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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :

: DOCKET NO. 920199-WS

Application for rate increase in Brevard:
Charlotte/Lee, Citrus, Clay, Duval, :
Highlands, Lake, Marion, Martin, Nassau, :
Orange, Osceola, Pasco, Putnam, Seminole :
Volusia, and Washington Counties by :
SOUTHERN STATES UTILITIES, INC.; Collier :
County by MARCO SHORES UTILITIES :
(Deltona); Hernando County by SPRING :
HILL UTILITIES (Deltona); and Volusia :
County by DELTONA LAKES UTILITIES :
(Deltona) :

FIRST DAY - MID-MORNING AND AFTERNOON SESSIONS

VOLUME II

Pages 158 through 319

PROCEEDINGS:

FINAL HEARING

BEFORE:

CHAIRMAN THOMAS M. BEARD
COMMISSIONER BETTY EASLEY
COMMISSIONER SUSAN F. CLARK

RECEIVED
Division of Records & Reporting

DATE:

NOV 10 1992

Friday, November 6, 1992

TIME:

Florida Public Service Commission

Commenced at 9:30 a.m.

PLACE:

FPSC, Hearing Room 106
101 East Gaines Street
Tallahassee, Florida 32399

REPORTED BY:

JOY KELLY, CSR, RPR
SYDNEY C. SILVA, CSR, RPR
PAMELA A. CANELL
Official Commission Reporters
and
LISA GIROD JONES, RPR, CM

APPEARANCES:

(As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DAT

13192 NOV 10 1992

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P R O C E E D I N G S

(Transcript continues in sequence from Volume I.)

CHAIRMAN BEARD: Could I get everyone's attention again? I think we've had a few people show up since we started this morning, and welcome. I think most everyone, I believe, is from the Spring Hill area, if I'm not mistaken. We covered a lot of preliminary matters this morning, and let me go back through for those of you that have just arrived. I know there are a number of people that had not had an opportunity, or it is my understanding, there are a number of people that had not had an opportunity to speak at one of the ten service hearings that we held throughout the Southern States service areas.

And what we will do, we're going to start with our first witness this morning since we've already got him on the stand and get that out of the way. In the meantime, I understand there's a list being put together of people who wish to testify. And let me make clear, we have a very busy schedule. I don't want to preclude anybody, but if you have previously testified at one of the service hearings, I would ask that you not sign up this morning. We would like to provide an opportunity for people that did not get that chance at one of those ten service hearings. I

1 understand that there were a number of people that were
2 probably up north that had not gotten down here yet,
3 that hadn't had a chance to speak. We want to provide
4 you that opportunity. But it is not necessary to go
5 back through, again, people's testimony that had
6 already testified. So with your cooperation, we will
7 do that, and we will then try to move forward in this
8 case.

9 We are -- because of the workload associated
10 with this case, we're going to basically work through
11 our lunch here and work until five o'clock. I think
12 that will give those of you that have come up for the
13 day a chance to see, as much as possible, what goes on
14 here. We will probably take about 15 or 20 minutes to
15 order sandwiches or whatever each of you wants to do.
16 And it is not unusual for us to do this. So don't feel
17 bashful about bringing a sandwich or a cold drink or
18 something in here. We will do the same thing in an
19 attempt to keep this process moving forward where we
20 can cover all the witnesses and get this work done in
21 the next -- little over a week that we have scheduled
22 for the hearings. Okay, given that, Company, your
23 first witness is on.

24 MR. HOFFMAN: Thank you, Mr. Chairman. Have
25 you been sworn, sir?

1 WITNESS SANDBULTE: No, I have not.

2 CHAIRMAN BEARD: If I can, each of the
3 witnesses that is currently in the hearing room that
4 will be testifying, if you would go ahead and stand and
5 we will swear you in at one time.

6 (Witnesses collectively sworn.)

7 CHAIRMAN BEARD: Okay.

8

- - - - -

9

AREND J. SANDBULTE

10 was called as witness on behalf of the Citizens of the
11 State of Florida and, having been duly sworn, testified
12 as follows:

13

DIRECT EXAMINATION

14 BY MR. HOFFMAN:

15 Q Would you please state your name and business
16 address?

17 A My name is Arend J. Sandbulte. My business
18 address is 30 West Superior Street, Duluth, Minnesota
19 55802.

20 Q Mr. Sandbulte, did you prepare and cause to
21 be filed Prefiled Direct Testimony and Prefiled
22 Rebuttal Testimony on behalf of Southern States
23 Utilities, Inc. in this proceeding?

24 A Yes, I did.

25 Q Do you have any changes or revisions to

1 either your direct testimony or your rebuttal
2 testimony?

3 A Only on my rebuttal testimony, Page 9, Line
4 13, the word "condemned" should be removed and the
5 words "sold voluntarily" inserted after the word
6 "assets."

7 COMMISSIONER EASLEY: So it reads, "to the
8 assets sold voluntarily," is that right?

9 WITNESS SANDBULTE: Yes, that's right,
10 Commissioner.

11 COMMISSIONER EASLEY: Okay, thank you.

12 Q (By Mr. Hoffman) Mr. Sandbulte, with that
13 revision, if I asked you the same questions contained in
14 your Prepared Direct Testimony and Prepared Rebuttal
15 Testimony today, would your answers be the same?

16 A Yes, it would.

17 Q Mr. Chairman, I would ask that Mr.
18 Sandbulte's Prefiled Direct Testimony and Prefiled
19 Rebuttal Testimony be inserted into the record as
20 though read.

21 CHAIRMAN BEARD: They will both be so
22 inserted.

23

24

25

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Arend J. Sandbulte, and my business
3 address is Minnesota Power & Light Company
4 (Minnesota Power), 30 West Superior Street,
5 Duluth, Minnesota 55802.

6 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

7 A. My position is Chairman, President and Chief
8 Executive Officer of Minnesota Power.

9 Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL
10 BACKGROUND AS WELL AS YOUR RESPONSIBILITIES IN
11 YOUR CURRENT POSITION.

12 A. I am a 1959 graduate of Iowa State University
13 with a Bachelor of Science degree in Electrical
14 Engineering. I also obtained a Master's degree
15 in Business Administration from the University
16 of Minnesota in 1966. I began my career as a
17 rate engineer with Northern States Power Company
18 in 1959. I moved to Minnesota Power in 1964
19 where I originally served in a similar capacity.
20 I was promoted to financial assistant in 1965,
21 and to Director of the Budgets and Research
22 Department in 1966. I was named Assistant Vice
23 President of the Research and Corporate Planning
24 Department in 1972 and became Vice President of
25 the Corporate Planning Department in 1974. I was

1 named Vice President and Chief Financial Officer
2 in 1976 and Senior Vice President, Finance and
3 Administration, and Chief Financial Officer in
4 1978. In 1980, I was named Executive Vice
5 President and Chief Financial Officer, and in
6 1983, I was appointed to the Chief Operating
7 Officer position in addition to retaining the
8 earlier positions. In 1984, I became President
9 and Chief Operating Officer. In 1988, I was
10 elected President and Chief Executive Officer,
11 and in 1989 was named to my current position of
12 Chairman of the Board, President and Chief
13 Executive Officer.

14 My primary responsibilities in my current
15 position are to provide overall leadership and
16 direction to the Company and to guide development
17 of appropriate long-range strategic plans. I
18 lead and work with the Board of Directors and
19 provide guidance to the Company's Group Vice
20 Presidents in managing the strategic, tactical,
21 and day-to-day activities assigned to them.

22 **Q. ARE YOU A MEMBER OF ANY PROFESSIONAL SOCIETIES**
23 **OR ASSOCIATIONS?**

24 **A.** I am a Registered Professional Engineer in the
25 states of Minnesota, North Dakota and Wisconsin

1 and a member of the Institute of Electrical and
2 Electronic Engineers (IEEE).

3 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA**
4 **PUBLIC SERVICE COMMISSION OR ANY OTHER REGULATORY**
5 **BODY?**

6 **A.** I have not testified before the Florida Public
7 Service Commission. However, I have testified
8 before state and federal regulatory authorities
9 on numerous occasions including each of Minnesota
10 Power's electric utility rate cases since 1975
11 before the Minnesota Public Utilities Commission
12 (MPUC) and the Federal Energy Regulatory
13 Commission and its predecessor, the Federal Power
14 Commission. Generally, I have testified in
15 matters of overall Company policy as well as rate
16 design, rate of return and similar matters. I
17 have also testified before several other
18 regulatory agencies on matters of power plant
19 siting, certificates of need and transmission
20 line routing. I have also testified before the
21 Wisconsin Public Service Commission concerning
22 rates sought by Minnesota Power's Wisconsin
23 utility subsidiary, Superior Water, Light & Power
24 Company.

25 **Q. WHAT HAS BEEN THE EXTENT OF YOUR INVOLVEMENT WITH**

1 **THE PLANNING FOR AND MANAGEMENT OF MINNESOTA**
2 **POWER'S INVESTMENT IN SOUTHERN STATES UTILITIES,**
3 **INC. AND DELTONA UTILITIES, INC.**

4 A. I have been extensively involved in Minnesota
5 Power's diversification efforts since they began
6 in 1983. Currently, I am Chairman of the Board
7 of all 7 of Minnesota Power's directly held
8 subsidiaries. In addition, in my capacity as
9 Chief Executive Officer of Minnesota Power, I am
10 responsible for the implementation of business
11 and growth strategies for the entire corporation,
12 including our diversification strategies.

13 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
14 **PROCEEDING?**

15 A. I will (1) briefly describe Minnesota Power, the
16 nature of its business and its service territory,
17 (2) describe Minnesota Power's philosophy
18 regarding diversification into the Florida water
19 and wastewater industry and (3) discuss our
20 future plans in Florida.

21 Q. **COULD YOU PLEASE PROVIDE A BRIEF DESCRIPTION OF**
22 **MINNESOTA POWER, ITS BUSINESS AND ITS SERVICE**
23 **TERRITORY?**

24 A. Yes. Minnesota Power's operations are classified
25 into three broad areas: "Core", "Core Support",

1 and "Diversification." Our Core business
2 provides electric service throughout northern
3 Minnesota and northwest Wisconsin. Minnesota
4 Power serves 120,000 retail electric service
5 customers and supplies wholesale power to 14
6 municipalities as well as to our Wisconsin
7 subsidiary Superior Water, Light & Power Company.
8 Over one-half of Minnesota Power's electric
9 revenues are derived from just nine large
10 industrial customers in the iron ore processing
11 and papermaking industries.

12 Our Core Support businesses are businesses that
13 bear a reasonably direct and beneficial
14 relationship to Minnesota Power's core electric
15 operations and are located in their geographic
16 vicinity. For example, our 50% joint venture
17 participation in the Lake Superior Paper
18 Industries paper mill in Duluth, Minnesota
19 created an estimated 2,000 jobs in our electric
20 service territory and added a large electric
21 service customer to our system. Other Core
22 Support businesses include a North Dakota coal
23 mining company, a company pursuing cogeneration
24 opportunities with our industrial customers, a
25 company that manufactures utility vehicles

1 (aerial and digger units), and a company that is
2 pursuing business opportunities in energy
3 efficiency, resource conservation, solid waste
4 management and pollution prevention.

5 Minnesota Power considers its involvement in
6 water and wastewater utilities in Florida and in
7 North and South Carolina to be Diversification.
8 The goal to be achieved by engaging in these
9 operations is to provide solid earnings from
10 enterprises that are geographically, financially
11 and operationally diverse from economic cycles
12 that may affect our core electric business. Of
13 course, the customers served by these water and
14 wastewater operations receive the benefits of our
15 experience in a regulated industry, our
16 commitment to the environment, and, to date, our
17 presence as a source of significant capital
18 financing through equity infusions.

19 Our goal for the year 2000 is that the Core
20 activities provide 50% of earnings, Core Support
21 provide 20% of earnings and Diversification
22 provide 30% of earnings.

23 **Q. WHAT IS YOUR ASSESSMENT OF THE PROSPECTS OF**
24 **MATERIAL EARNINGS GROWTH IN MINNESOTA POWER'S**
25 **CORE UTILITY OPERATIONS FOR THE FORESEEABLE**

1 **FUTURE?**

2 A. Let me say first that we are targeting 5%
3 earnings growth annually for the 1990s.
4 Minnesota Power's core electric operations are
5 expected to remain relatively stable with slow
6 earnings growth in the foreseeable future.
7 Annual electric load growth of approximately one
8 percent is predicted with a stable or slightly
9 declining industrial base. Most of our earnings
10 growth is therefore expected to come from Core
11 Support and Diversification activities, and we
12 expect to invest heavily in these activities to
13 produce that growth. Water and wastewater
14 businesses are expected to grow the most through
15 natural growth and acquisitions.

16 **Q. HOW HAS MINNESOTA POWER'S MANAGEMENT BEEN**
17 **EVALUATED BY MINNESOTA REGULATORS?**

18 A. I believe Minnesota regulators are well satisfied
19 with the performance of Minnesota Power's
20 management. We have been able to maintain low
21 rates while providing reliable and
22 environmentally sound electric service. I also
23 believe we have a very good working relationship
24 with our Minnesota regulators which is an
25 important part of our "partnership" strategy with

1 all Minnesota Power stakeholders, including
2 customers, shareholders and regulators.

3 **Q. PLEASE DESCRIBE THE PHILOSOPHY OF MINNESOTA POWER**
4 **BEHIND ITS DIVERSIFICATION INTO THE FLORIDA WATER**
5 **AND WASTEWATER INDUSTRY.**

6 **A.** Consistent with the needs and goals I expressed
7 previously, our diversification strategy involves
8 businesses meeting one of two tests: (1) either
9 they are in a regulated industry or (2) they must
10 bear a reasonably direct and beneficial
11 relationship to our "core" electric power
12 business.

13 The purpose of what we call our Diversification
14 activities, namely the water and wastewater
15 utility businesses in Florida, North Carolina and
16 South Carolina, is to provide solid earnings from
17 enterprises that are geographically, financially
18 and operationally diverse from economic cycles
19 that may affect our core electric business. We
20 feel that we know how to operate regulated
21 utility businesses and believe that our
22 experience in doing so will result in profitable,
23 well-managed utility businesses in those states.

24 **Q. IS MINNESOTA POWER CONSIDERING EXPANDING ITS**
25 **WATER AND WASTEWATER UTILITY BUSINESS IN FLORIDA**

1 **THOUGH THE ACQUISITION OF OTHER UTILITIES?**

2 A. Yes, as I stated earlier, we want our water and
3 wastewater businesses to contribute 30% of
4 earnings by the year 2000. As can be seen
5 through our recent acquisition of Lehigh
6 Utilities, Inc. (Lehigh) in 1991 and our efforts
7 to consolidate the numerous other water utility
8 holdings that we have acquired in Florida over
9 the last few years, which I will refer to
10 collectively as "Southern States," Minnesota
11 Power is always looking for opportunities to
12 expand its water and wastewater utility business
13 in Florida. We would like to expand our water
14 operations on a systematic basis if other water
15 utility businesses can be acquired at a
16 reasonable cost and if such systems are
17 compatible with our diversification goals and
18 existing water systems.

