

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 960235-WS
Application for Transfer of :
Certificates Nos. 404-W and :
341-S in Orange County from :
Econ Utilities Corporation to :
Wedgefield Utilities, Inc. :

Application for Amendment : DOCKET NO. 960283-WS
of Certificates Nos. 404-W and :
341-S in Orange County by :
Wedgefield Utilities, Inc. :

VOLUME 2

Pages 103 through 308

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA

DATE: Thursday, March 19, 1998

TIME: Commenced at 10:00 a.m.
Adjourned at 4:20 p.m.

PLACE: Wedgefield Ranger Drainage District
19950 Nugent Street
Orlando, Florida 32833

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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

2 (Hearing reconvened at 1:10 p.m.)

3 COMMISSIONER DEASON: We'll call the hearing
4 back to order. We're back on the record and we have
5 concluded the customer testimony phase of the hearing.
6 We will now proceed into the technical phase. And I
7 understand there are some preliminary matters. Staff.

8 MS. BRUBAKER: Actually, Commissioner,
9 perhaps as a point -- excuse me. There were several
10 exhibits identified in the course of the customer
11 testimony. Would it be appropriate at this time to
12 see if you want to get those moved into the record?

13 COMMISSIONER DEASON: Yes, we can go ahead
14 and address that at this time. I've identified
15 exhibits 1 through 5. 5 has already been stipulated
16 into the record so that leaves 1 through 4. Is there
17 a motion?

18 MR. BECK: We move the admission of Exhibits
19 1 through 4 into evidence.

20 COMMISSIONER DEASON: Is there any
21 objection?

22 MR. GIRTMAN: Yes, we still have our
23 objection in regard to the correspondence. And we
24 believe it should be on the correspondence side of the
25 file. We have not had an opportunity to have the

1 authors of those letters present and to examine them
2 and to ask them questions about the basis of any
3 conclusions therein. So I think it more appropriately
4 should be on the correspondence side of the file.

5 **CHAIRMAN JOHNSON:** I believe that's
6 Exhibit 4. Is there any objection to Exhibits 1, 2
7 and 3?

8 **MR. GIRTMAN:** No.

9 **COMMISSIONER DEASON:** Very well. We will
10 show Exhibits 1, 2 and 3 admitted.

11 Mr. Beck, there's been an objection to
12 Exhibit 4. Do you care to respond?

13 **MR. BECK:** Yes. I think Commissioner Clark
14 has discussed some of it. I assume that Mr. Girtman's
15 basis is it's hearsay. We had a customer testify
16 about the letters and interest of the public
17 officials. Those letters themselves show that. They
18 show that the officials wrote letters. It's not for
19 the truth of the matters contained in the letters, but
20 the fact that the letters were sent and that the
21 officials are interested and cared about the customers
22 in Wedgefield. Therefore, it's not for hearsay
23 purpose and there's no proper objection to it. And it
24 also provides support for the sworn testimony of the
25 witness to the interest of the officials.

1 **COMMISSIONER DEASON:** Mr. Girtman.

2 **MR. GIRTMAN:** I don't have a copy of those
3 letters, but as I recall their being read, there were
4 expressions of opinion as to whether or not the rate
5 base should be set as we claim it should be. And we
6 have not had an opportunity to cross examine on the
7 basis for those conclusions. They are offered for
8 the -- to prove what they claim to prove and that is
9 that the rate base ought to be reduced to purchase
10 price. And I think they are inadmissible hearsay.

11 **COMMISSIONER DEASON:** Staff.

12 **MS. REYES:** Staff would echo Mr. Beck's
13 sentiments and would further say Rule 25-22.048
14 provides that hearsay evidence may be used to
15 supplement or explain other evidence, but shall not be
16 sufficient in itself to support a finding, unless it
17 would be admissible over objections in civil actions.
18 On that basis, we would recommend they be allowed into
19 the record as an exhibit, and that whatever finding or
20 conclusion can be drawn from that.

21 **COMMISSIONER DEASON:** Very well. The
22 objection is overruled. I think the Exhibit 4, which
23 constitutes the letters, will be admitted for the
24 purpose they were presented; as I understand that to
25 be to show that the public officials who wrote those

1 letters do have a concern about the matters that are
2 being addressed by the Commission. But I don't think
3 they are being presented to prove the facts which are
4 at issue here in this proceeding, and with that
5 understanding Exhibit 4 will be admitted on that
6 basis.

7 (Exhibits 1 through 4 received in evidence.)

8 COMMISSIONER DEASON: All right. That
9 brings us up-to-date then with the exhibits. Other
10 preliminary matters?

11 MS. BRUBAKER: Commissioner, there are
12 several preliminary matters, first of which I suppose
13 I'd like to bring up is that Staff is requesting
14 official recognition of several Commission orders.
15 We've provided a list, copy of the orders to all
16 parties and we have them available for the
17 Commissioners, if they'd like.

18 COMMISSIONER DEASON: Do all parties have
19 copies of the list of the orders?

20 MR. BECK: Yes.

21 COMMISSIONER DEASON: Any objection to
22 taking official notice of those orders?

23 MR. BECK: No.

24 COMMISSIONER DEASON: Hearing no
25 objection --

1 **MS. BRUBAKER:** If we could have the list and
2 copies of the referenced order marked for
3 identification as an exhibit.

4 **COMMISSIONER DEASON:** Yes. The list will
5 be -- you want the list and the orders or just the
6 list?

7 **MS. BRUBAKER:** We plan to use portions of
8 the orders for cross examination purposes, and I
9 suppose we might as well have the orders in as well.

10 **COMMISSIONER DEASON:** I don't think it's
11 necessary to have the orders in.

12 **MS. BRUBAKER:** Okay. Just the list.

13 **COMMISSIONER DEASON:** We'll identify the
14 List of Orders as Exhibit No. 6, and without objection
15 that exhibit will also be admitted into the record.

16 (Exhibit 6 marked for identification and
17 received in evidence.)

18 **COMMISSIONER DEASON:** Okay. Other
19 preliminary matters?

20 **MR. GIRTMAN:** We have some matters,
21 Commissioner.

22 **COMMISSIONER DEASON:** Mr. Girtman.

23 **MS. BRUBAKER:** Commissioner, I'm sorry, we
24 would also like to move it into the record.

25 **COMMISSIONER DEASON:** Yes, it's in,

1 Exhibit 6.

2 MS. DRUBAKER: Okay.

3 MR. GIRTMAN: We have also filed a request
4 for official notice of a list of orders of the
5 Commission. Most of them are from prior utility
6 cases, some of them are rule proceedings. On our
7 request, it's Attachment B to our motion -- I have
8 some copies here -- I'd like to clarify a point.

9 Although we are requesting official
10 recognition of about eight rule proceeding orders we
11 specifically wanted to make it clear that we are not
12 attempting to raise issues which have previously been
13 found to be inappropriate in this proceeding, and we
14 didn't want to open a door for anyone else to do the
15 same.

16 I have no problem in striking the -- I think
17 it's two paragraphs on the top of the cover sheet,
18 Attachment B, I think it is -- at least in the motion
19 expressing our interpretation of it. That was put
20 there merely for the purpose of showing that we were
21 not seeking to raise previously stricken issues.

22 But we have -- there are a hundred cases
23 that we request the Commission give official notice
24 of, and I have copies, provided copies to counsel.
25 Also have copies here for the Commission.

1 **COMMISSIONER DEASON:** Mr. Beck.

2 **MR. BECK:** Commissioner, I have no objection
3 to taking official notice. In fact, I have no
4 objection to taking official notice of any orders of
5 the Commission. I do not see the purpose of it. I
6 think it's a -- I think that official notice of an
7 order solely replaces having the Clerk of the
8 Commission coming in under oath and testifying that
9 these are, in fact, the orders of the Commission.
10 That's all official notice does. It serves no
11 purpose. It doesn't make them any different than any
12 order of the Commission. I certainly have no
13 objection to taking notice of all of these, these
14 orders. I don't think it serves any purpose.

15 **MR. GIRTMAN:** Commissioner Deason, if I
16 could respond to that. There are some very specific
17 legal consequences in regard to taking official
18 notice, and if I may take a couple of minutes and go
19 through that.

20 First of all, the official notice or
21 official recognition is the administrative law
22 equivalent of judicial notice. Under Section 120.569
23 Florida, Statutes it's titled Decisions which Affect
24 Substantial Interests. In subsection 1, second
25 sentence, it states "Unless waived by all parties,

1 Section 120.57(1) applies whenever the proceeding
2 involves a disputed issue of material fact.

3 Now, Office of Public Counsel, when they
4 filed their protest on October 28th, 1996,
5 specifically requested a Section 120.57(1) formal
6 hearing.

7 Subsection 120.5692(G) Florida Statutes
8 states that when official recognition is requested,
9 the parties shall be notified and given an opportunity
10 to examine and contest the material.

11 As I previously stated, we had provided
12 copies to -- both to Mr. Beck and to Staff counsel
13 early in the week for their review.

14 COMMISSIONER CLARK: Can I ask a question?

15 MR. GIRTMAN: Yes.

16 COMMISSIONER CLARK: Mr. Beck is not
17 objecting to us taking official notice.

18 MR. GIRTMAN: But I want to get to the
19 point, my specific legal point that I want to get.

20 But this is background I think you need to be given to
21 understand where we're coming from and why we want to
22 do this.

23 COMMISSIONER CLARK: But there's no
24 objection to it now.

25 MR. GIRTMAN: Right. But I would like to

1 have this in the record if I may. It will only take a
2 minute.

3 COMMISSIONER GARCIA: Are you testifying
4 into the record something?

5 MR. GIRTMAN: No. I'm giving you the legal
6 basis for what we want to do with these documents.

7 COMMISSIONER CLARK: The brief is for that
8 purpose.

9 MR. GIRTMAN: If I could make one statement
10 then. Under Section 120.57(1)(f) it states "The
11 record in the case governed by this subsection shall
12 consist of," and it lists nine items. Item 3 is
13 "those matters officially recognized."

14 So what point I want to make here for the
15 record is that these 100 cases for which we are asking
16 official notice, they are evidence in the record.

17 COMMISSIONER CLARK: Orders are the
18 evidence.

19 MR. GIRTMAN: Orders are evidence in the
20 record.

21 COMMISSIONER DEASON: The hundred orders,
22 that's the Attachment A to your motion; is that
23 correct?

24 MR. GIRTMAN: There is a numbered list.
25 There was one additional case that was found and in

1 the group of excerpts there it's labeled number zero,
2 so it's on top of that second list. Attachment A.

3 COMMISSIONER DEASON: So then do you wish
4 then Attachment A as modified then to be identified as
5 an exhibit?

6 MR. GIRTMAN: Actually, there is a second
7 one, Attachment B, is the -- Attachment A is the set
8 of cases relating to individual utilities. Attachment
9 B are the orders relating to rule proceedings.

10 COMMISSIONER DEASON: You wish for both
11 Attachment A as modified, and Attachment B, with the
12 exclusion of two paragraphs.

13 MR. GIRTMAN: Yes.

14 COMMISSIONER DEASON: That will be
15 identified then as Composite Exhibit 7.

16 MS. BRUBAKER: Commissioner, may I make a
17 comment?

18 COMMISSIONER DEASON: Surely.

19 MS. BRUBAKER: We have no problems with the
20 official notice of the orders themselves. I would, as
21 a point of clarification, like to note that any
22 language in Wedgefield's request for official notice
23 that is in the way of interpreting the orders,
24 speaking as to what those orders stand for, the
25 content of them, that it be stricken as irrelevant and

1 not apropos to a motion for --

2 COMMISSIONER DEASON: Well, we're only
3 identifying the attachments themselves.

4 MS. BRUBAKER: Okay.

5 COMMISSIONER DEASON: And the language --
6 there's two paragraphs, I think, of Attachment B
7 that's been stricken off of that. And that will be
8 identified as Composite Exhibit 7, and without
9 objection, Composite Exhibit 7 is admitted into the
10 record.

11 (Exhibit 7 marked for identification.)

12 COMMISSIONER DEASON: Other preliminary
13 matters?

14 MR. BECK: I think we have one other
15 stipulated exhibit. Mr. Girtman asked me to -- there
16 are some letters related to the Orange County study
17 that I had intended to use in cross examination.
18 However, we've agreed to stipulate those letters into
19 the record. So I'd like to pass them out and ask that
20 it be marked and admitted.

21 MR. GIRTMAN: Do you have a cover sheet on
22 that as Mr. Seidman's Deposition Exhibit 2, or did you
23 take that cover sheet off?

24 MR. BECK: Made a brand new cover.

25 COMMISSIONER DEASON: This will be

1 identified as Composite Exhibit No. 8, entitled
2 "Letters Related to Analysis by Orange County Public
3 Utilities Division," and without objection Composite
4 Exhibit 8 is admitted.

5 (Composite Exhibit 8 marked for
6 identification and received in evidence.)

7 MR. GIRTMAN: We also have another
8 stipulation as to the prior three audits of this
9 particular utility.

10 COMMISSIONER DEASON: Mr. Girtman, you wish
11 this to be identified as a composite exhibit?

12 MR. GIRTMAN: Yes, sir.

13 COMMISSIONER DEASON: It will be identified
14 as Composite Exhibit No. 9. If you will describe for
15 the record what it consists of.

16 MR. GIRTMAN: Okay. These are three prior
17 audits of Econ Utilities, and it may simplify
18 reference to them if we refer to them -- I may refer
19 to them as A, B and C.

20 COMMISSIONER DEASON: Just for purposes of
21 clarification on the record, when you refer then to
22 "A" you're talking about Docket 840368?

23 MR. GIRTMAN: Just a moment. I was looking
24 for that list. (Pause) "A" is the audit for the
25 period ended December 31, 1994.

1 **COMMISSIONER DEASON:** Which docket does that
2 relate to? Is that the 950318?

3 **MR. GIRTMAN:** This appears to be undocketed.
4 It was earnings investigation. It is undocketed,
5 earnings investigation undocketed.

6 **COMMISSIONER DEASON:** Okay.

7 **MR. GIRTMAN:** That would be A. The audit
8 for the period ended September 31, 1987, Docket
9 No. 871208-WS would be B. And the audit for the
10 period ending June 30, 1984, in Docket No. 840368-WS
11 would be item C.

12 **COMMISSIONER DEASON:** Okay. Then these
13 three audits that you've just identified will be
14 identified as a composite exhibit, and that will be
15 Composite Exhibit No. 9. Are you also moving that
16 exhibit into the record?

17 **MR. GIRTMAN:** Yes.

18 **COMMISSIONER DEASON:** Any objection?
19 Hearing no objection, show Exhibit 9 also entered into
20 the record. Other preliminary matters?

21 (Composite Exhibit 9 marked for
22 identification and received in evidence.)

23 **MR. GIRTMAN:** Commissioner, we have a couple
24 of motions that we would like to make.

25 One is a Motion to Strike portions of

1 Mr. Larkin's testimony. The other one is a motion for
2 reconsideration of the Prehearing Officer's order
3 denying Wedgefield's motion to file supplement
4 testimony.

5 First, in regard to the Motion to Strike
6 portions of Mr. Larkin's testimony. Mr. Larkin has
7 testified that he is a CPA and not an engineer. The
8 information which is set forth on Page 8, Line 14,
9 through Page 16, Line 14, and the information
10 beginning on Page 8 in Lines 15 through 17 -- excuse
11 me, Page 18, Lines 15 through 17.

12 MR. BECK: Mr. Girtman, I'm sorry, I'm lost.
13 Could you give the page number again.

14 MR. GIRTMAN: I'll start over again.
15 Page 8, Line 14 through Page 16, Line 14, and Page 18,
16 Lines 15 through 17.

17 COMMISSIONER CLARK: What was that number?

18 MR. GIRTMAN: Page 18, Lines 15 through 17.

19 COMMISSIONER DEASON: My version on Page 18,
20 Line 15, is that the sentence that begins with the
21 "Because"?

22 MR. GIRTMAN: Yes.

23 COMMISSIONER DEASON: Just that one sentence
24 that begins with a "because" and ends with
25 "infiltration" on Line 17?

1 **MR. GIRTMAN:** Yes.

2 This testimony calls for the witness to
3 reach conclusions which require the skills of a
4 trained engineer. In his testimony Mr. Larkin
5 acknowledges he is not an engineer, and we believe
6 that it is inappropriate for a CPA to be allowed to
7 testify as to engineering matters.

8 **COMMISSIONER DEASON:** Mr. Beck?

9 **MR. BECK:** Mr. Larkin, Commissioners, has, I
10 believe, been an expert witness in over 400 regulatory
11 proceedings over numerous years. In fact, he has
12 testified before the Public Service Commission on
13 acquisition adjustments, and is being offered as an
14 expert in this area.

15 He is certainly allowed to recount for you
16 some of the things that he used as a basis for
17 reaching his opinion that you should recognize an
18 acquisition adjustment. He has experience that goes
19 over a number of fields, just as the Commissioners
20 themselves do, because you hear a lot of testify on a
21 lot of fields. Together with the experience he has
22 and the fact that just giving the basis for reaching
23 the conclusion he did, it's proper material to be in
24 the record.

25 **COMMISSIONER DEASON:** Staff.

1 **MS. BRUBAKER:** Staff would simply, frankly,
2 in concurrence with what OPC says, it appears that the
3 sections that are being sought to be struck,
4 specifically the first couple of pages, starting with
5 Page 8, is simply recounting of documents upon which
6 he has relied and formed his opinion. He says up
7 front that he's not an engineer and it doesn't appear
8 that he's holding himself out to be in the course of
9 that section of testimony.

10 On Page 18 it simply seems to be in the
11 context of a hypothetical. And I don't know that,
12 once again, that's an allegation that he's speaking
13 from the basis of being a professional engineer.

14 **COMMISSIONER DEASON:** The motion is denied.
15 It seems to me that this question goes more to the
16 weight -- that the Commission would give to this
17 testimony as opposed to its inadmissibility.

18 Any other preliminary matters?

19 **MR. GIRTMAN:** One additional motion,
20 Commissioner.

21 We'd like to move for reconsideration of the
22 Prehearing Officer's denying Wedgefield's motion to
23 file supplemental testimony.

24 His testimony states that he reviewed
25 approximately 100 cases of the Florida Public Service

1 Commission which dealt with the subject of acquisition
2 adjustments. He reviewed those orders and stated what
3 those orders said. He did not give a legal
4 conclusion. So his testimony is no less appropriate
5 on the questions of what the orders of the Public
6 Service Commission say than Mr. Larkin's testimony is
7 on the question of what we feel are engineering
8 issues.

9 If there's any portion of the testimony of
10 Mr. Seidman which anyone feels expresses a legal
11 conclusion, then that certainly is subject to a Motion
12 to Strike that portion of the testimony, but not to
13 have the entire testimony stricken. Office of Public
14 Counsel has had no objection to the filing of the
15 testimony. We've provided copies. And Mr. Beck
16 stated that they do not have any objection to the
17 filing of the supplemental testimony.

18 Now, we believe that these two witnesses and
19 their testimony need to be judged by the same
20 standard. That much of the work that this Commission
21 does requires people of intelligence and ability to
22 read and understand, and to provide comment upon many
23 things, whether they are orders of the Commission,
24 whether they are reports or whatever they may be. And
25 there is a certain latitude given for people who are

1 trained professionals, whether they are engineers,
2 CPAs, lawyers or whatever they may be, when people
3 come and testify before this Commission; that there is
4 a degree of latitude that is required to allow these
5 trained people to testify as to what they have read,
6 what they have seen, what they have done.

7 And we believe as far as the question of
8 whether Mr. Seidman's testimony is rendering legal
9 opinion, we just don't believe that's so. The mere
10 recitation of the fact of the existence of an order
11 that relates to a subject and here's what the order
12 says does not constitute practicing law or rendering
13 legal opinions.

14 Now, on the second point raised in the Order
15 Denying the Motion to File Supplemental Testimony,
16 Issue No. 8 in the Prehearing Order raises the
17 question of who has the burden of proof in a negative
18 acquisition adjustment case.

19 The Order of Denial states that the motion
20 was not timely. Immediately after the prehearing
21 conference in this case there was a discussion between
22 Mr. Beck, myself and Staff counsel right outside the
23 door of the Commission chambers about the question of
24 who has the burden of proof, and what are we going to
25 face when we get down to a hearing, not knowing

1 exactly who has that burden, because it's an issue in
2 the proceeding, and what we have to prove or not
3 prove. Because this is a totally new procedure that's
4 being considered in this case.

5 So we discussed the potential problems of
6 merely the mechanics of coming here and making a
7 reasonable presentation in a reasonable period of time
8 and being sure that we knew who had to prove something
9 and what they had to prove. And it's been a problem
10 for us.

11 Now, we left the conversation not resolving
12 the question. I guess it was about a couple of weeks
13 later I had done some thinking on it and I called the
14 Staff attorney and I said we need to bring this matter
15 to the Commissioners' attention to get some kind of
16 decision on it so we'll know what the rules of the
17 game are. And I had proposed a particular
18 alternative, a motion proceeding, and she said she
19 would discuss it with Staff and get back to me.

20 She did get back to me and expressed the
21 opinion that she did not believe -- Staff did not
22 believe that was an appropriate and effective way to
23 resolve the question. We'd have to come up with
24 something else.

25 So this is what we've come up with. If we

1 can't get it resolved, at least we have to present to
2 the Commissioners a review of what the Commission in
3 the past ten years has done on the question of burden
4 of proof and say what is the law on this subject?
5 What is the Commission's decision on this subject?
6 What is the policy of the Commission on burden of
7 proof? And we need to review them all, put it all
8 together, and make it available. So that's what we
9 did. We believe it is immanantly fair to have done it
10 this way. We believe it is certainly a practical way
11 to do it.

12 The summary sheets that are provided as
13 exhibits to the testimony are very summary in form and
14 they convey a great deal of information about the
15 numbers of cases that are handled, the number of cases
16 where positive or negative acquisition adjustments
17 were granted, and the statement from the Order as to
18 what the grounds were. Now, that's not practicing
19 law. That's not giving legal opinion. It's merely
20 saying I've read the order and here's what it says.
21 Now if we deny --

22 COMMISSIONER CLARK: Mr. Girtman, can I ask
23 a question?

24 MR. GIRTMAN: Yes, ma'am.

25 COMMISSIONER CLARK: Didn't we say the

1 orders are in the record now?

2 MR. GIRTMAN: Yes, ma'am.

3 COMMISSIONER CLARK: So we can read the
4 orders and in effect what Mr. Seidman is giving us is
5 a synopsis of those orders?

6 MR. GIRTMAN: Yes.

7 COMMISSIONER CLARK: Okay.

8 MR. GIRTMAN: If we deny the right of a
9 nonlawyer to read and to understand what the
10 application of the order is, what we're doing is
11 telling every utility company that they can't hire
12 anybody but lawyers because they have to read and
13 interpret and apply those orders. So we request a
14 reconsideration of that denial.

15 COMMISSIONER DEASON: Staff.

16 MS. BRUBAKER: Commissioners, the purpose of
17 a motion for reconsideration is to point out a mistake
18 of fact or law, which, in this case, the Prehearing
19 Officer failed to consider when making its decision.
20 It's not an appropriate vehicle for merely rearguing
21 the same arguments made before, or to raise new points
22 which weren't discussed prior.

23 With all due respect, I haven't heard
24 anything in Mr. Girtman's arguments that would change
25 our recommendation that the order did issue properly.

1 Staff's position has not changed. It was --
2 you know, on burden of proof. It's been the same
3 since the August 1997 prehearing. It's been
4 consistent throughout the proceedings, and the orders
5 issued based essentially on the fact that the
6 supplemental testimony was filed untimely; it was
7 filed essentially a month before the hearing.

8 I agree that -- you know, that the orders
9 are in the record now pursuant to the request for
10 official notice. They can be used in the briefing.
11 That was also mentioned in the Order. That the
12 Utility has every opportunity to discuss the import of
13 those orders in the course of its brief. And I simply
14 don't see any mistake of fact or law that's been
15 raised by the Utility in the case. I believe the
16 motion for reconsideration should be denied.

17 **MR. GIRTMAN:** If I could respond,
18 Commissioner. In response to Commissioner Clark's
19 question, there is another thing that that testimony
20 does. It takes the statement of the factual situation
21 in the cases issued, orders issued by the Commission,
22 and shows how those apply to the factual situation in
23 this particular case.

24 **COMMISSIONER CLARK:** Provides an analysis.

25 **MR. GIRTMAN:** A comparison, if you will; a

1 comparison of what the facts were in the cases,
2 particularly those where negative acquisition
3 adjustments were granted and those where it was
4 specifically denied and explained why.

5 It takes those facts in one side and says
6 those are those facts. Here are our facts. We have
7 the same facts here in some cases; we have totally
8 different facts in others. And that's, I think, a
9 critical part of the consideration of the evidence in
10 this case. How do those cases apply to us?
11 Wonderful. We have a hundred cases in evidence. What
12 do they mean? How do they apply in this case? And
13 what guidance can they give to us? That's what
14 Mr. Seidman's testimony does for us.

15 **COMMISSIONER DEASON:** Commissioners, we have
16 a motion in front of us for reconsideration of a
17 Prehearing Officer's ruling. That's something the
18 full Commission, this full panel needs to address.

19 **COMMISSIONER CLARK:** You don't want to do it
20 yourself?

21 **COMMISSIONER DEASON:** Oh, no. So do I have
22 a motion?

