, we would have to reword Issue
8 1 to drop those two intervenors and leave only Turner in
9 Issue 1. Apparently that is in dispute.

10 **COMMISSIONER EDGAR:** And my belief is that by
11 early next week we will either have proposed stipulation
12 language that addresses it or it will remain in dispute
13 as an issue for the hearing.

14 **MR. REILLY:** Okay.

15 **COMMISSIONER EDGAR:** Okay. We have talked
16 about Issue 6. Then, Ms. Bennett, Issue 7.

17 **MS. BENNETT:** Staff agrees with the proposal
18 from Office of Public Counsel for Issue 7. There I
19 don't believe is an Issue 8 at this time.

20 **MR. REILLY:** That's correct.

21 **COMMISSIONER EDGAR:** However, Mr. Hein has
22 shared with us that he thinks he may have two additional
23 issues to propose at this time. So where I am at right
24 now is we have a good working document for Issues 1
25 through 7, per the discussion that we have had. That we

1 will leave a placeholder for proposed Issue 8 and 9,
2 language to be supplied -- proposed language for further
3 review to be supplied by Mr. Hein by close of business
4 Monday, which would move should the docket be closed to
5 Issue 10.

6 Mr. Hein, any additional?

7 **MR. HEIN:** I just -- I have an issue with
8 staff's Issue 3 and Public Counsel Issue 4, but I will
9 address that in writing when I submit my list of --
10 preliminary list of issues.

11 **COMMISSIONER EDGAR:** Okay. That works for me,
12 and I am seeing affirmative nods from Ms. Bennett and
13 from Mr. Reilly, as well. Any other comments on the
14 preliminary list of issues as we have it before us and
15 as we have discussed?

16 **MS. BENNETT:** None from staff.

17 **MR. REILLY:** None from Public Counsel.

18 **COMMISSIONER EDGAR:** Okay. Then I view this
19 as good discussion. Again, a working document as is
20 part of the process. And I understand, Mr. Hein, that
21 you will be communicating to the Commission as part of
22 this docket proposed additional issue language and some
23 proposed language changes on some of these issues. I
24 expect that you, on behalf of the utility, and Mr.
25 Reilly and Ms. Bennett will have an opportunity to then

1 have a conversation about all of that prior to the
2 prehearing conference.

3 **MS. BENNETT:** I can schedule another issue
4 identification meeting after the preliminary issues are
5 filed on Monday before the prehearing conference.

6 **COMMISSIONER EDGAR:** So, Mr. Hein, what I'm
7 asking of the three of you is for you and Mr. Reilly to
8 cooperate with Ms. Bennett to schedule a conference call
9 for the three of you on behalf of the entities you
10 represent to discuss those issues in further detail,
11 work towards agreement where possible, and then we will
12 discuss that on the record in further detail at the
13 prehearing conference.

14 **MR. HEIN:** Yes. I don't have a problem with
15 that.

16 **COMMISSIONER EDGAR:** Okay. Good. Any other
17 matters?

18 **MS. BENNETT:** Commissioner Edgar, I do want to
19 point out that I will be available to Mr. Hein. We had
20 discussed qualified representative status. I will walk
21 him through the Commission's website to show him where
22 he can look up different petitions that have been filed
23 and orders that have been issued granting qualified
24 representative status, if he wishes to call me.

25 **MR. HEIN:** Well, I was to understand -- it was

1 my understanding there were some samples available, and
2 now I'm not hearing that those samples will be provided.

3 **COMMISSIONER EDGAR:** Mr. Hein, I think there
4 are samples, or examples is probably a more accurate
5 term, of these documents that have been utilized in
6 other documents that I believe will give you good
7 guidance as to the type of information that is required,
8 and Ms. Bennett will be available to show you on-line
9 where those exist and see if there are other ways that
10 she can be helpful to you as you work through that
11 process.

12 **MR. HEIN:** I appreciate that.

13 **COMMISSIONER EDGAR:** And I realize that
14 everybody is very, very busy. And, again, we have a
15 short time frame and a number of things by all of us
16 that need to be completed in the next few days. Let me
17 ask you this. Is there -- if you can take just a moment
18 to look at your calendar. Is there a time, if you can
19 give us a window of time and a specific day in the next
20 very little while that Ms. Bennett can contact you so
21 that she can follow through on that request?

22 **MR. HEIN:** Yes. I have time if she has time
23 after the conference call is over with.

24 **COMMISSIONER EDGAR:** Ms. Bennett, is later
25 this afternoon --

1 **MS. BENNETT:** I probably would be available at
2 4:15.

3 **MR. HEIN:** All right. I will attempt to
4 contact you at 4:15, then.