19 **Q. WHAT DEGREE OF AUTONOMY DOES THE EXISTING**
20 **MANAGEMENT OF SOUTHERN STATES HAVE CONCERNING THE**
21 **OPERATIONS OF THE FLORIDA WATER AND WASTEWATER**
22 **SYSTEMS?**

23 A. The existing management of Southern States has a
24 high degree of autonomy and control regarding the
25 day-to-day operations of the Florida water and

1 wastewater systems. The President of Southern
2 States, Bert Phillips, and all of the senior
3 management personnel of those utilities are
4 located in Apopka, Florida. This management team
5 is responsible for running the entire water and
6 wastewater operation, including making decisions
7 on capital improvements, system operations and
8 all aspects of customer service.

9 Q. WHAT ARE MINNESOTA POWER'S FUTURE PLANS
10 CONCERNING SOUTHERN STATES AND THE FLORIDA WATER
11 AND WASTEWATER INDUSTRY IN GENERAL?

12 A. Minnesota Power's primary plan concerning
13 Southern States is to establish Minnesota Power
14 as a long-term presence in Florida's water and
15 wastewater utility industry. Our primary goal
16 is to provide reliable water and wastewater
17 utility service at reasonable rates, in a manner
18 consistent with environmental concerns, and earn
19 a fair return on investment. We recognize that
20 increasingly stringent environmental standards
21 and relatively rapid customer growth will
22 require, as in the recent past, significant
23 investments in capital improvements in Southern
24 States' water and wastewater systems. In
25 exchange for our investments in capital

1 improvements, we expect that Southern States will
2 be allowed to earn a reasonable return on the
3 money invested.

4 **Q. IN LIGHT OF THE APPROXIMATELY EIGHT YEAR HISTORY**
5 **OF MINNESOTA POWER'S DIVERSIFICATION EFFORTS IN**
6 **THE FLORIDA WATER AND WASTEWATER INDUSTRY, WHAT**
7 **IS YOUR OVERALL ASSESSMENT OF THE FUTURE**
8 **PROSPECTS OF SOUTHERN STATES?**

9 A. I am confident that we have the right
10 organization, the right businesses, the right
11 people, and the right strategy to continue to
12 improve our past performance. Our progress to
13 date has not been easy. We are attempting to
14 combine over 100 small and medium size water and
15 wastewater systems into a larger, more efficient
16 organization. In a sense, we are bringing order
17 to what otherwise would be a somewhat chaotic
18 patchwork of water and wastewater systems. Our
19 overall assessment of the future prospects of our
20 Florida operations is optimistic. We believe
21 that our continued efforts will result in
22 improved customer service and water quality,
23 reasonable prices for our customers, and a fair
24 return on our investment.

25 **Q. IF SOUTHERN STATES IS NOT GRANTED THE RATE**

1 **INCREASES THEY SEEK IN THIS PROCEEDING, WHAT DOES**
2 **THE FUTURE HOLD FOR SOUTHERN STATES?**

3 A. Without the requested rate relief to allow
4 Southern States to continue to make investments
5 in their operations, the future prospects of the
6 company are not good. Southern States has
7 significant revenue requirement deficiencies that
8 should be recognized in this proceeding. Without
9 rate increases, Southern States simply will not
10 have sufficient financial strength to continue to
11 meet the capital and operational requirements
12 that are being imposed upon it by federal, state
13 and local laws, ordinances, rules and
14 regulations. Without rate relief, I believe
15 there could be significant deterioration in both
16 the quality of service and an inability of
17 Southern States to attract needed low-cost
18 capital for required capital projects.

19 **Q. COULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?**

20 A. Yes. The highlights of my testimony are as
21 follows:

22 1. Minnesota Power views the Southern States
23 operations as key components in its overall
24 corporate strategy. We believe that our
25 experience in running regulated utility

1 operations has benefited Southern States and
2 its customers.

3 2. Minnesota Power's ultimate goal for Southern
4 States is that the company provide superior
5 customer service, which in turn requires
6 Southern States to continue to upgrade
7 facilities to meet water quality standards
8 and customer growth. In exchange for this
9 commitment, Minnesota Power, the source of
10 a significant portion of the funding of such
11 upgrades, expects a fair return on its
12 investment.

13 3. The rate increases requested by Southern
14 States are absolutely necessary to allow the
15 company to meet its goal of improved
16 customer service. Without rate relief,
17 Southern States will not have the financial
18 strength to make necessary system upgrades
19 or operate its systems properly, and access
20 to lower cost financial markets will remain
21 impossible.

22 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

23 A. Yes, it does.

- 1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**
- 2 **A. My name is Arend J. Sandbulte and my business**
3 **address is Minnesota Power & Light Company, 30 West**
4 **Superior Street, Duluth, Minnesota 55802.**
- 5 **Q. ARE YOU THE SAME AREND J. SANDBULTE WHO PREVIOUSLY**
6 **SUBMITTED PREFILED DIRECT TESTIMONY IN THIS**
7 **PROCEEDING?**
- 8 **A. Yes.**
- 9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN**
10 **THIS PROCEEDING?**
- 11 **A. I will address the proposal by Office of Public**
12 **Counsel ("OPC") witness Ms. Kimberly H. Dismukes,**
13 **that the gains realized from the condemnation and**
14 **sale of the St. Augustine Shores water system and**
15 **certain University Shores wastewater facilities be**
16 **applied to reduce Southern States Utilities, Inc.'s**
17 **("Southern States" or "SSU") revenue requirements.**
18 **In other words, the OPC seeks to have these gains**
19 **given to ratepayers rather than retained by Southern**
20 **States and its shareholders. I will explain why**
21 **Southern States should be permitted to retain the**
22 **gains from these sales.**
- 23 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**
- 24 **A. Ms. Dismukes' proposal should be rejected by the**
25 **Commission for the following reasons:**

1 St. Augustine Shores Water System

2 (1) SSU's remaining ratepayers contributed nothing
3 to Southern States' recovery of its investment in
4 the St. Augustine Shores water system and they bore
5 none of the risk of any loss.

6 (2) The condemnation of the St. Augustine Shores
7 system involved not only the sale of Southern
8 States' assets but also the loss of customers to
9 whom service had been previously dedicated and
10 provided through those assets.

11 (3) At the time of condemnation, the St. Augustine
12 Shores' system was regulated by St. Johns County and
13 was not under Florida Public Service Commission
14 jurisdiction.

15 (4) The St. Augustine Shores water system always has
16 been treated on a stand alone basis for ratemaking
17 purposes.

18 University Shores Wastewater Facilities

19 (5) The condemned University Shores wastewater
20 facilities were placed in service in March 1986.
21 The Commission has not established a new rate base
22 for the University Shores wastewater system since
23 1982 (based on a June 30, 1979 rate base).
24 Therefore, neither the customers served by the
25 University Shores system nor Southern States'

1 remaining customers contributed to Southern States'
2 recovery of its investment in the condemned
3 wastewater facilities.

4 (6) Neither the customers currently served by the
5 University Shores wastewater system nor SSU's
6 remaining customers bore any risk of loss of the
7 Company's investment in the condemned facilities.

8 St. Augustine Water System and University Shores
9 Wastewater Facilities

10 (7) A Commission determination that a utility's
11 revenue requirements must be reduced by the gain on
12 the sale of a system (or a portion thereof) would
13 require the Commission to increase the utility's
14 revenue requirements in the event of a loss on the
15 sale of a system (or a portion thereof) regardless
16 of the absence of any relationship between the
17 remaining customers and the system (or portion
18 thereof) sold.

19 (8) To deny utility investors the opportunity to
20 offset the erosion of their investment through the
21 receipt of capital gains would be a deterrent to the
22 reinvestment of retained earnings by the utility and
23 to the attraction of new capital from investors.

24 (9) The proceeds from the condemnations were
25 retained by Southern States as equity and deployed

1 for utility purposes -- no portion of the proceeds
2 were distributed as dividends to shareholders.

3 (10) The Commission's policy concerning gains and
4 losses on the disposition of utility systems should
5 be consistent with the Commission's recently
6 confirmed acquisition adjustment policy -- that is,
7 absent extraordinary circumstances, when a utility
8 purchases a system rates are not adjusted for any
9 discount under or premium over book value. See
10 Order No. 25729 issued February 17, 1992 in Docket
11 No. 891309-WS. Likewise, on the sale of a system,
12 customer rates should not be adjusted to reflect
13 gains or losses absent extraordinary circumstances.

14 **Q. COULD YOU ELABORATE FURTHER ON THE REASONS WHY MS.
15 DISMUKES' PROPOSAL SHOULD BE REJECTED?**

16 **A.** Ratepayers pay for the use of utility property
17 employed in providing service. They do not acquire
18 a proprietary interest in that property. Similarly,
19 ratepayers have no proprietary interest in non-
20 utility and non-regulated property, and hence, are
21 not entitled to share in the gain and are not
22 required to bear the impact of any loss arising out
23 of the disposition of such property. Ownership of
24 both utility and non-utility property is
25 indistinguishable in this regard -- ownership

1 continues to reside in the shareholders who,
2 accordingly, must bear the risk of loss.

3 I understand that it has been argued before the
4 Commission in the past that customers acquire an
5 equitable interest in depreciable assets since
6 depreciation expense is factored into rates, and
7 hence, customers should realize the benefits of a
8 portion of a gain realized on the sale of such
9 assets. This argument has no application to the
10 facts in this proceeding. It would be inequitable
11 and unreasonable to flow through the gain from the
12 condemnation of the St. Augustine Shores system to
13 the remaining SSU customers since they never have
14 been assessed any of the capital or depreciation
15 costs associated with the system nor have they been
16 subject to any risk for potential losses associated
17 with the system. The same rationale applies to the
18 condemnation of the University Shores facilities.
19 I am not aware of any instance in which ratepayers
20 were found to be entitled to share in the gain on
21 the sale of property absent them either having
22 contributed to the utility's recovery of its
23 investment or having borne the risk of loss.
24 Neither of these circumstances exists here. Rates
25 for utility service from the St. Augustine Shores

1 system historically were set on a stand-alone basis
2 in accordance with separate accounting data, rate
3 base, depreciation, expenses, etc. Therefore, other
4 SSU customers have been unaffected by the existence
5 of this system in the past and should remain so.

6 I also must note that if the St. Augustine
7 Shores system had been sold at a loss, I am unaware
8 of any legal or equitable principle or precedent
9 that would authorize the Commission to require
10 Southern States' remaining customers to reimburse
11 the Company for its investment in assets used at St.
12 Augustine Shores which were never used to supply
13 other SSU customers with utility service. However,
14 if Ms. Dismukes' proposal were adopted, it does not
15 appear that the Commission would have any
16 alternative but to do so in the future.

17 In addition, the regulated ratepayers of the
18 remaining SSU systems should not be affected by a
19 gain or loss on the sale of a non-jurisdictional
20 entity. Under these circumstances, using the gain
21 generated by the condemnation of the non-
22 jurisdictional St. Augustine Shores system to reduce
23 rate relief to which the Company is otherwise
24 entitled for its jurisdictional systems would
25 deprive the Company and its shareholders of "just

1 compensation."

2 Also, under the Commission's recently
3 reaffirmed acquisition adjustment policy, absent
4 extraordinary circumstances, when a utility
5 purchases an additional system, customer rates are
6 not adjusted for any discount under or premium over
7 book value. Likewise, the Commission's policy on
8 the sale of a system should be to ignore any gain
9 or loss absent extraordinary circumstances. No such
10 circumstances have been identified in this
11 proceeding.

12 **Q. DID SOUTHERN STATES SEEK BUYERS FOR THE ST.**
13 **AUGUSTINE SHORES WATER SYSTEM?**

14 **A.** No. The sale of this system was the result of a
15 condemnation proceeding.

16 **Q. WHY IS IT RELEVANT THAT THIS SALE INVOLVED A**
17 **GOVERNMENTAL CONDEMNATION OF AN ENTIRE WATER UTILITY**
18 **SYSTEM?**

19 **A.** This fact is important for several reasons. SSU not
20 only sold all plant assets which comprise the St.
21 Augustine Shores water system, but also lost
22 customers and part of its business as a result of
23 the condemnation. In this situation, SSU was not
24 just selling excess capacity but rather was required
25 to liquidate part of its on-going enterprise. These

1 types of condemnations have hidden costs. For
2 instance, opportunities to stabilize SSU's business
3 and achieve long-term investment returns are lost
4 as a result of these forced sales.

5 **Q. DOES THE FACT THAT THIS SALE INVOLVED A CONDEMNATION**
6 **PROVIDE FURTHER SUPPORT FOR YOUR POSITION THAT THE**
7 **GAIN SHOULD BE RETAINED BY THE COMPANY AND ITS**
8 **SHAREHOLDERS?**

9 A. Yes. Condemnations are essentially a partial
10 liquidation of the utility's business. In the case
11 of a total liquidation of a utility system, it is
12 clear that any gains or losses should go to the
13 owners of the utility, in other words, the
14 shareholders. Ms. Dismukes fails to address how the
15 St. Augustine Shores condemnation differs from a
16 condemnation of a single utility system which
17 happens to be the only system owned by a particular
18 entity. In such circumstances, no reasonable
19 argument can be made that the owner of the condemned
20 system can be ordered to return all gains to the
21 former customers served by the system. Similarly,
22 the Commission cannot authorize the former owner to
23 look to former customers for compensation of losses
24 the owner may have incurred as a result of the
25 condemnation.