23 **COMMISSIONER CLARK:** Mr. Chairman, I think
24 Mr. Girtman has indicated that it's an attempt to show
25 how the cases apply to these specific factual

1 circumstances. And the last time I checked, that was
2 the practice of law. That's what lawyers do. And
3 coupled with the fact that it was untimely, it appears
4 to me that the motion was properly denied and I would
5 recommend that we deny the reconsideration.

6 I will say this, the same -- in reading the
7 testimony it seems to me the same arguments can be
8 made in the brief. That's where you make these
9 arguments.

10 **COMMISSIONER DEASON:** We have a motion. I'm
11 going to agree with that. Commissioner Garcia, do you
12 participate in this as well? What is -- he as
13 Prehearing Officer, he made the ruling.

14 **COMMISSIONER GARCIA:** I can second my
15 previous motion. (Laughter)

16 **COMMISSIONER DEASON:** Anyway, I'm going to
17 agree with Commissioner Clark. So that the -- even
18 without Commissioner Garcia's participation, the
19 motion for reconsidering will be denied.

20 The basis is that I agree with Staff. I did
21 not hear anything in the argument which would alert me
22 that there's been, indeed, a mistake of fact or law
23 which I understand is the basis for reconsideration.

24 I also do note in the order that there was a
25 question of timeliness, which is of concern whenever

1 we have prefiled testimony. But I want to make it
2 clear that in supporting Commissioner Clark that in no
3 way implies that it is always necessary to have an
4 attorney to read an order and render an opinion
5 thereon.

6 I don't think it's necessary to reach that.
7 And I don't think that the order that we're being
8 asked to reconsider from Commissioner Garcia reaches
9 that conclusion either, so I don't think that's
10 something you have to address. But, nevertheless, the
11 motion is denied.

12 Any other preliminary matters? Hearing
13 none, then we can proceed to take the testimony.

14 I believe the witnesses have already been
15 sworn. And according to the Prehearing Order, who is
16 the first witness?

17 **MS. BRUBAKER:** Actually, Commissioner, if I
18 may, I have spoken with both Mr. Beck and Mr. Girtman
19 regarding making a slight change to the order of
20 witnesses that appears in the Prehearing Order.

21 If everyone is still in agreement, I would
22 like to go ahead and take Staff's witness first to
23 allow her to leave in order to account for a family
24 emergency.

25 **COMMISSIONER DEASON:** Hearing no objection

1 to that then, Ms. Welch if you will take the stand.

2

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3

KATHY L. WELCH

4 was called as a witness on behalf of the Florida
5 Public Service Commission and, having been duly sworn,
6 testified as follows:

7

DIRECT EXAMINATION

8 **BY MS. BRUBAKER:**

9 Q Ms. Welch, would you please state your name
10 and business address for the record?

11 A My name is Kathy Welch and my address is
12 3625 NW 82nd Avenue, Suite 400, Miami, Florida 33166.

13 Q By whom are you employed and what capacity?

14 A The Florida Public Service Commission. I'm
15 a regulatory analyst supervisor and I'm in charge of
16 the Miami District Office.

17 Q Have you prefiled or caused to be prefiled
18 direct testimony in this docket consisting of three
19 pages?

20 A Yes, I have.

21 Q Do you have any changes or corrections to
22 that testimony?

23 A No, I do not.

24 Q If I were to ask you the same questions as
25 posed in your testimony, would your answers be the

1 same today?

2 A Yes, they would.

3 MS. BRUBAKER: Commissioner, if I may,
4 please, have Ms. Welch's testimony inserted into the
5 record as though read.

6 COMMISSIONER DEASON: Without objection it
7 shall be inserted.

8 Q (By Ms. Brubaker) Did you also file or
9 cause to be filed with your testimony an exhibit
10 identified as KLW-1. It consists of a PSC Staff Audit
11 Report dated March 28th, 1996, on Econ Utilities
12 Corporation?

13 A Yes, I did.

14 Q Do you have any changes or corrections to
15 that exhibit?

16 A No, I do not.

17 MS. BRUBAKER: Madam Chairman, if we may
18 have KLW-1, Staff's March 28th, 1996, audit report
19 marked for identification.

20 COMMISSIONER DEASON: Yes, Exhibit 10.

21 (Exhibit 10 marked for identification.)

22

23

24

25

1 DIRECT TESTIMONY OF KATHY L. WELCH

2 Q. Please state your name and business address.

3 A. My name is Kathy L. Welch. My business address is 3625 NW 82nd Ave.
4 Suite 400, Miami, Florida.

5 Q. By whom are you presently employed and in what capacity?

6 A. I am employed by the Florida Public Service Commission as a Regulatory
7 Analyst Supervisor in the Division of Auditing and Financial Analysis.

8 Q. How long have you been employed by the Commission?

9 A. I have been employed by the Florida Public Service Commission for
10 eighteen years and six months.

11 Q. Briefly review your educational and professional background.

12 A. I have a Bachelor of Business Administration degree with a major in
13 accounting from Florida Atlantic University. I have a Certified Public
14 Manager certificate from Florida State University. I am also a Certified
15 Public Accountant licensed in the State of Florida. I was hired as a Public
16 Utilities Analyst I by the Florida Public Service Commission in June of 1979.
17 I was promoted to Regulatory Analyst Supervisor on January 2, 1990.

18 Q. Please describe your current responsibilities.

19 A. Currently, I am a Regulatory Analyst Supervisor with the
20 responsibilities of administering the Miami District Office, reviewing
21 workload and allocating resources to complete field work and issue audit
22 reports. I also supervise, plan, and conduct utility audits of manual and
23 automated accounting systems for historical and forecasted financial
24 statements and exhibits.

25 Q. Have you testified before this Commission or any other regulatory

1 agency?

2 A. Yes. I have filed testimony in the following cases: Tamiami Village
3 Utility, Inc. rate case, Docket No. 910560-WS; Tamiami Village Utility, Inc.
4 transfer to North Fort Myers, Docket No. 940963-SU; and General Development
5 Utilities, Inc. rate case, Docket No. 911030-WS.

6 Q. What is the purpose of your testimony today?

7 A. The purpose of my testimony is to sponsor the staff audit report of Econ
8 Utilities Corporation, Docket No. 960235-WS. The audit report is filed with
9 my testimony and is identified as K LW-1.

10 Q. Were you responsible for this audit report?

11 A. Yes. I was the audit manager for this report.

12 Q. Did you prepare a water and wastewater rate base schedules as part of
13 your audit?

14 A. Yes, they are included in the audit report on page 6. These schedules
15 reflect a water rate base of \$1,462,487 and a wastewater rate base of
16 \$1,382,904.

17 Q. Please review the audit exception in the audit report.

18 A. Audit Exceptions disclose substantial non-compliance with the Uniform
19 System of Accounts, a Commission rule or order, and formal company policy.
20 Audit Exceptions also disclose company exhibits that do not represent company
21 books and records and company failure to provide underlying records or
22 documentation to support the general ledger or exhibits. Audit Exception
23 No. 1 discusses severe water damage the utility incurred in 1994 which
24 destroyed certain records from 1987 through 1989. Commission rule 25-
25 30.110(1)(a), Florida Administrative Code, requires that "Each utility shall

1 | preserve its records in accordance with the "Regulations to Govern the
2 | Preservation of Records of Electric, Gas and Water Utilities" as issued by the
3 | National Association of Regulatory Utility Commissions, as revised May 1985."
4 | These regulations require the utility to retain records related to plant for
5 | a minimum of 25 years. They further require:

6 | When any records are destroyed before the expiration of the
7 | prescribed period of retention, a certified statement listing, as
8 | far as may be determined, the records destroyed and describing the
9 | circumstances of accidental or other premature destruction shall
10 | be filed with the Commission within ninety (90) days from the date
11 | of discovery of such destruction. Discovery of loss of records
12 | is to be treated in the same manner as in the case of premature
13 | destruction.

14 | The utility did not notify the Commission of the loss of the records.

15 | Q. Does this conclude your testimony?

16 | A. Yes, it does.

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1 MS. BRUBAKER: I think at this time Staff
2 tenders its witness for cross.

3 COMMISSIONER DEASON: Very well. Mr. Beck.

4 MR. BECK: Thank you, Commissioner.

5 CROSS EXAMINATION

6 BY MR. BECK:

7 Q Good afternoon, Ms. Welch. My name is
8 Charlie Beck of the Public Counsel's office.

9 Could you tell me when this audit was
10 performed?

11 A This particular audit was done -- it was
12 completed March 28th, 1996.

13 Q Was it all performed in the first three
14 months of 1996?

15 A I don't have the exact date. Actually I
16 know when it started. Just a second. It was all done
17 in March, actually.

18 Q How much time did you spend on this audit?

19 A On this one, 30 hours.

20 Q Was that time of yours or by people who --

21 A It was mine.

22 Q -- report to you?

23 A This particular audit. It was just an
24 update of a previous audit.

25 Q Were any other persons involved in preparing

1 in audit?

2 A No. Someone reviewed it for me, though.

3 Q Who was that?

4 A Lliana Piedra.

5 Q And does Lliana Piedra work for you?

6 A Yes, she does.

7 Q Where was the audit performed?

8 A At the offices of Econ Utilities.

9 Q Where was that?

10 A Actual city?

11 Q Well, it wasn't here?

12 A No, it was not here.

13 Q In southeast Florida?

14 A Fort Lauderdale area; a little north of
15 Fort Lauderdale, close to Boca.

16 Q You looked at their financial records, I
17 guess, near Boca?

18 A Yes, I did.

19 Q Did anyone actually come to Orlando to
20 inspect the assets of the Company?

21 A People from the Tallahassee office inspected
22 the assets, I'm not sure during this audit but the
23 audit that we did previously, and we worked in
24 conjunction with them.

25 Q What was done previously took --

1 A The one that was done --

2 Q -- took a different period of time --

3 A -- in December '94.

4 Q And this audit took it to January 1, 1996?

5 A Yes, December '95.

6 Q So at least for those two year periods

7 nobody inspected, actually came and looked.

8 A One year. But I don't know whether they did
9 or not. I'm not sure if an engineer actually went out
10 during this particular audit.

11 Q If they did it wasn't anything you relied
12 on, was it?

13 A No.

14 Q You would not call this an audit as it is
15 generally accepted when people hear the word "audit,"
16 would you? Or would you?

17 A Generally accepted audit principles, like an
18 audit like an external CPA firm, no. This was an
19 audit done internally.

20 Q It's not performed in accordance with
21 generally accepted auditing standards either, is it?

22 A No.

23 Q On the audit itself, your exhibit, you have
24 a disclaim public use statement. Could you turn to
25 that? It's on Page 2 of 6 of your exhibit.

1 A Sure.

2 Q In that section of the audit it says "This
3 document must not be relied upon for any purpose
4 except to assist the Commission Staff in the
5 performance of their duties." What does that mean?

6 A It means that we don't always follow
7 generally accepted accounting principles and
8 accounting standards. Although, for the most part,
9 after reviewing several external CPA's work papers, I
10 think we do more work than they do, but we disclaim
11 anyway.

12 Q You also state there that substantial
13 additional work would have to be performed to satisfy
14 generally accepted auditing standards and produce
15 audited financial statements for public use; is that
16 right?

17 A That's what we say.

18 Q What would be the substantial additional
19 work that would have to be performed?

20 A I really don't think there would be much.

21 Q Then why do you say that?

22 A Because that's a disclaimer that's required
23 by our audit manual.

24 Q Could you go to Page 6 of your exhibit?

25 A Yes.

1 Q You did the balance of the Company's assets
2 per the Company, and then adjustments and then your
3 staff adjusted balance; is that right?

4 A That's correct.

5 Q And you found no adjustments at all as part
6 of your audit?

7 A Not during this audit.

8 Q Does your audit express an opinion about
9 whether an acquisition adjustment should be recognized
10 or not?

11 A No, it does not.

12 Q Do you have a position on that?

13 A No, I do not.

14 Q Does Staff?

15 A I don't know.

16 Q What role, if any, do you have relating to
17 the positions that are taken in this docket?

18 A Not much.

19 MS. BRUBAKER: If I may, Ms. Welch is not a
20 policymaker, she's an auditor, if we could, you know,
21 keep cross within the scope of her expertise, thank
22 you.

23 MR. BECK: That's exactly what the question
24 is designed to do.

25 MS. BRUBAKER: Thank you.

1 Q (By Mr. Beck) So you don't have any role
2 in developing the positions that Staff takes in this
3 case?

4 A Not the positions. We come up with the
5 numbers that are on the books of the Company and any
6 adjustments that need to be made to make those numbers
7 correct according to Commission policy.

8 Q Do you know whether Staff has taken a
9 position on whether an acquisition adjustment should
10 be recognized in this case?

11 A No, I do not.

12 Q You're not even aware of that one way or the
13 other?

14 A No.

15 Q Did anybody ever ask you what your opinion
16 was?

17 A No.

18 MS. BRUBAKER: I'd just simply like to state
19 this is beyond the scope of Ms. Welch's testimony.

20 COMMISSIONER DEASON: Objection overruled.
21 Please proceed, Mr. Beck.

22 Q (By Mr. Beck) Do you know whether there's
23 any Staff witness who will support the Staff's
24 position in this case on acquisition adjustments?

25 A No, I do not.

1 MR. BECK: That's all I have. Thank you.

2 COMMISSIONER DEASON: Mr. Girtman.

3 CROSS EXAMINATION

4 BY MR. GIRTMAN:

5 Q Ms. Welch, how long have you been employed
6 by the Florida Public Service Commission?

7 A Almost 19 years.

8 Q And during that period of time would you
9 generally describe the responsibilities that you had
10 starting with beginning and moving forward to today?

11 A I started as an Auditor I back when we were
12 called auditors, and went to Auditor II, Auditor III,
13 Auditor IV. Then we switched to Regulatory Analyst.
14 Then became supervisor of the office.

15 Q Okay. During that period of 19 years, how
16 many audits have you participated in?

17 A Hundreds. Maybe even a thousand.

18 Q Your exhibit attached to your testimony is
19 identified as Audit Report as of December 31, 1995; is
20 that correct?

21 A That's correct.

22 Q In Part 2 titled "Audit Scope" under the
23 heading "Rate Base," it states that the audit, quote,
24 "examined utility plant, construction in progress and
25 CIAC account balances from the prior audit of December

1 31, 1994." Is that correct?

2 A That's correct.

3 Q So the 1995 audit is just an update from the
4 1994 audit; is that correct?

5 A That's correct.

6 Q Okay. Were you in attendance when Exhibit
7 No. 9, the three prior audits of Econ Utilities, was
8 introduced and moved into evidence?

9 A Yes.

10 Q Do you have a copy of that?

11 A Yes.

12 Q Okay. If you look at the first audit which
13 is marked as 9A, the audit for the period ending
14 December 31, 1994, is that the audit which was relied
15 upon for the 1995 audit?

16 A Yes.

17 Q You were listed as audit manager on the
18 audit ending December 31st, 1994; is that correct?

19 A That's correct.

20 Q What were your duties in relation to the
21 1994 audit?

22 A I managed the audit and I did most of the
23 work. I was training a new auditor during that time.

24 Q So is it correct to say that that work was
25 either done by you or directly under your supervision

1 and control?

2 A Yes, it was.

3 Q Were those duties that you performed on that
4 audit essentially the same as your duties for the
5 audit for the year ended December 31st, 1995?

6 A Yes.

7 Q On Page 2 of the 1994 audit, in Part 2
8 titled "Audit Scope" under the heading "Rate Base," it
9 states that the audit, quote, "examined utility plant,
10 construction in progress and CIAC account balances
11 from the prior audit of September 1987." Is that
12 correct?

13 A That's correct.

14 Q So the 1994 audit was just an update from
15 the 1987 audit; is that correct?

16 A That's correct.

17 Q If you would now take a look at what's been
18 marked Exhibit 9B, the audit for the period ended
19 September 30, 1987. Is that the audit which was
20 relied upon for the 1994 audit?

21 A Yes.

22 Q You are listed as acting regulatory audit
23 supervisor on the 1987 audit, correct?

24 A Yes.

25 Q What were your duties in relation to the

1 1987 audit?

2 A I came in and filled in for the audit
3 supervisor who had been mugged in Econ's parking lot
4 and had her shoulder broken, so I came in at the end
5 of the audit to supervise it.

6 Q Did you do audit work on the audit?

7 A I probably did a little bit but I definitely
8 reviewed the whole audit.

9 Q So is it correct then to say that it was
10 either done by you or under your direct supervision
11 and control?

12 A Yes.

13 Q Did you have to review and sign off on the
14 work of the audit manager?

15 A Yes. I did review the work.

16 Q On Page 3 of the 1987 audit, Part 2 titled
17 "Workload Control Summary," under the heading "Audit
18 Scope," in Paragraph 7 it states that the audit,
19 quote, "reconciled the beginning balance in the
20 minimum filing requirements to the last rate case
21 Order 15459."

22 In Paragraph 8 it states that the audit,
23 quote, "examined additions to plant from balances
24 established on FPSC Order 15459 through the end of
25 test year." Is that correct?

1 A That's correct.

2 Q Is this essentially tracing additions to
3 plant from the last rate case?

4 A Yes.

5 Q As shown in Paragraph 7, 8, 9 and 10, on
6 Page 3 of the 1987 audit, does this audit trace
7 additions to plant in service, accumulated
8 depreciation, and net CIAC from the balances approved
9 in the last rate case?

10 A Yes.

11 Q Do you recall whether Order No. 15459 issued
12 in Docket No. 840368-WS was the last rate case in
13 which rate base was established for Econ Utilities?

14 A I believe it was.

15 Q Let me show you -- if you will take a look
16 at what's been marked as Exhibit 9C, the audit for the
17 period ending June 30, 1984. Is that the audit that
18 was prepared for the rate case in Docket
19 No. 840368-WS?

20 A Yes.

21 Q Were you the audit manager for the 1984
22 audit which was conducted for the rate case?

23 A Yes, I was.

24 Q Going back to the most recent audit, the one
25 for the period ending December 31, 1995, under Section

1 1, Audit Scope, Rate Base, it states that you, quote,
2 "reconciled prior balances, reviewed contracts,
3 cancelled checks and plant invoices for all large
4 editions and tested the computation of AFUDC." Is
5 that essentially what was done in each of the three
6 prior audits which we've discussed?

7 A Yes, it was.

8 Q Then you, as audit manager or supervisor,
9 participated intensively in all four audits of this
10 company, right?

11 A Yes, I did.

12 Q Based upon your audits and knowledge of this
13 system and its records, is it your conclusion that for
14 purposes of this transfer, water rate base is
15 \$1,462,487.37, and wastewater rate base is
16 \$1,382,904.13?

17 A It's my opinion that that's what's on the
18 books -- was on the books of Econ in December of '95
19 and that those books were supported by invoices, yes.

20 Q Thank you. Is it normal practice for
21 auditors, whether they are government employed
22 auditors or private auditors, is it normal practice
23 for them to put a disclaimer on their audits
24 regardless of what kind of audit they are?

25 A Yes.

1 Q Is the audit that was -- the last audit that
2 was prepared here, is it typical of the types of
3 audits that are prepared by the Public Service
4 Commission for proceedings before the Public Service
5 Commission?

6 A Yes.

7 Q Are all four of those audits typical of the
8 type of audits performed by the PSC Staff for
9 proceedings before the Public Service Commission?

10 A Yes.

11 Q Is it necessary to have -- for the purposes
12 of transfers, rate cases and other matters over which
13 this Commission has jurisdiction, is it necessary to
14 have a full audit completely in compliance with
15 acceptable accounting standards? Normal acceptable
16 accounting standards. Is it necessary to do that?

17 A No. But I don't believe there's much
18 difference.

19 MR. GIRTMAN: Okay. Thank you very much.

20 COMMISSIONER DEASON: Redirect?

21 MS. BRUBAKER: No redirect.

22 COMMISSIONER DEASON: Exhibits. I'm sorry,
23 Commissioners, any questions.

24 COMMISSIONER CLARK: Ms. Welch, when are
25 CIAC payments recorded? If you have a rate base of,

1 say, one million, and you have put in the lines in the
2 plant to serve a hundred lots, and you're currently
3 only serving ten and you expect to put on maybe 20
4 more, and you are taking in a thousand per lot that
5 you signed up. When do you record the CIAC as a debit
6 to rate base?

7 **WITNESS WELCH:** You record it in CIAC when
8 the plant is -- that relates to it is installed. If
9 you get it before the plant is installed, it would go
10 into an advance for construction. But you would still
11 use used and useful adjustments on the CIAC if it
12 related to plant that was not used and useful.

13 **COMMISSIONER CLARK:** Okay. So you would
14 record the anticipated CIAC?

15 **WITNESS WELCH:** You would record it if the
16 plant had already been built that it related to. If
17 the asset was recorded as a plant in service, you
18 would record it there. If you got the CIAC in
19 anticipation of something that hadn't been built, it
20 would go into an advance.

21 **COMMISSIONER CLARK:** But what if you haven't
22 received the CIAC; that you haven't received the
23 payment from the lots, you anticipate a hook-up fee
24 from each one of those, do you record that as a debit
25 when you receive it?

1 **WITNESS WELCH:** As a credit when you receive
2 it.

3 **COMMISSIONER CLARK:** Yes. When you say
4 "credit" what does that -- effect of that have on the
5 rate base.

6 **WITNESS WELCH:** It's a negative to rate
7 base.

8 **COMMISSIONER CLARK:** Thank you.

9 **MR. GIRTMAN:** Could I clarify just for a
10 moment? You don't record that until you receive the
11 CIAC, right?

12 **WITNESS WELCH:** Right.

13 **COMMISSIONER DEASON:** Redirect?

14 **MS. BRUBAKER:** Staff has none.

15 Mr. Chairman, if I may, Staff would like to
16 move the exhibit marked Exhibit 10.

17 **COMMISSIONER DEASON:** Without objection show
18 Exhibit 10 admitted. Thank you, Ms. Welch.

19 (Exhibit 10 received in evidence.)

20 **UNIDENTIFIED SPEAKER:** I'd like to ask a
21 question.

22 **COMMISSIONER DEASON:** You need to
23 communicate through your attorney at this phase of the
24 hearing, sir.

25 **UNIDENTIFIED SPEAKER:** Stay there.

1 **MR. BECK:** Commissioner, with your
2 indulgence, I have been asked to ask some questions
3 about the CIAC balances, and I think I can do that if
4 that's agreeable with you.

5 **COMMISSIONER DEASON:** Very well. Please
6 proceed.

7 **RECROSS EXAMINATION**

8 **BY MR. BECK:**

9 **Q** Could you turn to Page 6 of 6 of your
10 exhibit.

11 **A** I already put it away. I already looked it
12 up when he asked the question earlier, so go ahead.

13 **Q** You gave the balances that you found on your
14 audit of 1.462 million, approximately, in water, and
15 1.382 million in wastewater; is that right?

16 **A** Right.

17 **Q** Is that net of the CIAC balances?

18 **A** Yes, it is.

19 **Q** In fact, you have some CIAC balances listed
20 in your audit.

21 **A** Right. The CIAC balance was about
22 2.2 million, I believe, at the end of '95. And in
23 1994 it was approximately 1.7. And it has been
24 removed from the plant as a credit so it is reducing
25 rate base.

1 **COMMISSIONER CLARK:** I want to ask a
2 specific question along those lines. Would you look
3 at Mr. Larkin's testimony, Page 8.

4 **WITNESS WELCH:** Me? I don't have it.

5 (Hands document to witness.)

6 **COMMISSIONER CLARK:** It's not Page 8.

7 **WITNESS WELCH:** This is DeWard.

8 **COMMISSIONER CLARK:** I'm sorry, on Page 4.

9 He makes the statement, beginning -- a sentence on
10 Line 12, he says "Additionally, Econ can receive up to
11 600,000 in additional payments based on the collection
12 of CIAC from every lot in a planned unit development
13 in the Commons." Do you know if there are facilities
14 in the Commons that are in rate base?

15 **WITNESS WELCH:** I'm not sure, but I'll see
16 if anything I have identifies specifically the
17 Commons. If it was, Commissioner Clark, if it was a
18 rate case proceeding, that would probably be removed
19 as nonused and useful, so, therefore, the CIAC
20 wouldn't need to be in rate base at that particular
21 time because the plant would not be considered used
22 and useful.

23 **COMMISSIONER CLARK:** All right. Let me ask
24 the question: The amount you have come up with for
25 rate base, the 2.8 million, has that been adjusted for

1 used and useful?

2 **WITNESS WELCH:** No. Because we don't
3 usually adjust it until a rate case proceeding comes
4 about.

5 **COMMISSIONER CLARK:** So you would adjust it
6 for used and useful and then you would adjust it for
7 CIAC?

8 **WITNESS WELCH:** If the CIAC was not in
9 there, then you would just adjust the plant for used
10 and useful and then it would balance out. It wouldn't
11 affect anything.

12 **COMMISSIONER CLARK:** Okay. Thank you.

13 **COMMISSIONER DEASON:** Any redirect?

14 **MS. BRUBAKER:** No redirect.

15 **COMMISSIONER DEASON:** Mr. Girtman.

16 **MR. GIRTMAN:** No questions.

17 **COMMISSIONER DEASON:** Thank you, Ms. Welch.

18 (Witness Welch excused.)

19 **MR. GIRTMAN:** We'd like to call Mr. Carl
20 Wenz as a witness.

21

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CARL WENZ

1
2 was called as a witness on behalf of Wedgefield
3 Utilities, Inc. and, having been duly sworn, testified
4 as follows:

DIRECT EXAMINATION

5
6 **BY MR. GIRTMAN:**

7 **Q** Mr. Wenz, have you previously then sworn in
8 this proceeding?