5 **COMMISSIONER EDGAR:** And I am going to ask Ms.
6 Bennett to call you at 4:15, and hopefully we can make
7 that work.

8 **MR. HEIN:** Thank you.

9 **MS. BENNETT:** I will call Mr. Hein at 4:15 at
10 the number that he gave Mr. Staden earlier.

11 **COMMISSIONER EDGAR:** Thank you.

12 **MR. HEIN:** Thank you.

13 **COMMISSIONER EDGAR:** Good.

14 Mr. Reilly, did you have anything additional?

15 **MR. REILLY:** Is that just a conversation
16 between the two of them?

17 **COMMISSIONER EDGAR:** I believe so.

18 **MR. REILLY:** Okay.

19 **COMMISSIONER EDGAR:** There will be plenty of
20 others for you to join in on.

21 **MR. REILLY:** That's fine.

22 **COMMISSIONER EDGAR:** Okay. All right. Then I
23 am going to try to recap. Ms. Bennett at 4:15 today is
24 going to contact Mr. Hein by phone at the number that he
25 has given to our staff to share additional information

1 with him to help him with the process of filing the
2 paperwork for Mr. Smallridge to request to be a
3 qualified representative such that he can represent Mr.
4 Hein at the October 3rd prehearing conference.

5 Ms. Bennett.

6 **MR. HEIN:** Mr. Hein needs to have a computer
7 available before him, so that I can walk him through how
8 to access that information.

9 **COMMISSIONER EDGAR:** Mr. Hein, for your
10 conversation at 4:15 with Ms. Bennett, the information
11 that she can share with you is available on-line, so you
12 need to have your phone and your computer together.

13 **MR. HEIN:** I will try to see if I can make
14 that happen. I don't have Internet access, but I will
15 go someplace where I should be able to have that.

16 **COMMISSIONER EDGAR:** Thank you. Thank you.

17 Then moving on. We have set the dates of
18 September 29th or -- excuse me, September 28th or
19 September 29th as dates where the customers, through Mr.
20 Reilly, will be available for depositions, recognizing a
21 number of procedural things that need to take place
22 before that.

23 We have agreed on a working document for a
24 preliminary list of issues with the understanding that a
25 conference call will be scheduled prior to the

1 prehearing conference to discuss that language in more
2 detail when everybody has had the opportunity to look at
3 it more closely. And Mr. Hein is going to send by close
4 of business on Monday his suggested new issues and any
5 other language changes.

6 Mr. Hein has committed to completing the
7 interrogatories that are due to Mr. Reilly by Friday,
8 September 16th, and sending them by overnight mail to
9 the Commission to be here by Monday, September 19th.

10 **MR. HEIN:** Let's back up for a moment. I
11 guess I am under a misimpression. I have
12 interrogatories from staff. I have not seen the ones
13 from Mr. Reilly. I will go through the paperwork again
14 to make sure I have them, but when I was saying that --

15 **COMMISSIONER EDGAR:** Hold on, because I may
16 have misstated, and I will ask Ms. Bennett to clarify
17 for all of us.

18 **MS. BENNETT:** It is Commission staff's
19 interrogatories to Mr. Hein.

20 **COMMISSIONER EDGAR:** Okay. Mr. Hein, thank
21 you.

22 **MR. HEIN:** So I do have them. Okay.

23 **COMMISSIONER EDGAR:** That's okay. Thank you
24 for that question. I want to make sure we are all
25 clear. And it is interrogatories from staff, however,

1 Mr. Reilly is anxiously awaiting them so he can review
2 them for his case preparation.

3 Mr. Hein has committed to reviewing the motion
4 filed by Mr. Reilly requesting to substitute the
5 testimony of Ms. Turner for Mr. Earl Turner, and has
6 agreed to review that and let us know of any objection
7 by close of business on Friday with the understanding
8 that if no objection is received, I will deem that as no
9 objection. Yes, Ms. Bennett.

10 **MS. BENNETT:** That probably needs to be in
11 writing filed with the Clerk, the objections.

12 **COMMISSIONER EDGAR:** Mr. Hein, if you have --

13 **MR. HEIN:** I would ask if Mr. Reilly would
14 agree to fax me that motion, because if I understood him
15 he said he mailed it just recently. And if I am to have
16 an answer by that, I may not have it by mail. So if he
17 could fax that to me so I could address it quicker. And
18 if there is a concern, I would contact him.

19 **COMMISSIONER EDGAR:** We will take that
20 additional step, and I will ask Ms. Bennett to have
21 somebody in her office send that document to you today
22 at the fax number that you gave us earlier.

23 **MR. HEIN:** Thank you.