1 **Q. WHAT IS AN APPROPRIATE STANDARD FOR ALLOCATING GAINS**
2 **OR LOSSES OF ENTIRE SYSTEMS ARISING OUT OF**
3 **CONDEMNATION PROCEEDINGS?**

4 **A. In our view, gains or losses from the sale of an**
5 **entire system should be allocated entirely to the**
6 **shareholders of the utility in all condemnation**
7 **situations. Where a sale of a system is voluntary**
8 **or sought by the utility, the Company and its**
9 **shareholders should still retain the gain absent**
10 **extraordinary circumstances such as a material**
11 **adverse impact on remaining customers who somehow**
12 **have contributed capital to the utility which**
13 **relates to the condemned assets, sold voluntarily.**

14 **Q. HAS THE "EXTRAORDINARY CIRCUMSTANCES" STANDARD BEEN**
15 **USED IN OTHER STATES?**

16 **A. Yes. In 1988, the California Public Utilities**
17 **Commission ("C.P.U.C.") instituted a rulemaking on**
18 **this exact issue in Docket No. R88-11-041. The**
19 **C.P.U.C. adopted rules requiring that, where a**
20 **utility system is sold to a governmental entity, the**
21 **capital gain or loss shall accrue to the utility and**
22 **its shareholders to the extent that (1) remaining**
23 **ratepayers on the selling utility's system are not**
24 **adversely affected, and (2) remaining ratepayers**
25 **have not contributed capital to the utility system.**

- 1 **Q. HAVE SSU'S RATEPAYERS BEEN ADVERSELY AFFECTED BY THE**
2 **CONDEMNATION OF THE ST. AUGUSTINE SHORES WATER**
3 **SYSTEM AND UNIVERSITY SHORES WASTEWATER FACILITIES?**
- 4 **A. No. OPC witness Dismukes argues that Southern**
5 **States' remaining customers are absorbing the common**
6 **costs that would have been allocated to the St.**
7 **Augustine Shores system but for the condemnation and**
8 **that this reallocation of common costs alone**
9 **justifies her proposal. I do not believe that this**
10 **argument is persuasive, particularly since the**
11 **customer base sharing in the allocation of Southern**
12 **States' common costs actually grew in 1991 (despite**
13 **the condemnation of the St. Augustine Shores system)**
14 **as a result of the purchase of Lehigh Utilities,**
15 **Inc. Moreover, Ms. Dismukes' strained allocation**
16 **argument does not apply to the condemnation of the**
17 **University Shores wastewater facilities since no**
18 **customers were lost from this sale. Therefore, Ms.**
19 **Dismukes has provided no justification whatsoever**
20 **for her proposal regarding the University Shores**
21 **condemnation.**
- 22 **Q. DID MS. DISMUKES IDENTIFY THE ALLEGED COSTS TO SSU'S**
23 **REMAINING RATEPAYERS RESULTING FROM THE ADDITIONAL**
24 **COMMON COSTS WHICH SHE BELIEVES ARE NOW ALLOCATED**
25 **TO THEM?**

1 A. No, she did not. In addition, the most compelling
2 evidence against approval of Ms. Dismukes' theory
3 is that it is not logical. Under Ms. Dismukes'
4 theory, the Company only would be permitted to
5 retain a portion of the condemnation gain equal to
6 the common costs which would have been allocated to
7 St. Augustine Shores' customers. If the only
8 adverse impact on SSU's remaining customers is the
9 allocation to them of the portion of the common
10 costs that would have been allocated to St.
11 Augustine Shores' customers, then SSU's remaining
12 customers can be made whole by requiring Southern
13 States to absorb this portion of the common costs.
14 Ms. Dismukes' rationale supports no further
15 adjustment than that. However, as I indicated
16 previously, the suggestion that SSU's remaining
17 customers are entitled to benefit from the
18 condemnation gain based solely on the condemnation's
19 impact on common cost allocations is without merit.

20 **Q. ARE THERE ANY ADDITIONAL REASONS WHY SOUTHERN**
21 **STATES' SHAREHOLDERS SHOULD RETAIN THE GAIN ON THE**
22 **CONDEMNATION OF THE ST. AUGUSTINE SHORES WATER**
23 **SYSTEM AND UNIVERSITY SHORES WASTEWATER FACILITIES?**

24 A. Yes. If the Commission denies shareholders the
25 opportunity to offset the erosion of their

1 investment through the receipt of capital gains, it
2 would deter the reinvestment of retained earnings
3 by utilities and inhibit the attraction of new
4 capital from investors. The deterrent effect of
5 such a denial would be magnified significantly were
6 Southern States required to return the capital gains
7 to ratepayers in this proceeding. I say this
8 because the remaining customers of SSU whom Ms.
9 Dismukes would have share in the condemnation gains
10 have neither contributed to Southern States'
11 recovery of its investments in the condemned St.
12 Augustine Shores or University Shores assets nor
13 borne any risk of loss of such investments.
14 Southern States operated the St. Augustine Shores
15 water system under the jurisdiction of St. Johns
16 County, not the Florida Public Service Commission.
17 Water rates for the system, without exception, were
18 determined on a stand alone basis. Therefore, none
19 of SSU's remaining customers contributed to the
20 Company's recovery of its investments in the system
21 or the depreciation of plant assets. The condemned
22 University Shores wastewater facilities were not
23 placed into service until March of 1986. As
24 indicated in the Company's MFRs, the rate base for
25 the wastewater system was last established based on

1 the twelve months ended June 30, 1979. Therefore,
2 University Shores' current wastewater customers have
3 never contributed one dime to the recovery of
4 Southern States' investment in the condemned
5 wastewater facilities. Ms. Dismukes refers to
6 Southern States' response to Public Counsel's
7 Interrogatory No. 113 to support her proposal to
8 deny the Company the gain on the condemnation of the
9 University Shores wastewater facilities.
10 Specifically, Ms. Dismukes states as follows: "In
11 response to OPC's Interrogatory 113, the Company
12 stated that [the University Shores] property was
13 previously included in rate base as 100% used and
14 useful" (emphasis added). A review of the Company's
15 response confirms that Ms. Dismukes'
16 characterization of its contents is not accurate.
17 The Company's response states, in pertinent part,
18 as follows:

19 Appendix 113-B-R reflects the sale of the
20 Skyline Hills plant to the City of Lady Lakes
21 in October 1986 and the condemnation of
22 property in Orange County at the University
23 Shores plant. This particular transaction
24 occurred in two different years, 1987 and 1991.
25 Both of these transactions were involving plant

1 which was 100% used and useful and the
2 resulting gain was booked below the line for
3 ratemaking purposes.

4 The Company never indicated that the condemned
5 University Shores facilities were ever included in
6 rate base and, as I have explained and the Company's
7 MFRs confirm, they never were.

8 **Q. WERE THE GAINS ON THE ST. AUGUSTINE SHORES AND**
9 **UNIVERSITY SHORES CONDEMNATIONS RETAINED BY SSU?**

10 **A. Yes. All net proceeds derived from these**
11 **condemnations have been retained in SSU and applied**
12 **to support capital needs in the remaining Florida**
13 **water and wastewater systems. SSU's shareholders**
14 **did not receive any of the sale proceeds as**
15 **dividends.**

16 **Q. ARE YOU AWARE OF ANY DECISIONS BY THE REGULATORY**
17 **AUTHORITIES OR COURTS OF OTHER STATES WHICH SUPPORT**
18 **THE VIEWS THAT YOU HAVE ESPOUSED?**

19 **A. Yes, I am. In fact, numerous commissions and courts**
20 **have reached the same conclusion that I have with**
21 **respect to the distribution of the proceeds from the**
22 **sale of utility assets. Most noteworthy among these**
23 **decisions are the following:**

24 * In Maine Water Company v. Public Utilities
25 Commission, 482 A2d. 443 (Me. 1984), the court

- 1 reversed the Maine commission and held that the
2 gain on the sale of two utility divisions to
3 a municipal district should be retained by the
4 utility and not used to reduce rates to
5 customers in the remaining divisions. This
6 case involved the transfer of both depreciable
7 and non-depreciable assets.
- 8 * The Missouri Public Service Commission held in
9 Associated Natural Gas Company, 55 PUR 4th 702
10 (Mo. P.S.C. 1983), that where the utility
11 proposed to apply the proceeds of the
12 condemnation of a gas distribution system to
13 the retirement of bonds and to invest in new
14 plant, resulting in a reduction in interest
15 expense and increased debt coverage, the gain
16 need not be allocated to ratepayers.
- 17 * The New Hampshire Supreme Court held in Appeal
18 of the City of Nashua, 435 A.2d 1126 (N.H.
19 1981), that the New Hampshire commission
20 correctly determined that a water utility
21 should be allowed to retain the gain on the
22 sale of land no longer needed to provide
23 utility service.
- 24 * In Philadelphia Suburban Water Company v.
25 Pennsylvania Public Utility Commission, 427

1 A.2d 1244 (Pa. Commw. Ct. 1981), the court
2 reversed the Pennsylvania commission's decision
3 reducing rates of a utility by the current
4 market value of land upon the dividend of the
5 land to its parent company. The land had been
6 in service over fifty years and had appreciated
7 more than tenfold. The court found the
8 commission's action constituted confiscation
9 without due process and just compensation. The
10 court relied on the concepts that the investors
11 had not recovered any of their investment
12 through depreciation, that they had earned a
13 return through rates only on the original cost
14 of the land for fifty years and that the
15 utility customers paid only for the use of the
16 land and do not gain equitable or legal rights
17 to the property through the use of it.

18 * The District of Columbia Court of Appeals held
19 in Washington Public Interest Organization v.
20 Public Service Commission, 446 A.2d 28 (D.C.
21 1978) that the commission correctly allowed the
22 gain on the sale of land by two utilities to
23 be retained by the utilities' stockholders
24 rather than using the gain to reduce rates.
25 The court relied on the finding of the

1 commission that depriving the utilities of the
2 gain on the sale, both in terms of the effect
3 on expected earnings and on the investor
4 assessment of the regulatory climate, would
5 increase the cost of capital to the utilities
6 to the ultimate detriment of ratepayers.

7 **Q. ARE YOU AWARE OF ANY OTHER REGULATORY ACTIONS WITH**
8 **RESPECT TO THIS ISSUE?**

9 A. Yes, as I described earlier, the C.P.U.C. has
10 adopted rules whereby gains and losses on sales of
11 utility systems to governmental entities are to be
12 retained by the shareholders. This action in
13 California pertains to the same type of transactions
14 (i.e., condemnations) as those I discussed in this
15 testimony.

16 **Q. OPC WITNESS DISMUKES HAS CITED FLORIDA CASES IN**
17 **WHICH GAINS HAVE BEEN SHARED WITH RATEPAYERS.**
18 **SHOULD THESE CASES CONTROL HERE?**

19 A. No, they should not for the reasons I have described
20 above. Moreover, to my knowledge, none of the
21 precedents cited involved either the sale of an
22 entire system (together with customers served
23 thereby) or utility plant which never had been
24 included in rate base or otherwise recovered by the
25 utility in rates in any way.

1 Q. DO YOU AGREE WITH MS. DISMUKES' ALTERNATIVE PROPOSAL
2 THAT DOLLARS ASSOCIATED WITH THE GAINS BE REMOVED
3 FROM SSU'S CAPITAL STRUCTURE, THUS REDUCING THE
4 COMPANY'S OVERALL EQUITY RATIO?

5 A. No, I do not agree with this alternate proposal.
6 The proceeds derived from the condemnations have
7 been retained by Southern States as equity and
8 deployed for utility purposes. This capital
9 rightfully belongs to SSU and its shareholders, and
10 SSU should not be penalized for devoting this
11 capital to its other utility systems. Finally, Ms.
12 Dismukes identifies no justification for this
13 alternative proposal other than that set forth as
14 alleged support for her primary proposal. Thus, Ms.
15 Dismukes' alternative proposal is without merit for
16 the same reasons I previously identified concerning
17 her primary proposal. Moreover, Ms. Dismukes'
18 resort to such an alternative is a transparent
19 attempt to reduce the Company's revenue requirements
20 in any way possible, regardless of the absence of
21 justification for such action. Only when the equity
22 ratio is too high should the Florida Commission act
23 to disallow a return on the portion that is
24 excessive; clearly not an issue in this proceeding.
25 In fact, SSU is having serious difficulty funding

1 its capital program with current low levels of
2 earnings. Disallowing a return on a portion of SSU
3 equity is counter-productive to what is needed to
4 restore and sustain SSU's financial capacity.

5 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

6 **A. Yes.**

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1 Q (By Mr. Hoffman) Mr. Sandbulte, have you
2 prepared a brief summary of your direct testimony and
3 your rebuttal testimony?

4 A Yes, I have.

5 Q Would you please provide it?

6 A Thank you.

7 CHAIRMAN BEARD: Before you do. The standard
8 caution from me, whenever I have -- and I apologize if
9 I didn't get the word out, but word should be getting
10 out pretty rapidly. Summaries of testimony -- and in
11 this case there were no opening statements -- but
12 opening statements are to be brief, and by that five
13 minutes is an ample time for any summary that a witness
14 may have of their testimony. Otherwise it becomes
15 their testimony. I'm not directing that at you, but
16 over the last month I'm trying to give that caveat out
17 so we can get to the meat of the subject. Now go
18 ahead, please.

19 WITNESS SANDBULTE: All right, thank you,
20 Commissioner. I'm sure I can contain mine within five
21 minutes.

22 Minnesota Power is a diversified electric
23 utility. It's been in the business for 70 years and I
24 think it's highly regarded in the areas that it has
25 served in or worked in for many years pending. It has

1 very good regulatory relations, I believe, in the
2 states of Minnesota and Wisconsin, and it believes
3 firmly in the idea of partnering and cooperation as
4 opposed to adversarial approaches. I might add,
5 parenthetically, that we have over 1,700 residents in
6 the state of Florida who are shareholders of this
7 Company. And many, many more who come down in the
8 winter time, the count I don't know, but who are also
9 residing in the state at least part of the time. Water
10 and wastewater utilities are a very important part of
11 our strategy.

12 Both through natural growth and through
13 acquisitions, we expect to grow the earnings of
14 Minnesota Power corporately so that 30% of earnings
15 come from the water and wastewater businesses by the
16 Year 2000. And we will need significant acquisitions
17 in order to accomplish that.

18 I am interested and -- in your previous
19 order 25729, which deals with positive and negative
20 acquisition adjustments in which the Commission seems
21 to at least support the idea that consolidations and
22 acquisitions might be a good thing, at least in certain
23 instances. And we believe that further consolidation
24 will be beneficial and will actively -- we will
25 actively be seeking that in the future. We believe

1 we're particularly well suited to handling issues of
2 customer service, plant construction, protecting the
3 environment and meeting growth for demand -- or growth
4 and demand for service. Particularly in the
5 environmental area, I think it's going to be very
6 difficult for small companies -- small utilities to
7 handle the myriad of regulations and laws that are
8 already on the books or that will likely be imposed in
9 the future. And so I think size is an important aspect
10 of dealing with these various issues. I think small
11 systems will tend to be, if not overwhelmed, then at
12 least severely challenged by those demands in the years
13 ahead.

14 In order to do our job, we do need adequate
15 revenues and returns on investment in order to be
16 successful. We are currently losing money on our water
17 and wastewater operations. Now, we've continued to
18 invest in the belief that we will be granted our rate
19 increases in this case as well as the two related cases
20 at Lehigh and Marco Island. For instance, we're
21 investing about \$30 million in capital this year, and
22 will invest somewhat over \$20 million next year in the
23 SSU system. A timely rate relief will allow us to
24 continue our acquisitions, as well as meet the growth
25 and the environmental challenges, which include major

1 capital expenditures, while making our service quality
2 even better.

3 In my rebuttal summary, I'd just like to
4 speak briefly about the proposal to take some gains
5 from condemnations by municipal government in the case
6 of St. Augustine Shores and University Shores and
7 provide them to the ratepayers. I'd like to say as a
8 general comment that this is investor capital. It's at
9 risk by the investors. There's no proprietary interest
10 by the ratepayers, particularly in these two cases,
11 that I'm aware of, either plus or minus. The capital
12 clearly is at risk by the shareholder in this case. As
13 I mentioned, we are losing money at the present time on
14 our Florida operations. And even with the rate
15 increases in these three proceedings, because of
16 regulatory lag, continued heavy capital spending and
17 probable growth needs, we will not be achieving the
18 allowed return for some time to come yet. The point
19 is, I think, and this is that the investors are the
20 ones who are at substantial risk.

21 Consistency with Order 25-729 of last
22 February, I think, also at least implies that the
23 ratepayer is not involved in the capital decisions,
24 risks and losses or gains, that might occur in the
25 capital arena. These are governmental condemnations.

1 There was a taking of and a deprivation of a future
2 earnings stream for the company. The customers were
3 lost. They are now served by municipal government. So
4 I think it's a different situation than where you might
5 have a piece of property sold which does not involve
6 customers. And the ratepayers certainly suffered no
7 adverse impacts from this taking, to my knowledge.