9 **A** Yes, I have.

10 **Q** Would you please state your name and
11 business address?

12 **A** My name is Carl J. Wenz. My business
13 address is 2335 Sanders Road, Northbrook, Illinois.

14 **Q** By whom are you employed and in what
15 capacity?

16 **A** I'm employed by Utilities, Incorporated as
17 Vice President of Regulatory Matters.

18 **Q** Have you prepared prefiled direct testimony
19 consisting of seven pages, and prefiled additional
20 direct testimony consisting of 11 pages, and caused
21 that testimony to be filed in this case?

22 **A** Yes, I have.

23 **Q** If I were to ask you the same questions that
24 were asked in both those sets of testimony today,
25 would your answers be the same?

1 A Yes, with the exceptions of a couple of
2 corrections, minor typographical.

3 Q Okay.

4 A On the original testimony of Carl Wenz,
5 Page 1, Line 24 the number "55" should be "63."

6 Q Excuse me. Where was that?

7 A Page 1, Line 24, the number "55" should be
8 changed to "63."

9 And then on the additional testimony of Carl
10 Wenz, Page 2, Line 5, the number "61" through changed
11 to "63." Then on Page 6 of the additional direct
12 testimony, Line 4, the word "where" should be changed
13 to "were." And then again on Page 8, Line 15, the
14 number "61" should be changed to "63." That makes
15 them all consistent.

16 Q Do you also wish to change or make an
17 addition to your testimony to show that you are
18 sponsoring the exhibit, CW-1, the application for
19 transfer?

20 A Yes, I would.

21 MR. GIRTMAN: Commissioners, I request that
22 the application be marked for identification for the
23 purpose of the record. It's titled "Application for
24 Transfer," and there are four parts. Part A is the
25 application; B, C and D are late-filed documents

1 including Notice, Proof of Publication, Affidavit of
2 Service, Closing Documents, SF Purchase Agreement,
3 Memorandum of Closing Agreement, Closing Statement,
4 Assignment Assumption of Contracts and Special
5 Warranty Deed.

6 COMMISSIONER DEASON: Yes. It will be
7 identified as Exhibit 11.

8 (Exhibit 11 marked for identification.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

TESTIMONY OF CARL WENZ

REGARDING APPLICATION FOR TRANSFER OF
ECON UTILITIES TO WEDGEFIELD UTILITIES

DOCKET NOS. 960235 WS & 960283-WS

Q. Mr. Wenz, please state your business address for the record:

A. 2335 Sanders Road, Northbrook, Illinois, 60062.

Q. By whom are you employed and what is your position?

A. I am the Vice President of Regulatory Matters for Utilities, Inc. and all of its subsidiaries, including Wedgefield Utilities, Inc.

Q. Please state your professional and educational experience.

A. I have been employed by Utilities, Inc. since 1984. Over the last ten years I have been involved in all phases of the regulatory process. Utilities, Inc. owns water and/or wastewater utilities in fifteen states. I have testified before the Commissions in several states, including Florida, North Carolina, South Carolina, Louisiana, Illinois, Indiana, Nevada and Maryland. In my present position I am responsible for all aspects of utility commission regulation for the group of ⁶³~~54~~ Utilities, Inc. subsidiaries.

1 I am a Certified Public Accountant and hold a
2 Bachelors Degree in Business Administration from
3 Western Michigan University. I have attended
4 several utility regulation seminars sponsored by
5 NARUC and Arthur Andersen LLP. For the last three
6 years I have been on the faculty of Eastern Utility
7 Rate School which is sponsored by the NARUC Water
8 Committee and Florida State University.

9 Q. What is the purpose of your testimony here today?

10 A. I am here to sponsor the Company's applications for
11 transfer of water and wastewater certificates,
12 particularly as they relate to the matter of
13 acquisition adjustment. There are several motions
14 currently pending on behalf of Wedgefield
15 Utilities, but the prehearing order requires the
16 applicant to file testimony by January 6, 1997,
17 even though our motions have not yet been ruled
18 upon. Therefore, it is presently unclear whether
19 the scope of this testimony should include the
20 transfer, the extension of territory, or the
21 question of acquisition adjustment. The most
22 recent staff recommendation seems to indicate that,
23 if a hearing is held, it will be only on the matter
24 of an acquisition adjustment. Therefore, this
25 testimony is being filed to include only that one

1 matter.

2 Q. What is Wedgefield's position on the matter of
3 negative acquisition adjustment?

4 A. Commission Order No. PSC-96-1241-FOF-WS issued on
5 October 7, 1996, addresses the question of
6 acquisition adjustment and states: "In the absence
7 of extraordinary circumstances, it has been
8 Commission policy that the purchase of a utility at
9 a premium or discount shall not affect the rate
10 base calculation. Considering the likely impact of
11 used and useful adjustments for this utility, the
12 circumstances of this instance do not appear to be
13 extraordinary. Therefore, no acquisition
14 adjustment is included in the rate base
15 calculation." It is Wedgefield's position that no
16 acquisition adjustment should be included in rate
17 base in the current proceeding.

18 Q. If OPC is seeking to challenge the current
19 Commission policy on acquisition adjustments, is
20 this the appropriate type of proceeding in which to
21 do so?

22 A. No, it is not. It still is not clear whether the
23 Office of Public Counsel seeks to challenge the
24 overall Commission policy on acquisition
25 adjustments or whether it is merely alleging that

1 extraordinary circumstances exist in this case
2 which would warrant a negative acquisition
3 adjustment. None of their pleadings have alleged
4 that sufficient circumstances (whether referred to
5 as "exceptional" or "extraordinary" circumstances)
6 exist in this case.

7 Q. What if it turns out that the OPC is trying to
8 challenge the overall Commission policy on
9 acquisition adjustments?

10 A. It is my understanding that the "case-by-case"
11 approach can no longer be followed under Florida
12 law. To change the existing policy, the Commission
13 would have to initiate a generic proceeding,
14 particularly in view of the fact that the
15 Commission has previously and thoroughly addressed
16 this question of acquisition adjustments in 1989 in
17 its Docket No. 891309-WS. (See Order Nos. 22361,
18 23376 and 25729.) See also Docket No. 911082-WS,
19 Order Nos. PSC 93-1663-FOF-WS and PSC-93-1704-FOF-
20 WS.

21 Q. If OPC takes the position that it is not
22 challenging existing Commission policy on
23 acquisition adjustments and argues that
24 extraordinary circumstances exist in this case, do
25 you believe that sufficient allegations have been

1 made to support such a position?

2 A. No, I do not. In all the pleadings which OPC has
3 filed so far there has been only a vague assertion
4 about alleged "prior maintenance" practices of the
5 seller. Those allegations are insufficient to
6 sustain a claim that "extraordinary circumstances"
7 exist in this case. Furthermore, way back in the
8 1991 docket, OPC also unsuccessfully tried to make
9 "prior maintenance" a basis for granting
10 acquisition adjustments. The Commission did not
11 accept that argument. There was no basis for such
12 a claim then, and there is none now. In that
13 proceeding, the matter was addressed before this
14 Commission on May 24, 1993, in the supplemental
15 comments for the Florida Waterworks Association,
16 Transcript of proceedings in Docket No. 911082-WS,
17 Volume I, pages 9 - 10, May 24, 1993.

18 Q. Who has the burden of proof in a matter relating to
19 an acquisition adjustment?

20 A. It is my understanding that, as set forth in the
21 foregoing orders, particularly in Order No. 23376,
22 the burden of proof rests with the proponent of an
23 acquisition adjustment. Normally, for a positive
24 acquisition adjustment, that burden rests with the
25 acquiring utility which would normally be expected

1 to be the proponent of a positive acquisition
2 adjustment. For a negative acquisition adjustment,
3 that burden rests with the person or entity seeking
4 to have a negative acquisition adjustment imposed,
5 and in this case the burden of proof would fall on
6 OPC. A further discussion of the burden of proof
7 and prior Commission consideration of the
8 acquisition adjustment policy is contained in our
9 Motion filed December 6, 1996, at pages 7 through
10 11.

11 Q. In pleadings previously filed with this Commission
12 Wedgefield Utilities has taken the position that
13 the Commission may not make part of the Order a
14 final order and part of it a proposed agency action
15 (PAA) order. What is the basis for that position?

16 A. The purchaser of the utility in this case relied on
17 the established Commission policies, including the
18 policy on acquisition adjustments, in justifying
19 its decision to purchase the utility. The existing
20 Commission policy on acquisition adjustments had
21 been in effect since about 1983, according to
22 Commission orders, and the purchaser relied on that
23 policy in the instant case. Thus, the purchase of
24 this utility was a total decision as to all known
25 aspects of the utility, including the established

1 policy on acquisition adjustments. The decision
2 was not made on a piecemeal basis, and the
3 Commission's order regarding that application for
4 transfer should address all aspects of the transfer
5 with the same finality.

6 Q. Does this conclude your testimony?

7 A. Yes, it does. However, with the procedural
8 uncertainties currently existing in this
9 proceeding, Wedgefield Utilities would like to
10 reserve the right to file additional direct
11 testimony if the Commission is going to address
12 anything other than just the matter of an
13 acquisition adjustment. Wedgefield Utilities also
14 reserves all its other rights in regard to pending
15 motions and all other matters relating to this
16 proceeding.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
ADDITIONAL DIRECT TESTIMONY OF CARL WENZ
REGARDING THE APPLICATION FOR TRANSFER OF
ECON UTILITIES TO WEDGEFIELD UTILITIES
IN ORANGE COUNTY

DOCKET NOS. 960235-WS & 960283-WS
filed March 18, 1997

Q. Mr. Wenz, please state your business address for the record?

A. 2335 Sanders Road, Northbrook, Illinois 60062.

Q. By whom are you employed and what is your position?

A. I am the Vice President of Regulatory Matters for Utilities, Inc. and all of its subsidiaries, including Wedgefield Utilities, Inc.

Q. Please state your professional and educational experience.

A. I have been employed by Utilities, Inc. since 1984. Over the last ten years I have been involved in all phases of the regulatory process. Utilities, Inc. currently owns water and/or wastewater utilities in fifteen states. I have testified before the commissions in several states, including Florida,

1 North Carolina, South Carolina, Louisiana,
2 Illinois, Indiana, Nevada and Maryland. In my
3 present position I am responsible for all aspects
4 of utility commission regulation for the group of
5 ~~63~~ Utilities, Inc. subsidiaries in fifteen states.
6 This includes twelve systems in Florida which we
7 have purchased during the last four years.
8

9 I am a Certified Public Accountant and hold a
10 Bachelors Degree in Business Administration from
11 Western Michigan University. I have attended
12 several utility regulation seminars sponsored by
13 NARUC and by Arthur Andersen LLP. For the past
14 three years I have been on the faculty of the
15 Eastern Utility Rate School which is sponsored by
16 the NARUC Water Committee and Florida State
17 University.
18

19 Q. What is the purpose of your testimony here today?

20 A. On October 7, 1996 this Commission, in Order No.
21 PSC-96-1241-FOF-WS approved, as a final action, the
22 transfer of Certificate Nos. 404-W and 341-S from
23 Econ Utilities Corporation to Wedgefield Utilities,
24 Inc. It also granted, as a final action, certain
25 requested amendments of the certificated territory.

1 However, in that same order, the Commission gave
2 notice of a Proposed Agency Action (PAA)
3 establishing rate base for purposes of the
4 transfer. That PAA has been challenged by the
5 Office of Public Counsel. The purpose of my
6 testimony today is to support the rate base
7 established by the PAA, which is the net book value
8 of the utility at the time of transfer, without any
9 acquisition adjustment.

10
11 This testimony is in addition to that filed January
12 6, 1997 pursuant to Order No. PSC-96-1533-PCO-WS.
13 We reserve all of our objections to this
14 proceeding, and we do not waive those objections or
15 any other rights by our participation herein.

16
17 Q. For purposes of the transfer what is the rate base
18 of the utility at the time of transfer?

19 A. It is \$1,462,487 for the water system and
20 \$\$1,382,904 for the wastewater system.

21
22 Q. Are those amounts for water and wastewater the same
23 as set forth in Commission Order No. PSC-96-1241-
24 POF-WS?

25 A. Yes, they are.

1 Q. How were those amounts established?

2 A. They were established by the Commission Staff after
3 an audit of the utility's books in this docket and
4 represent the original cost of plant in service,
5 net of accumulated depreciation and unamortized
6 CIAC. They do not reflect any used and useful or
7 other ratemaking adjustments such as an allowance
8 for working capital. The amounts established by
9 Commission Staff do reflect corrections to the
10 books of the utility to remove unauthorized AFUDC,
11 reclassification of expenses to capital, adoption
12 of the Commission's guideline depreciation rates
13 and adjustments required by prior Commission
14 orders.

15
16 Q. Have you reviewed the Commission Staff audit and
17 the Staff adjustments that result in its
18 established transfer value of rate base?

19 A. Yes.

20
21 Q. And do you agree that the rate base established by
22 Commission Staff correctly reflects the original
23 cost of plant in service net of accumulated
24 depreciation and unamortized CIAC, at the time of
25 transfer?

1 A. Yes.

2

3 Q. Is the price paid for the utility by Wedgefield
4 different than the rate base reflected on the books
5 of the utility?

6 A. Yes. It is lower.

7

8 Q. Is Wedgefield requesting that an acquisition
9 adjustment be made to rate base?

10 A. No.

11

12 Q. Are you familiar with this Commission's policy on
13 acquisition adjustments for water and wastewater
14 utilities?

15

16 A. Yes. My understanding of this Commission's policy
17 is that, in the absence of extraordinary
18 circumstances, the purchase of a utility at a
19 premium or a discount shall not effect the rate
20 base calculation. That is, the purchaser stands in
21 the shoes of the seller. My understanding is based
22 on my experience purchasing and operating utilities
23 in Florida under this Commission's jurisdiction and
24 on reading the Commission's orders establishing,

1 investigating and reconfirming its policy on
2 acquisition Adjustments.

3

4 Q. ^{Whe} ~~Where~~ you aware of this policy when Wedgefield
5 purchased Econ?

6 A. Yes.

7

8 Q. Was this policy a consideration in the decision to
9 purchase Econ?

10 A. Absolutely. As you may be aware, Utilities, Inc.,
11 or its subsidiaries, have purchased several
12 utilities in Florida. The Commission's policy
13 regarding acquisition adjustments has entered into
14 all of those decisions. Without the incentive
15 provided by this Commission's long established
16 policy on acquisition adjustments, many of the
17 purchases, including this one, would probably not
18 even have been considered. It would be unfair to
19 change the prior existing policy after the utility
20 purchase agreement had already been signed. Adding
21 to this unfairness, the Commission's order
22 approving the transfer was "final agency action"
23 and only "proposed agency action" as to
24 establishing rate base for purposes of the
25 transfer. This procedure, and lack of reasonable

1 certainty as to the ground rules, will make it very
2 difficult for utility companies to consider the
3 possibility of acquiring other utilities in
4 Florida.

5
6 Q. Do you know anything about the owner of Econ, the
7 utility that is now Wedgefield?

8 A. Yes. The owner of Econ was a small developer. He
9 had indicated to us that, although he wanted to
10 continue to develop property, he was no longer
11 interested in operating a utility or committing
12 funds to it.

13
14 Q. Is Wedgefield or its parent a developer?

15 A. No. Utilities, Inc. owns and operates utilities
16 only.

17
18 Q. Are Wedgefield and its parent willing to commit
19 funds to the operation of Wedgefield?

20 A. Yes, assuming fair ratemaking treatment by this
21 Commission.

22
23 Q. Do Wedgefield and its parent have the financial
24 ability to commit the funds necessary to operate
25 this utility?

1 A. Yes.

2

3 Q. Can they attract capital at reasonable costs?

4 A. Yes.

5

6 Q. Do you know if the prior owner had or has the
7 financial ability to continue to operate Wedgefield
8 in the manner consistent with state requirements?

9 A. It is my understanding that the former owner either
10 does not have the funds or is not willing to commit
11 the funds necessary.

12

13 Q. Do Wedgefield and its parent have access to
14 professional and experienced utility management?

15 A. Yes. As previously stated, we operate some ⁶³~~24~~
16 water and wastewater utilities in fifteen states.
17 Here in Florida, we have an established management
18 team and access to professional operators.

19

20 Q. Will Wedgefield benefit from any economies of scale
21 in its operation?

22 A. Yes. Since management is already in place in
23 Florida, it will not be necessary to obtain
24 management just for Wedgefield. Wedgefield will be
25 allocated a portion of the overall management

1 expense. In addition, equipment and supply
2 purchases for Wedgefield will benefit from the
3 established vendor resources already being used
4 for sister systems in Florida.
5

6 Q. Prior to the purchase of Wedgefield, did anyone
7 from Utilities, Inc. or its subsidiaries inspect
8 the Wedgefield systems?

9 A. Yes. Mr. Rasmussen, Vice President of Utilities,
10 Inc. of Florida, inspected the systems.
11

12 Q. Did he make you aware of the condition of the
13 systems?

14 A. Yes. He found that they were not in the best of
15 condition, but they were not in extremely poor
16 condition, either. This is typical of developer-
17 owned utilities. They were not in violation of any
18 state regulations, but they were not up to the
19 standard that we would want to maintain.
20

21 Q. Some of the documents provided to the Commission or
22 the Office of Public Counsel (OPC), as part of
23 their discovery process for the transfer
24 application, seem to imply that expenditures of
25 millions of dollars will be necessary to bring this

1 utility into working order. Is that your
2 understanding?

3 A. No. Certainly, the systems need some additional
4 maintenance, but they are in compliance with
5 regulatory requirements and are not in immediate
6 danger of falling out of compliance. There was,
7 however, a danger that the condition of plant and
8 the quality of service would deteriorate because of
9 the prior owner's expressed disinterest in
10 continuing to fund and operate the utility. Much
11 of the costs discussed in documents provided to the
12 Commission and OPC are related to expanding the
13 system to enable it to serve growth, some of the
14 costs are related to normal near term maintenance
15 and improvements and preventive maintenance, and
16 some are just a "wish list" contemplated by Orange
17 County, which also had been reviewing the utility
18 for possible purchase.
19

20 Q. Will the change in ownership from Econ to
21 Wedgefield benefit the customers of the utility and
22 provide them with a better quality of service?

23 A. Yes. Summarizing the facts I have testified to,
24 the customers will benefit because the new owner is
25 utility oriented and replaces a developer related

1 owner that has expressed disinterest in operating
2 and funding the utility. The new owner will not
3 have the financial pressures faced by the previous
4 owner of deciding whether to invest in utility
5 operations or in real estate development. The new
6 owner has the ability to attract capital at a
7 reasonable cost. It has the ability and commitment
8 to make any necessary improvements. It has a
9 professional staff with years of experience in
10 utility operations. It has the potential to reduce
11 costs through the allocation of existing
12 administrative expenses and through access to an
13 established purchasing system. It is familiar
14 with, and has the ability to comply with, all state
15 and federal regulations.
16

17 Q. Was there anything extraordinary about this utility
18 or the circumstances leading up to its purchase?

19 A. No. This utility and the circumstances surrounding
20 the purchase were pretty much like those of the
21 other utilities we have purchased in Florida.
22

23 Q. Does that conclude your direct testimony?
24 A. Yes.

1 Q (By Mr. Girtman) Would you please
2 summarize your testimony in your prefiled direct and
3 prefiled additional direct testimony?

4 A Yes. Utilities, Inc. that is 11 Florida
5 subsidiaries. Through those subsidiaries
6 Utilities, Inc. provides water and/or wastewater
7 service to 29,000 customers in 43 communities.

8 I'm the Vice President of Regulatory Matters
9 for Utilities, Inc. and it's 63 subsidiaries in 15
10 states. I'm a CPA with over 11 years of experience,
11 specializing in all phases of the regulatory process.

12 I'm here to sponsor the Company's
13 application to transfer the assets from Econ Utilities
14 Corp to Wedgefield Utilities, Inc. which I prepared.
15 My testimony is focussed on one issue: the acquisition
16 adjustment.

17 In the Commission Order approving of the
18 transfer of assets from Econ to Wedgefield, Order
19 No. PSC-961241-FOF-WS issued October 7th, 1996, the
20 Commission addresses the question of acquisition
21 adjustment, and states "In the absence of
22 extraordinary circumstance, it has been Commission
23 policy that the purchase of a utility at a premium or
24 discount shall not affect the rate base calculation.
25 Considering the likely impact of used and useful

1 adjustments for this utility, the circumstances of
2 this instance do not appear to be extraordinary.
3 Therefore, no acquisition adjustment is included in
4 the rate base calculation. Wedgefield agrees."

5 This has been the Commission's policy since
6 the early '80s. The policy has been stated in at
7 least hundred orders that I'm aware of. The policy
8 was the subject of an investigation in Docket
9 891309-WS, and was reviewed in the context of a
10 rulemaking proceeding, Docket No. 911082-WS.

11 Utilities, Inc. is probably the most active
12 large utility Company in acquiring troubled water and
13 sewer systems in the state of Florida. The
14 Commission's long-standing policy on acquisition
15 adjustments has been understood and relied upon while
16 bargaining in good faith, and at arm's length for
17 these troubled utilities acquired over the years.

18 The policy was relied upon in negotiating
19 with Econ for the purchase of the Wedgefield system.
20 In the '89 investigation docket the Commission issued
21 Orders No. 23376 and 25729. These orders state that
22 the policy is intended to provide an incentive to
23 companies to acquire troubled utilities like
24 Wedgefield. The policy has worked as it was intended.
25 To change the policy in this case retroactively would

1 be unfair to Wedgefield and would provide a
2 disincentive for Utilities, Inc. and others to
3 continue acquiring troubled systems in Florida."

4 Referring, again, to prior orders of this
5 Commission, it has been integral to the consistent
6 application of the policy that the proponent of an
7 acquisition adjustment carried the burden of proving
8 that extraordinary circumstances exist that warrant
9 recognition of the acquisition adjustment.

10 The issue has been raised in this case,
11 however, whether Wedgefield has the burden of proof.
12 The question then becomes how do we prove that
13 extraordinary circumstances do not exist?

14 A review of the prior Commission orders on
15 the subject of acquisition adjustments indicates that
16 neither the alleged prior maintenance practices of the
17 seller nor the purchase price, book value differential
18 in this particular transaction would qualify as
19 extraordinary.

20 Clearly there's nothing extraordinary about
21 this transaction to warrant recognition of an
22 acquisition adjustment. Net book value should be
23 approved by the Commission at 2,845,391 as established
24 by the Staff audit. Thank you.

25 MR. GIRTMAN: Move the admission of the

1 Exhibit 11 into evidence and tender the witness.

2 COMMISSIONER DEASON: Normally we move
3 exhibits at the conclusion of testimony. We'll just
4 take it up at that point. Mr. Beck.

5 MR. BECK: Thank you, Commissioner.

6 CROSS EXAMINATION

7 BY MR. BECK:

8 Q Good afternoon, Mr. Wenz.

9 A Good afternoon.

10 Q Let me review a little bit of the
11 qualifications you give in your prefiled testimony.
12 On Page 2 of your initial direct, the first piece of
13 testimony, on Lines 5 through 8 you state that the
14 last three years you have been on the faculty of the
15 Eastern Utility Rate School, which is sponsored by
16 NARUC Water Committee and Florida State University; is
17 that right?

18 A Yes, correct.

19 Q Is that actually a school of some sort with
20 a physical location?

21 A It's a seminar that's held in a physical
22 location.

23 Q They don't have a school per se; there's no
24 campus for the Eastern Utility Rate School, is there?

25 A Correct. That's correct.

1 Q Says you're on the faculty of it. What does
2 that mean, to be on the faculty of it?

3 A It means I'm responsible for a certain
4 portion of the seminar, that together with other
5 experts in the field, teach this seminar.

6 Q How did it come to be that you got
7 associated with the rate school?

8 A I was asked to participate by one of the
9 long-standing faculty members.

10 Q Who was that person?

11 A I think the initial call was from John
12 Williams of the Florida Commission Staff.

13 Q So it was a member of the Florida Commission
14 Staff asked you to be on the faculty of this?

15 A Yes.

16 Q How often do you give -- I guess, what, do
17 you give presentations at seminars that are sponsored
18 by this school?

19 A Yes. I've done it every year for the last
20 three or four years. It's held in October.

21 Q Was there one this last October?

22 A Yes, there was.

23 Q Where was that located?

24 A It's in Clearwater Beach, Florida.

25 Q What were the topics that you presented at

1 that seminar?

2 A My particular subject matter has been the
3 rate base portion of the seminar. Myself and another
4 gentlemen go over the various components of rate base.

5 Q Do you go over acquisition adjustments?

6 A No, I don't think that subject is covered in
7 my area.

8 Q Okay. You just go over rate base in your
9 area?

10 A Yes.

11 Q Who attends these schools?

12 A Various people from different disciplines in
13 the utility field: engineers, accountants, lawyers,
14 commissioners. Would you agree that the main people
15 who attend these schools are members of the public
16 utility staffs, or no?

17 A By "public utility staffs" do you mean
18 public utility companies?

19 Q No, I'm sorry. Like public service
20 commission staff members?

21 A No. It's a wide range of different areas:
22 Utility companies, staffs, consumer advocate groups,
23 municipal entities.

24 Q And has been the determination of rate base
25 been your area of expertise at these seminars for the

1 three years?