24 **COMMISSIONER EDGAR:** Ms. Bennett, can you
25 follow through on that for me?

1 **MS. BENNETT:** I certainly can. And I will
2 also show him where he can look on-line for those
3 documents.

4 **COMMISSIONER EDGAR:** Thank you.

5 And we have agreed that prehearing statements
6 are due by close of business at the Commission
7 September 19th.

8 **MR. HEIN:** I'm sorry, I missed the beginning
9 of that.

10 **COMMISSIONER EDGAR:** Okay. Prehearing
11 statements are due to the Commission by close of
12 business, at the Clerk's Office, September 19th.

13 **MR. HEIN:** Is that different from the
14 preliminary list of issues?

15 **COMMISSIONER EDGAR:** It is different. Very
16 much related, but different.

17 Ms. Bennett.

18 **MS. BENNETT:** A prehearing statement not only
19 includes the preliminary list of issues, you will
20 include those, but you will also include your position,
21 and your witnesses, and your exhibits. It's a little
22 bit more detailed. When we walk through the docket
23 file, I can show you some dockets that you can look in
24 and see examples of sample prehearing statements. I
25 think we also -- it is described in the OEP, and I think

1 I have already filed a prehearing statement in this
2 docket when we were setting up for hearing, so there are
3 several examples he can look at.

4 **COMMISSIONER EDGAR:** Okay. And, Mr. Hein, I
5 would ask both you and Ms. Bennett to add that to the
6 list of your things that when you speak with Ms. Bennett
7 by phone at 4:15 today she can point to you on the
8 computer, as well, that I know will be helpful to you.

9 **MR. HEIN:** I appreciate that, and I will do
10 that.

11 **COMMISSIONER EDGAR:** Good. And also by close
12 of business on Monday, Mr. Hein has committed to let us
13 know if counsel has been retained to assist as required
14 with the taking of deposition of his witness.

15 **MR. REILLY:** And from our standpoint, to be
16 there for his witness when we depose her.

17 **COMMISSIONER EDGAR:** Yes. Okay. That is the
18 recap as I see it. Any items that I have missed?

19 **MR. HEIN:** Commissioner, this is Harry Will.

20 **COMMISSIONER EDGAR:** Yes.

21 **MR. WILL:** I wonder if I might speak?

22 **COMMISSIONER EDGAR:** Mr. Will, you may.

23 **MR. WILL:** Thank you. Is it my understanding
24 that Ms. Bennett is going to represent Mr. Hein?

25 **COMMISSIONER EDGAR:** No, that is incorrect.

1 And if that was a question in your mind, I'm glad that
2 you asked it so I may answer it.

3 No. Mr. Hein is representing himself. He has
4 shared with us that he plans on requesting
5 Mr. Smallridge -- I'm sorry, I apologize to
6 Mr. Smallridge for that hesitation -- that he is going
7 to file paperwork for us to consider for Mr. Smallridge
8 to be what we term a qualified representative, that is
9 basically in lieu of an attorney.

10 Ms. Bennett is in our General Counsel's Office
11 here at the Public Service Commission. She is
12 representing the Commission's General Counsel's Office
13 in this matter. And in her role as staff to the public
14 agency, the Public Service Commission, she is available
15 to answer questions about the procedural requirements
16 that Mr. Hein must meet.

17 And Mr. Reilly, who is representing you and
18 the other customers, will have full access to all of
19 that information as needed and as he desires. Does that
20 answer your question?

21 **MR. WILL:** Yes, it truly does. Thank you for
22 hearing me.

23 **COMMISSIONER EDGAR:** Of course.

24 Mr. Reilly, anything that you would like to
25 add to that? I certainly want the customers to be

1 clear, to the best of our ability, as to the roles that
2 we are all trying to follow through upon.

3 **MR. REILLY:** I believe that was correctly
4 stated.

5 **COMMISSIONER EDGAR:** Okay. Ms. Bennett.

6 **MS. BENNETT:** And I certainly can open the
7 conversation with Mr. Hein to Mr. Reilly, if that would
8 be of comfort to the parties.

9 **MR. WILL:** This is Mr. Will again. Yes, it
10 would make -- certainly make me feel better that there
11 wouldn't be any ex parte hearing.

12 **COMMISSIONER EDGAR:** Mr. Reilly.

13 **MR. REILLY:** That's fine. I'm certainly
14 available to participate and listen in on the
15 communications between staff and Mr. Hein, and am happy
16 to make myself available to do so.

17 **COMMISSIONER EDGAR:** Okay. Good. And then,
18 Mr. Will, thank you for sharing your question and
19 concern with us. Mr. Reilly, thank you for making
20 yourself available. And I know that all three will work
21 their way through the necessary steps.