8 In the case of St. Augustine, the SSU
9 customers have not been involved in anyway that I can
10 see as far as any risk of loss, any capital recovery or
11 rates. SSU has suffered a liquidation, a forced
12 liquidation, of a part of its earnings base and loss of
13 future revenues and earnings. This system was not
14 jurisdictional with the FPSC. It was regulated by the
15 St. Johns County at the time of the condemnation, and
16 it was a standalone system for ratemaking purposes.

17 In the case of University Shores, this was
18 some land that had been acquired for spray effluent
19 disposal. It never was in the rate base, and again,
20 there was no risk of loss that I am aware of
21 experienced by customers of SSU or University Shores,
22 for that matter.

23 So I think that given the risk/reward
24 relationship that is in the investor arena, and the
25 fact that the customer have not been damaged in anyway

1 that I can see, we feel that those gains should be for
2 the ratepayer -- for the shareholders' benefit. This
3 capital was left in the business. There's also been a
4 suggestion that our capital structure should be
5 modified for removal of this -- of the gain on this
6 sale, which makes no sense to me because there's
7 continuing new capital needed in this business, and if
8 the gains had been dividended up somehow to the parent
9 company, which they were not, they would simply have to
10 be put into the business immediately following, or else
11 we couldn't do the financing that we have been doing,
12 which has been difficult enough as it is. So I feel
13 that the gains on these systems should be for the
14 shareholders' account and that no adjustment in rate
15 base, NOI or capital structure should be considered.
16 That concludes my direct and rebuttal summaries.

17 MR. HOFFMAN: Mr. Chairman, Mr. Sandbulte is
18 available for cross.

19 MR. JONES: No questions.

20 MR. HAAG: No questions.

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CROSS EXAMINATION

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BY MR. McLEAN:

Q Good morning, sir. Harold McLean for the
Citizens.

A Good morning, Mr. McLean.

Q Mr. Sandbulte, you're the CEO of Minnesota
Power & Light, are you?

A Yes.

Q All right, sir. And you oversee all the
operations of the water and sewer operations in Florida
-- not directly, but those people who do oversee them
account to you, isn't that correct?

A Yes, all of the decision-making, other than
capital allocations, some very broad-based decisions
are made here by people who operate within boundaries
that we establish.

Q And did I understand you to say that you
expected to see 30 percent of the profits at Minnesota
Power and Light enjoyed over the next few years to come
from Florida customers?

A From water and wastewater businesses. They
may not all be in Florida. In fact, some are in the
Carolinas at this time.

Q What's the proportion of the system in
Carolinas? Give us some dimension for how much is

1 there?

2 A Well, approximately 15 percent of the
3 customers are in the Carolinas.

4 Q 50 percent?

5 A 15 percent, roughly speaking.

6 Q 15?

7 A 15 percent of the total water and wastewater
8 customers we serve.

9 Q And it's Minnesota Power and Light's policy,
10 I understand, to conduct a fairly aggressive
11 acquisition program in Florida?

12 A We have grown the Company from a handful of
13 customers in '84 -- or under 20,000, up to the current
14 level of about 180,000.

15 Q Do you expect to continue in that direction?

16 A If the opportunities arise to purchase these
17 systems on a reasonably-priced basis, yes.

18 Q The majority of those systems purchased have
19 been, what you characterized, I think, as small
20 systems, is that right?

21 A Yes?

22 A Yes, I think most of them are 10,000
23 customers are less, and a lot of them are much smaller
24 than that.

25 Q Is there a threshold at which the local

1 authorities can make an acquisition as opposed to
2 having to go to Minnesota Power & Light? Do you
3 understand the question?

4 Q Yes, I understand the question. Yes, there
5 is.

6 Q What threshold is that?

7 A A million dollar equity cost.

8 Q So if there's less than a million dollars
9 equity cost, the decision to acquire or not to acquire
10 is made where?

11 A Well, Mr. Phillips, the president and CEO of
12 SSU, is involved in that, but it involves the top
13 management of the corporation in Minnesota.

14 Q Okay, well, that's the intent of my question
15 is to determine, for those purchases which represent
16 less than a million dollars in equity, the Situs of
17 that decision?

18 A That is at SSU in Apoka, under a million -- a
19 million or less.

20 Q Yes, sir, a million or less. And that's
21 under the direction of Mr. Phillips?

22 A Yes.

23 Q And of course, he advises you, but he doesn't
24 need to go to you first?

25 A That's correct.

1 Q And there are acquisitions too, presumably,
2 more than a million dollars?

3 A Yes.

4 Q Who makes those decisions?

5 A I do, ultimately, and our Board of Directors.

6 Q What percentage can you say of the
7 acquisitions have you made are less than a million
8 dollars?

9 A Not very many. We bought Deltona, which
10 consisted of many systems at one time. Lehigh was
11 bigger than a million dollars. I can't give you a
12 number, but not very many, to my knowledge.

13 Q I'm looking for more of a feeling than I am
14 precise numbers. You filed for a rate increase in 127
15 systems in this case, is that correct?

16 A Yes.

17 Q Of that 127, how many -- the decision to
18 acquire those, how many of those decisions were made by
19 local authorities as opposed to the Minnesota home
20 office?

21 A Not very many. I don't know if it would be
22 ten or less, or 20 or less, something like that, I
23 suppose.

24 Q Okay, who is the best witness --

25 A Mr. Phillips, or Mr. Vierima could answer

1 that question.

2 Q Okay, sir, I've arranged for you to be passed
3 an exhibit, and Mr. Chairman, may I have that marked
4 for identification.

5 CHAIRMAN BEARD: Be marked as Exhibit No. 23.
6 (Exhibit No. 23 marked for identification.)

7 CHAIRMAN BEARD: This exhibit is covered
8 under Commissioner Easley's order, is that correct?

9 MR. McLEAN: I think that it has been
10 released from its confidential status?

11 CHAIRMAN BEARD: Is that correct?

12 MR. HOFFMAN: I think that's correct.

13 CHAIRMAN BEARD: I don't want to think.

14 MR. HOFFMAN: I haven't seen the order --

15 CHAIRMAN BEARD: I think we should give it to
16 Tampa Tribune, is that okay?

17 COMMISSIONER EASLEY: I've got the word
18 confidential stamped --

19 CHAIRMAN BEARD: It's got the word
20 confidential on it and I just want to make sure.

21 MR. HOFFMAN: Mr. Chairman, it was originally
22 submitted pursuant to request for confidential
23 classification and it was so marked.

24 COMMISSIONER CLARK: You want to look at it
25 and see?

1 MR. HOFFMAN: I've got it in front of me.

2 (Pause)

3 Mr. Chairman, I think that I would need to
4 see the order. I know there was an order that was
5 issued addressing a request for confidential status of
6 salary information, and I just can't recall offhand,
7 without looking at the order, if it addressed this
8 specific document request.

9 MS. BEDELL: We can certainly get a copy of
10 the order, but I believe it did.

11 MR. HOFFMAN: It did?

12 CHAIRMAN BEARD: Are there going to be other
13 documents that are --

14 MR. HOFFMAN: This is really the only one.

15 CHAIRMAN BEARD: Okay, well --

16 MR. HOFFMAN: And if there's any debate about
17 it, I mean, the Company can release it here and now, if
18 they wish.

19 COMMISSIONER CLARK: Mr. Hoffman, my
20 recollection is there is a specific statement in the
21 statutes that compensation is not -- cannot be kept
22 confidential.

23 MR. HOFFMAN: Commissioner Clark, and I think
24 that reason, and maybe others, led to an order in which
25 our request for confidential treatment of salary

1 information was denied. I just simply cannot remember
2 if it was at to this particular document request,
3 because we had a couple of discovery responses.

4 COMMISSIONER EASLEY: Is there a way to
5 shortcut this? Inasmuch as that's what this deals
6 with, can the Company release it? (Pause)

7 Either that or let's take a minute and look
8 at the order, but I don't want to get into these boxes.

9 MS. BEDELL: We're getting the order.

10 COMMISSIONER EASLEY: Thank you. Can we
11 proceed until we find out for sure, Mr. McLean, in some
12 matter without --

13 MR. MCLEAN: Sure, I think so.

14 COMMISSIONER EASLEY: Thank you.

15 Q (Mr. McLean) Mr. Sandbulte, you testified
16 this Company is losing money, is that correct?

17 A That's correct.

18 Q And both the direct and rebuttal testimony
19 have occasional references to things like the Company
20 being in dire straits, and generally painting the
21 picture of a company that is in less than adequate
22 financial posture, if I could use those terms, is that
23 correct?

24 A It's not earning its allowed return and it
25 has some financial difficulties in gaining capital.

1 Q And your term in your summary, I believe, was
2 that it was losing money?

3 A Yes, in 1992, to date, it is losing money.

4 Q How about 1991?

5 A Subject to check, I think it made a little
6 bit of money.

7 Q Let's look at Page 4 of 10 of the exhibit.
8 Now I'm a layman, Mr. Sandbulte, but I'm wondering, my
9 interpretation of that page is that you paid out
10 \$65,000 in bonuses to Company officers and employees in
11 the year 1991, is that correct?

12 A This is a result-sharing program, I believe.
13 I haven't seen this before, but I know there is a
14 result sharing program in place.

15 Q What's the difference between result sharing
16 and bonus?

17 A Result sharing deals with the issue of
18 achieving a series of predetermined results or results
19 against stated objectives which were set at the
20 beginning of the year.

21 Q Okay.

22 A This is under our general guidance, and
23 Mr. Phillips has the specific authority to have such a
24 program.

25 Q Mr. Sandbulte, I want you to correct me if

1 I'm wrong --

2 A My name is Sandbulte.

3 Q I'm sorry, sir. I want you to correct me if
4 I'm wrong. Looks to me like the Company that's in dire
5 financial straits and so forth, nonetheless is able to
6 pay its employees and officers \$65,000 over and above
7 their normal salaries, is that correct?

8 A We need to retain good people to do the work
9 that's been assigned to us --

10 Q May I ask you, sir -- I'm sorry, sir, would
11 you answer the question, and then --

12 A We paid them 65,000, if this document is
13 correct, and I assume it is, but I have never seen it
14 before.

15 Q All right, sir, can you say by whom it was
16 prepared? Do you want to draw some distance between
17 yourself and the document? Do you say the document is
18 wrong?

19 A No, I didn't say that, Mr. McLean.

20 Q All right, sir.

21 A I do not know Roxan Haggerty. It says at the
22 top of the document that it's a response to a
23 production of documents, so subject to check, I will
24 accept your representation.

25 Q All right, sir, thank you. It looks like the

1 representations of Southern States, does it not?

2 A Yes.

3 Q Let's move along then and look at the --
4 there is a general notion that the Company holds, and
5 you know our office disagrees with it, that when you
6 sell something like University Shores in St. Augustine
7 -- I'm sorry, St. Augustine Shores, when you sell those
8 systems, it's your position that since the customers
9 don't share in anyway the risk, they have no
10 proprietary interest, no equity position in those
11 companies, that the Commission ought to approve some
12 sort of scheme whereby the entire gain goes to the
13 shareholders -- or the shareholder, of Southern States,
14 is that correct?

15 A I don't think it's a scheme. I think it's
16 the way the risk -- the risk/reward relationship in the
17 U.S. economy is supposed to work.

18 Q Okay, I didn't mean it in the pejorative
19 sense. I should have said a technique, perhaps, a
20 methodology. I want to ask some very basic questions
21 about the whole notions of regulation because I want to
22 make sure that everybody understands why we hold the
23 theory that you do. Would you agree with me that
24 utilities in the state of Florida, water and sewer
25 utilities, are generally regulated, if they are

1 investor-owned?

2 A Yes.

3 Q And they are -- they're regulated in some
4 instances by the State of Florida through the Public
5 Service Commission, and in other instances by the State
6 of Florida through the counties, is that -- don't you
7 think that's correct?

8 A Yes.

9 Q All right, sir, now, in exchange, one of the
10 things that the utility gets when it's regulated, isn't
11 it, don't they get the exclusive right to provide
12 whatever service they're providing within the
13 certificated area?

14 A Yes, exclusive right and the obligation.

15 Q Sure. They get to be the only guy on the
16 block, essentially?

17 A Right, and the obligation to serve.

18 Q And market entry is extremely restricted, in
19 fact --

20 A I think for good reason, yes.

21 Q Yes. Nearly forbidden.

22 And our focus, of course, is what the
23 customers get in exchange for that.

24 Would you agree with me that what the
25 customers get in exchange for that is the

1 representation of both the Utility and of the State,
2 that the Utility will not be able to exercise its
3 monopoly market position to extract more than
4 reasonable prices for the services rendered?

5 A I think that, yes, I think, if I understand
6 this correctly, or the nature of your question, they
7 are entitled to recover all reasonable expenses and
8 earn a fair return on their investment.

9 Q So the deal is you can be the only guy on the
10 block but you have got to charge reasonable rates.

11 A Right. And you have to serve everybody, all
12 comers.

13 Q Of course, all comers. (Pause)

14 Now, when you sell a system like -- I might
15 get the name wrong but I think it's St. Augustine
16 Shores, you all sold that system, I think, roughly, at
17 \$4.2 million gain after taxes; is that right?

18 A I believe so, yes.

19 Q Round numbers. Now, what I want to know is,
20 if you strike that deal with government, the one that
21 on the one hand you get to be the only guy on the block
22 and on the other hand you must charge reasonable
23 prices, do you all entertain any notion that the sale
24 of St. Augustine Shores is somehow outside of that
25 deal?

1 A Would you repeat that?

2 Q Yes, sir. If you accept the general precept
3 of regulation, that on the one hand you are guaranteed
4 a monopoly position, and on the other hand you are on
5 one hand required to serve everyone who asks for
6 service, and that you may charge only a reasonable
7 price for the services, does the Company have a notion
8 that the sale of St. Augustine Shores, and sales such
9 as that, are outside of that bargain in some way?

10 A Yes, I think they are.

11 Q Well, explain that to me, please. How can it
12 be outside the bargain?

13 A The capital has been dedicated to service of
14 the customer. The Company has the responsibility, the
15 burden of proof, to show that it is entitled to
16 whatever rates that might be warranted. And there's
17 certainly a risk involved in earning that return, i.e.
18 the kind of an earning situation we have right now.

19 So I think that the consumer gets the use of
20 the service provided from the capital investment, but
21 does not obtain or earn, or is not entitled to any
22 residual claim on the capital.

23 Q Okay. I think you may be looking at a
24 smaller picture than I'm looking at. I'm looking at
25 the large picture: Minnesota Power and Light operates a

1 water and sewer utility in the state of Florida. They
2 are isolated and insulated from competition. And in
3 exchange for that they agree to serve everyone and
4 limit their profits to a reasonable rate.

5 Now, let me ask you hypothetically if the St.
6 Augustine Shores system had been sold at \$100 million
7 gain, there wouldn't be any question in anyone's mind,
8 would there, that Southern States -- 100 million after
9 tax -- there wouldn't be any question in anyone's mind,
10 would there, that Southern States had exceeded its
11 allowed rate of return, at least in the state of
12 Florida, would there?