2 A Yes. I've covered pretty much the same
3 subject matter since I began participation.

4 Q And Mr. Williams, you said, is a faculty
5 member of the school too; is that right?

6 A Yes.

7 Q Do you know what he teaches?

8 A I'm not sure what his area is.

9 Q Go to Page 4 of your initial direct
10 testimony. At Line 10. You state that it's your
11 understanding that the case-by-case approach can no
12 longer be followed under Florida law with respect to
13 policy on acquisition adjustments; is that right?

14 A Yes.

15 Q How did you reach that understanding?

16 A Discussing the subject matter with
17 Mr. Girtman.

18 Q So basically you're giving Mr. Girtman's
19 opinion on that in your testimony here?

20 A No. I'm giving my understanding of the law.

21 Q Your understanding of law is based on what
22 Mr. Girtman told you?

23 A Yes.

24 Q Did you research whether the Public Service
25 Commission has any rules governing acquisition

1 adjustments?

2 **A** Yes, I did.

3 **Q** What did you find?

4 **A** I found that the Commission's rule -- that
5 the Commission doesn't have a formal rule; that the
6 rule has been a policy more or less over the years.

7 **Q** Do you know what the state of the law is
8 regarding state agencies being required to place their
9 policies and rules --

10 **MR. GIRTMAN:** Objection, Commission. I'd
11 like to state that Issues 10 and 11 were stricken from
12 the Prehearing Order and was upheld on a motion for
13 reconsideration, and all we're doing now is getting
14 into a resurrection of that issue. And it's
15 inappropriate for this tribunal in this proceeding.

16 **MR. BECK:** He's raised it by his giving
17 legal opinions in his testimony concerning what the
18 status of the case-by-case approach being -- no longer
19 be followed. I'm simply exploring that statement in
20 his testimony.

21 **COMMISSIONER DEASON:** Mr. Girtman, what were
22 the issues that were stricken?

23 **MR. GIRTMAN:** The Office of Public Counsel
24 had raised the issue, if I remember, whether or not
25 the Public Service Commission had a rule on negative

1 acquisition adjustments. And the Utility, in
2 response, had raised the issue -- first of all the
3 position was if it had a rule it had to follow it.
4 No. 2, if it didn't have a rule that this case had to
5 be dismissed and the findings and conclusions in the
6 PAA order had to become final, because it could not
7 proceed on a case-by-case basis to make a
8 determination of acquisition adjustment.

9 **COMMISSIONER DEASON:** If those issues were
10 stricken, then why is this testimony being submitted?
11 What issue does this issue then address?

12 **MR. GIRTMAN:** It addresses the point that
13 the Commission has to follow the policy that it has
14 established through generic proceedings.

15 **COMMISSIONER DEASON:** I guess the problem
16 I'm having you're saying there should not be cross on
17 this because those issues have been stricken from the
18 Prehearing Order. My concern is then it raises a
19 question why you would have the testimony at all. So
20 either I'm going to strike the testimony or else if I
21 leave the testimony in, I'm going to allow cross
22 examination.

23 **MR. GIRTMAN:** This testimony was prepared
24 prior to the time, and under the prior ruling then it
25 may be appropriate to strike that line of testimony.

1 **COMMISSIONER DEASON:** Objection overruled.
2 You may proceed, Mr. Beck.

3 **Q** **(By Mr. Beck)** Do you know what the law is
4 regarding state agencies adopting policies and rules?

5 **A** No, I don't.

6 **Q** Okay. Do you have an opinion of why the
7 Public Service Commission has no rule regarding
8 acquisition adjustments?

9 **MR. GIRTMAN:** Objection. It calls for a
10 conclusion.

11 **MR. BECK:** It called for an opinion. That's
12 exactly what I asked him. He discusses the approach,
13 the case-by-case approach that must be followed. I'm
14 asking -- it's a given there's no rule by the PSC and
15 I'm asking him if he has an opinion why.

16 **MR. GIRTMAN:** Object to the characterization
17 that there is no rule. That's a legal issue which a
18 court may have to determine one day, or the Division
19 of Administrative Hearings. The Office of Public
20 Counsel had an opportunity to take the issue to DOAH
21 on the question of whether or not the Public Service
22 Commission was exercising nonrule policy, and they
23 chose not to do so.

24 **COMMISSIONER DEASON:** Ignoring that
25 characterization, could you restate the objection to

1 the initial question?

2 **MR. GIRTMAN:** The question states -- I don't
3 remember the specific wording of it, but essentially
4 he is stating the Commission has no rule on
5 acquisition adjustment policy.

6 **COMMISSIONER DEASON:** So you're objecting to
7 the terminology used in the question.

8 **MR. GIRTMAN:** Yes, sir.

9 **MR. BECK:** I think I could restate the
10 question.

11 **COMMISSIONER DEASON:** Very well.

12 **Q** **(By Mr. Beck)** Do you know whether there is
13 any written material in the Florida Administrative
14 Code that the Commission has adopted that would
15 discuss acquisition adjustments?

16 **A** I'm not aware of any, no.

17 **Q** Do you have an opinion about why there is no
18 rule -- no materials in the Florida Administrative
19 Code regarding that?

20 **A** There is, I thought, a requirement in the
21 Administrative Code. Is that when you apply for the
22 transfer of a system, your application has to include
23 a statement as to -- if you are asking for an
24 acquisition adjustment and why. I think that little
25 piece is in there.

1 Q Okay. What I'm asking you about is whether
2 there's anything in the Florida Administrative Code
3 that addresses the issue of whether a negative
4 acquisition adjustment should be recognized or not?

5 A Nothing that specific that I'm aware of.

6 Q Let me move on.

7 Let's go to the purchase of Econ, the assets
8 of Econ Utilities by Wedgefield. This was an asset
9 purchase, was it not?

10 A That's correct.

11 Q And there was both cash, the cash price and
12 contingent consideration; is that correct?

13 A That's correct.

14 Q And the cash price as \$545,000?

15 A That's correct.

16 Q And then there's some contingent
17 possibilities of additional cash if there's growth in
18 the area known as the Commons; is that right?

19 A Yes.

20 Q The Commons is now known as the Reserve?

21 A That's my understand, yes.

22 Q And is that area located just north of where
23 we're sitting right now, up the road?

24 A Yes.

25 Q Okay. Has there been any change or any

1 additional cash given for the purchase on account of
2 the work being done in the Commons area?

3 A No.

4 Q If there were no growth, would you agree
5 that the -- growth in the Commons area, would you
6 agree that the final price for the utility would be
7 \$545,000?

8 A Yes.

9 Q Okay. Would you agree that that reflects
10 the fair market value of the assets that you
11 purchased?

12 MR. GIRTMAN: Objection. Would you rephrase
13 that question, please, sir?

14 Q (By Mr. Beck) Would you agree that the
15 price that was paid by Wedgefield to Econ Utilities
16 was the fair market value of the assets that you
17 purchased?

18 MR. GIRTMAN: Again, I'd like to ask for a
19 clarification on fair market value. That phrase has
20 many different meanings and different contexts.

21 Q (By Mr. Beck) Do you have any question,
22 Mr. Wenz, about fair market is?

23 A I'd like to know what you mean by fair
24 market value.

25 Q What does it mean to you? What else could

1 it mean other than that is the purchase price that
2 somebody was willing -- you have a willing seller and
3 a willing buyer and that's the price they come to.

4 A Given this particular transaction at that
5 particular point in time, given our understanding of
6 the Commission's policy on acquisition adjustments,
7 our understanding of the condition of the facilities,
8 potential for growth, at that particular point in time
9 when the deal was struck that was the fair market
10 value.

11 COMMISSIONER DEASON: Are you saying it
12 would have a different value if we had a different
13 policy?

14 WITNESS WENZ: Yes.

15 COMMISSIONER DEASON: From my understanding
16 then, if we did not have a policy at all concerning --
17 would then the fair market value be higher or lower
18 than what you pay?

19 WITNESS WENZ: It would be different. I
20 don't know whether it would be higher or lower. It
21 probably would be lower.

22 COMMISSIONER DEASON: So our policy then
23 makes the fair market value higher than what it
24 otherwise would be?

25 WITNESS WENZ: It might have in this

1 particular case.

2 COMMISSIONER DEASON: I'm sorry, Mr. Beck.
3 Please continue.

4 Q (By Mr. Beck) Why do you think it might be
5 lower if the Commission didn't have the policy you
6 claim it does?

7 A Because of the potential for used and useful
8 adjustments in this particular case. If you paid a
9 certain price and the used and useful adjustments came
10 off of that, it would be punitive. That was a great
11 uncertainty in this case; still is.

12 Q Let me ask you this: Would you agree that
13 the transaction for the purchase of the assets at Econ
14 Utilities was an arm's-length transaction?

15 A Yes.

16 Q Let me ask you to go to your additional
17 direct testimony. Page 3, Line 13. At Line 13 you
18 state "We reserve all of our objections to this
19 proceeding and we do not waive those objections or any
20 other rights by our participation herein." What are
21 you referring to?

22 MR. GIRTMAN: What was that page reference?

23 MR. BECK: Page 3 of the additional
24 testimony, Lines 13 through 15.

25 MR. GIRTMAN: Let me ask a clarification, if

1 I may, of Mr. Wenz. Wasn't this testimony prepared at
2 a time when motions were pending before the Public
3 Service Commission?

4 WITNESS WENZ: Yes, it was.

5 Q (By Mr. Beck) Now could you answer my
6 question?

7 A Would you say that question again?

8 Q What are you referring to when you state at
9 Line 13 through 15 on Page 3 of your additional direct
10 testimony "We reserve all of our objections to this
11 proceeding and we do not waive those objections or any
12 other rights by our participation herein."

13 A I think at this particular time there was
14 some uncertainty as to burden of proof. It was
15 unclear whether -- we were not comfortable that the
16 Commission had issued part of the order in final form
17 and some of it in PAA form. So I just threw that in
18 there to kind of cover myself and leave the door open
19 for objections.

20 Q Objections to what?

21 A Anything.

22 Q That's it? The person of this testimony is
23 so you don't waive your objections to anything?

24 A Uh-huh.

25 Q Okay. Could you turn to Page 9 of your

1 testimony? At Line 17 through 19 of your testimony,
2 at this point you're referring to the condition of the
3 assets that you purchased; is that right?

4 A Yes.

5 Q Okay. If Line 17 says "They were not in
6 violation of any state regulations but they were not
7 up to the standard that we would want to maintain."
8 Is that right?

9 A Yes.

10 Q In what way were they not up to the standard
11 you would want to maintain?

12 A Well, their appearance was not up to our
13 standards. We have a practice of keeping everything
14 painted, you know, as an aesthetic measure, and also,
15 you know prevent corrosion. My understanding that,
16 you know, some of the lift stations needed to be
17 reworked; some pumps needed to be replaced, you know,
18 things of that nature.

19 Q How about infiltration in the system, was
20 that one of the things that wasn't up to the standards
21 you want to maintain?

22 A I don't know that there's an excessive
23 infiltration problem out there, so it's hard for me to
24 answer that question.

25 Q Okay. You think with respect to

1 infiltration that the system is at the standard that
2 you wish to maintain?

3 A I think there are infiltration problems out
4 there. I don't know that they are excessive or
5 whether it is cost efficient to replace those.

6 Q Some of the pipes that make up the system
7 are made of asbestos cement, are they not?

8 A Yes.

9 Q They are called AC or asbestos cement pipes?

10 A Yes.

11 Q Are they up to the standards you would want
12 to maintain?

13 A That's really outside the area of my
14 expertise.

15 Q Okay. So you don't know?

16 A No.

17 Q How about pipe breakages, are you aware of
18 any breakages of the pipes of this system?

19 A I heard some testimony this morning about a
20 main break that occurred just before Christmas.

21 Q But were you aware of any when you purchased
22 the system, that there had been breakages?

23 A No. I would assume there were routine main
24 breaks, et cetera.

25 Q Would you agree that the condition of the

1 assets that you purchased played a role in the
2 purchase negotiations?

3 A They played a role in the negotiations, yes.

4 Q Let me show you an exhibit and ask it be
5 passed out.

6 COMMISSIONER DEASON: Mr. Beck, do you wish
7 to have this identified?

8 MR. BECK: Yes, please.

9 COMMISSIONER DEASON: This will be
10 identified as Exhibit 12.

11 (Exhibit 12 marked for identification.)

12 Q (By Mr. Beck) While they are being passed
13 out, could you thumb through there just to see whether
14 you are familiar with those documents?

15 A Yes.

16 Q These are some of the documents that
17 Wedgefield provided in response to our request for
18 production of documents, that's right?

19 A Yes.

20 Q And you actually reviewed the documents that
21 Wedgefield produced?

22 A Yes.

23 Q You're aware also that we asked for
24 documents to be produced by Econ Utilities as well,
25 are you not?

1 A Yes.

2 Q Because we had sent some requests that went
3 to Mr. Forrer of Econ?

4 A Yes, I'm aware of that.

5 Q Did you agree that you would exchange your
6 documents with each other before producing them to our
7 office?

8 A Yes, we did.

9 Q Did you do so?

10 A Yes, we did.

11 Q What was your purpose of your reviewing the
12 documents that each of you would produce before
13 producing them to us?

14 A I think we wanted to make sure that each of
15 our files were complete. That we weren't providing
16 something to use that the other one didn't have.

17 Q So you, in fact, did review the documents
18 that Econ produced to our office as well as your
19 Company did?

20 A Yes.

21 Q Now this exhibit which is marked Exhibit 12
22 for identification, these are all documents that came
23 from the files of your company, are they not?

24 A Yes.

25 Q Can you turn to -- we have marked pages in

1 the upper right-hand corner, 1 of 8, 2 of 8 and so
2 forth.

3 A Okay.

4 Q Could you turn to page 2 of 8.

5 A Okay.

6 Q And this is either -- I guess a memo to
7 Perry from Jim; is that right?

8 A Yes.

9 Q Can you tell us who Perry is in this memo?

10 A Perry was the then chairman of the company,
11 Jim was the vice chairman of the company.

12 Q By "the company," that's Utilities, Inc. the
13 parent company?

14 A Yes.

15 Q And these are some of the documents that
16 were related to the purchase negotiations at that
17 time; is that correct?

18 A Yes.

19 Q Okay. Now, I'd asked you earlier about the
20 condition of the assets playing a role in the
21 negotiations. I'd like to ask you to turn toward the
22 bottom of the page, there's a paragraph that starts
23 with "utilities within Orange County." Okay. And
24 then there's a sentence there, it says "Accordingly,
25 Econ Utilities will soon need to expand its supply

1 pumping treatment capacity as well as its storage
2 capacity to be able to meet fire flow requirements."

3 Do you see that?

4 A Yes.

5 Q Does that apply to Wedgefield now that you
6 have purchased the assets of the company?

7 A I don't think we have to do that. I'm not
8 aware that we're doing that.

9 Q That was my question. Is Wedgefield doing
10 what it says here?

11 A No, I don't believe.

12 Q And why is that?

13 A I think there's adequate supply pumping and
14 treatment capacity to meet the fire flow requirements.

15 Q Okay. Of course, that was a comment of Jim
16 who was, what, vice --

17 A Vice chairman, yes.

18 Q Vice chairman of the company. So what he
19 thought then turned out ultimately to not be true; is
20 that what you're saying?

21 A Yes.

22 Q Then underneath there you see that
23 there's -- highlighted there's a comment about 19,000
24 feet of AC. Do you see that?

25 A Yes.

1 Q 65,000 feet of PVC. "AC" stands for
2 asbestos cement with respect to pipe, does it not?

3 A I believe so, yes.

4 Q By the fact it's highlighted, do you think
5 that was a matter of concern to the Company, their
6 purchasing plant with asbestos cement pipes?

7 A No, I wouldn't. It wouldn't characterize it
8 being highlighted as being of concern. It's just
9 highlighted. I don't know why Perry would have done
10 that.

11 Q "PVC" was not highlighted, was it?

12 A No.

13 Q What's DI? What does that stand for?

14 A Some kind of iron.

15 Q That's not highlighted either, is it?

16 A No.

17 Q At the bottom of the page. It says "Actual
18 flows are now running over 150,000 gallons per day and
19 a new 200,000 gallon per day expansion is required
20 along with the upgrades to the equalization pond?

21 A Yes.

22 Q Has any of those efforts -- any of those
23 things been done by Wedgefield Utilities?

24 A They are in the planning and design stages
25 right now.

1 Q And what is requiring that expansion, or the
2 planning and design for that expansion?

3 A The plant is exceeding its three-month
4 average daily flows, its permitted three-month average
5 daily flow, so it has to do an upgrade.

6 Q That's at sewer treatment plant?

7 A Sewer treatment plant.

8 Q Since it's reached its capacity, would you
9 agree it would be 100% used and useful in a rate
10 proceeding, if you know?

11 A You can't always draw that conclusion, no.

12 Q Why can't you draw that conclusion?

13 A Because there are sometimes different
14 measures used for ratemaking purposes than by DEP
15 requirements.

16 Q Would you agree that it would be largely
17 used and useful? It would be a very high percentage
18 of used and useful, if not 100%, or not?

19 A You just never know.

20 Q Okay. Go to the next page, Page 3 of 8.

21 A Yes.

22 Q And at the very top on the second line it
23 says "There appears to be inflow and infiltration
24 problems which will require upgrades to manholes and
25 lift stations." Do you see that?

1 A Yes.

2 Q Has Wedgefield taken any action to do those
3 upgrades to manholes and lift stations?

4 A I think they have done some work on both of
5 those, yes.

6 Q What was the problems with them that
7 required that work?

8 A I think some of the manholes were below
9 grade and had to be raised. I know some of the
10 manholes were covered over by asphalt. Some of the
11 lift stations may have been needed to be grouted or
12 pumps upgraded.

13 Q You said some of that work has been done?

14 A Yes.

15 Q Are you still in the process of completing
16 that work?

17 A When we were inspecting yesterday we were
18 talking about doing some smoke testing on some of the
19 lines to find some of the infiltration.

20 Q So you are looking at infiltration right
21 now?

22 A Yes.

23 Q Could you describe what that problem is with
24 infiltration?

25 A It's where you get groundwater flowing into

1 the mains or through a manhole, you know, cracks in
2 the manhole where the line goes into the manhole. And
3 inflow is where you get surface water running into the
4 manholes.

5 Q And it's reached the stage where you think
6 some corrective action needs to be taken with regard
7 to that?

8 A Pretty much every sewer system, you have to
9 keep on top of that. It's just a routine part of
10 maintaining a sewer selection system, looking for
11 infiltration.

12 Q And the smoke test will -- the smoke will
13 come out where there's holes or whatever in the
14 system; is that right?

15 A Yes.

16 Q Did Econ do that, by the way, if you know?

17 A I don't know if they did or not. I read in
18 some of their correspondence, internal and in the
19 Orange County report, about some slip lining they were
20 going to do.

21 Q They were looking at it then?

22 A Yes.

23 Q Do you know whether they took any actions in
24 that respect?

25 A I don't think they did, no.

1 Q Down the page a little bit, on this page,
2 maybe a third of the way down, it says "The engineers
3 estimated cost just to bring the water supply,
4 pumping, treatment and storage up to near-term
5 requirements is approximately \$400,000." Do you see
6 that?

7 A Yes.

8 Q Then it goes on, after that "for the
9 wastewater treatment collection and disposal
10 facilities approximately \$900,000." Is that right?

11 A Yes.

12 Q And that was Econ engineers, is that right,
13 who had made that estimate?

14 A I believe, so, yes.

15 Q I take it Wedgefield thought those estimates
16 were high for the action?

17 A Yes.

18 Q Do you know what Wedgefield's estimates were
19 of the amount that would be needed to cure those
20 problems?

21 A No.

22 Q Let's go down to the section that says
23 "acquisition economics." Okay. It states that
24 "Preliminary economics indicate that we would lose
25 money in the near term. I would anticipate we would

1 have to invest approximately \$800,000 in improvements
2 over the first three years." Do you see that?

3 A Yes.

4 Q It's been, what, now, two years; two years
5 and a couple of months since you purchased the assets?

6 A Yes.

7 Q Do you know how much has been spent in
8 improvements to date?

9 A I think to date we've spent \$125,000.

10 Q Do you plan to invest the 800,000 that was
11 discussed here?

12 A Well, I think the sewer plant upgrade is
13 probably the bulk of that 800,000. And that, again,
14 is in the planning and design stages right now.

15 Q By sewer plant upgrade you mean expanding
16 the capacity?

17 A Yes.

18 Q Let me ask you about the next letter which
19 is on Pages 4 of 8 and 5 of 8?

20 A Yes.

21 Q This is a formal letter sent from your
22 company to the Chairman of Econ making an offer for
23 purchase, is it not?

24 A Yes.

25 Q In that offer there are two proposals that

1 appear on Page 5 of 8, second page of the letter. One
2 is for a cash purchase price, and the second is for a
3 purchase price contingent upon how much of a rate
4 increase you could get from the Company; is that
5 right?

6 A I think the second one -- what we would be
7 willing to pay if the sellers were proceeding with the
8 rate case. He calls it a joint rate case application,
9 yes.

10 Q Here's what we'll pay you cash. Forgot
11 about the rate case. Then the second one was if you
12 would both go in and file a rate case?

13 A Yes.

14 Q Then the extra amount of consideration would
15 depend on how large an increase that you could get in
16 a rate case?

17 A Yes.

18 Q Why would your purchase price depend upon
19 the results of a rate case?

20 A It improves cash flow. It makes the utility
21 more viable. And this particular utility was
22 generating significant losses under the old owner so
23 it was in desperate need of rate relief.

24 Q So you gave them a schedule, as one of your
25 proposals, how much extra money you would pay them

1 depending on how large a rate increase they would get;
2 is that right?

3 A Yes.

4 Q And under that if there were a 40% rate
5 increase, you'd pay them the \$400,000 fixed plus an
6 additional \$300,000 for a total of 700,000; is that
7 right?

8 A Yes.

9 Q And at the high end, if you could get a 100%
10 rate increase, you'd pay them the 600,000 in addition
11 to the 400,000; is that right?

12 A Yes.

13 Q That would be a million dollar purchase
14 price if you could get a 100% rate increase?

15 A Yes.

16 Q What did the seller's decide?

17 A I think they took Option No. 1.

18 Q Let me ask you to go to the last -- on the
19 next document, Pages 6 of 8 and 7 of 8. And this is
20 another memo to Perry from Jim. Those are the same
21 people you referred to?

22 A Same Perry, same Jim.

23 Q Okay. Toward the middle of the page, again,
24 it kind of recounts some of the things we discussed, I
25 believe. It says that the seller needs to make

1 immediate improvements, and the sellers engineers had
2 estimated it would cost \$1.5 million. Do you see
3 that?

4 A Uh-huh.

5 Q And your company felt those costs were very
6 inflated, and it also included replacing the asbestos
7 cement mains; is that right?

8 A Yes.

9 Q And there it says that "Andy and Don
10 Rasmussen have reviewed the report and believe we
11 could do the upgrade and expansions for approximately
12 \$850,000." Is that correct?

13 A Yes.

14 Q Andy and Don Rasmussen are who?

15 A Andy Dilbuch (ph) is Vice President of
16 Operations for Utilities, Inc. And Don Rasmussen is
17 is our Vice President of Utilities, Inc. of Florida.
18 He's responsible for our operations in the state of
19 Florida.

20 Q And down at the end of that paragraph says
21 "your lower cost reflects the fact that you have an
22 unutilized 360,000-gallon per day plant."

23 A Yes.

24 Q So when you estimated there that you could
25 do it for \$850,000, that was not including the cost of

1 the additional sewage plant; is that right?

2 A Well, I don't know exactly what Jim was
3 thinking when he said our lower cost also reflects the
4 fact we have unutilized 360,000-gallon per day plant
5 that we've just taken down from Weathersfield.

6 I don't know whether that -- you know, the
7 cost of moving it and erecting it at Wedgefield is
8 included in the 850 or not. I'm not exactly clear.

9 Q Could you go to the next page, please? Let
10 me ask you, before asking you some specific questions
11 about this page, would it be fair to say that the
12 hookup fees, the CIAC fees were attractive to
13 Wedgefield as part of this purchase? In other words,
14 that \$3,000 was fairly high and that it was
15 attractive. Would you agree with that or not?

16 A I don't know what up mean by attractive.

17 Q Would you agree that the \$3,000 hookup fees
18 were relatively high?

19 A I wouldn't say relatively high, no.

20 Q You wouldn't say that?

21 A No.

22 Q You think they are just about average?

23 A Sounds fair and reasonable.

24 Q Okay. Let me ask this: On the last page,
25 the second to the last paragraph, could you take a

1 second, where it says starts "thereafter the situation
2 only gets better."

3 A Yes.

4 Q Could you take a second to read that.

5 (Witness complies.)

6 A Yes.

7 Q Okay. Would it be fair to say that the
8 paragraph we've just read, you read to yourself,
9 describes a future scenario where it concludes that
10 eventually you could have a zero dollar investment in
11 a utility serving 3,500 customers?

12 A Yes. Assuming all those things came true.

13 Q Could you kind of describe in regular
14 language how you could do that? Have a zero dollar
15 investment in a utility serving 3,500 customers?

16 A You could do it through the collection of
17 CIAC. You could do it through just weighting out the
18 depreciation reserve to bring the rate base to zero.

19 Q In this case it was through the collection
20 of CIAC that they foresaw that possibility at least;
21 is that right?

22 A The key word there being eventually, yes.
23 If all of these things came true.

24 Q And would you agree that that's quite an
25 incentive to purchase a company? If you could get a

1 utility serving 3,500 customers with no investment,
2 isn't that attractive?