22 It was brought to my attention one point that
23 I may have neglected to recap, which is that we are also
24 looking to Mr. Hein to continue to reach his witness and
25 let us know if, indeed, you receive information about

1 her availability. And I see that in conjunction with
2 letting us know if you have retained counsel for that
3 deposition process.

4 MR. HEIN: Yes, I will do that.

5 COMMISSIONER EDGAR: Okay. Any other matters?
6 Ms. Bennett, anything before we close for the
7 day?

8 MS. BENNETT: None. Thank you for your time,
9 Commissioner Edgar.

10 COMMISSIONER EDGAR: Mr. Reilly.

11 MR. REILLY: The same thing. Thank you for
12 your time.

13 COMMISSIONER EDGAR: Mr. Hein.

14 MR. HEIN: Nothing further at this point.

15 COMMISSIONER EDGAR: Okay. And anything, very
16 briefly, from the customers who have joined us here
17 today by phone?

18 MR. WILL: Yes. If it please the counsel, I
19 just tried Beatrice Jordan's number, and she is
20 answering the phone. She answered the phone when I
21 started -- when you started here at 1:00 o'clock, and
22 she just answered again, so now might be a good time to
23 reach her.

24 COMMISSIONER EDGAR: Okay.

25 MR. HEIN: I will call her the minute I

1 disconnect.

2 **COMMISSIONER EDGAR:** Okay. And just for our
3 court reporter and for my benefit, the gentleman that
4 just spoke to share that information with us potentially
5 about Ms. Jordan, can you tell us your name?

6 **MR. WILL:** Yes. Terry Will.

7 **COMMISSIONER EDGAR:** Okay. Thank you,
8 Mr. Will. It is a little difficult to distinguish
9 between the voices over the phone. So, thank you for
10 that.

11 Mr. Hein, thank you for participating with us
12 today, and to the commitments that you have made to
13 follow through on the information as we have discussed.
14 We look forward to receiving all of that.

15 Thank you to the customers, as well, for being
16 with us today. And my thanks to all who have
17 participated. I look forward to a thorough and orderly
18 process over these next few weeks. And we are
19 adjourned.

20 (The Status Conference concluded at 2:15 p.m.)

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

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

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

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

DATED THIS 26th day of September, 2011.



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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of amendment to connection/transfer sheets, increase in returned check charge, amendment to miscellaneous service charges, increase in meter installation charges, and imposition of new tap-in fee, in Marion County, by East Marion Sanitary Systems, Inc.

Docket No. 080562-WU

Filed: September 14, 2011

OFFICE OF PUBLIC COUNSEL
PRELIMINARY LIST OF ISSUES

- Issue 1:** Does the Commission's Order No. PSC-09-0263-TRF-WU require the Utility to provide properly installed irrigation meters to the homes of Intervenors Grego, Singel and Turner for the prior \$70.00 tariff charge?
- Issue 2:** Did Intervenor's Smith, Politte, Mallon and Will provide sufficient evidence that their requests for an irrigation meter was initiated prior to April 7, 2009, as required by Order No. PSC-09-0263-TRF-WU?
- Issue 3:** If any or all of the four Intervenors, Smith, Politte, Mallon and Will submitted sufficient evidence to show they requested an irrigation meter before the April 7, 2009 deadline, should East Marion be required to provide irrigation meters to the homes of those Intervenors at the prior tariff rate of \$70.00 per meter?
- Issue 4:** If the Commission requires East Marion to provide irrigation meters to any or all of the Intervenors at the prior tariff rate of \$70.00, how should those irrigation meters be configured?
- Issue 5:** If the Commission requires East Marion to provide irrigation meters to the Intervenors, what is the allowable time in which the Utility must install those irrigation meters?

✓ OPC
Parties/Staff Handout
event date 09/14/11
Docket No. 080562

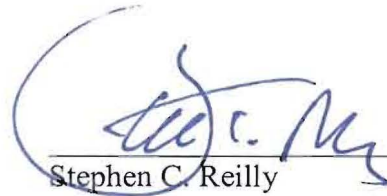
Issue 6: If East Marion fails to install or properly reinstall the meters within the deadline imposed by the Commission, should the Commission impose one or more fines upon the Utility? If so, what should be the amount of the fines?

Issue 7: What is the appropriate monthly charge for any irrigation meter installed for the Intervenor's as a result of this protest proceeding?

Issue 8:

Issue 9: Should this docket be closed?

Respectfully submitted this 14th day of September, 2011.



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Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 080562-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing **OPC Preliminary List of Issues** has been furnished by U.S. Mail and electronic mail to parties who have provided e-mail addresses, on this 14th day of September, 2011.

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