13 A Well, the only case where I could see your
14 example being true is where the whole system was sold,
15 in which case we wouldn't be sitting here, I guess. I
16 mean, there wouldn't be any claim, that I'm aware of,
17 by the ratepayers on the \$100 million if, in fact,
18 everything was sold. We're not going to sell St.
19 Augustine Shores for 100 million, so that's just not a
20 --

21 Q No. But the point is you are asking the
22 Commission not to consider that \$4.2 million after tax
23 gain as being any business of this bargain that has
24 been struck between regulated industry and its
25 regulator.

1 A Right. What's happened in St. Augustine
2 Shores is that the future earning stream that we
3 expected, through our investment, has been taken away
4 from us. I consider it the present value of the future
5 earnings stream, that we are paid now instead of over a
6 period of years. And there's no harm to the existing
7 customers. They still get the same bargain they had
8 before as far as these other systems are concerned.

9 Q So does it boil down to a question, then,
10 that you did not receive just compensation for the St.
11 Augustine Shores system? Is that the position that you
12 take?

13 A No. I don't claim we didn't receive just
14 compensation for St. Augustine Shores. You mean the
15 4.2 million?

16 Q Yes, sir.

17 A No, we were condemned. I mean, we didn't try
18 to sell the system. This was a condemnation by a
19 municipal government our county government.

20 Q Well, did you argue or arrange to be argued
21 that you should have just compensation in exchange for
22 their taking the system?

23 A Yes.

24 Q And presumably --

25 A That's where we get into this loss of future

1 earnings.

2 Q Sure, and that was part of the valuation that
3 the court -- or that you decided to settle on
4 ultimately?

5 A Right. And we were -- this was a forced
6 liquidation.

7 Q Now, and you're also not saying that there's
8 any meaningful distinction between -- at least in my
9 terms in looking at the general idea behind regulation,
10 are you suggesting that if there's any material or
11 relevant difference between whether the Public Service
12 Commission is the enforcer, so to speak, of that
13 bargain or the State of Florida, through the County?
14 Is there a meaningful distinction there? (Pause)

15 Let me ask the question differently: Would
16 you agree with me that there is no meaningful
17 distinction? That the principles of regulation remain
18 constant irrespective of whether it is the Commission
19 regulating the Utility or the County regulating the
20 Utility?

21 A I would generally view it that way, that the
22 ratepayer does not acquire a proprietary interest by
23 the fact they are served from certain facilities.

24 Q Okay. But the gist of your position is that
25 when the Utility sells off a piece part, irrespective

1 of whether that happened to be used for utility
2 purposes or no, that the customer, since they had no
3 proprietary interest in it and had no equitable
4 position in it, are not subject -- are not the
5 beneficiaries of any gain, and presumably not the
6 victims of any loss?

7 A Right. It cuts both ways. If the
8 condemnation were at less than rate base, shareholders
9 should suffer the loss.

10 Q Well, Mr. Sandbulte, I know that you are not
11 responsible for the details of the case, but isn't it
12 true that in this very case before the Commission today
13 that the Utility asked the Commission to compensate it
14 for abandoned plant? Do you know whether that is true?

15 A No, I don't.

16 Q If it were true, would it be inconsistent
17 with the theory that you just espoused?

18 A I think it would depend on whether there were
19 customers involved. There were no customers involved
20 in this. I don't know what the specifics are in that
21 case.

22 Q Okay. Let me ask you another question along
23 the same line.

24 Your notion is, as I understand it, that the
25 property should be bought and sold, loss or gain,

1 irrelative, independently pretty much from the
2 customer's interest. Now --

3 A Which customer?

4 Q The customers who remain on the system. The
5 customers who are --

6 A Right. As long as they are not harmed by it,
7 that's what I stated in my testimony.

8 Q Okay. Fine. Now, I want to ask you this:
9 Occasionally, I understand that Southern States is the
10 target of a condemnation proceeding by municipalities,
11 counties and so forth; is that correct?

12 A That's what happened in the cases of St.
13 Augustine Shores and University Shores, I believe, and
14 there are other situations that arise from time to
15 time.

16 Q I understand. And your position is pretty
17 much that since the customers have nothing at risk,
18 they don't need to look to the -- for any gain, and
19 they don't need to suffer any loss. We have been over
20 that several times, and that's your position directly.

21 A On a municipal condemnation rate.

22 Q Sure. What about underwriting the cost of
23 your defense of those condemnations? Whose business is
24 that?

25 A I think that should be the cost of the

1 Company.

2 Q That the stockholder should bear that?

3 A Right.

4 Q Okay. Now, given you have that point of
5 view, if you found it to be true in this case that the
6 Company was seeking to recover the costs of those
7 condemnation defenses, would you direct that the
8 Company surrender its claim to those costs?

9 Do you understand the question?

10 A I don't believe so.

11 Q Okay. Let me just say it hypothetically.

12 A Surrender its claim?

13 Q Yes. That's probably too pejorative of a
14 term. Let me ask the question differently.

15 If you discovered that Southern States, in
16 this case right here, was seeking to recover expenses
17 which they incurred defending condemnation actions,
18 wouldn't you regard that as inconsistent with your
19 theory about the gain on sale?

20 MR. HOFFMAN: Mr. Chairman, may I pose an
21 objection and request for clarification as to whether
22 Mr. McLean is talking about successful condemnations by
23 governmental authorities or attempted condemnations?

24 MR. MCLEAN: Well, actually, I'm talking
25 about both at this stage. To the extent that they

1 risk, to the extent they are resisting a condemnation
2 or seeking to obtain just compensation. And
3 hypothetically, if they have incurred any expense in
4 that operation. My question to Mr. Sandbulte is, is
5 that inconsistent with the theories that he tells us
6 about the proceeds of gain on sale or loss on sale?

7 A Yeah, I think the shareholders should, under
8 normal circumstances or maybe exceptional
9 circumstances, but I think the shareholders should bear
10 the cost of that defense.

11 Q Okay. Mr. Hoffman raised an interesting
12 point. Would that turn on whether the condemnation was
13 successful or unsuccessful?

14 A Well, there could be a lot of different
15 circumstances, but basically, I don't think so.

16 Q I don't know that you can speak for Mr.
17 Hoffman, but I'm wondering if, when there is a
18 condemnation and the Court, with the aid of a jury,
19 renders a verdict and there is a number which is
20 represented to be just compensation, whether that is,
21 in the Company's view, a successful or unsuccessful
22 condemnation? (Pause)

23 My question is I don't --

24 A It's unsuccessful from our standpoint because
25 we're not in this business to see our properties

1 condemned, so we're not interested in selling these
2 systems. But the municipal governments have the
3 authority and the power to condemn. So --

4 Q And when they try to do that, you try to
5 receive just compensation, correct?

6 A That's correct. Because we do not have a
7 defense in the absolute against the taking.

8 Q When there is -- this may be going outside
9 your bailiwick but I want to ask you anyway. Are you
10 aware of whether you also recover your costs,
11 attorney's fees, appraisals, and so forth, when there
12 is a condemnation, when it is concluded by the Court
13 itself?

14 A I think those are normally recovered from the
15 condemning party, normally. I mean, I don't know the
16 rule in every situation. But my understanding is that
17 cost of condemnation, to the condemned, so to speak, is
18 borne by the condemning party. I'm not a lawyer, so --

19 Q By the condemner, the government --

20 A Condemner, I don't know, is that the right
21 word for that?

22 Q Okay. Let's leave that area. (Pause)

23 Pardon me just a moment, Mr. Sandbulte.

24 (Pause)

25 Mr. Sandbulte, is it accurate to say that you

1 have represented that the Commission does not have a
2 stated policy on gain on sale, or that you don't know
3 what it is? Would you clarify that point for me,
4 please, sir?

5 A I know they have had a couple of cases where
6 they have dealt with the gain-on-sale issue. I don't
7 know that those involve loss of customers or
8 involuntary liquidation of a business unit, as we have
9 in the case of St. Augustine Shores, nor do we have, I
10 think, the separation of rates that we have in this
11 case, such as St. Johns County regulating the rates and
12 the customers at SSU having no connection to it.

13 Also, I believe that if it's not been in rate
14 base, that gives it a different character than if it
15 has been, according to the prior rulings of the FPSC.

16 Q All right, sir. I've arranged for you to be
17 handed an exhibit.

18 MR. McLEAN: Mr. Chairman, may I have it
19 marked for identification? (Pause)

20 CHAIRMAN BEARD: Do we need to mark this?
21 This is an order?

22 MR. McLEAN: Yes, sir. I do want it marked.

23 CHAIRMAN BEARD: Do not we normally just take
24 judicial notice of our orders?

25 MR. McLEAN: I think we do sometimes, but I

1 want to present the case as having it put into evidence
2 before you.

3 CHAIRMAN BEARD: Any problem with that, Mr.
4 Pruitt?

5 MR. PRUITT: No.

6 CHAIRMAN BEARD: It just became Exhibit No.
7 23.

8 MR. MCLEAN: Thank you, sir. (Pause)

9 Is this 24, Mr. Chairman?

10 CHAIRMAN BEARD: What did I miss? Oh, I am
11 sorry, you're correct. This is 24. (Pause)

12 Short title? Order No. --

13 MR. MCLEAN: Order No. 17168.

14 CHAIRMAN BEARD: -- 17168? I've got to get
15 my magnifying glass out.

16 (Exhibit No. 24 marked for identification.)

17 Q (By Mr. McLean) Mr. Sandbulte, would you
18 familiarize yourself -- are you familiar with the
19 exhibit as yet?

20 A No, I'm not.

21 Q All right, sir. Would you take a look at it,
22 please.

23 My questions are going to be whether it
24 involves Southern States, and whether it addresses the
25 issue of gain on sale and so forth. I think you'll

1 find that material on Page 5 of the Order.

2 A Well, it involves, Southern States, according
3 to the heading. Where is Page 5?

4 Q Yes, sir. Look, please, on Page 5. (Pause)

5 If you will for the benefit of the Commission
6 and for the audience particularly, I'd ask you to read
7 Paragraph 4, which appears on pen-numbered Page 5 on
8 the left-hand side.

9 MR. HOFFMAN: Mr. Chairman, I'm going do
10 object. I think the Order speaks for itself and it's
11 in evidence, or it's been marked for identification.

12 MR. McLEAN: I'd just like to show that the
13 witness is familiar with it. He can read it to himself
14 if he wants, but the record certainly won't reflect
15 whether he did that.

16 COMMISSIONER CLARK: Would you tell me where
17 you were?

18 MR. McLEAN: Yes, ma'am. Paragraph 4, Page
19 5.

20 COMMISSIONER EASLEY: Page 5 of the Order.
21 (Pause)

22 CHAIRMAN BEARD: Did you get a chance to read
23 it?

24 WITNESS SANDBULTE: Yes, I read it.

25 CHAIRMAN BEARD: It looks pretty inflammatory

1 to me. (Laughter)

2 Q (By Mr. McLean) Mr. Sandbulte, would you
3 agree with me that that stated Commission policy there
4 disagrees with the theory that you held earlier; and
5 that is, essentially, that gain or loss is really
6 outside the concern of the customers?

7 MR. HOFFMAN: Mr. Chairman -- excuse me, Mr.
8 Sandbulte.

9 I'm going to object. I think that the
10 question presumes that this one sentence on Page 9 of
11 this order is Commission policy. I think the order
12 speaks for itself, and I don't know where we can go
13 with respect to asking this witness questions about the
14 Commission Order. It's a legal argument and a legal
15 interpretation.

16 MR. McLEAN: I can only assume that if that
17 paragraph is not a representative paragraph in the
18 Order, Mr. Hoffman will be quick to point it out when
19 his turn comes.

20 COMMISSIONER CLARK: Mr. Chairman, it appears
21 to me that we are just discussing the issue of the pros
22 and cons, including a gain on sale, or a loss. I think
23 it is relevant as to whether as to the treatment given
24 before, regardless of whether it has arisen to the
25 status of a policy. I think what he's asking the

1 witness is his philosophy and how that might gel with
2 something the Commission has --

3 MR. HOFFMAN: Commissioner Clark, I guess the
4 only problem I have is I would feel more comfortable if
5 Mr. Sandbulte had all the opportunity to read all the
6 background facts in this case before he makes any
7 comments or analysis on the Order.

8 COMMISSIONER CLARK: Well, I would only point
9 out that this is a Southern States case and in his
10 rebuttal testimony, it seems to me, he was well aware
11 of other cases in other jurisdictions on this point.

12 CHAIRMAN BEARD: I'm going to allow the
13 question.

14 How about asking it again, though?

15 WITNESS SANDBULTE: Which was, was I aware of
16 this case or --

17 Q (By Mr. McLean) No, sir. It's a fairly
18 simple question. Whether that position expressed by
19 the Commission on Page 5 appears inconsistent with the
20 position that you have advocated earlier this morning?

21 A As a general matter, yes. The distinction
22 with both University Shores and St. Augustine Shores
23 would be that in the case of St. Augustine Shores, this
24 was regulated by St. Johns County. In the case of
25 University Shores, this property was never in rate

1 base. And I don't know the situation in this case. I
2 assume, subject to check, that this system, Skyline
3 Hills, or Mills, was part of SSU.

4 Q There is no question --

5 A Regulated by the FPSC, I should say.

6 Q I'm sorry. Yes.

7 There is no question that the property we're
8 arguing about here, both University Shores and St.
9 Augustine Shores, was, in fact, owned by either
10 Southern States or by the Southern States family of
11 companies, is there?

12 A No, there was no question about that.

13 COMMISSIONER EASLEY: Could I understand the
14 distinction that you're making, please? Do you mind if
15 I ask a question?

16 MR. McLEAN: No, of course not, go ahead.

17 COMMISSIONER EASLEY: Let me ask a question,
18 then, Mr. Sandbulte, because maybe I'm missing
19 something.

20 You're saying that both of these systems were
21 owned by Southern States. Neither system was in rate
22 base. Is that the distinction?

23 WITNESS SANDBULTE: No, Commissioner. One of
24 them was not in rate base.

25 COMMISSIONER EASLEY: Which one?

1 WITNESS SANDBULTE: The University Shores
2 land, this is land, was purchased, I think, in 1986,
3 and the last rate case was in 1982. So it was not in
4 rate base from the standpoint that it was an expense on
5 which rates were being collected. It was then
6 condemned by a governmental body.

7 In the case of --

8 COMMISSIONER EASLEY: St. Augustine.

9 WITNESS SANDBULTE: -- St. Augustine Shores,
10 my point is that there is no impact on these ratepayers
11 -- and particularly of SSU -- because those are
12 stand-alone systems; they're stand-alone rates. It has
13 no bearing on the SSU rate case in this instance.
14 Because --

15 COMMISSIONER EASLEY: Because those
16 ratepayers were never part of the overall system?

17 WITNESS SANDBULTE: Well, they were not part
18 of the overall system, at least at the time of
19 condemnation. And also, we were deprived of the future
20 earnings on that system by government.