3 A That is attractive, yes.

4 Q And that has nothing whatsoever to do with
5 whether there is an acquisition adjustment recognized
6 in this case or not; isn't that right?

7 A In this particular transaction the
8 acquisition adjustment policy was a factor.

9 Q Let me make my question clear. In this memo
10 by your Company it presents a scenario where
11 eventually, if all of those things happen, it was
12 possible you could have a zero dollar investment in a
13 utility serving 3,500 customers; is that right?

14 A Yes.

15 Q That would be because of the CIAC funds that
16 you would collect as the utility expands; is that
17 right?

18 A Yes.

19 Q Okay. Would that -- does that calculation,
20 or that scenario that's presented there, have anything
21 to do with whether there's an acquisition adjustment
22 recognized or not? I'm not asking you whether an
23 acquisition adjustment had something to do with the
24 purchase. I'm asking you whether it has anything to
25 do with that analysis?

1 A Well, I think so. Because we probably
2 wouldn't be allowed to continue to collect a \$3,000
3 connection fee on \$545,000, or less, rate base.

4 Q Could you explain that?

5 A It's the Commission's policy, or rule, that
6 your net investment can't be less than 25% of the rate
7 base.

8 Q So to get this kind of scenario you'd have
9 to have a high rate base to keep your CIAC charges
10 high?

11 A Yes.

12 Q Your fear is that if they recognize an
13 acquisition adjustment, that your CIAC fees may not
14 stay as high. Is that right?

15 A You say my fear. You're putting words in my
16 mouth. I don't have the fear. You asked me about the
17 scenario about -- you know, was the policy a factor in
18 the negotiations? Yes. Did we reply upon the policy?
19 Yes. Did it enter into our thinking, or Jim's
20 thinking, in writing that paragraph? The answer is
21 yes.

22 Q You think it does?

23 A Yes.

24 Q Because without the acquisition adjustments
25 your CIAC fees might not stay at \$3,000 per hookup?

1 A Yes.

2 Q Okay.

3 COMMISSIONER CLARK: Without the acquisition
4 adjustments they might not stay?

5 MR. BECK: With it.

6 COMMISSIONER CLARK: You accountants who
7 choose that "acquisition adjustment" term -- but I
8 think it should have been "with it."

9 MR. BECK: With it.

10 Q (By Mr. Beck) That was your understanding,
11 was it not, Mr. Wenz, that with the acquisition
12 adjustment being recognized, the concern would be that
13 the CIAC charges might not stay as high as they are
14 today?

15 A Yes.

16 Q One of the bases used in the Commission's
17 order for recognizing -- or for not recognizing the
18 acquisition adjustment was the used and useful
19 percentages that have been applied historically to the
20 system; is that right?

21 A Yes. That's mentioned in the order.

22 Q Nowhere in your testimony, or anywhere else
23 in the Company's that I saw -- correct me if I'm
24 wrong -- do you address that as being -- whether you
25 agree or not agree with that policy?

1 A Which policy?

2 Q The rationale given in the Commission's
3 proposed agency action, that the used and useful
4 percentages are a basis for not recognizing the
5 acquisition adjustment.

6 MR. GIRTMAN: I'm confused.

7 Q (By Mr. Beck) Let me rephrase this.

8 Do you believe that the used and useful
9 percentages as described in the Commission's order,
10 that that's rationally related to whether you should
11 recognize an acquisition adjustment?

12 MR. GIRTMAN: Again, I have a concern with
13 the phrasing and form of the question. It's vague and
14 I'm not understanding exactly what question you're
15 asking, Mr. Beck.

16 MR. BECK: All right. Without arguing that
17 I will get a copy of the Order out.

18 I'd like to have an exhibit marked for
19 identification.

20 COMMISSIONER DEASON: Is this an order, Mr.
21 Beck?

22 MR. BECK: This is an excerpt from the
23 proposed agency action order in this case.

24 COMMISSIONER DEASON: This will be marked as
25 Exhibit 13.

1 (Exhibit 13 marked for identification.)

2 Q (By Mr. Beck) Mr. Wenz, if you could, I'm
3 going to ask you some questions at the bottom half of
4 this Page 5 of this Order.

5 Mr. Wenz, could I ask you to turn to Page 5
6 of the order?

7 A Yes.

8 Q There's a paragraph that starts "Although
9 there's a substantial difference between the original
10 construction cost and the purchase price, used and
11 useful adjustments have not been made." Do you see
12 that?

13 A Yes.

14 Q And it recounts the experience from the 1984
15 docket of Econ where the reported investment was about
16 3.1 million, but the approved rate base was 659,000
17 due in large part to used and useful reductions. Do
18 you see that?

19 A Yes, I do.

20 Q Toward the bottom of the page, the Proposed
21 Agency Action Order says "Considering the likely
22 impact of used and useful adjustments for this
23 utility, the circumstances in this instance do not
24 appear to be extraordinary." What I'm asking you is
25 do you think that the used and useful adjustments are

1 related to whether you should have recognized
2 extraordinary circumstances?

3 A Could you say that again?

4 Q Do you agree with the way the Commission is
5 reasoning? Put it that way.

6 A That's a tough question. Yeah.

7 Q Used and useful percentages change over
8 time, do they not?

9 A Yes, they do.

10 Q You agree your used and useful percentage,
11 if they were reviewed right now, would be higher than
12 they were during the last rate case; is that right?

13 A I would assume so.

14 Q At some point if a system is completely
15 built out it will be 100% used and useful, would it
16 not, in concept?

17 A In concept, yes.

18 Q If the used and useful percentages are used
19 as a basis for not recognizing an acquisition
20 adjustment at some point in time, conceptually it's
21 going to be 100% used and useful, is it not?

22 A Yes.

23 Q So at that point -- and at 100% used and
24 useful you're going to get a return on the entire rate
25 base; is that right?

1 A Well, conceptually. There could be other
2 factors.

3 Q All other things being even, you'd agree
4 with that?

5 A Yes.

6 Q Do you have an opinion about what the used
7 and useful percentages that would apply to your system
8 right now would be?

9 A No. I've not done any calculations.

10 Q Let me ask for one other exhibit to be
11 marked for identification.

12 COMMISSIONER DEASON: This will be
13 identified as Exhibit 14.

14 (Exhibit 14 marked for identification.)

15 COMMISSIONER CLARK: While he's passing that
16 out, Mr. Wenz, can I ask you a question? I think
17 you're in agreement with the notion that there should
18 be no positive or negative acquisition adjustment,
19 and, in effect, the new owner stands in the shoes of
20 the old owner.

21 WITNESS WENZ: Yes.

22 COMMISSIONER CLARK: My question to you is
23 does that apply -- would that apply to other aspects
24 of the utility's operations? Let me be specific.

25 If, say, some of the manhole areas had

1 excessive -- what do you call it -- infiltration.

2 WITNESS WENZ: Infiltration.

3 COMMISSIONER CLARK: And upon a review of
4 the maintenance that was done, or not done, we
5 concluded that it could have been avoided if they were
6 properly maintained. And that some of the
7 expenditures that need to be incurred, in fact, were
8 due to the imprudent management of a maintenance
9 regime.

10 Would you expect that your Company would be
11 responsible for the failure of the previous owners to
12 act in that capacity?

13 MR. GIRTMAN: That may call for a legal
14 conclusion. I hate to say that, but that appears to
15 be a pure legal issue.

16 COMMISSIONER CLARK: Well, I want you to
17 answer it in terms of the notion of stepping into the
18 shoes of the owner, the previous owner. In terms of
19 fairness and equity and the common -- if the notion of
20 stepping into the shoes applies to one, would it be
21 your opinion it should apply to the other? Legal
22 considerations aside. Just in terms of what would be
23 common sense, walking-around fairness.

24 WITNESS WENZ: I think you're asking me if
25 we went in there and corrected the infiltration

1 problems, would I expect to recover those costs
2 through rates? I would say the answer is yes.

3 COMMISSIONER CLARK: And you could expect to
4 recover them even if they were a result of failing to
5 maintain them properly by the previous owners?

6 WITNESS WENZ: Yes.

7 COMMISSIONER CLARK: Okay. Let me ask it a
8 different way.

9 If you were, in fact, continuously the owner
10 and you had failed to properly maintain them, and then
11 later you had to expend more money than you would have
12 if you had properly maintained them, would you expect
13 to get the full amount?

14 WITNESS WENZ: If you hadn't prudently
15 managed this utility and hadn't made prudent
16 expenditures, then I wouldn't expect to recover those
17 costs.

18 COMMISSIONER CLARK: So why should it be any
19 different when you are standing in the shoes of the
20 old owner?

21 WITNESS WENZ: Because it's the
22 long-standing Commission policy that rate base doesn't
23 change upon the transfer. Not changing the rate base
24 requires the customers to pay one time for the
25 facilities that are in place to serve them. And in

1 fairness, we relied upon the policy in negotiating
2 this transaction.

3 **COMMISSIONER CLARK:** Well, you're talking
4 about the rate base. I'm getting back to the
5 maintenance issue and whether or not you should stand
6 in the shoes of the previous owner -- and I'm not
7 saying there was any imprudent management. But if
8 there was imprudent management, that results in a
9 greater expenditure than would have been if they had
10 been properly maintained.

11 **COMMISSIONER GARCIA:** It's a question about
12 the burden and benefit. Do the burdens go along with
13 the benefit you receive?

14 **WITNESS WENZ:** I think you'd have to show
15 that the seller, the old owner, was making all kinds
16 of money on this utility and was diverting it
17 elsewhere, when, in fact, he had \$7 million of
18 accumulated losses on his books. So he wasn't
19 collecting money from ratepayers to maintain the
20 system the way it should have been, and I think that's
21 a distinction.

22 **COMMISSIONER CLARK:** Well, that may be a
23 distinction you would want to make to argue that he
24 wasn't being paid appropriately. And that may be the
25 reason why it was imprudent. But let's look at the

1 notion that if they had been imprudent. Let's assume
2 they earned what they should have earned, and had they
3 maintained it properly you would not have made some
4 corrections to the plant that you have to make. I'm
5 trying to get at the notion why should it be any
6 different because the owners change than if you had
7 been responsible in the first place?

8 I mean, it seems to me, as Commissioner
9 Garcia is saying, if you take the benefits, you take
10 some of the burdens too.

11 **WITNESS WENZ:** Well, in looking at it --

12 **MR. GIRTMAN:** Excuse me. Could I ask for a
13 clarification on that question? Are you assuming that
14 the buyer gets the full rate base, and that some
15 adjustment for prudence, or failure to maintain, be
16 made to the new owner? Is that it?

17 **COMMISSIONER CLARK:** Let me state it this
18 way: I'm working on the premise that you stand in the
19 shoes of the owner, and that you get the rate base
20 that he had, the per books rate base. No positive, no
21 negative acquisition adjustment. If you stand in the
22 shoes of the purposes of rate base, shouldn't you
23 stand in the shoes for management prudence, in effect.
24 If they were imprudent and as a result there are
25 greater costs to be incurred that would not have been

1 incurred if it were prudently managed, should you get
2 the greater cost just because you're a new owner?

3 COMMISSIONER GARCIA: It's a theoretical
4 question.

5 WITNESS WENZ: As an acquirer of troubled
6 water and sewer utilities, I would say yes, I should
7 be allowed to recover those costs, and I shouldn't be
8 held responsible for the prior owner since. I didn't
9 create them. You know, I'm here to fix them. You
10 have this policy that I've read in a hundred orders
11 that it's an incentive for companies like me to buy
12 companies like this, like Wedgefield.

13 COMMISSIONER CLARK: Right.

14 WITNESS WENZ: And the incentive is working.
15 I would expect to recover the costs of rehabilitating
16 troubled systems.

17 And somebody should have, perhaps, regulated
18 Econ a little closer if they hadn't been managing
19 their facilities properly, and that's probably DEP.

20 COMMISSIONER CLARK: Well, maybe it's an
21 extraordinary circumstance then. If we look at it and
22 it hadn't been maintained, we would adjust the rate
23 base then. Would failure to properly maintain it be
24 an extraordinary circumstance?

25 WITNESS WENZ: It hasn't been historically.

1 COMMISSIONER CLARK: Okay.

2 Q (By Mr. Beck) Mr. Wenz, back to the
3 document. Do you recognize this as one of the
4 documents produced by Econ Utilities?

5 A Yes.

6 Q On the first -- Page 1 of 4, would you agree
7 that this document generally has a number of
8 considerations by Econ of what would happen if they
9 filed a rate case in 1995?

10 A I haven't read this in a while. You know, I
11 guess it is. I don't know who Gerry and Cyndi are.
12 And I don't know who wrote it. It's not signed or
13 anything, so I --

14 Q But you recognize this as one of the
15 documents --

16 A It's a document that Mr. Forrer, from Magna,
17 provided in response to your discovery request.
18 That's all I know about it.

19 Q About halfway down it says that "Based on
20 the methodology used in the 1988 rate case, our lines
21 are now about 50% used and useful, our treatment plant
22 is about 75% utilized and the rest of the equipment
23 100% utilized." Do you agree or disagree with that
24 statement that he makes there, or that's contained in
25 this memo?

1 A I know nothing about that statement. I
2 can't agree or disagree.

3 Q But you would agree that the used and useful
4 percentages today would be higher than they were in
5 the last rate case, or not?

6 A I have been involved in rate cases where it
7 goes down even though you have more customers, so --

8 Q That's not my question. My question is
9 would you agree that the used and useful percentages
10 that apply for Wedgefield are higher today than they
11 were in the last rate case they filed, that Econ had?

12 A I will assume that to be true.

13 Q Okay.

14 MR. BECK: Thank you. That's all I have.

15 COMMISSIONER DEASON: Staff.

16 CROSS EXAMINATION

17 BY MS. BRUBAKER:

18 Q Mr. Wenz, if I could direct you to Page 4 of
19 your additional direct testimony, you indicate there
20 that rate base amounts in this proceeding not include
21 used and useful adjustments.

22 Did Wedgefield perform any type of used and
23 useful analysis with respect to Econ's plant
24 facilities prior to purchasing the system?

25 A I didn't see any in the correspondence that

1 I provided. I don't think we did.

2 Q Okay. So to your knowledge there's no
3 study, documentation, any form of documentation that
4 would memorialize a used and useful analysis?

5 A That's correct.

6 Q Okay. Did Wedgefield consider, to your
7 knowledge, used and useful factors for the Econ system
8 in its purchase decision?

9 A Yes, I believe we did.

10 Q And how, in your opinion, would used and
11 useful matters affect the purchase price?

12 A Well, it impacts -- if you take the net book
13 value, which is at issue here, and you take off used
14 and useful adjustments, you'll get to a lower number
15 obviously. And the policy, the Commission policy, the
16 way it is, our understanding of the policy, you know,
17 to take a used and useful adjustment off the 545 now
18 would be punitive.

19 Q Earlier you had discussed, just by way of
20 reference, on Page 9 of your additional direct, you
21 had made the comment that the acquired systems were
22 neither in the best of condition or worst.

23 You had made some comments earlier during
24 Mr. Beck's cross examination as to the types of things
25 that you felt were not up to Utility, Inc.'s standard

1 necessarily, such as appearance, and there was
2 discussion about infiltration and asbestos pipes.

3 Are there any other particular concerns or
4 factors that you looked at as far as the condition of
5 the assets, anything that -- other than what you have
6 discussed already?

7 A No, nothing comes to mind.

8 Q Is Wedgefield presently serving any homes in
9 the area known as the Commons?

10 A No, I don't think any homes are completed
11 over there. There's a couple of model homes going up.

12 Q Did Wedgefield agree that the purchase price
13 for Econ's facility would be increased by 50% of the
14 expected service availability charges that would be
15 due for development of that area, the Commons,
16 currently known as, I believe, the Reserve?

17 A Yes. That's the way the transaction is
18 structured.

19 Q Okay. And the agreement also provides that
20 distribution and collection facilities in the Commons
21 area will be contributed to Wedgefield?

22 A That's correct.

23 Q Okay. Have distribution and collection
24 facilities been installed in the Commons community
25 area?

1 A I'm not sure of that.

2 Q Could you tell me -- identify for me who
3 might be the perfect person to ask that question? If
4 you're unaware, would perhaps Mr. Seidman have
5 knowledge, do you think?

6 A He could probably find out.

7 Q Okay. What accounting treatment will
8 Wedgefield follow to account for Econ's retention of
9 50% of the service availability charges in the Commons
10 development area?

11 A It will go to reduce the contingent
12 liability. You know, as the payments are made to
13 Econ, the contingent liability that's recorded on our
14 books will be reduced.

15 Q Isn't it true that if Wedgefield only
16 collected 50% of its approved connection fees, that
17 that would be inconsistent with its tariff?

18 A Well, the tariff requires us to collect
19 them. So we'll collect all of them. And we'll record
20 all of them as CIAC. So the customers will get the
21 benefit of all of those as CIAC increases.

22 Q Would imputation of the uncollected amount
23 be the correct accounting treatment under that
24 arrangement then?

25 A No. Because when you collect them you

1 record all of them as CIAC, and all of them go to
2 reduce rate base. And then as you pay them out you
3 reduce the contingent liability, which is separate
4 from the rate base calculation.

5 Q So if CIAC is imputed, would the offsetting
6 entry be a debit to the acquisition adjustment
7 account?

8 A You wouldn't have to impute them because we
9 will already have had recorded them as CIAC.

10 MR. GIRTMAN: May I ask for a clarification
11 on the question? Are you talking about imputing them
12 prior to receipt, or just recording them when they are
13 collected?

14 MS. BRUBAKER: I believe we're recording as
15 collected.

16 Q (By Ms. Brubaker) Has Wedgefield actually
17 recorded already some form of contingent liability
18 with respect to the Commons?

19 A Yes. I believe we recorded the rate base as
20 shown in the Staff audit.

21 Q Okay. Earlier a question was posed whether
22 the failure to maintain the condition of the assets
23 purchased might qualify as an extraordinary
24 circumstance. In your opinion do the conditions of
25 the assets -- let me rephrase that. Do the present

1 conditions of the assets and any expansion or
2 reconditioning of the assets that might be required,
3 do you see anything in the present condition of the
4 assets and what would be needed to maintain them, do
5 you see anything in that that would constitute an
6 extraordinary circumstance?

7 A No, I do not.

8 MS. BRUBAKER: That's all we have for cross.

9 COMMISSIONER DEASON: Commissioners?

10 Redirect.

11 MR. GIRTMAN: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. GIRTMAN:

14 Q Mr. Wenz, the question was asked regarding
15 whether the failure of the previous owner to properly
16 maintain is, or should be, an extraordinary
17 circumstance in the acquisition adjustment for the
18 purchaser as far as the rate base is concerned.

19 In your review of the Florida authorities on
20 negative acquisition adjustments, have you ever seen
21 failure to maintain properly by the prior owner as
22 considered to be an extraordinary circumstance?

23 A No, I haven't.

24 Q Would that be -- if it happened in this
25 case, would that be a change in what you understood

1 the Florida policy to be and what you relied upon by
2 this system?

3 A Yes, it would.

4 Q Would it be a change in the purchaser's
5 incentive to buy troubled systems?

6 A Yes, it would.

7 Q Would this be a new, an additional factor to
8 consider when evaluating whether or not to purchase a
9 troubled utility system?

10 A Well, if the basis for changing the policy
11 was that the system was not properly maintained, it
12 would act as a great disincentive to acquire troubled
13 companies.

14 Q That is having failure to maintain being
15 treated as an exceptional circumstance?

16 A Yes.

17 Q If a Commission decision was rendered in
18 this case and stated that the previous owner's failure
19 to maintain is an extraordinary circumstance, where
20 would any other acquiring utility look to find out
21 what that policy change was? How would they know?

22 A Say that again?

23 Q Okay. If this Commission were to enter an
24 order stating that we find failure of the previous
25 owner to properly maintain a system to be, by

1 definition, or included in the concept of an
2 extraordinary circumstance, if they did that in this
3 case, and they issued an order, said that's what we
4 find, that's what we're going to do -- let me break
5 this down a little bit further -- if they did that,
6 would a prospective buyer someplace else be able to
7 look in the Florida Administrative Code, in the rules,
8 and find that if the only thing that is done is an
9 Order is issued in this case making that decision?
10 Could you find it in the Florida Administrative Code?

11 A No.

12 Q Okay. Would you have to have a rule
13 proceeding if you were going to find it in the
14 Administrative Code?

15 A I believe so.

16 Q And wouldn't the only place a person would
17 be able to find that decision would be in the order in
18 this case relating to this one single utility?

19 A Yes.

20 Q Haven't there been cases decided by this
21 Public Service Commission where failure to maintain
22 properly by the prior owner specifically has been
23 excluded as an extraordinary circumstance?

24 A Yes.

25 Q Are the full 400 number of lots planned

1 originally for the Commons, to your knowledge are they
2 going to be built on?

3 A No. I think the number has been reduced to
4 something like 328.

5 Q So instead of receiving hookups for 400
6 lots, you receive hookup fees for 328?

7 A That's correct.

8 Q Do you know why the developer made that
9 change in plan?

10 A I think the 400 resulted in too high of a
11 density. You had to take out some of the units to
12 have more well ends retention.

13 Q Do hookup fees help improve cash flow?

14 A Yes.

15 Q Do hookup fees help or hurt the existing
16 customers; hookup fees being paid by new customers who
17 come on?

18 A They help by lowering the rate base.

19 COMMISSIONER CLARK: Mr. Wenz, just so I'm
20 clear, the money you would get -- let's just assume
21 that rate base is roughly 2.8 million, and the money
22 you receive, I guess, from the Commons will reduce
23 that \$2.8 million.

24 WITNESS WENZ: That's correct. Yes.

25 COMMISSIONER CLARK: Okay. By how much does

1 it potentially reduce that rate base?

2 **WITNESS WENZ:** Well, I can do the 400 in my
3 head, that's 1.2 million. 3,000 a home times 400 is a
4 million two.

5 **Q** **(By Mr. Girtman)** Mr. Wenz, in addition to
6 the \$3,000 per hookup fee that's going to be received,
7 isn't the developer also going to contribute the lines
8 to the utility also helping the current customer?

9 **A** Doesn't help or hurt, it's neutral.

10 **Q** Okay. Won't the developer contribute those
11 lines in the Commons, contribute them to the utility?

12 **A** Yes. It has no impact on existing
13 customers. It's neutral.

14 **Q** That's the point. It benefits the existing
15 customers because they are not going to be asked to
16 make any kind of payment for that \$3,000 to pay for
17 those lines, or for the lines which are contributed to
18 the utility, right?

19 **MR. BECK:** Objection, leading.

20 **MR. GIRTMAN:** I'll rephrase my question.

21 **Q** **(By Mr. Girtman)** There's been concern
22 expressed this morning by some of the customers that
23 they will be called upon to pay for expansion to serve
24 new customers. Do you remember hearing that
25 testimony?

1 A Yes.

2 Q What can you say to these people who have
3 that concern to help alleviate that concern?

4 A Well, a developer in the new area, in the
5 Reserve, is going to contribute all of the lines,
6 distribution lines and collection lines. So that is
7 neutral on the existing customers. The developer is
8 going to pay a \$3,000 connection fee for every new
9 home. That will reduce the rate base for this
10 utility, which goes to benefit all customers. And the
11 addition of new customers allows us to achieve greater
12 economies of scale, and that's beneficial to new
13 customers. And any upgrades or expansions that we
14 would have to fund to serve the new area will be
15 considered in the next rate case and will be subject
16 to the Commission's used and useful requirements so
17 that existing customers don't pay for facilities
18 installed to serve future connections.

19 Q Going to what's been marked for
20 identification as Exhibit 13, excerpt from the Order
21 approving the transfer, Order PSC 96-1241, at the
22 bottom of Page 5 you were asked some questions about
23 used and useful adjustments.

24 The last paragraph begins stating the
25 Commission policy. And then if you would, please,

1 read that second sentence beginning with
2 "considering."

3 A "Considering the likely impact of used and
4 useful adjustments for this utility, the circumstances
5 in this instance do not appear to be extraordinary."

6 Q I'd like to clarify that for a little bit.
7 These are two separate matters, aren't they? The
8 acquisition adjustments, used and useful adjustments,
9 they don't have to happen at the same time?

10 A No. Used and useful adjustments happen in
11 rate cases.

12 Q So these are two totally different matters,
13 aren't they?

14 A Yes.

15 Q So isn't the phrasing of the Order a little
16 bit confusing? Doesn't it suggest that a used and
17 useful adjustment is an excuse or a reason,
18 justification for an acquisition adjustment. Isn't
19 that a little confusing?

20 A It says what it says. I don't know that
21 it's confusing, Ben.

22 Q You can have a acquisition adjustment
23 without having the used and useful adjustment,
24 correct?

25 A Yes.

1 Q Okay. So a used and useful adjustment is
2 not a precondition for having a negative acquisition
3 adjustment, is it?

4 A No.

5 Q So in essence the two stand alone. One is
6 not a precondition of the other?

7 A Correct.

8 Q Now, assuming no negative acquisition
9 adjustment were made in this case, and the full rate
10 base remained as it was with the previous owner, would
11 you anticipate that separate and apart from the issue
12 of negative acquisition adjustment, that the issue of
13 used and useful would be considered, and might
14 possibly result in a reduction in the rate base for
15 setting rates at some time in the future, whenever
16 that might happen?