21 COMMISSIONER EASLEY: All right. Let me back
22 you up just a minute.

23 Earlier you had said that St. Augustine
24 Shores had been regulated by Duval County?

25 WITNESS SANDBULTE: By St. Johns County.

1 COMMISSIONER EASLEY: St. Johns County.

2 Well, I was close.

3 CHAIRMAN BEARD: Let me help you, Commissioner.

4 There was a rate case, '89, '90, somewhere in
5 that time frame, St. Augustine Shores, that was done by
6 this Commission.

7 COMMISSIONER EASLEY: Okay.

8 CHAIRMAN BEARD: It was sometime after that
9 that St. Johns County chose to take jurisdiction over
10 regulation of their County. And that, in fact, took
11 St. Augustine Shores from underneath the Florida Public
12 Service Commission and put them under St. Johns County
13 Commission, along with all the other water and
14 wastewater systems in St. Johns County.

15 COMMISSIONER EASLEY: In that county, right.

16 CHAIRMAN BEARD: And the St. Augustine Shores
17 rate case, that rate case, was on a stand-alone basis.
18 Okay?

19 COMMISSIONER EASLEY: All right.

20 CHAIRMAN BEARD: That was what was
21 stand-alone.

22 COMMISSIONER EASLEY: Okay. I was having a
23 little bit of trouble with the sequence.

24 Thank you, Mr. McLean.

25 COMMISSIONER CLARK: I want to be clear on a

1 somewhat tangential point.

2 As I understand this rate case, one of the
3 things, one of your long-term goals, is to sort of make
4 one system out of all the individual systems.

5 WITNESS SANDBULTE: Well, to bring them under
6 common management, at least. Whether they're regulated
7 by the FPSC or by a county, we would --

8 COMMISSIONER CLARK: Now, well, then, let me
9 ask you this: With respect to your investment in what
10 used to be individual systems, are you still proposing
11 to treat that investment individually and set the rates
12 in that area that used to be one system or as a
13 discrete system? The investment and expenses for
14 those, disregarding common expenses, will be set on a
15 stand-alone basis?

16 WITNESS SANDBULTE: I think that's the basis
17 for our filing in this case, if I understand the
18 question correctly.

19 COMMISSIONER CLARK: Well, let me be maybe
20 more specific.

21 I had understood that one of the things the
22 Company would like to do is move toward parity of rates.

23 WITNESS SANDBULTE: That's true.

24 COMMISSIONER CLARK: Which may be, may have
25 the result, that you really are not looking at the

1 individual investment in the system serving that
2 particular group of customers.

3 If that's the case, why shouldn't we look at
4 the gain or loss on these systems that will eventually
5 become part of the same large family and, in effect,
6 the investment and return on that investment will be
7 shared by everyone who is part of your system?

8 WITNESS SANDBULTE: Well, I think that gets
9 back to the fundamental position, Commissioner, that
10 the ratepayers have not been harmed by this
11 condemnation. At least I don't know of any significant
12 harm. They pay rates and it is based on either
13 specific facilities or all of the facilities depending
14 on whether we go to the situation you're talking about.

15 COMMISSIONER CLARK: Well, that's --

16 WITNESS SANDBULTE: And the investors --
17 pardon me -- the investors are deprived of a return on
18 their investment for those future years of service,
19 including growth, that they were looking forward to by
20 action of municipal government over which it could not
21 -- which it had no control over.

22 COMMISSIONER CLARK: But they have, they
23 might not have the opportunity to earn a return on
24 investment through that particular business, but they
25 certainly have the opportunity to invest that money

1 elsewhere, as they have done in this case --

2 WITNESS SANDBULTE: Yes, but our stated
3 business is the water and wastewater business. It is
4 not the same, at least not to me, to say, "Well, you're
5 condemned out of a substantial part of your business
6 and you have to either conduct or concoct a new
7 strategy or go into another line of work, so to speak."
8 If this happened in our electric business, you know, we
9 would be a different company, I guess.

10 COMMISSIONER CLARK: You advocate that loss
11 should be treated the same way as the sale --

12 WITNESS SANDBULTE: Absolutely. Absolutely.

13 COMMISSIONER CLARK: In this case, had you
14 experienced the loss of your capital, you would not be
15 in here asking us to make that up through other
16 customers?

17 WITNESS SANDBULTE: Right.

18 COMMISSIONER CLARK: And the property was a
19 prudent investment at the time it was done and now
20 through condemnation it is not recoverable?

21 WITNESS SANDBULTE: Yes, as far as I know, it
22 has been a prudent investment. That's not the issue.
23 It was a decision by the St. Johns -- I think it was
24 St. Johns County or some county, anyway, to condemn.

25 COMMISSIONER CLARK: What about abandonments?

1 What about where you have a system, for instance, where
2 the County -- for health reasons, the plant you are
3 using to serve that particular group of customers is
4 not adequate, does not meet new regulations and the
5 best solution is to hook up to a county system. And,
6 in effect, you have the County or the State, through
7 actions of health agencies, require you to abandon that
8 plant?

9 WITNESS SANDBULTE: Well, I think it would be
10 a question of prudence. In other words, was the
11 property in question prudent at the time? Did some
12 intervening or subsequent events change? Like you have
13 a disposal facility and the rules change so you have to
14 go to a different kind of a disposal facility. I think
15 in that case abandonment should be a legitimate cost of
16 the customer.

17 COMMISSIONER CLARK: How is that different
18 than simply a condemnation where you experience a loss?

19 WITNESS SANDBULTE: Because the condemnation
20 is of a perfectly good system that is going to provide
21 future earnings to the investors and it is being taken
22 away from them involuntarily. It is an involuntary
23 conversion or taking of a valuable right.

24 COMMISSIONER CLARK: And if they lose capital
25 in that, it's your position that that is allocated only

1 to the shareholders -- a gain or loss --

2 WITNESS SANDBULTE: Right, if it's a
3 condemnation sale.

4 COMMISSIONER CLARK: And an abandonment, why
5 shouldn't the abandonment simply be allocated to the
6 shareholders and not the ratepayers? What is the
7 difference between a condemnation where you lose money
8 or an abandonment where you have property taken from
9 you or where you have to abandon --

10 WITNESS SANDBULTE: Well, I think -- the
11 reason for the abandonment, I think, would have some
12 bearing on an issue. But an example I used, for
13 instance, I think this is not a question of a third
14 party coming in -- well, unless it's a government
15 proposing new regulations -- this is a question of
16 something changing with respect to that property that
17 requires it no longer to be used, even though it was a
18 good idea and it was used and useful and prudent and
19 all that when it was first put into service.

20 COMMISSIONER CLARK: But that's the same in
21 the condemnation. It was used and useful, it was a
22 prudent investment when you made it, but it was
23 condemned and you lost money.

24 I mean, I guess I'm struggling with a
25 rationale for treating it differently because in the

1 past we have allowed abandonments to be recovered if it
2 was a prudent investment to begin with. And it seems
3 to me if I can't distinguish between that and a loss,
4 why should I distinguish between a loss and a gain?

5 WITNESS SANDBULTE: Well, in my mind there's
6 a difference between taking a viable unit, a business
7 unit, and having it condemned and its future earnings,
8 its future benefits, taken from you, as opposed to an
9 abandonment, which means, at least in general, that
10 this piece of property or this piece of equipment is no
11 longer producing any benefit, even though it was
12 producing benefit in prior periods.

13 COMMISSIONER CLARK: I'll just ask one more
14 question.

15 It seems to me the impact to the shareholders
16 is exactly the same. In both cases, you're losing --

17 WITNESS SANDBULTE: I think the assignment of
18 risk in that case, though, should be different. I
19 think the assignment of risk to the investor, just as
20 the risk we're taking right now in the kind of returns
21 we are currently earning, is something that is borne by
22 the investor.

23 I think an abandonment is a different
24 situation where there is, I think, a responsibility,
25 unless it was an imprudent type of decision that led to

1 it in the first place, where there's a responsibility
2 for the ratepayers to pay that.

3 And I know that's a big argument in a lot of
4 jurisdictions, whether it's nuclear plants or whatever.
5 I mean, this is a big issue. But I would draw the
6 distinction. Because you're selling a viable, going
7 concern in one case; and in an abandonment, you're
8 taking about something that is no longer viable.

9 But I think, to get back to the fundamental
10 issues of who puts up the capital and who takes the
11 risk, and I think I've stated what I feel about that.

12 Q (By Mr. McLean) Following on Commissioner
13 Clark's question, however, in a condemnation you have a
14 check from a governmental entity ultimately, do you
15 not?

16 A Yes.

17 Q And the only difference I can see is that in
18 an abandonment you can look only to the customers for
19 that check, there's no governmental entity handy to pay
20 for it, is there?

21 A Correct.

22 Q Okay. Let me change focus a little bit.

23 CHAIRMAN BEARD: While you're doing that,
24 question one: About how much more do you have this
25 witness, do you think?

1 MR. McLEAN: My best guess is 30 minutes, and
2 it may be substantially less.

3 CHAIRMAN BEARD: Is this a good point where
4 we could take a short break maybe and people could make
5 some lunch arrangements or --

6 MR. McLEAN: Yes, sir.

7 CHAIRMAN BEARD: Okay. For those of you in
8 the audience, we're going to take about 20 minutes, and
9 some people can make some arrangements. At the bottom
10 of the building there's a cafeteria affectionately
11 referred to as "Chez Fletcher." Don't let the name
12 fool you. But they have sandwiches and a variety of
13 lunches. And also on the street right here to the
14 side, Adams Street, about two blocks south is a small
15 sandwich shop, Kostas, which provides pretty good
16 sandwiches. Those are the closest places by if you
17 want to make some arrangements for a sandwich and a
18 cold drink and that kind of thing.

19 We'll be back here approximately 11:45.

20 (Thereupon, lunch recess taken at 11:25 a.m.)

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AFTERNOON SESSION

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(Hearing reconvened at 11:45 a.m.)

CHAIRMAN BEARD: Okay, let's come back together, if we can. And Mr. McLean, you were on.

MR. McLEAN: Thank you, sir. Mr. Sandbulte, we were talking about both the -- I want to make sure I'm getting your name right. Sand, bolt?

A Like B-O-L-T, bolt.

Q I understand. Thank you, sir.

I want to make sure that the record is clear on the point with respect to University Shores and St. Augustine Shores. Were both of those settled or -- tell me how the actual sale took place. Was it an agreed sale, settlement or what?

A My understanding is that they were both condemned.

Q Okay, is there -- I'll probably -- let me just let that stand. I'll go to another witness because I think there may be some details that we're interested in, but we'll get to that.

You have mentioned several times that the sale of those systems did not hurt the existing customers, but would you agree, first of all, that Southern States does allocate common costs to its various systems, including both of these, or at least

1 has done so in the past?

2 A Yes.

3 Q So there is some lessening of the number of
4 customers to whom those common costs can be allocated,
5 isn't that correct?

6 A Yes. But I think with the growth that we've
7 had, we've more than overcome that loss. Go ahead.

8 Q But, of course, that loss is somewhat
9 permanent. I mean they won't come back?

10 A That's true.

11 Q Okay. Now I want to ask you another
12 question. We kind of discussed two extremes: One of
13 which was where the customers -- our theory,
14 essentially, where the customers are at risk for the
15 gain or loss; and yours, I think, where the
16 shareholders are at risk for either gain or loss, or
17 benefit.

18 Now, you're familiar with the testimony of
19 Ms. Dismukes, correct, because you attempt to rebut it?

20 A Yes.

21 Q Now, isn't it true that her scheme of dealing
22 with the -- I should say her system, perhaps, of
23 dealing with the gain is really neither one of those
24 extremes, isn't that true?

25 A No. I think it's pretty far toward the

1 extreme of the customer getting all the benefits.

2 Q Skewed in one direction in any case?

3 Q Yes.

4 Q But the fact is that even under her scheme,
5 the stockholders would participate in the gain to some
6 degree?

7 A Very minimal degree, as I understand her
8 testimony.

9 Q And the size of that degree is determined by
10 the relative size of, say, St. Augustine Shores on one
11 hand and the other Southern State systems on the other,
12 is that right?

13 A I think size is a factor, yes.

14 Q But isn't it true, too, that her allocation
15 of the gain, the relative size, let's say, relative
16 number of customers, is the principal means by which
17 you'd made make that allocation, or that she would?

18 A That's my understanding, yes.

19 Q Okay. Now, quite a bit earlier in the
20 questioning, I gave you a hypothetical about St. Augustine
21 Shores sold at a tremendous increase, a tremendous gain.
22 Your answer was that if the entire system were sold,
23 that there wouldn't be any customers left to enjoy any
24 portion of the gain. Now, isn't it true that that result
25 is entirely consistent with Ms. Dismukes' system of

1 distributing the gains?

2 MR. HOFFMAN: I object, Mr. Chairman. I
3 think the question is a little confusing. I'm not sure
4 what he's going after here in terms of the results.

5 MR. McLEAN: Nothing particularly tricky.

6 The question I'm asking, I think, is in the
7 instance where the entire system is sold, obviously,
8 there wouldn't be any customers left to pick up the
9 gain. Mr. Sandbulte seemed to offer that as reducing
10 Ms. Dismukes' argument to an absurdity. But I want to
11 point out, and I would like to point out through this
12 witness, that, in fact, that's perfectly consistent
13 with the way that she proposes to distribute the gain.

14 CHAIRMAN BEARD: Ask your question again.

15 MR. McLEAN: Sure. I'll give it my best.

16 Q (By Mr. McLean) Earlier in the day I asked
17 you a question about a sale of St. Augustine Shores for
18 \$400 million, and, of course, you said that wouldn't
19 happen, and we do agree.

20 Your answer, however, was that where the
21 entire Southern States system was sold, obviously there
22 wouldn't be any customers left to enjoy any portion of
23 the gain, isn't that right?

24 A Well, my point was that it would belong to
25 the shareholder and there wouldn't be, presumably, any

1 question that since they're out of business, that the
2 shareholders receive the gains, or losses, whatever
3 they are.

4 Q Sure. I agree. Now, isn't that pretty much
5 consistent with the theory that Ms. Dismukes propounds,
6 as you understand it?

7 A No. I don't -- that is not the way I
8 understand it.

9 Q Well, how would it be different, according to
10 your understanding?

11 A As I understand her testimony, it talks about
12 taking the common costs associated with the customers
13 sold and allowing the investors to keep those dollars
14 and to give all the other dollars to the ratepayers.

15 And I don't know how that would work out in
16 the -- in extremis, as you're indicating, but I don't
17 think that would give all the -- well, I guess if every
18 customer is sold, I don't know what way there would be
19 to give the Company to any -- the results to anybody
20 but the owners.

21 Q Fortunately, that's an extreme we don't have
22 to deal with, right?

23 A Right. That's why we're in this business, to
24 sell water and wastewater services.

25 Q All right, sir, if you'll wait just a moment,

1 please. (Pause)

2 I want to arrange for you to be handed an
3 exhibit, sir, as we change focus a bit. (Pause)

4 Mr. Sandbulte, in our discussions thus far, I
5 believe it is fair to say that you have raised the
6 question as to whether the Commission has a policy on
7 gain on sale; is that a fair observation?

8 A No. I don't think I said that. I think I
9 said they have a policy on certain types of
10 transactions which are, in my mind at least, unlike the
11 ones that we're talking about in St. Augustine, and at
12 least could be different than what is the case in St.
13 Augustine and University Shores. I'm not sure of all
14 of the different situations they've had to deal with
15 over the years.

16 MR. McLEAN: Well, Mr. Sandbulte, I've
17 arranged for you to be handed an exhibit.

18 Mr. Chairman, may I have that exhibit marked
19 for identification, please, sir.

20 CHAIRMAN BEARD: It will be identified as
21 Exhibit No. 25. Now we need to identify what it is.

22 MR. McLEAN: All right, sir.

23 (Exhibit No. 25 marked for identification.)

24 Q (By Mr. McLean) Mr. Sandbulte, would you be
25 surprised to learn that the Commission has a published

1 manual, which is not in the form of a rule, which is
2 entitled "Digest of Regulatory Philosophy"?

3 A I don't know. I don't know of it.

4 CHAIRMAN BEARD: Before we get any further,
5 I've given you a number, let's give a short title to
6 this. What is this that I'm looking at?

7 MR. McLEAN: DORP.

8 CHAIRMAN BEARD: Well, more specifically it's
9 Pages 138 -- 137 and 138 of division -- what is it?

10 COMMISSIONER CLARK: It's the DORP.

11 MR. McLEAN: Digest of Regulatory
12 Philosophies, a/k/a DORP.

13 CHAIRMAN BEARD: As opposed to DWEEB?

14 COMMISSIONER EASLEY: Yes.

15 MR. McLEAN: As opposed to rule, I think.

16 CHAIRMAN BEARD: Okay.

17 Q (By Mr. McLean) Would you familiarize
18 yourself with the exhibit please, Mr. Sandbulte?

19 (Pause)

20 A I've looked at it briefly, Mr. McLean.

21 Q All right, sir.

22 I'm not going to ask you to adopt anything
23 therein, and I'm not going to ask you if the policies
24 enunciated here are directly on point with your case.
25 Let me just simply ask you whether it purports to be a

1 statement of the regulatory philosophies of the
2 Commission?

3 MR. HOFFMAN: Mr. Chairman, let me just note
4 an objection for the record to Mr. McLean's question to
5 the extent Mr. McLean is trying to establish that this
6 document contains policies of the Commission.

7 MR. McLEAN: I can put on a witness that it
8 is from the DORP manual, but I don't think it would be
9 a real wise use of our time. It's a xeroxed copy of a
10 manual that the Commission publishes.

11 COMMISSIONER CLARK: And, in fact, it's just
12 what it says. It is a digest of cases in which these
13 positions have been taken. Can we agree to that?

14 MR. HOFFMAN: That's my only point.

15 COMMISSIONER CLARK: Okay.

16 CHAIRMAN BEARD: Got it.

17 COMMISSIONER CLARK: Let me ask one question.
18 Have there been no revisions since '85 that you know
19 of?

20 MR. McLEAN: I don't know. To tell you the
21 truth, I think we have the most current version of it,
22 but I'm not sure.

23 COMMISSIONER CLARK: I would like you to
24 verify that to make sure that there isn't an updated
25 version in which this point is covered.

1 MR. McLEAN: Yes, ma'am, we will.

2 COMMISSIONER CLARK: Thank you.

3 Mr. McLEAN: The only point to introduce the
4 exhibit is to show that the Commission has considered
5 the question on occasion. Perhaps not in all it's
6 variations but I have addressed it.

7 COMMISSIONER BEARD: I think Commissioner
8 Clark is just wanting to verify what our latest
9 considerations have been.

10 COMMISSIONER CLARK: That's right.

11 Q (By Mr. McLean) Mr. Sandbulte, let me ask
12 you one more question in a broader sense. You said
13 that the sale of the St. Augustine Shores system and
14 University Shore system didn't occasion any harm to the
15 customers. And, presumably, if the Commission doesn't
16 distribute the gain in some way to the customers, isn't
17 it true that the customers' rates will be higher than
18 they otherwise would have been had the gain been
19 distributed?

20 MR. HOFFMAN: Mr. Chairman, sorry, again, I
21 just want to make sure, for clarification, if Mr.
22 McLean is talking about the customers of the systems in
23 this rate case, or the former customers of the St.
24 Augustine Shore system, because I think it's important
25 to make that clarification.

1 MR. McLEAN: I don't think we know about the
2 customers at the St. Augustine Shore system, so my
3 question is restricted to the customers who remain on
4 the Southern States system.

5 Q (By Mr. McLean) Would you like me to reask
6 the question?

7 A No, I understand the question, I think. The
8 revenue of requirements, as I understand your question,
9 would be reduced if the -- under Ms. Dismukes'
10 proposal.

11 Q Yes, sir. Mr. Sandbutte, (sic) I've arranged
12 for you --

13 A Mr. Sandbulte.

14 Q I'm sorry. Please don't take offense. ,Mr.
15 Sanbulte, I've arranged for you to be handed an
16 exhibit.

17 MR. McLEAN: Mr. Chariman, may I have it
18 marked for identification, please?

19 COMMISSIONER BEARD: It will be Exhibit No.
20 26. Short title "Late-filed Deposition Exhibit No. 3,
21 Gangnon."

22 (Exhibit 26 is marked for identification.)

23 Q (By Mr. McLean) Mr. Sandbulte, would you
24 familiarize yourself with the instrument, please, sir?

25 (Pause)

1 A All right.

2 Q All right, sir. My understanding is -- what
3 is the sales price. Let me ask you that way. (Pause)

4 Let me strike that question and get right to
5 the bottom line. I want to ascertain whether the
6 expense incurred in the deal is reflected in the sales
7 price, or is there a separate place where we might look
8 to see what the expenses of the sale are?

9 MR. HOFFMAN: Mr. Chairman, again, I want to
10 object. This is a document that was prepared by Bruce
11 Gangnon. He's a witness in this case, and he's
12 available to answer questions about the numbers in this
13 document.

14 MR. McLEAN: What's the objection? I'm
15 entitled to know whether this witness knows --

16 COMMISSIONER BEARD: Excuse me. Can you
17 answer the question? If you can't, just say so, and
18 we'll let the question wait for the person who prepared
19 the exhibit. And there's nothing wrong with saying "I
20 don't know."

21 WITNESS SANBULTE: If you want us to repeat
22 the question, I'm not sure I -- it has to do with
23 expense on sale; is that correct? What was the
24 question?

25 Q (By Mr. McLean) Wait just a moment. Let me

1 make sure I understand it.

2 Does the sales price include compensation for
3 the Company's expenses, or are there expenses which are
4 not reflected on this document?

5 A I'm not sure. I'm not sure.

6 Q Mr. Gangnon would probably a better witness
7 on the point.

8 A He would be, yes.

9 Q Okay. (Pause) Mr. Sandbulte, the Company,
10 as I understand it, by means of stipulation, has agreed
11 with a number of adjustments suggested by the Office of
12 Public Counsel; is that correct?

13 A That's my recollection, yes, in reading the
14 list of issues and other materials. I'm not sure who
15 they were suggested by. I know some were suggested by OPC.

16 Q All right. Sir, would you turn to Page 18 of
17 your testimony, please, sir?

18 COMMISSIONER EASLEY: Is that direct?

19 MR. McLEAN: I'm sorry, rebuttal.

20 COMMISSIONER EASLEY: Rebuttal

21 WITNESS SANBULTE: All right.

22 Q (By Mr. McLean) Would you read your
23 testimony beginning at Line 17, the first sentence that
24 begins on Line 17? Would you read it out loud, please, sir?

25 A "Moreover, Ms. Dismukes' resort to such an

1 alternative is a transparent attempt to reduce the
2 Company's revenue requirements in any way possible,
3 regardless of the absence of justification for such
4 action."

5 Q Now, sir, I interpret the fact that you
6 agreed with some of those adjustments that Ms. Dismukes
7 made over time, is that some are driven by some measure
8 of justification, wouldn't you think so?

9 A Yes.

10 Q All right, sir. Would you agree with me that
11 that's fairly strong language to describe a witness
12 who's under oath?

13 A It might be considered that.

14 Q All right, sir. Thank you very much.

15 MR. McLEAN: I have no further questions.

16 COMMISSIONER BEARD: Staff?

17 CROSS EXAMINATION

18 BY MS. SUMMERLIN:

19 Q Good afternoon, Mr. Sandbulte.

20 A Good afternoon.

21 MS. SUMMERLIN: Before I go forward with Mr.
22 Sandbulte's cross examination, I wanted to clear up the
23 one question we've had on Exhibit No. 23, which was
24 whether or not it's confidential.

25 We found an order that was issued by the

1 prehearing officer on September 29, '92, that declared
2 -- that denied the confidentiality request on that
3 document. So that's -- we're okay.

4 COMMISSIONER BEARD: Okay. Thank you.

5 Q (By Ms. Summerlin) Mr. Sandbulte, throughout
6 your testimony, your rebuttal testimony, you referred
7 to the condemnation and sale of a portion of the
8 University Shores system; is that correct?

9 A Yes.

10 Q Do you know whether the University Shores
11 system was earning within the range of reasonableness
12 that had been set for that system by the Commission
13 during the time prior to the sale?

14 A No, I do not.

15 Q Which witness for the Company would know the
16 answer to that, can you tell us?

17 A Either Mr. Vierima or Mr. Ludsen.

18 Q Okay.

19 COMMISSIONER BEARD: Let me clarify your
20 question. At the time prior to the sale, the rate of
21 return set by the Commission is that -- are you talking
22 about the rate case that this Commission held when we
23 had jurisdiction?

24 MS. SUMMERLIN: I'm talking about the
25 University Shores, not St. Augustine.

1 COMMISSIONER BEARD: I'm sorry. I'm getting
2 my shores mixed up also.

3 MS. SUMMERLIN: I have been too.

4 Q (By Ms. Summerlin) All right, Mr. Sandbulte.
5 In the Company's responses to Public Counsel's
6 Interrogatory No. 70 -- I don't think you need to look
7 at it. I'm just referring to it. There are several
8 systems that have land designated by the Company as
9 being held for future use. It lists several systems,
10 such as Citrus Springs, Marion Oaks, Spring Hills,
11 Sunny Hills, Deltona Lakes, and there may be some
12 others. I'm just simply using this as an illustration
13 of the thing, not for a specific listing of the
14 systems. Would you agree that that is the case, that
15 there are some portions of the systems that are --

16 A I really don't know. I'm not sure.

17 Q Okay. Well, if we can show you an exhibit
18 that will show you what the Company's response is so we
19 can pin that down, if we need to do that. This exhibit
20 that I have here is set up for Witness Lewis later on.
21 I will show it to you just so that you can see that's
22 what the response is. We wouldn't try to -- just so
23 you'll know that that was in fact one of the responses
24 from the Company.

25 A All right.

1 COMMISSIONER BEARD: You don't seek
2 identification at this time?

3 MS. SUMMERLIN: No, sir. We're going to do
4 that with Witness Lewis later.

5 WITNESS SANDBULTE: This is what, land held
6 for future use, you say?

7 Q (By Ms. Summerlin) Yes. I'm just simply
8 making the statement that there is some land held for
9 future use that the Company has included in the test
10 year or in the request. If the Commission were to
11 approve the rate base that the Company has requested,
12 and it includes this land for future use, would you
13 agree that the resulting rates that would have been
14 approved would allow for recovery of some carrying
15 costs that would be associated with that land?

16 A Yes.

17 Q Okay. If such property that's held for
18 future use was included and rates were approved that
19 included those carrying costs, and that property was
20 subsequently sold at a gain, would it be Southern
21 States' position that the customers would be entitled
22 to share in that gain through correspondingly lowered
23 service rates?

24 A No, I don't think so. The same argument, I
25 think, would apply relative to the risk takers if it

1 were sold at a gain or a loss, I feel that would be
2 the shareholder's risk and not the ratepayers. If it
3 was held for future use at the time of sale?

4 Q Yes, even though the rates would include
5 carrying costs on that property.

6 A Because I think like any user of services or,
7 in particular services, or an apartment unit or
8 anything like that, I think you -- there's a payment
9 for useage or for holding, in this case, but that
10 doesn't mean that the party has property rights or
11 ownership rights. I guess my view would be that this
12 is still an issue of the risk takers; these would be
13 the ratepayers.

14 Q So you're saying no portion at all of that
15 gain would go to the customers?

16 A I don't think so because the customers were
17 simply paying carrying costs presumably for a good and
18 valid purpose. In other words, if it was in plant held
19 for future for good reason, it was prudent to put it in
20 there; and if it was condemned away from the Utility, I
21 think the same principle would apply that I have talked
22 about earlier. In that case, it wouldn't matter
23 whether it was in plant held for future or plant in
24 service, I guess. It would be the same principle.

25 Q Do you see any distinction between land and

1 plant that would be depreciated?

2 A Well, I know that land is not depreciable and
3 -- but there would have still been some carrying costs
4 on the land, and in that case, I think as long as it
5 was for a prudent purpose, the Commission in having
6 been allowed by the Commission, it would be recoverable
7 from the ratepayers but there would be no depreciation.

8 Q Would that be true in the case of a sale as
9 opposed to a condemnation? I mean, would your position
10 be the same in either case?

11 A Well, I think if it were a voluntary sale
12 then you would have to look harder at the question of
13 customer injury, but I don't think it would change the
14 fundamental issue.

15 There might be loss in that case to the
16 customer because this was put in plant held for future
17 use and for some purpose, and if the Company
18 arbitrarily decided to simply sell the land, you know,
19 then I think there would be an argument, at least, that
20 there was injury to the ratepayer because of being
21 deprived of some future service from that particular
22 land.

23 MS. SUMMERLIN: Staff has no further
24 questions.

25 COMMISSIONER CLARK: I have a question on

1 your acquisition of these various systems, and I want
2 to explore the evaluation you did. For a number of
3 these systems, you were able to acquire them at below
4 book value; is that correct?

5 WITNESS SANBULTE: Subject to check, and I
6 think Mr. Vierima can, you know, confirm or not
7 confirm. I think in the case of the Deltona systems,
8 the way the idea was structured, we were purchasing
9 those at book.

10 COMMISSIONER CLARK: Well, I'm --

11 WITNESS SANBULTE: And I think book and rate
12 base in this case are synonymous.

13 COMMISSIONER CLARK: That's what I mean.

14 WITNESS SANDBULTE: Or close anyway.

15 COMMISSIONER CLARK: You can take it to mean
16 synonymous for purposes of my question.

17 WITNESS SANBULTE: In the case of Lehigh, we
18 talked about that in another hearing, that was
19 appraised and was put on at book value. I --

20 COMMISSIONER CLARK: Wait a minute. What do
21 you mean at book value? Did you pay book value for it?

22 WITNESS SANBULTE: Well, it wasn't -- it was
23 part of an overall transaction which was out of the
24 ordinary. Normally, we buy just the utility. In this
25 particular case we were buying real estate assets as

1 well because that's the only way the RTC would sell it.

2 COMMISSIONER CLARK: Right.

3 WITNESS SANBULTE: Besides those two, I don't
4 know about whether the predominant purchase has been at
5 book or below book, or I think there's been a case or
6 two perhaps above book as well, but I don't know the
7 specific details of that. I think, probably, Mr.
8 Vierima could give you a better handle on that than I
9 can, or Mr. Phillips perhaps.