17 A Yes.

18 Q How many systems do you all operate
19 nationwide, approximately?

20 A Approximately 350.

21 Q And your Company has bought all of those
22 systems since it was founded, correct?

23 A Yes.

24 Q About when, 1960s?

25 A '65.

1 Q Okay. So you have, your Company has
2 experience in evaluating the condition of utility
3 plants, doesn't it?

4 A Yes.

5 Q And what is your assessment of the condition
6 of this plant in comparison to the other plants and
7 systems that your Company has brought?

8 A Based on my discussions with some of our
9 local people here, and based on my personal
10 observations, this appeared to be just a typical
11 developer-owned system, whose attention was diverted
12 to developing, and he didn't maintain this like a
13 professional utility company would.

14 There was some maintenance things that had
15 to be taken care of, you know, a lot of aesthetic
16 things. He was disinterested in doing those. He
17 wanted to sell it. He had accumulated large losses
18 over the years. Just your typical troubled
19 developer-owned utility Company.

20 Q Would you rate this utility as compared to
21 the other ones as high quality, low quality, average
22 quality or some other quality?

23 A Just average typically.

24 COMMISSIONER GARCIA: Typical of a
25 developer-owned utility.

1 **WITNESS WENZ:** Yes.

2 **Q** **(By Mr. Girtman)** In regard to the
3 questions about the previous owner's maintenance and
4 whether it's prudent and whether there should be some
5 adjustment based on that, doesn't the Commission
6 always have authority to make certain adjustments when
7 a utility is operated if it's not being operated
8 properly, when it comes up for a rate case? Doesn't
9 it have authority to make adjustments then?

10 **A** Yes.

11 **Q** And those adjustments are outside the
12 question of a negative acquisition adjustment?

13 **A** Yes.

14 **Q** So if Utilities, Inc. did not properly and
15 prudently run this system, that you would be subject
16 to review in a future possible rate case and have
17 possible negative adjustments made if you didn't run
18 it properly?

19 **A** That's correct.

20 **MR. GIRTMAN:** Thank you. No further
21 questions.

22 **COMMISSIONER DEASON:** Exhibits.

23 **MR. BECK:** Commissioner Deason, I have some
24 cross based on Mr. Girtman's redirect. And it's
25 solely limited to the issues he raised in redirect.

1 **COMMISSIONER DEASON:** His redirect should
2 have been just limited to your cross, or Staff's
3 cross. And so I don't understand why you raise
4 something new -- why you didn't object at the time he
5 raised something new.

6 **MR. BECK:** It's not something new. It's
7 questions he asked on redirect. And I think I'd be
8 entitled to cross examine limited to the scope of his
9 redirect.

10 **COMMISSIONER DEASON:** Very well.

11 **MR. BECK:** It won't take long.

12 **RECROSS EXAMINATION**

13 Q **(By Mr. Beck)** Mr. Wenz, I believe you said
14 in response to Mr. Girtman's questions on redirect
15 that you know of no case in which the Commission
16 considered the prior maintenance practices of a
17 company, of the selling company, with respect to
18 whether to recognize acquisition adjustment or not.
19 Is that right?

20 **MR. GIRTMAN:** Objection. My question was do
21 you -- have you ever seen a case where the previous
22 company's prior poor maintenance practices was
23 considered to be extraordinary circumstances, and he
24 said no.

25 **MR. BECK:** Is that your answer?

1 WITNESS WENZ: Yes.

2 Q (By Mr. Beck) You're familiar with the
3 Jasmine Lakes Utility case.

4 A I wouldn't say I'm familiar with it.

5 MR. GIRTMAN: Do you have a copy of it?

6 MR. BECK: Yeah. Sure do. I'd like to have
7 it marked as an exhibit.

8 COMMISSIONER DEASON: Do you want this
9 identified?

10 MR. BECK: Yes.

11 COMMISSIONER DEASON: Exhibit 15.

12 (Exhibit 15 marked for identification.)

13 MR. GIRTMAN: I'm going to object to the use
14 of this document. It doesn't have the dissenting
15 opinion of Commissioner Johnson with it.

16 MR. BECK: Yes, it does. It's the last
17 page.

18 MR. GIRTMAN: It does?

19 MR. BECK: It's the last page.

20 MR. GIRTMAN: I don't have one with the
21 document I got.

22 MR. BECK: Page 3 of 3.

23 MR. GIRTMAN: 2 of 2.

24 MR. BECK: Goodness. 1 of 3.

25 MR. GIRTMAN: 1 of 2.

1 MS. BRUBAKER: 1 of 2.

2 MR. GIRTMAN: They have a copy machine
3 outside. We can make one real quick.

4 MR. BECK: That was a mistake. That was
5 made -- they didn't correct it and we need to give you
6 the corrected one. The corrected one has three pages.
7 Pages 1 of 3, 2 of 3, and 3 of 3.

8 COMMISSIONER CLARK: Mr. Beck, can you tell
9 me who was on this case?

10 MR. BECK: It was Commissioner Deason,
11 Commissioner Lauredo and Commissioner Johnson.

12 COMMISSIONER CLARK: I thought my memory was
13 going. (Laughter)

14 Q (By Mr. Beck) Have you had a chance to
15 look through the majority opinion in this case,
16 Mr. Wenz?

17 A Uh-huh.

18 Q Would you agree that the prior maintenance
19 activities of the prior owner affected the
20 Commission's decision on acquisition adjustment?

21 MR. GIRTMAN: Objection as to the form of
22 the question. There were several factors that were
23 mentioned by the Commission in that case. It was
24 mentioned but there were some other rather major
25 problems with that system, so I object to the form

1 inferring that that was the basis of the decision.

2 MR. BECK: I didn't ask that question. I
3 asked whether it was a -- I can have it read back.

4 Q (By Mr. Beck) Wasn't that one of the
5 considerations the Commission took in deciding this
6 case?

7 A Could you say that question again? I was
8 reading.

9 Q Let's look at the second paragraph under the
10 negative acquisition adjustments. Let me read it into
11 the record. It says "OPC Witness Dismukes testified
12 that a negative acquisition adjustment \$17,753 should
13 be included in rate base. To support this position,
14 OPC cites utility witness Dreher's testimony that the
15 utility was in bad shape prior to the purchase, that
16 the utility had not been maintained in seven years,
17 and that the previous owner had neglected the utility
18 for a long time. OPC Witness Dismukes concluded that
19 recognition of this cost/book value difference should
20 be made. OPC further argues that recognition of this
21 difference would insulate the ratepayers from failure
22 or negligent by prior utility management."

23 The next sentence says "We agree with OPC."

24 And goes on to describe why they agree.

25 Would you agree with me, Mr. Wenz, that the

1 Commission has taken into account prior maintenance
2 activities of an owner in deciding whether to
3 recognize an acquisition adjustment?

4 **MR. GIRTMAN:** Again, I object to the form of
5 the question. First of all, it calls for a legal
6 conclusion. Second of all, it leaves out a major
7 portion on the top of Page 2 of 3 regarding the fact
8 that the Utility was already purchasing 80% of its
9 water from Pasco County and yet the Utility had earned
10 a return with water plant components for the past two
11 years. Let's get the whole picture here.

12 **MR. BECK:** I think the question is proper.
13 I would ask the witness to answer it.

14 **COMMISSIONER DEASON:** Objection is
15 overruled. Witness may answer the question.

16 **WITNESS WENZ:** It was a factor in deciding
17 this rate case, yes.

18 **Q** (By Mr. Beck) And this rate case was
19 decided prior to your purchase of Econ; is that
20 correct?

21 **A** What's the date of this? '93 sometime?

22 **Q** November 18th, 1993?

23 **A** Yes.

24 **Q** So had Wedgefield reviewed the decisions of
25 the Commission they would have found this decision

1 where the prior maintenance practices of the owner
2 affected the Commission's decision on whether to
3 recognize the acquisition adjustment; is that right?

4 A That's right. We probably would have
5 concluded that it's not really on point with the
6 Wedgefield transaction.

7 MR. BECK: That's all I have.

8 COMMISSIONER DEASON: Further redirect?

9 MR. GIRTMAN: Yes, I have one question.

10 REDIRECT EXAMINATION

11 BY MR. GIRTMAN:

12 Q Mr. Wenz, would you turn to Page 3 of 3?

13 A Yes

14 Q This is the dissent of Commissioner Johnson
15 in that case. Would you please read her dissent into
16 the record?

17 A "Commissioner Johnson dissents on the issue
18 of including a negative acquisition adjustment in rate
19 base. The Commission previously decided the issue of
20 whether an acquisition adjustment was appropriate in
21 the transfer case. OPC Witness Dismukes testified in
22 the instance proceeding that she did not consider the
23 circumstances under which the utility was purchased to
24 be extraordinary, but that the utility had not been
25 properly maintained. Therefore, in the absence of any

1 evidence of any extraordinary circumstances, the
2 Commission's previous decision in Order No. 23728
3 should not be disturbed and a negative acquisition
4 adjustment should not be made. Commissioner Johnson
5 also dissented on the determination of the appropriate
6 method for calculating working capital."

7 Q Are you aware -- I'm sure you're aware, but
8 I'll ask anyway -- are you aware of the list of cases
9 that was prepared by Mr. Seidman, which has been
10 attached to the orders of the Commission for which
11 official recognition has been given today?

12 MR. BECK: Commissioner Deason, I'm going to
13 object. My questions were solely limited to questions
14 raised on redirect. Now Mr. Girtman is trying to go
15 outside the recross. (Pause)

16 MR. GIRTMAN: I'll withdraw the question.
17 We have no further questions.

18 COMMISSIONER DEASON: Okay. Exhibits.

19 MR. GIRTMAN: We move the direct and
20 additional direct testimony of Mr. Carl Wenz be
21 admitted into evidence.

22 CHAIRMAN JOHNSON: That would be Exhibit 11
23 without objection.

24 MR. GIRTMAN: Application.

25 MR. BECK: Move Exhibit 12.

1 **COMMISSIONER DEASON:** Without objection.

2 Exhibit 12 is admitted.

3 (Exhibits 11 and 12 received in evidence.)

4 We're going to take a recess of ten minutes.

5 **MS. BRUBAKER:** I'm sorry. You had said

6 Exhibit 12. Was the Application for Transfer

7 Exhibit 11?

8 **MR. BECK:** Yes.

9 **COMMISSIONER DEASON:** The Application for

10 Transfer is 11 and then Public Counsel moved

11 Exhibit 12.

12 **MS. BRUBAKER:** Okay. Okay. Thank you.

13 (Brief recess.)

14 - - - - -

15 **COMMISSIONER DEASON:** Ladies and gentlemen,

16 if I could ask you to take your places, we're going to

17 reconvene the hearing. Go back on the record.

18 Mr. Beck, please call your witness.

19 **MR. BECK:** Citizens call Mr. Larkin.

20 **COMMISSIONER DEASON:** I want to put everyone

21 on notice, and the customers in particular, we're

22 running into a time constraint. We didn't realize the

23 hearing was going to be taking this long.

24 There's a very real possibility at the

25 conclusion of Mr. Larkin's testimony we will conclude

1 the hearing. That will leave one witness remaining,
2 that would be Mr. Seidman on behalf of the utility.
3 We will reschedule another day, and that day most
4 likely would be in Tallahassee. It would not make
5 sense to travel everyone to this location. But we'll
6 make every endeavor either to set up either a
7 telephone or an Internet connection so those
8 interested customers could witness that testimony via
9 one of those type connects. Please proceed.

10 - - - - -

11 **HUGH LARKIN, JR.**

12 was called as a witness on behalf of the Citizens of
13 the State of Florida and, having been duly sworn,
14 testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MR. BECK:**

17 **Q** Would you please state your name and by whom
18 you're employed?

19 **A** My name is Hugh Larkin, Jr.. I'm a senior
20 partner of Larkin & Associates, a certified public
21 accounting firm that specializes in utility
22 recognition. My address is 15728 Farmington Road
23 Livonia, Michigan 48154.

24 **Q** Did you previously have a person who worked
25 for your firm named Thomas DeWard?

1 A Yes.

2 Q Is he working for your at this time?

3 A No, he is not.

4 Q Are you prepared to adopt his testimony
5 today as your own?

6 A Yes, I am.

7 Q And if I were to ask -- you have filed your
8 qualifications to take the place of Mr. DeWard's; is
9 that correct?

10 A That's correct.

11 Q And you've replaced the first two pages of
12 his testimony with your qualifications?

13 A That's correct.

14 Q If I were to ask you the same questions as
15 contained in Mr. DeWard's testimony, as amended by
16 your subsequent testimony --

17 A Yes.

18 Q -- would your answers be the same here
19 today?

20 A Yes.

21 Q You've prepared an appendix that gives your
22 qualifications; is that right?

23 A Yes.

24 Q And there's also an Exhibit TCD-1 with two
25 schedules attached to Mr. DeWard's testimony?

1 A That's correct.

2 MR. BECK: I would ask Mr. Larkin's
3 appendix, as well as the two schedules of exhibit
4 TCD-1, be marked as composit exhibit.

5 MR. GIRTMAN: Commissioner, I have a
6 question. I have no problem with the exhibits. The
7 qualifications of an individual, normally, I think
8 would be considered as part of their testimony, and
9 really are not an exhibit in evidence in the
10 proceeding. It's part of his testimony as to what his
11 qualifications are. It's a technical matter, but I
12 think I believe --

13 COMMISSIONER DEASON: I think the appendix
14 is not in question and answer form. It's primarily a
15 listing of cases that have been participated in. It
16 would probably be difficult to actually put it into
17 the transcript as such. I think it's just an
18 accommodation. Is that correct, Mr. Beck?

19 MR. BECK: Yes. It's the easiest way to get
20 it in.

21 COMMISSIONER DEASON: We will identify the
22 appendix and the prefiled TCD-1 and 2 as Composite
23 Exhibit 16.

24 (Exhibit 16 marked for identification.)

25 MR. BECK: I would move Mr. Larkin's

1 testimony inserted into the record as though read.

2 COMMISSIONER DEASON: Without objection the

3 prefiled testimony will be so inserted.

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1 DIRECT TESTIMONY OF HUGH LARKIN, JR.
2 ON BEHALF OF THE CITIZENS OF FLORIDA
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4
5 DOCKET NOS. 960235-WS & 960283-WS

6 I. INTRODUCTION

7 Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?

8 A. My name is Hugh Larkin, Jr. I am a Certified Public
9 Accountant licensed in the States of Michigan and
10 Florida and the senior partner in the firm of Larkin &
11 Associates, Certified Public Accountants, with offices
12 at 15728 Farmington Road, Livonia, Michigan 48154.

13 Q. PLEASE DESCRIBE THE FIRM LARKIN & ASSOCIATES.

14 A. Larkin & Associates is a Certified Public Accounting
15 and Regulatory Consulting firm. The firm performs
16 independent regulatory consulting primarily for public
17 service/utility commission staffs and consumer interest
18 groups (public counsels, public advocates, consumer
19 counsels, attorneys general, etc.). Larkin &
20 Associates has extensive experience in the utility
21 regulatory field as expert witnesses in over 400
22 regulatory proceedings including numerous water and
23 sewer, gas, electric and telephone utilities.

- 1 Q. HAVE YOU PREPARED AN APPENDIX WHICH DESCRIBES YOUR
2 QUALIFICATIONS AND EXPERIENCE?
3 A. Yes. I have attached Appendix I, which is a summary of
4 my experience and qualifications.

1 Q. What issues did you address in those cases?

2 A. I addressed a range of issues, including those related to revenue
3 requirements, rate base, operating income, capital structure, capital
4 costs, wage levels, employee benefits, fuel accounting, fuel costs,
5 fuel refunds, fuel handling, insurance, O&M, contributions and
6 memberships, advertising, inflation rates, payroll and property taxes,
7 and Federal and state income taxes including the Tax Reform Act of
8 1986.

9 Q. By whom were you retained and what is the purpose of your
10 testimony in this proceeding?

11 A. The firm of Larkin & Associates was retained by the Office of
12 Public Counsel("OPC") to address the issue of the appropriateness
13 of a negative acquisition adjustment in connection with the purchase
14 of the assets of Econ Utilities Corporation("Econ") by Wedgefield
15 Utilities, Inc.("Wedgefield" or the "Company")at a price
16 significantly below the net book value of the acquired assets.

17 Q. Have you included any Schedules to support your written
18 testimony?

19 A. Yes, Exhibit___TCD-1 includes 2 Schedules.

20 Q. In connection with your analysis, did you review any documents?

21 A. Yes, I reviewed a number of documents that were obtained by the

1 OPC through a Production of Documents request to the Company
2 and a request to review documents in possession of the Public
3 Service Commission Staff ("PSC Staff"). I also reviewed prior
4 Commission Orders.

5 Q. Please summarize your testimony.

6 A. I recommend that a negative acquisition adjustment be established in
7 connection with the purchase of assets of Econ Utilities Corporation
8 by Wedgefield Utilities, Inc. Wedgefield was organized as a wholly
9 owned subsidiary of Utilities, Inc. to acquire the assets of Econ.
10 Wedgefield acquired the assets for a cash price of \$545,000.
11 According to the Commission Order, the net book value of the
12 assets at December 31, 1995 was \$2,845,391. Additionally Econ
13 can receive up to \$600,000 in additional payments based on the
14 collections of CIAC from every other lot in a planned development
15 (The Commons) calculated on 400 lots at \$3,000 per lot. (400 x
16 50% x \$3,000).

17 Q. Is it your opinion that the negative acquisition price should be based
18 on a purchase price of \$1,145,000 which includes the contingent
19 payment?

20 A. No. The initial acquisition should be based on the cash outlay of
21 \$545,000 in comparison to the net book value of the acquired assets

1 of \$2,845,391. If and when any additional payments are made, the
2 negative acquisition adjustment could be adjusted at that time. In
3 other words, the negative acquisition adjustment of \$2,300,391
4 (\$2,845,391-\$545,000) could be adjusted downwards by \$60,000 if
5 40 lots were sold and Wedgefield paid the \$60,000 to Econ.
6 Wedgefield would record the entire \$120,000 as CIAC with a
7 charge to the Negative Acquisition account and a credit to Cash for
8 the \$60,000 paid to Econ.

9 Q. You stated the negative acquisition adjustment could be adjusted at
10 that time additional funds are paid out. Is there an alternative?

11 A. Yes, however in order to be conservative, I am recommending that
12 the negative acquisition adjustment be reduced by any contingent
13 payments. As I note later in my testimony, there may be some costs
14 associated with serving The Commons. As funds are expended, rate
15 base will increase which will increase return requirements and
16 depreciation expense. I have assumed the Company has carefully
17 evaluated the potential and determined that the on going tariff
18 revenues and net CIAC collected from The Commons will offset the
19 return requirements and additional expenses(O&M and
20 depreciation). If this was not the case, I would recommend that the
21 negative acquisition adjustment not be adjusted or reduced as

- 1 additional amounts, if any, are paid out
- 2 Q. If Wedgefield is willing to make additional contingent payments
3 doesn't this mean that the existing assets may be worth more than
4 \$545,000.
- 5 A. No. First of all, no additional payments are required if no money is
6 received as a result of new hook ups in the planned development
7 known as The Commons. Thus, \$545,000 could be the total
8 purchase price. Next, there will be benefits and costs if The
9 Commons is developed. Although the owners of Econ are
10 responsible for constructing and donating to Wedgefield the
11 distribution and collection system, additional lines may be required
12 to bring service to the area and additional water and sewer
13 treatment facilities may be required to serve the increased customer
14 load. This will also result in increased tariff revenues and cash flow
15 from CIAC collected on the other 50% of the lots. Thus it is
16 apparent that Wedgefield is willing to pay up to an additional
17 \$600,000 to add up to 400 customers and receive up to \$1,200,000
18 in CIAC of which \$600,000 will be retained.
- 19 Q. Are the assets that Wedgefield is acquiring worth \$2,845,391?
- 20 A. No, they are worth \$545,000.
- 21 Q. What valuation does Wedgefield place on these assets for Federal

1 and State tax purposes.

2 A. The purchase price of \$545,000 must be allocated between the
3 assets. This becomes the tax basis and the \$545,000, net of any
4 amount allocated to land or other non depreciable assets such as
5 chemicals or supplies, is the total amount that can be depreciated for
6 tax purposes.

7 Q. Does this have any long term impact on the Company?

8 A. Yes. If the negative acquisition adjustment that I propose is not
9 adopted, the book basis of the assets will be substantially in excess
10 of the tax basis. Book depreciation will exceed tax depreciation and
11 thus a deferred tax charge will be generated. It should be kept in
12 mind that tax depreciation normally exceeds book depreciation thus
13 creating a zero cost deferred tax credit which goes to reduce the
14 overall return. A deferred tax charge in the capital structure will
15 increase the overall return requirements thus further penalizing the
16 customers. This will be corrected when the negative acquisition
17 adjustment is amortized over the remaining useful composite life
18 thus reducing book depreciation expense.

19 Q. What does the Company believe the fair value of the assets for
20 property tax purposes to be?

21 A. The Seller believes the value to be \$545,000. In a letter from John

1 O. Forrer to the Orange County Property Appraiser's Office dated
2 May 14, 1996, Mr. Forrer stated:

3 Our estimate of fair value as of 1/1/96 on our Tangible
4 Personal Property Tax Return is based on the purchase price
5 of \$545,000 set forth in on page 6 of the Purchase
6 Agreement less the portion of this price (\$11,000) which
7 was allocated to real property. Since this was definitely an
8 arms length transaction between two parties with adverse
9 interests, it seems to me that \$534,000 constitutes the fair
10 value of the utility assets at that time regardless of what the
11 historic book value is or was or what we think the rate base
12 ought to be for PSC rate making purposes.
13

14 Q. Why are the assets only worth \$545,000?

15 A. The key element is the condition of the assets and the amount of
16 improvements necessary to bring the assets to an acceptable
17 condition.

18 Q. Did you tour the facility to determine first hand the condition of the
19 assets?

20 A. No, I didn't have to. Nor am I an engineer. However, I did review
21 a number of documents which discussed the condition of the assets
22 being acquired as well as some insight into past maintenance or
23 more appropriately lack of preventative maintenance policies. These
24 documents were provided to the OPC by the Company in response

1 to requests for the production of documents as follows:

2 1. Please produce each document in your possession,
3 custody or control estimating the value of the assets
4 purchased from Econ Utilities Corporation. This request
5 includes, but is not limited to, all appraisals related to these
6 assets and all internal memoranda and other documents
7 discussing or evaluating the value of these assets.
8

9 2. Please produce each document in your possession,
10 custody or control discussing the potential purchase price
11 for assets of Econ Utilities Corporation.
12

13 Q. What are some of the documents the Company provided in response
14 to this request for documents?

15 A. One document, prepared January 1995, by the Orange County
16 Public Utilities Division was entitled Acquisition Feasibility Analysis
17 of Econ Utilities Corporation. In analyzing the Water Supply,
18 Water Treatment, Water Distribution, Wastewater Collection and
19 Wastewater Treatment and Effluent Disposal facilities the prevalent
20 comment was that maintenance or repairs had been performed on an
21 emergency basis only. Furthermore, there was no preventative
22 maintenance program in effect.
23

24 In discussing the Wastewater Collection system on page 2-3 of the
25 report, the analysis stated: "...during wet weather indicates a

1 significant inflow/infiltration problem in the collection system. TV
2 inspections of a portion of the system confirm an infiltration
3 problem. Many of the manhole covers in the system are located
4 under asphalt and are inaccessible..." In discussing the Wastewater
5 Treatment and Effluent Disposal facilities on page 2-3, the report
6 noted: "The steel structure is experiencing severe corrosion along
7 the water line and at the base of the chlorine contact tank."

8
9 In discussing improvements needed, the report on pages 3-2 and 3-3
10 include the following observations:

11 "As previously mentioned, there has been no preventative
12 maintenance on the water distribution system. It is therefore
13 difficult to determine the extent of the improvements
14 required. However, there are several modifications that will
15 be required to bring the system up to current County
16 standards. Approximately 23,000 feet of 4-inch and 6-inch
17 pipe and related valving will need to be installed to replace
18 all of the AC pipe and 2-inch mains. In addition, there are
19 approximately 370 services which will need to be connected
20 to the new mains.

21
22 Fire protection and metering are other areas in which
23 improvements may be needed. The fire hydrant spacing in
24 Wedgefield does not meet the current subdivision
25 regulations. The water meters have been replaced on an "as-

1 needed" basis. There are no records of these replacements
2 and as a result, the age, condition and types of meters are
3 inconsistent. A meter replacement program may be prudent.
4 An evaluation will need to be performed to determine what
5 will be required to bring the metering and fire hydrants up to
6 standards."

7
8 On Table 3-3 of the report, the County estimated the cost to install
9 PVC water mains, gate valves and to reconnect water services at
10 \$577,612.

11
12 In discussing necessary improvements to the wastewater collection
13 system the following discussion appears on page 3-4:

14 The wastewater collection system will require several
15 modifications to bring it up to County standards.
16 Approximately 18,000 feet of gravity mains and 69 manholes
17 will be required to bring rear lot services and mains to the
18 front, and to replace the AC pipe with PVC. This will
19 involve the reconnection of 217 services, and the restoration
20 of over 44,000 square yards of pavement. The wastewater
21 transmission system will require rehabilitation of the six
22 pumping stations, and the construction of approximately
23 3,850 feet of 4-inch force main.

1 On Table 3-8 of the report, the County estimated the cost to
2 rehabilitate the Collection System at \$2,734,755. This included
3 installing gravity main, manholes, force main and the restoration of
4 pavement.

5
6 In the Summary & Conclusion on page 4-4 of the report, the
7 County concluded that the cash required to perform the
8 rehabilitation and improvements to the existing facilities at
9 \$4,642,367.

10 Q. Were there other documents provided by the Company which
11 analyze the condition of the assets?

12 A. Yes, a report was prepared by Econ's engineering firm in June,
13 1995 and entitled Capital Improvement Plan and Utility Rate &
14 Impact Fee Analysis of Water and Wastewater Systems. In that
15 report the firm of John B. Webb & Associates, Inc. recommended
16 among other things that:

17 "The Utility begin now to make preparations for the eventual
18 replacement of all cement-asbestos pipe utilized in the
19 system, both potable water and wastewater. We recommend
20 a systematic approach where the utility begins to save money
21 now for the project, that the exact locations of the cement-
22 asbestos lines be determined, and finally that engineering
23 plans be prepared that will show the necessary replacement
24 lines and the procedure for transferral(sic) of services from
25 the old cement asbestos lines to the new lines."

1 Q. Did an engineer from the Staff of the Public Service Commission
2 visit the facilities when they were owned by Econ?

3 A. Yes, an informal visit was made on November 3, 1994. Some of the
4 comments included in the Memorandum to File are as follows:

5 The chlorine room is the original one from the 1960's and is in need
6 of being rebuilt.

7
8 One of the old wells is located outside the fenced-in area of the
9 water treatment plant and is need of being properly abandoned.

10
11 There is a good bit of leaking in the distribution, some of the lines
12 are just getting old.

13
14 Mr. Hunneman said that(sic) have problems with leaks and in fact
15 there was a serious leak the week prior to my visit which collapsed a
16 road. He said they are constantly repairing services.
17

18 Q. Did the Company provide any internal documents concerning the
19 condition of the facilities and what repairs might be required?

20 A. Yes, following are some selected comments from the documents
21 identified with an underscore:

22 Memo from Jim to Perry dated 7/5/95

23 Econ Utilities has a Service Agreement with Orange County
24 which specifies design and construction standards which
25 include provisions for fire flow protection. Accordingly,

1 Econ Utilities will soon need to expand its supply/pumping
2 treatment capacity as well as its storage capacity to be able
3 to meet fire flow requirements.
4

5 Actual flows are now running over 150,000 gpd, and a new
6 200,000 gpd expansion is required along with upgrades to
7 the equalization pond.
8

9 There appears to be inflow and infiltration problems which
10 will require upgrades to manholes and lift stations.
11

12 In November, 1994, the Seller engaged an engineer to
13 identify and quantify the costs needed to expand and
14 upgrade the facilities. The engineer's total estimate included
15 the cost of replacing the AC mains.
16

17 The engineer's cost just to bring the water
18 supply/pumping/treatment and storage up to near term
19 requirements is approx \$400,000.
20

21 The engineer's estimated cost just to bring the wastewater
22 treatment, collection and disposal facilities up to near term
23 requirements is approximately \$900,000. The engineer's
24 estimates appear to be very high!!!(e.g. \$680,000 for a
25 \$200,000(sic) gpd expansion).

1 The OPUD determined that much of the existing facilities
2 would need to be replaced or taken off-line in order to
3 conform to County requirements.
4

5 I would anticipate that we would have to invest approx
6 \$800,000 in improvements over the first three years of
7 ownership.
8

9 Letter from Jim Camaren of Utilities, Inc. to John O. Forrer
10 of Econ Utilities Corporation dated October 23, 1995
11

12 Obviously, the uncertainty concerning the value of the rate
13 base that will ultimately be determined by the
14 Commission(as opposed to the value estimated by your
15 company or recommended by the PSC Staff) must be
16 reflected in our purchase proposal.
17

18 As was also affirmed in your March 15, 1995 letter, the
19 utility facilities are in need of timely upgrades and capacity
20 expansions requiring immediate capital expenditures in the
21 neighborhood of \$900,000.
22

23 To Perry from Jim dated November 22, 1995

1 The Seller needs to make immediate improvements and
2 expansion to the facilities. The Seller's engineers have
3 estimated costs of \$1.5 million. The engineering report was
4 very thorough and probably very expensive. These costs are
5 very inflated and include replacing the AC mains. However,
6 I believe the Seller would incur costs of this magnitude
7 because they don't know what they're doing. Both Andy
8 and Don Rasmussen have reviewed the report and believe
9 we could do the upgrades and expansions for approximately
10 \$850,000. (Not that we are that much more efficient - rather
11 we wouldn't do half of the projects their engineers say are
12 necessary). Our lower costs also reflects the fact that we
13 have an unutilized 360,000 gpd plant that we have just taken
14 down from Weathersfield.
15

16 Q. You have quoted from a number of documents that you reviewed.

17 Did the PSC Staff have available these same documents when it
18 made its recommendation to the Commission?

19 A. I don't believe they had all the documents. They certainly were
20 available to them for the asking. Obviously, they had the Staff
21 Engineer's report. However, when the OPC asked to see the
22 documents that Staff relied on it appeared that the other analyses
23 were not reviewed by PSC Staff or at least not retained by them.

24 Q. If the Commission does not recognize a negative acquisition
25 adjustment what will be the end result?

- 1 A. The Company will be the beneficiary at the expense of the customer.
2 The Company will be in a position to earn excessive returns as I
3 show on Schedule 1. Using the hypothetical capital structure and
4 rates of return shown on that Schedule, I show that based on the
5 Company's cash outlay of \$545,000, it could earn a pretax return of
6 67.61%. Taxes would reduce that by a composite rate of 38.575%
7 leaving the Company a potential after tax return of 41.53%.
- 8 Q. Will there be other benefits to the Company if a negative acquisition
9 is not recognized?
- 10 A. Yes. Because the dollar amount of the plant in service, less
11 accumulated depreciation and net CIAC at the date of acquisition,
12 exceeds the cash investment, the Company will be allowed to
13 recover an excessive amount of depreciation expense. In other
14 words the Company will be allowed to recover a return of assets
15 which do not exist.
- 16 Q. Using your example from Schedule 1, what excessive level of
17 revenues will be generated if the Company does not have to record
18 an acquisition adjustment?
- 19 A. The Company will recover an additional \$378,414 (\$468,067-
20 \$89,653) in revenue. In other words, rates will be overstated by
21 that amount. Current and future customers will be required to pay

1 these additional monies to allow the Company to earn the excessive
2 returns I just discussed.

3 Q. If the Company invests additional monies to make the numerous
4 improvements outlined in the reports and communications you
5 previously discussed, will the Company be allowed to earn a return
6 on these investments?

7 A. Yes. In my hypothetical example, that return is 9.50% after tax and
8 12.95% before tax.

9 Q. If the Commission does not adopt your proposal to offset rate base
10 by a negative acquisition adjustment, will it be allowed to earn a
11 return on the capital outlays for the same improvements you just
12 discussed.

13 A. Unfortunately yes. Let me give an example. Lets suppose the
14 undepreciated value of a section of the collection system is
15 \$500,000. Because of poor construction or the lack of an effective
16 maintenance program, that section of the system must be slip lined
17 or replaced to eliminate excessive infiltration. The cost to replace
18 that section or to slip line it is \$750,000. If the \$750,000 is deemed
19 to be a prudent investment and used and useful, the Company will

1 be allowed to earn a return on the \$750,000 as well as the
2 \$500,000.

3 Q. But why would the Company pay \$500,000 for an asset they knew
4 they would have to replace at a cost of \$750,000?

5 A. They didn't. Presumably this and all other factors were considered
6 by the Company when they purchased assets with a net book value
7 of over \$2.8 million for \$545,000. Sadly, however, the Company
8 wants to ignore this and to recover a return on assets that are of no
9 value or even a negative value in that the cost of replacement may
10 exceed the depreciated net book value.

11 Q. What does Schedule 2 show?

12 A. Schedule 2 illustrates the problem of calculating a return on an asset
13 base which does not exist. For illustrative purposes, I have assumed
14 that funds are invested in a certificate of deposit with an annual
15 percentage yield of 6%. In this world of make believe I could invest
16 \$545,000 but be paid a return on \$2.8 million. Thus my pre-tax
17 return would be 30.83%. I could continue to earn this return year
18 after year thus compounding my return. In this world, I could
19 withdraw the full \$2.8 even though I invested only \$545,000. (This is
20 akin to depreciating the full \$2.8 million of assets when the cash
21 investment is only \$545,000).

1 Q. Have you read some of the prior Commission orders on acquisition
2 adjustments?

3 A. Yes. It appears that the Commission is reluctant to make an
4 acquisition adjustment, positive or negative, absent any showing of
5 an extraordinary circumstance. Extraordinary circumstances
6 appears to be determined on a case by case basis. Furthermore, the
7 Commission appears hesitant to make a negative acquisition
8 adjustment to the extent that it would discourage a potential buyer
9 from purchasing a "troubled utility."

10 Q. Given the past Commission orders, do you still believe it appropriate
11 to make a negative acquisition adjustment in this proceeding?

12 A. Definitely. Purchasing over \$2.8 million in assets for only \$545,000
13 is an obvious indication that something is wrong. That's only 20
14 cents on the dollar. That appears to be extraordinary in my opinion.
15 Econ obviously failed to adequately maintain its facilities. The
16 obvious reason for the low purchase price in relationship to the net
17 book value is that many of the assets will have to be replaced or
18 repaired. Unless a negative acquisition adjustment is approved, the
19 customers will be the big losers. The Company will be allowed to
20 earn excessive returns on its investment.

21 Q. Does Econ meet the definition of a troubled utility?

- 1 A. I'm not sure. I don't believe that the Commission or its Staff
2 instructed Econ to search out a purchaser. I believe the decision to
3 seek a buyer was Econ's decision. Obviously, the utility was on the
4 market as evidenced by the review made by Orange County which I
5 previously discussed and I also reviewed some correspondence from
6 Southern States Utilities.
- 7
- 8 I found one document that discussed the financial condition of the
9 Seller. In the memo which I previously discussed and identified as
10 "to Perry from Jim", dated 7/5/95, in discussing the need for
11 improvements, the following comment was made: "...However,
12 they have certainly "intimidated" the Seller's into thinking the Utility
13 is going to require a lot of money. I was informed by one of the
14 operators that the Seller's(sic) is also experiencing financial
15 problems with an environmental group in Miami."
- 16 Q. Did the Staff Engineer's report or the PSC Staff audit indicate that
17 Econ was a "troubled" utility?
- 18 A. No. As I noted the Staff Engineer's report did state that some of
19 the facilities were in a state of disrepair and that improvements were
20 needed. However, the following comments were included in the
21 report:

1 I called the central district of DEP and spoke with JBob
2 Anson. He said there is no problem with the drinking water
3 part of the utility. There was a sanitary survey conducted as
4 recent as August 1994.

5
6 I called the central district of DEP and spoke with Lee
7 Miller. He stated that everything is fine with the wastewater
8 utility, and that they just applied for a new operating permit.
9

10 Q. Did the owner(principals) of Econ have an interest in maintaining
11 the viability of the utility?

12
13 A. Yes. I believe they were also a developer of lots in the area. In
14 fact, in what I believe to be a document which was written by
15 Magna Properties, Inc., the owner(in actuality, according to Econ's
16 Federal income tax return, John O. Forrer owned 57.50% of Econ
17 and Gerald F. Blake owned 42.50%. Mr. Forrer and Mr. Blake are
18 both listed as either officers or registered agents of Magna
19 Properties, Inc.) of Econ, the following comment appeared in a June
20 30, 1995 document identified as Gerry Cyndi:

21 Even with maximum effort we probably won't be ready to
22 file it before Labor Day, and waiting any longer simply
23 increases the risk that DEP will make an inspection visit
24 during the rainy season this summer, see that we are
25 exceeding the 200,000 gallon design capacity of our current

1 sewer treatment plant, and slap a moratorium on new hook-
2 ups.

3
4 Q. If Econ didn't have the funds to make the necessary improvements
5 to the utility and thus may have been considered a "troubled utility",
6 where will the funds come from to develop The Commons?

7 A. I don't know, but what I do know is that as part of the

8 MEMORANDUM OF CLOSING AGREEMENTS, the Seller
9 agreed as follows:

10 Subject to the satisfaction, approval and acceptance of
11 Purchaser, Seller, or in the event Seller transfers the area
12 known as The Commons then such transferee, agrees to
13 design and install the water and sewer facilities (lines, mains,
14 pumps and related facilities) in The Commons and agrees to
15 contribute those facilities to the Purchaser's utility as a
16 contribution-in-aid-of-construction (CIAC) ; provided,
17 however, Seller's shall not be required to make such
18 contribution and Purchaser shall pay for the design and
19 installation of the water and sewer facilities if Seller's
20 contribution would cause a reduction in the hook-up fee
21 below \$3,000 per lot. If seller sells The Commons, or any
22 part thereof, to a successor developer, Seller shall have no
23 further liability for such portion transferred.

1 As the Seller is identified as Econ Utilities, Inc. I would presume
2 that the property would be transferred to Magna Properties, Inc. or
3 some other developer controlled by the principals of Econ. I have
4 also assumed that Econ Utilities, Inc. is the same entity known as
5 Econ Utilities Corporation on the Federal tax return and other
6 documents.

7 Q. Should the agreement you just discussed be of concern to the
8 Commission and most of all the customers.

9 A. Certainly, if the Utility is required to construct facilities in The
10 Commons, instead of having those facilities donated, rate base will
11 increase and thus return requirements and rates will increase.

12 Q. If Econ didn't appear to be that "troubled", is there a reason that
13 Econ might have been short of cash?

14 A. Yes, in response to a PSC Staff request for information, Mr. Forrer
15 on behalf of Econ, stated:

16 Wedgefield is a residential development located in eastern
17 Orange County, Florida which was begun in the early 1960's
18 as Rocket City. Econ Utilities Corporation was created at
19 the same time to provide water and sewer service to the
20 entire 20,000 acre development if, as and when needed.
21 Initially, water and sewer lines were installed in a one square
22 mile section in the northeast corner of the development to
23 serve the shopping center and approximately 1350
24 residential lots in this area.

1 For a variety of reasons, the originally-contemplated
2 expansion of the utility lines did not occur. However, in
3 1982 the number of customers in the northeast corner finally
4 grew large enough so that the utility system became subject
5 to the jurisdiction of the Florida Public Service Commission.
6

7 The current customers should not be penalized for the inaccurate
8 planning projections of the original developers. Nor should the
9 current customers be penalized by the lack of effective maintenance
10 and preventative maintenance policies. Utilities, Inc., the owners of
11 Wedgefield Utilities, Inc. freely entered into the agreement to
12 purchase the assets in what is described as an arms-length
13 transaction. They should be allowed to earn a fair return on their
14 investment. That's a basic principle of regulation. To fail to adopt
15 a negative acquisition adjustment will allow them to earn an
16 excessive return at the expense of the customers. That's unfair to
17 the customers. Thus, my recommendation to adopt a negative
18 acquisition adjustment should be adopted.

19 Q. Does that conclude your testimony?

20 A. Yes.

1 BY MR. BECK:

2 Q Mr. Larkin, have you prepared a summary of
3 your testimony?

4 A No, but I certainly can speak off the top of
5 my head.

6 MR. GIRTMAN: Excuse me, could I ask a
7 question? We have TCD-1, Schedule 1 and 2 but we
8 don't have a TCD-2.

9 COMMISSIONER DEASON: I perhaps misspoke.
10 It should have been TCD-1 which consists of Schedule 1
11 and 2.

12 MR. GIRTMAN: Thank you.

13 A I don't think the Commission needs to be
14 educated about what the issue is.

15 It is clear that this utility was not
16 properly maintained. It is clear that it still was a
17 functioning utility. It was not a utility that was in
18 dire need of being taken over. But for whatever
19 reasons, the extraordinary circumstance arose that
20 Wedgefield was able to purchase this utility for
21 approximately 20 cents on the dollar. And if an
22 acquisition adjustment is not recognized, that these
23 ratepayers will be asked to pay a rate of return on
24 whatever portion of that 2.8 million is eventually
25 used and useful. And our feeling is it's probably

1 fairly high now. Plus, whatever repairs and
2 maintenance expenses are necessary to bring this up --
3 this utility up to a standard, that would be
4 acceptable for the consumption of the customers. And
5 we recommend that the Commission adopt an acquisition
6 adjustment which the Utility won't be harmed by this.
7 They are going to receive a return on their
8 investment. They are going to receive a return of,
9 and on, any additional investment that they make.
10 There is no reason, no commonsense reason to reward a
11 utility with 60% plus returns in order to get them to
12 purchase utility systems. That's the end of my
13 summary.

14 **COMMISSIONER GARCIA:** Mr. Larkin, you heard
15 Commissioner Clark's discussion about making an
16 adjustment to the acquisition based on any failings
17 that there had been. Do you have any thoughts on
18 that?

19 **WITNESS LARKIN:** What I thought she was
20 asking was if you incurred maintenance expense in the
21 future that was related to the poor performance of the
22 prior owner, shouldn't we, or couldn't we, just make a
23 disallowance of those in a going-forward case.

24 Well, the problem with that is that you have
25 a clear picture here of what the cost is of this

1 utility system. You had a buyer who had made a deal,
2 an arm's-length deal with a seller for \$545,000. You
3 won't have to go in any future rate case to say,
4 "Well, how much did it cost you to dig out these
5 manhole covers? How much did it cost to -- well, this
6 part, we don't know what this is and we don't know
7 what that is." So if you set the acquisition
8 adjustment we've got a number we can deal with. We
9 won't have to deal with in the future about what may
10 or may not be disallowed. Let them recover everything
11 in the future that they pay to bring it up to snuff.
12 But I think that this is an extraordinary
13 circumstance, where you can pay 19 cents on the dollar
14 to purchase a utility that eventually, in your own
15 calculations, is eventually going to give you 3500
16 customers. That's a deal. And there's no reason for
17 the Commission to add to that deal by letting them
18 have a rate base that they haven't paid for.

19 COMMISSIONER CLARK: I just want to ask a
20 brief question too.

21 Issue 5 of the Prehearing Order, can you
22 give one to Mr. Larkin, Mr. Beck? (Hands document to
23 witness.)

24 If my addition is correct, everybody agrees
25 what the net book value of what the water and

1 wastewater system is; is that correct?

2 WITNESS LARKIN: Yes.

3 COMMISSIONER CLARK: So there's no dispute
4 that CIAC is properly accounted for, depreciation is
5 properly accounted for, and this is the net book
6 value -- is \$2,845,391.

7 WITNESS LARKIN: Yes. We're not taking
8 exception to the Staff audit.

9 COMMISSIONER CLARK: Thanks.

10 COMMISSIONER DEASON: Is Mr. Larkin
11 iavailable for cross?

12 MR. BECK: Yes.

13 COMMISSIONER DEASON: Mr. Girtman.

14 CROSS EXAMINATION

15 BY MR. GIRTMAN:

16 Q Mr. Larkin, is it fair to say that the total
17 essence of your testimony today, and your bottom line
18 conclusion, is that there should be a negative
19 acquisition adjustment to rate base in this case?
20 That's the essence of it, isn't it?

21 A Yes.

22 Q In regard to the assets purchased by
23 Wedgefield Utilities, Inc. from Econ, is it fair to
24 say without a negative acquisition adjustment
25 Wedgefield would be allowed to earn a return on the

1 net original cost rather than on the purchase price?

2 A If the Commission so allowed, yes, that
3 would be the case.

4 Q If there were no other factors they still
5 would be allowed to earn on net original cost,
6 wouldn't they?

7 A If there were no other factors; if they paid
8 \$2.8 million they would be allowed to earn on --

9 Q Let's go back before the sale to Wedgefield.

10 A Yes.

11 Q The conditions that existed then. Net book
12 value whatever it was.

13 A Yes.

14 Q Okay. If Econ had not sold that system,
15 wouldn't Econ be entitled -- whether they applied for
16 it or not, wouldn't they be entitled to earn a return
17 on the net original cost?

18 A Yes.

19 Q And would Wedgefield be entitled to recover
20 depreciation on the same net original cost?

21 A If they were the original owner, yes.

22 Q Right. If the utility system had not been
23 sold, would Econ be entitled to earn a return on the
24 net original cost of, in this case, \$2.8 million?

25 A If they hadn't been sold?

1 Q Right.

2 A Presumably if it was 100% used and useful.

3 Q If the utility system had not been sold,
4 would Econ be entitled to recover depreciation expense
5 on the net original cost?

6 A If it had not been sold, they would have.

7 Q They would have been entitled to recover
8 depreciation expense on full net original cost, right?

9 A If it were 100% used and useful.

10 Q When this testimony was written by
11 Mr. DeWard, and when you adopted it as your testimony,
12 were you aware that the Public Service Commission
13 previously had conducted an investigation of its
14 acquisition adjustment policy?

15 A I'm aware of what the policy is. And I'm
16 also aware that people can challenge that policy and
17 that's why this case is going forward.

18 Q Okay. What is that policy?

19 A The policy is absent extraordinary
20 circumstances which exist in this case, that neither a
21 negative or positive acquisition adjustment would be
22 recognized. But they have recognized them in the
23 past.

24 Q Okay. You seem to combine a statement of
25 the policy and your opinion as to whether

1 extraordinary circumstances exist in this case. I'd
2 like you to separate those two. What is the policy
3 without your opinion as to whether one appears or is
4 justified in this case?

5 A I think I stated it. That if there isn't
6 extraordinary circumstances, then neither a positive
7 or negative acquisition adjustment would be
8 recognized.

9 Q And what's the current policy of the
10 Commission on burden of proof?

11 A That's a legal question. You have to ask
12 Mr. Beck about that.

13 Q Have you ever read a Commission order
14 talking about the burden of proof in a acquisition
15 adjustment case?

16 A I probably have but I don't recollect.

17 Q Going back to my previous question, were you
18 aware that the Commission had conducted a generic
19 investigation at the insistence or initiation of the
20 Office of Public Counsel into the Commission policy on
21 acquisition adjustments?

22 A Yes.

23 Q You did know about that?

24 A Sure.

25 Q And let me clarify it just so I understand,

1 were you aware that that investigation was initiated
2 as a result of a request by the Office of Public
3 Counsel, the party on whose behave you're appearing
4 today as a witness?

5 A Yes.

6 Q Were you aware that the investigation was
7 conducted not as a part of a case for a single utility
8 but was generic to all water and wastewater utilities?

9 A I believe that's --

10 Q Were you aware that comments were filed by
11 interested parties in that investigation, including
12 the Office of Public Counsel?

13 A Yes, I'm aware of that.

14 Q Were you aware that the Commission issued a
15 Proposed Agency Action Order confirming its prior
16 existing policy and denying Public Counsel's request
17 to change that policy?

18 A I'm aware there's an order issued, yes.

19 Q But are you aware that their first order
20 denied the Commission's request -- excuse me, denied
21 the request by the Office of Public Counsel?

22 A I haven't read it in a long time.

23 Q Do you know how many orders were issued by
24 the Commission in regard to those proceedings
25 initiated by OPC?

1 **MR. BECK:** I'm going to object. Mr. Larkin
2 does not address this in his testimony. Going beyond
3 the scope of his direct testimony.

4 **COMMISSIONER DEASON:** There's been an
5 objection.

6 **MR. GIRTMAN:** The testimony that Mr. Larkin
7 provided discusses the acquisition policy of the
8 Commission. And I think it's fair to go into what he
9 knows about it and what he doesn't know about it, and
10 what he understands of the development of that policy.
11 And just because that he did not testify as to the
12 investigation, his testimony does include a
13 recommendation, or includes recommendations in regard
14 to what the policy is and what it ought to be. So I
15 need to know what the basis of his conclusion is.

16 **COMMISSIONER DEASON:** Objection overruled.
17 I just request that you recognize the lateness of the
18 hour.

19 **MR. GIRTMAN:** I understand.

20 **Q** **(By Mr. Girtman)** Were you aware that
21 public hearings were held and testimony was presented
22 by interested parties, including the Office of Public
23 Counsel?

24 **A** Yes.

25 **Q** Were you aware that the Commission issued a

1 final order reconfirming its policy on acquisition
2 adjustments and denying Public Counsel's request to
3 change that policy?

4 A I haven't read that order in a number of
5 years, but I'll accept your representation that that's
6 what it says.

7 Q At the time your testimony was prepared in
8 this case, were you aware that in its final order and
9 investigation the Commission stated that its policy is
10 to allow the utility to earn a return on not just the
11 purchase price, but also on the entire rate base of
12 the acquired utility?

13 A Absent extraordinary circumstances. And I
14 think they exist in this instance.

15 Q Do you understand that when I talk about the
16 entire rate base of the acquired utility, that does
17 not mean the acquiring utility can earn a return on
18 nonused and useful property?

19 A I understand that principle.

20 Q Isn't it correct that rates will not be
21 changed in this transfer case?

22 A No. But this is setting the basis for what
23 rates will be in the future. That this basis is not
24 supported by investment, and that absent any
25 significant reduction by a used and useful percentage,

1 that the Company will earn a rate of return on
2 2.8 million while investing 5 point -- or while
3 investing \$545,000. That's egregious. That's
4 extraordinary. It shouldn't be allowed to happen.

5 Q Mr. Larkin, please stay limited to answering
6 my questions. We'll all get out of here a little
7 quicker.

8 A I think I answered your question.

9 Q You went far -- I'm not going to debate it
10 with you.

11 MR. GIRTMAN: Commissioner, I ask that the
12 witness be directed to limit his answers to my
13 questions.

14 COMMISSIONER DEASON: Mr. Larkin, just
15 recognize the lateness of the hour, please.

16 Q (By Mr. Girtman) Let's clarify. You
17 answered no to the question. And I said isn't it
18 correct that the rates will not be changed in this
19 transfer case. It is correct they will not be
20 changed, isn't it?

21 A No. No, and it won't be changed in this
22 case but this forms the basis of future rates.

23 Q Isn't the answer yes, they won't be changed
24 in this case but?

25 A Yes.

1 Q Okay.

2 A They won't be changed in this case but this
3 forms a basis of future rate increases.

4 Q Isn't it also true that on occasion when
5 rates are changed, used and useful adjustments could
6 be made to reduce rate base?

7 A Could be made to reduce rate base but we
8 don't know what those are. And the best way to deal
9 with that is to recognize the cost.

10 Q Are you aware that a utility is not allowed
11 to earn a return on nonused and useful assets?

12 A Sure.

13 Q Are you aware that the utility is not
14 allowed to recover in its rates the depreciation
15 expense on nonused and useful assets?

16 A Sure.

17 Q Are you aware in its final order and
18 investigation the Commission stated that the customers
19 of the acquired utility are not harmed by this policy?

20 A I'm aware they said that but I think that's
21 mistaken.

22 Q Aren't your positions today the very same
23 positions considered and rejected by the Commission in
24 its investigation?

25 A I don't think so.

1 Q How do they differ?

2 A Because we have extraordinary circumstances.
3 We have something -- we have a utility that was bought
4 for 19 cents on the dollar. And we have essentially,
5 if you look at the assets, most of them, at least the
6 water treatment plant, the wastewater plant is all
7 used and useful.

8 Q That answer is not responsive to the
9 question, Mr. Larkin. I asked aren't your positions
10 today the same positions that were considered and
11 rejected by the Commission in its investigation? It
12 wasn't a transfer case. It wasn't a rate case. It
13 was an investigation, a generic investigation.

14 A Yes.

15 Q Your positions today, aren't they the same
16 as they were in the investigation docket and rejected
17 by the Commission?

18 A I don't believe so.

19 Q How are they different?

20 A We have extraordinary circumstances here.
21 That's the same answer I gave you.

22 COMMISSIONER CLARK: Can I ask it a little
23 differently?

24 I take it your testimony is because they
25 only paid 19 cents on the dollar, that in and of

1 itself is the extraordinary circumstances.

2 **WITNESS LARKIN:** That combined with the fact
3 the system hasn't been maintained and these ratepayers
4 will be asked to pay for any future repairs and
5 maintenance to this system.

6 **COMMISSIONER CLARK:** Those are the three
7 things that make up extraordinary circumstances: 19
8 cents on the dollar; the fact they were not in good
9 repair and in the future these customers will have to
10 pay for any improvements.

11 **WITNESS LARKIN:** There might be others but
12 those are three I can think of off the top of my head.
13 (Pause)

14 **Q** **(By Mr. Girtman)** Mr. Larkin, let's clarify
15 a point a moment. If there were no extraordinary
16 circumstances, do you agree that the Utility's
17 earnings should be based on the full net value -- or
18 excuse me, full rate base of the system?

19 **A** Well, yes, but then they probably would have
20 paid \$2.8 million for it. And I wouldn't object if
21 you had paid \$2.8 million for it.

22 **Q** So your concern is with the fact that they
23 paid less than \$2.8 million. And if they had paid
24 \$2.8 million, you wouldn't have any problem with this
25 case, right?

1 A Absolutely. No problem at all. Because
2 that would have been an arm's-length transaction
3 between a buyer and seller; evaluating the assets in
4 coming to a determination of what the value is. We
5 went through that exercise, you went through it, or
6 the Company, Utilities, Inc. went through that with
7 Econ, and came up with a value of the assets of
8 \$545,000 and that should be the rate base.

9 Q Do you have any reason to believe that this
10 transaction is based on anything other than an
11 arm's-length transaction?

12 A Oh, there might be some consideration about
13 help in developing comments, but --

14 Q No. I'm talking about an arm's-length
15 transaction. I'm not talking about the fact that
16 there's a contingent payment due. Is there any reason
17 to believe that it's other than a full arm's-length
18 transaction?

19 A No. It is. That's why I think we ought to
20 go with what you're paid.

21 Q Are you aware that in the investigation
22 docket the Commission rejected OPC's proposal to
23 change the burden of proof from the proponent of the
24 acquisition adjustment to the utility. Are you aware
25 of that?

1 A No.

2 Q Okay. On Page 20, Line 12 of your
3 testimony, you indicate that the differential between
4 the original cost and the purchase price of assets is
5 an extraordinary circumstance; is that correct?

6 A Page 20, Line 12. I think it says
7 definitely -- purchasing over \$2.8 million in assets
8 for only \$545,000 is an obvious indication that
9 something is wrong.

10 Q Go on down to Line 14.

11 A "That appears to be extraordinary in my
12 opinion," and I think I've said that.

13 Q Are you aware that in other cases addressing
14 acquisition adjustments the Commission has found that
15 the difference between original cost and purchase
16 price is not an extraordinary circumstance?

17 A Well, I'm not sure that they were looking at
18 this magnitude of a difference. I'm not sure I know
19 of any where they were purchased at 20 cents on the
20 dollar.

21 Q Is it possible that some were purchased at
22 less than 20 cents on the dollar?

23 A It's possible. But I'd say the majority
24 were not that deep discount.

25 Q Is it possible that there were some

1 purchases where the dollar difference between the
2 purchase price and the net book value is greater than
3 in this case?

4 A Percentagewise?

5 Q No, dollar amount.

6 A Oh, it's possible that the dollar amount --
7 but percentagewise, you mean that the acquisition
8 adjustment is greater than \$2.3 million?

9 Q Yeah.

10 A It's possible.

11 Q Would it make any difference to you?

12 A No, because we're looking at the purchase
13 of -- you could have a utility that has \$50 million in
14 assets and has been discounted by \$3 million which
15 would be greater than \$2.8 million. But
16 percentagewise it's only 1%. So the magnitude of the
17 acquisition adjustment is the relationship of the cost
18 to the purchase price that makes it extraordinary.

19 Q But the point I'm getting up to is we're
20 talking about both percentage and actual dollar
21 amount.

22 A Probably.

23 Q Okay. Well, are you familiar with the rate
24 case of Southern States Utilities, now known as
25 Florida Water Services, in Docket No. 950495-WS in

1 which you were a witness on behalf of the Office of
2 Public Counsel in the acquisition of Lehigh Utility?

3 A Probably, but I don't remember it.

4 Q Let me show you a copy which has already
5 been officially noticed by the Commission.

6 MR. GIRTMAN: For the record this case is
7 reported at 96 FPSC 10:386, Docket No. 950495-WS,
8 Order No. PSC-961320-FOF-WS issued October 20, 1996.

9 Q (By Mr. Girtman) I ask you to please turn
10 to page -- excuse me, also this is case No. 89 in our
11 list.

12 Please turn to Page 463. And at the top of
13 the page please read those three lines that are
14 underlined.

15 A (Witness complies.)

16 Q Read them out loud.

17 A "Mr. Larkin testified that SSU/TGI purchased
18 \$99 million in Lehigh acquisition corporation assets
19 for 40 million, resulting in a potential negative
20 acquisition adjustment of 59 million, or approximately
21 60% discount."

22 Q All right. If you would, please, turn over
23 to Page 467 and read into the record the paragraph
24 that's marked in the center of the page.

25 A "Even if a write-down of utility assets were

1 to occur, our policy is not to recognize negative
2 acquisition adjustments unless extraordinary
3 circumstances exist at the time of the transfer. Even
4 a possible showing that LUI assets were purchased at
5 45% of book value does not demonstrate that
6 extraordinary conditions exist, or that we erred in
7 not recognizing extraordinary circumstances in other
8 prior decisions." But this is not comparable. We're
9 at a transfer here.

10 Q Mr. Larkin, if you please --

11 A And we haven't gone by it --

12 Q -- if you would, please, answer my
13 questions. You'll have an opportunity when Mr. Beck
14 continues and asks you questions. We need to move it
15 along a little bit.

16 Are you familiar with the case of transfer
17 of water and sewer utility systems from Springdale,
18 Inc. to Springdale at Manatee Limited in Levy County?

19 A Probably not.

20 Q Let me show you a copy of the order. For
21 the record this is item number 47 on the list of
22 Officially Recognized Cases. The citation is 91-FPSC
23 1:79, Docket No. 900408-WS, Order No. 23970 issued
24 January 8th, 1991.

25 If you would, please, turn to Page 81 of

1 that case.

2 A Page 81. Excuse me, the Commission order is
3 Page 3. The Florida Public Service Commission
4 Reporter Citation is Page 81.

5 If you would please look at the last two
6 paragraphs on that page, and there are some numbers
7 recited there in the order. If you would please read
8 into the record the underlined provisions of those two
9 paragraphs.

10 A "Springdale at Manatee purchased the utility
11 in conjunction with mobile home subdivision for a
12 total of \$187,500. The purchase price of the utility
13 is estimated to be 26,355. Although a large negative
14 adjustment results from this sale, the circumstances
15 do not appear to be extraordinary. As a result of the
16 adjustments set forth herein, rate base is 71,000 for
17 the water system, 158,824 for the sewer system as of
18 October."

19 Q That's all right. You don't need to
20 continue.

21 If you'll notice at the bottom of that page
22 there are some handwritten computations showing the
23 total rate base, subtracting from that the purchase
24 price and showing the purchase price as a percentage
25 of total rate base. Those are provided for your

1 convenience. Would you like to recalculate that
2 yourself and tell us what percentage of rate base the
3 purchase price was, or would you like to accept those
4 numbers?

5 A I'll accept them, subject to check.

6 Q Subject to check. And what is the
7 percentage shown for the purchase of this utility?

8 A 11.5%.

9 Q 11.5%. That's less than the 19 or 20% that
10 you've testified to as to Wedgefield Utilities, right?

11 A Yes.

12 Q So already we've got two cases here. One is
13 a huge magnitude difference, greater in dollar value
14 that the Commission has found is not an exceptional
15 circumstance. And we've got a case here that the
16 price paid is 11.5%, which is -- it's almost half the
17 percentage that you've testified is in this case,
18 right?

19 A That's correct. But it doesn't state
20 whether anybody ever presented testimony or posed
21 those.

22 Q Are you familiar with the transfer case
23 regarding Grand Terrace Utility? That's a 1990 case.
24 Let me show you a copy. It's item or case No. 43 on
25 our list. Docket No. 891320-WU, Order No. 23656

1 issued October 23, 1990. The citation is 90 FPSC
2 10:536. If you would, please, turn to FPSC Page 539,
3 it's Page 4 of the Order. At the bottom of the page
4 would you please read into the record --

5 MR. BECK: I object. You asked him if he's
6 familiar with it. I want him to answer whether he's
7 familiar with this case before going any further.

8 Q (By Mr. Girtman) Are you familiar with the
9 case?

10 A No.

11 MR. BECK: Then I object to these questions.
12 Mr. Girtman can ask all day long for people to read
13 the orders that you've already taken official notice
14 of, but it's not proper cross examination. If he's
15 not familiar with it, he has nothing to add to what's
16 already in the record.

17 MR. GIRTMAN: What I want to do is have
18 Mr. Larkin become familiar with certain provisions of
19 rulings of the Commission, and then ask him questions
20 regarding his recently found awareness of this
21 information in regard to his testimony and how those
22 are inconsistent.

23 COMMISSIONER DEASON: I'm having some
24 difficulty, Mr. Girtman.

25 MR. GIRTMAN: He's testified as to what he

1 thinks is extraordinary. He says he thinks as to
2 those prior cases that he thinks that the amount, the
3 difference is extraordinary. And I want to know the
4 basis of his knowledge and his conclusion in coming to
5 that decision based upon the fact that the Commission
6 has already considered that question and --

7 **COMMISSIONER GARCIA:** So why don't you just
8 ask him that question and we can move on, as opposed
9 to educating him on your position. Clearly he has a
10 position. If you ask him that question, he will
11 answer that question -- I'm sorry --

12 **COMMISSIONER DEASON:** No, no, no, I
13 appreciate the suggestion.

14 **COMMISSIONER GARCIA:** And I think we can
15 move on from there. I think your reading of the cases
16 and the fact they are in there is very nice, but to
17 have Mr. Larkin read through these examples to educate
18 him to then ask him a question I don't think serves
19 anyone.

20 **COMMISSIONER DEASON:** It could be expedited
21 to some extent.

22 **MR. GIRTMAN:** Let me do this, let me just
23 ask questions from the quotes and proceed from there.

24 Q (By Mr. Girtman) Do you believe it is
25 necessary to provide an incentive for large utility

1 systems to come in and by troubled systems like this
2 one?

3 A No.

4 Q You don't believe there's a need for
5 incentive?

6 A Not incentives like this. I mean there's
7 enough of incentive that the company is going to
8 recover all of their investment in three years. To
9 add to that \$2.3 million in investment that they have
10 made I don't think is a legitimate incentive.

11 COMMISSIONER CLARK: Your position really is
12 not that the difference in purchase price is an
13 extraordinary circumstance. Your position really is
14 that all they should ever get is what they've paid.

15 WITNESS LARKIN: Well, that's part of it. I
16 think that you ought to start there. But then you've
17 set the standard of extraordinary circumstance and
18 then we have to look for that. And then you look for
19 that by looking at the assets and see what condition
20 they are in. These are in poor condition, so that's
21 extraordinary. And that's reflected in the
22 extraordinary price that they pay.

23 So to me, those are all extraordinary
24 conditions and they ought to be a basis for recording
25 a negative acquisition adjustment.

1 **COMMISSIONER CLARK:** Any time they pay a
2 price different than the net book value, that is an
3 extraordinary circumstance.

4 **WITNESS LARKIN:** Not in and of itself, but
5 I'd certainly look at that as being extraordinary
6 going into it.

7 **COMMISSIONER CLARK:** Okay.

8 **Q** **(By Mr. Girtman)** Mr. Larkin, let me ask
9 you a question in relation to case No. 55 on our list,
10 it's FIMC Hideaway. Do you believe that if the
11 purchasing utility has to spend a considerable amount
12 of money to bring the water and wastewater systems
13 into compliance with DER requirements, do you believe
14 that's an extraordinary circumstance?

15 **A** Well, it probably is an extraordinary
16 circumstance, but the ratepayer will pay for that. I
17 mean, you're going to put that in the rate base and
18 then you're going to come in and say here's what we
19 spent to bring this up to standard and the ratepayer
20 ought to pay for that. So, I mean, the ratepayer
21 doesn't get a free ride on this. Whatever you invest
22 he's going to pay for eventually.

23 **Q** Are you aware that Econ Utilities was
24 operating in a loss situation for many years?

25 **A** That's debatable. If you mean that when you

1 look at their utility that they got \$545,000, or
2 \$600,000 in revenue, and they depreciated all of that
3 plant, and they had nonused and useful expenses, and
4 that they had interest on -- expenses on carrying a
5 plant that was not used and useful, it's obviously
6 going to come out to a negative number. But that's
7 the fault of the utility for sizing something greater
8 than they could build out to. That's not the
9 ratepayer's fault. And you can't use that as a reason
10 or an excuse to jam it to these people. (Applause)

11 Q Mr. Larkin, are you familiar -- let me just
12 read this authority to you. It comes from the Public
13 Service Commission Rules 25-30.037(2)(g) in
14 particular. It talks about "An application for
15 transfer of a certificate, facilities or any portion
16 thereof, to nongovernmental entity shall include the
17 following." Then there's a list of things there that
18 the utility has to provide, and this is one of them:
19 "A statement setting out the reasons for the inclusion
20 of an acquisition adjustment if one is requested." Do
21 you agree with that?

22 A That's what it says, yes.

23 Q All right. To your knowledge, is there any
24 requirement in the rule book or otherwise, the
25 statutes, anywhere, that says that if the utility is

1 not asking for an acquisition adjustment, they have to
2 show why one is not required?

3 A I guess that's a legal question. But my
4 commonsense answer to that would be that nobody would
5 ever ask for a negative adjustment if they could earn
6 on 2.8 million and invest \$545,000.

7 Q Perhaps my question wasn't clear. My
8 question is do you know of any authority that says
9 that it's the burden of the utility to show why there
10 should not be a negative acquisition adjustment?

11 A I don't know if I answered it or not but it
12 seems like a legal question, so I don't know whether
13 that's --

14 Q So in other words, you don't know whether
15 there's that kind of requirement or not?

16 A No. But if there isn't I would think there
17 ought to be.

18 Q So what you would recommend doing --
19 assuming the policy is that the burden of proof is on
20 the proponent of the acquisition adjustment -- in this
21 case the Office of Public Counsel -- assuming that,
22 then your position would be that the Commission ought
23 to change that policy; is that right?

24 A Well, it ought to be on the party that would
25 get the benefit of the acquisition adjustment, or not

1 recording the acquisition adjustment, which would be
2 the utility, to show that they need this in order to
3 make this operation profitable, they need the -- not
4 to record the negative acquisition adjustment.

5 COMMISSIONER CLARK: While they are
6 conferring, let me ask you a question. Do you know of
7 any case where we have made the conclusion that the
8 magnitude of differential between the purchase price
9 and the net book value is an extraordinary
10 circumstance?

11 WITNESS LARKIN: I don't know of any. But
12 it seemed to me that that ought to be -- that ought to
13 raise flags.

14 COMMISSIONER CLARK: That there ought to be,
15 according to you.

16 WITNESS LARKIN: It ought to raise flags.
17 Somebody ought to be saying --

18 COMMISSIONER CLARK: But you know of no
19 order where we've concluded that?

20 WITNESS LARKIN: I didn't look for that, so
21 there may be orders but I don't know about them.

22 Q (By Mr. Girtman) Mr. Larkin, you've said
23 several times that it's your opinion that this utility
24 is in poor condition, right?

25 A From the documents I've looked at.

1 Q Have you inspected the plant?

2 A No.

3 Q So you're relying entirely upon the
4 documents from somebody else, right?

5 A That's correct. People that have made
6 inspections.

7 Q Who?

8 A Orange County and the Company's -- Econ's
9 own engineers did.

10 Q And made a report?

11 A Yes.

12 Q Okay. And which report was that?

13 A There was an interim report by the County,
14 and then there was a partial report made by the John
15 Webb Engineering Company.

16 Q Wasn't that a draft report that was never
17 completed and never made final?

18 A That's correct.

19 Q You say you're relying entirely on other
20 people for the conclusion that you reached that this
21 system is in poor condition, right? Now, if it were
22 shown that this system is not in poor condition, would
23 you change your mind and change your testimony?

24 A No. Because I think one drives the other.
25 I think if it weren't in poor condition the seller

1 wouldn't have given it away.

2 Q \$545,000 is a gift?

3 A I think it's a gift if you invested
4 \$2.8 million. I mean, they asked the County to pay
5 3.1 million. And when the County balked at that and
6 said "You have to pay us \$12 million to take it off
7 your hands," then all of a sudden the price went down
8 from 3.1 million to 545.

9 Q Are you aware that in business decisions,
10 when business decisions are made, sometimes there are
11 many factors involved in the basis for the decision?

12 A Sure.

13 Q And the decision of the Econ owners to sell
14 it, you seem to be saying in your testimony that the
15 only reason they sold it was it was in such poor
16 condition?

17 A Oh, no. I'm sure there are other reasons.

18 Q So that the sale price, even in your
19 testimony, is not determined only by the condition of
20 the plant, right?

21 A Not only, but, I mean, usually any -- the
22 sale of any financial asset is driven by its ability
23 to generate income.

24 Now, regardless of your other reasons,
25 regardless of whether you just want to get out of the

1 utility business, or you'd like to have some
2 additional money to invest in the Commons, or you'd
3 like to just not bother with this anymore, if you have
4 an asset that will generate income at a certain level,
5 you don't say because of these other reasons I'm going
6 to give it away. You look at its ability to generate
7 income and if it won't generate income, or if you
8 think the income that it will generate is worth
9 \$545,000, then that's what you sell it for.

10 Q If the Commission were to change its prior
11 practice and policy on acquisition adjustments and
12 were to grant a negative acquisition adjustment in
13 this case, wouldn't that change the entire business
14 decision-making process of companies that might want
15 to look at troubled utilities and purchase them?
16 Wouldn't that be a totally different situation they'd
17 face?

18 A Well, they'd be faced with a position of
19 coming in and showing that to not record the negative
20 acquisition adjustment has some basis other than
21 greed. You'd have to show that this additional return
22 is justified by some risk that they are taking.

23 When you have people that are captive
24 customers, can't go anywhere else, they are taking bad
25 water and you're going to charge them for a rate base

1 that has been sold at arm's length for \$545,000,
2 you're going to charge them \$2.8 million then --

3 Q Mr. Larkin, wouldn't it have been better if
4 this utility had been receiving a more fully
5 compensable rate and they could have spent more money
6 on upkeep, maintenance and other things?

7 A That's up to them. We don't know what a
8 fully compensable rate would have been.

9 Q If they were operating at a loss, wouldn't
10 they have been more financially able to do additional
11 maintenance and things that really you think ought to
12 be done?

13 A If they had more money. But you don't know
14 if they wouldn't have taken that money out and spent
15 it somewhere else.

16 Q You don't know either, do you?

17 A No, I don't, but --

18 Q So you're just making a bald assertion,
19 supposition, right?

20 A Well, I --

21 MR. GIRTMAN: I don't have any further
22 questions of this witness, Commissioner.

23 COMMISSIONER DEASON: Staff.

24 MS. BRUBAKER: We have no cross.

25 COMMISSIONER DEASON: Redirect.

REDIRECT EXAMINATION

1
2 BY MR. BECK:

3 Q Mr. Larkin, during the examination by Mr.
4 Girtman you were about to say that the Lehigh Acres
5 case was not comparable to this one. Would you please
6 state the basis for that?

7 A The Lehigh Acres case, as I read the order
8 here, was that it was already approved in a transfer
9 and the rate base had already been approved. And we
10 were coming after the fact to say that there ought to
11 be an acquisition adjustment recorded. I suppose you
12 could say that that was untimely. But we're not
13 untimely here. We're not saying the wrong thing at
14 the wrong time.

15 COMMISSIONER DEASON: Exhibits.

16 MR. BECK: Move Exhibit 16.

17 COMMISSIONER DEASON: Without objection
18 Exhibit 16 is admitted.

19 (Exhibit 16 received in evidence.)

20 COMMISSIONER DEASON: Realizing the lateness
21 of the hour, we're going to conclude for today. We
22 will reconvene in Tallahassee on March the 26th at
23 9:30, at the Commission, and we will at that time take
24 up the testimony of Mr. Seidman.

25 MR. GIRTMAN: Commissioner, just to make

1 sure that everything was admitted into evidence, I'd
2 like to make sure to move that all of Wedgefield's
3 exhibits be admitted into evidence if there's one I
4 missed.

5 **COMMISSIONER DEASON:** My list shows that all
6 of the exhibits that were being sponsored by
7 Wedgefield have been moved and admitted. There are
8 three exhibits which have been identified and not
9 admitted but it's because they were not moved. Those
10 are exhibits 13, 14 and 15, and I think those were
11 handouts provided by Public Counsel.

12 **MR. BECK:** That's correct.

13 **COMMISSIONER DEASON:** So with that, I want
14 to thank all of the customers for your testimony this
15 morning and for your patience with us this afternoon.
16 And I would encourage you to inquire with the
17 Commission Clerk's Office to see about perhaps having
18 access to the hearing, the continuation of this
19 hearing, either by some type of a telephone connection
20 or either by, perhaps, the Internet. I cannot at this
21 point promise you that it will be done but we will
22 make an attempt to provide you that possibility.

23 **MR. GIRTMAN:** Commissioner, one final
24 matter. Mr. Wenz has already given testimony and been
25 cross examined today. I wonder if we could have him

1 | excused so he wouldn't have to come back down here.
2 | He has no part that I know of in the further
3 | proceedings.

4 | **COMMISSIONER DEASON:** Yes. Mr. Wenz may be
5 | excused.

6 | **MR. GIRTMAN:** Thank you.

7 | (Witness Wenz excused.)

8 | **COMMISSIONER DEASON:** Thank you all. This
9 | phase of the hearing is adjourned.

10 | (Thereupon, the hearing adjourned at
11 | 4:20 p.m. to be continued on Thursday, March 26, 1998,
12 | at the Easley Building, Room 152, in Tallahassee,
13 | Florida.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

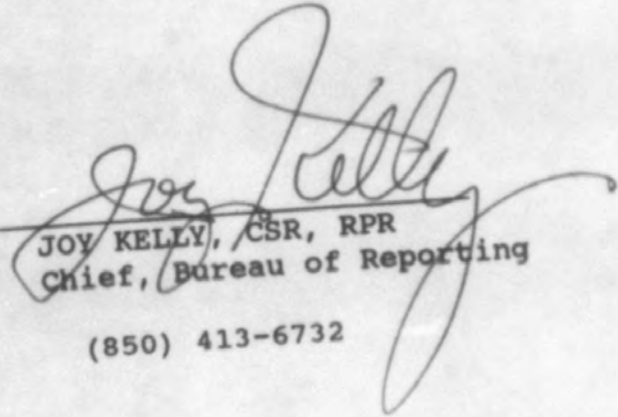
CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Hearing in Docket
6 No. 960235-WS was heard by the Florida Public Service
7 Commission at the time and place herein stated; it is
8 further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 306 pages, constitutes a
13 true transcription of my notes of said proceedings.
14 and the insertion of the prescribed prefilled
15 testimony of the witnesses.

16 DATED this 27th day of March, 1998.

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JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

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