10 COMMISSIONER CLARK: What I'm looking for is,
11 Does the Commission's policy with respect to
12 acquisition adjustment -- specifically that, even
13 though the system may be purchased at less than book,
14 you will still get book value -- does that provide you
15 with an incentive to take over some of these troubled
16 companies?

17 WITNESS SANDBULTE: Yes, it does. As I said
18 in my opening statement, we feel that, I would call it
19 an opportunity there or -- not a responsibility, that's
20 too self-serving -- but an opportunity to address the
21 issues that these small systems face -- financial,
22 capital raising, environmental, those are the principal
23 ones in my mind, through size. I mean, through having
24 size that can deal with regulatory arenas and capital
25 raising arenas.

1 So to the extent there is not an acquisition
2 adjustment below book and you can buy these systems
3 below book, then there is an incentive and, yes, that
4 is a definite incentive.

5 COMMISSIONER CLARK: And, likewise the fact --

6 WITNESS SANDBULTE: It is a disincentive to
7 pay a lot over book because you're going to have to
8 take that below the line as well.

9 COMMISSIONER CLARK: That's right. Right.

10 I think, as I understand the Commission's
11 approach, we have recognized the fact that there are
12 some systems that in the long run the customer is
13 better off if we can attract responsible operators of
14 the water and wastewater system.

15 What I'd like to ask you, and it has always
16 troubled me some that we do have acquisition
17 adjustments. I can't remember if they're called
18 "negative" or "positive," but the ones where you buy
19 below book.

20 WITNESS SANDBULTE: I think those are called
21 "negative," but I get confused, too, sometimes.
22 Negative is good and positive is bad in this case, I
23 think. (Laughter)

24 COMMISSIONER CLARK: Positive is bad. Well,
25 I'm comforted that you get confused, too.

1 What I wanted to ask you is, the Commission
2 in other areas have recognized the need to provide
3 incentives to the utilities to do things. And what we
4 have done is we have provided a sharing. And I'm
5 wondering why that wouldn't work.

6 I guess I want you to comment on would it
7 work in the case of negative acquisition adjustments.
8 In other words, suppose we still allowed them but we
9 allowed you no more than 60% of the difference and the
10 ratepayers could have 40%? We do that in economy sales
11 and, as I understand, I think it's economy sales in
12 electrics. And I'm trying to think of some of the
13 other things. Oh, in a recent telephone case where we
14 had incentive regulation, we allowed them to earn up to
15 a certain rate of return. And over that, to incent
16 them to do a better job, we say, "You can keep 40 but
17 the ratepayers will get 60"; and there's still some
18 incentive there.

19 I'm just wondering why it wouldn't be
20 appropriate to do that in this instance, too?

21 WITNESS SANDBULTE: To split the negative
22 acquisition adjustment between the ratepayers --

23 COMMISSIONER CLARK: Yeah. And I mean this
24 just as a policy matter, as on a going-forward basis,
25 and regardless of what we might do here. How would

1 that impact your desire to continue to acquire
2 properties?

3 WITNESS SANDBULTE: It would reduce the
4 incentive to acquire the troubled systems. We've had
5 quite a bit of experience with those, and obviously, I
6 think from the standpoint of losing some money. So,
7 with the regulatory process, the time it takes to get
8 rates and the capital needed to fix or address some of
9 these, I think that that incentive should be left
10 there.

11 I think also -- I don't want to hark back too
12 often, but the idea that the ratepayer is paying on the
13 basis of what the plant cost was when it was devoted to
14 utility service is still a pretty reasonable approach,
15 if you have the concomitant restriction on the other
16 side where paying more than book would not produce any
17 earnings, so to speak, for the investors on the excess
18 over book.

19 So, if you buy a system over book, then you
20 have to look primarily at the growth potential, I
21 think, in the system as the means by which this makes
22 sense.

23 Obviously, if there was a sharing, then it
24 would minimize the penalty for paying more than book if
25 it were to cut both ways. In other words, if you pay

1 more than book, you would share that as well; but I
2 have a hunch that that would not be real popular with
3 the Public Counsel.

4 COMMISSIONER CLARK: Thank you.

5 CHAIRMAN BEARD: Redirect?

6 COMMISSIONER CLARK: I have one other
7 question.

8 How do they do acquisition adjustments in
9 Minnesota?

10 WITNESS SANDBULTE: Well, you know, we
11 haven't acquired anything there for so long that we're
12 bidding on a cooperative electric system, and we were
13 bidding less than book. So our plan was to request
14 treatment at book value, the same, you know, when first
15 dedicated to utility service would be the request that
16 we would have made. But it's not a done deal at all.

17 So, I can't recall, really, any acquisitions
18 of utility property. This goes back into the '20s and
19 '30s, and there just isn't a lot of electric property
20 changing hands, at least not in Minnesota.

21 COMMISSIONER CLARK: The Commission doesn't
22 regulate water and wastewater up there, or is it
23 primarily a municipal service?

24 WITNESS SANDBULTE: There are no
25 privately-owned water systems in Minnesota. None.

1 There is one in Wisconsin; we own one in Superior,
2 Wisconsin. And that is regulated by the Wisconsin
3 Public Service Commission. So I am familiar with that
4 system, but --

5 CHAIRMAN BEARD: What's the answer to her
6 question with Wisconsin, with respect to either
7 electric or water?

8 WITNESS SANDBULTE: Well, we haven't bought a
9 system over there for many, many years. We've had this
10 system, the water system, since around 1900. So I
11 don't know what the --

12 CHAIRMAN BEARD: Short-term acquisitions, is
13 that it? (Laughter)

14 WITNESS SANDBULTE: Yeah. I don't know what
15 the -- and by the way, when I was talking about numbers
16 earlier about North Carolina and South Carolina and
17 Florida, I was not including Wisconsin. Mr. McLean
18 asked how many customers do we have in Florida
19 vis-a-vis the total. I said like 85%, I think, or so.
20 Well, if I added the Wisconsin customers, it would be
21 less than that, actually, in Florida.

22 But I look at that for some reason it's
23 somewhat different. It's been for, like I said, 80
24 years or so. So I want to correct that answer a little
25 bit, if that's possible.

1 I don't know what they do in Wisconsin, I
2 can't tell you. We haven't made any acquisitions over
3 there for many years.

4 COMMISSIONER CLARK: Thank you, Mr. Sandbulte.

5 CHAIRMAN BEARD: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. HOFFMAN

8 Q Mr. Sandbulte, there were some questions
9 directed to you by Mr. McLean regarding the costs of
10 defending condemnations. Do you remember those, Mr.
11 Sandbulte?

12 A Yes.

13 Q Could you provide some clarification as to
14 how the Company treats the costs of defending
15 condemnation of Company assets?

16 A How it treats the costs of condemnation?

17 Q Yes.

18 A Well, I think it's kind of an ongoing
19 scenario, if you will, of an effort that ultimately
20 leads into something formal.

21 I think at this point normal and prudent
22 efforts to avoid condemnation are probably treated as
23 above-the-line expenses. And then once the
24 condemnation begins, then it's sort of a milestone when
25 it would go below the line.

1 Q Mr. McLean also asked you some questions
2 regarding incentive compensation and the need for such
3 compensation -- I think this was in your response --
4 the need for such compensation to retain valuable
5 employees. Could you expand on that?

6 A Well, I think it is important to keep good
7 employees. This is not an easy business with all of
8 the issues that are out there. And I also -- I talked
9 about results sharing because I hadn't seen this
10 document and I made that assumption erroneously. There
11 is results sharing this year at SSU, but not in this
12 particular period that was referenced in that document.

13 I also understand -- again, Mr. Phillips will
14 be glad to expand -- that these bonuses that were paid
15 are on a one-time basis and on the basis of exceptional
16 performance; and the fact that we are compensating
17 people at this point well below the market, I think,
18 should be taken into consideration as well. I think
19 Mr. Phillips can answer specifically what the program
20 is, but it is not results sharing as I indicated
21 earlier.

22 MR. HOFFMAN: Thank you, that's all I have.

23 CHAIRMAN BEARD: Witness is excused.

24 Exhibits?

25 MR. McLEAN: Move 23, 24, 25, 26.

1 CHAIRMAN BEARD: Without objection? Hearing
2 none, they are moved.

3 MR. McLEAN: Thank you, sir.

4 (Exhibit Nos. 23, 24, 25 and 26 received into
5 evidence.)

6 MR. HAAG: Commissioner Beard, are we
7 entitled to recross if you have redirect?

8 CHAIRMAN BEARD: If you have something
9 briefly with respect to that, sure. Go ahead.

10 I'm sorry, the witness will stand fast for a
11 minute.

12 RECCROSS EXAMINATION

13 BY MR. HAAG:

14 Q Mr. Sandbulte, if, in fact, in a condemnation
15 case you receive a check from a governmental entity at
16 the conclusion of the case for reimbursement of the
17 legal costs an expenses, is that treated as income to
18 the Company?

19 A A recovery of expense? I assume it's
20 considered a recovery of expenses.

21 Q All right. So that would offset the expense
22 that you are allocating to go the ratepayers?

23 A I believe so, yes.

24 MR. HAAG: That's all I have.

25 CHAIRMAN BEARD: Okay. Thank you.

1 WITNESS SANDBULTE: Thank you.

2 (Witness Sandbulte excused.)

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4 CHAIRMAN BEARD: The next witness, by my
5 records, is Mr. Phillips?

6 MR. HOFFMAN: Yes, sir.

7 CHAIRMAN BEARD: Oh, wait a minute. I'm
8 wrong. The next witness is not Mr. Phillips.

9 What I would like to do now -- Laura, do you
10 have a list, or who has the list of the people that
11 wish to speak from the public that came up on the bus
12 today?

13 MR. McLEAN: I do, sir.

14 CHAIRMAN BEARD: Okay. Why don't we stop
15 with the technical part of the case now and go ahead
16 and have those witnesses who wish to speak today come
17 forward.

18 How many names do you have?

19 MR. McLEAN: Seven, Mr. Chairman.

20 CHAIRMAN BEARD: Seven names? Okay.

21 Let me back up just a minute for those of
22 you. When we do our service hearings out in the area,
23 we try to keep it as informal as possible. This
24 setting is a little more formal. But please, relax, we
25 want to hear from you. We will ask whoever the first

1 person they call, when they come up, those seven of you
2 that intend to testify this morning, if you will all
3 stand at one time, we'll swear you in together.

4 We try, like I said, to keep it informal; and
5 whatever you have to say with respect to service
6 quality or rates of the Company or anything like that,
7 we want to hear from you. So we're not too ugly. I'm
8 the ugly one in the crowd, but we try to be nice. So
9 if you will call the first person?

10 MR. McLEAN: The Citizens call Lloyd Daniel.

11 CHAIRMAN BEARD: And when Mr. Daniel gets up
12 here, if the rest of you that are going to be speaking
13 will stand?

14 Also, when you begin to testify, if you would
15 give us your name and spell your last name. That helps
16 the court reporter. Okay?

17 (Witnesses collectively sworn.)

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LLOYD DANIEL

1
2 was called as a witness on behalf of the Citizens of
3 the State of Florida and, having been duly sworn,
4 testified as follows:

5 WITNESS DANIEL: My name is Lloyd Daniel, and
6 the spelling of the last name is D-A-N-I-E-L.

7 I'm a resident of Spring Hill, Florida, and
8 I'm also a member of the Spring Hill Civic Association.

9 I know that the Commission is not obligated
10 to hear from us, so I do thank them for hearing.

11 There's a couple of things that I would like
12 to mention: The rate increases, according to the
13 information that I have, that on the basic charge --
14 and I'm looking at the document -- Spring Hill
15 Utilities, the basic charge is currently at 2.75 and
16 the increase is going to 3.98. That's a 45% increase.

17 The gallons, the gallons charge, is going
18 from -- actually, this is interim, excuse me, on the
19 interim basis, is going from 74 cents to 1.04. Then
20 that was on the interim rates, and the proposed final
21 rates are going on the basic charge to \$7.08. Which
22 represents a 157% increase.

23 I just think that none of us residents of
24 Spring Hill mind an increase, but we think we would
25 like to have a more reasonable increase. I think the

1 Commission would admit that these increases are a
2 little bit out of line. So, we would just like to --
3 we don't, like I say, we don't mind a reasonable
4 increase, but we think these are exorbitant increases.

5 And the second thing I would like to ask, if
6 I may. May I ask a question of the SSU?

7 CHAIRMAN BEARD: You can ask and we'll try to
8 get you an answer. If we can't get you one here, then
9 perhaps we can get you one at a later date.

10 WITNESS DANIEL: The information that I have
11 here, they're using as a basis -- they're using a
12 five-eighths- and a three-fourth-inch meter size. I
13 don't have information that shows a one-inch meter, on
14 the proposed final rates on a one-inch meter.

15 CHAIRMAN BEARD: Have we got that information
16 real handy? Maybe even my Staff has it.

17 MR. FEIL: We'll try to find out. I don't
18 think we have it right here at the table anywhere.
19 Buried under these papers, though.

20 CHAIRMAN BEARD: I'll tell you what. Where
21 is Laura?

22 The lady right over here in the red jacket,
23 she will help you to get that information. I think
24 probably either the Company or our Staff has that
25 information. And we'll get you specific details, and

1 we'll coordinate through her, so you'll have one person
2 and you'll know how to find her.

3 WITNESS DANIEL: Thank you very much.

4 CHAIRMAN BEARD: Okay.

5 WITNESS DANIEL: Along with that same
6 question, I understand that they have different charges
7 for different-sized meters. And I guess there's a
8 reason there, but I can't see why that you are charging
9 one price for a three-fourth and say another price for
10 a one-inch when you're using the same gallonage amount,
11 when you use the same water amount. So I wonder why
12 they're making different stipulations as far as
13 different-sized meters. I mean, you use the same
14 amount of water through a three-fourth-inch meter or a
15 one-inch meter.

16 COMMISSIONER EASLEY: Could I ask, Staff, is
17 there a distinction between a residential-sized meter
18 having one standard size and certain commercial
19 establishments having another size and it being that
20 rate? Is that possibly what we're talking about?

21 MR. FEIL: Commissioner, if you want, we can
22 have somebody talking to Mr. Daniel after he gets off
23 the stand. But it's my understanding that a
24 five-eighths by three-fourth is standard residential.
25 Some residences have one-inch meters, and in most of

1 those instances a customer with a one-inch meter would
2 have an irrigation system.

3 COMMISSIONER EASLEY: I tell you what, if
4 that is not the explanation, I would also like to know
5 what you tell Mr. Daniel.

6 WITNESS DANIEL: I do have a one-inch meter
7 and I have a separate system, I have a well system for
8 irrigation.

9 CHAIRMAN BEARD: Why don't we -- let's do
10 this, and I think that I would like to have the
11 information back as well.

12 It probably would be better to get the
13 specifics of your situation to detail and find out,
14 one, why you have that one-inch meter; and then, two,
15 why that cost differential exists. And once you get
16 the detailed information for Mr. Daniel, how about
17 getting it back to us as well.

18 COMMISSIONER EASLEY: Yeah, even if you deal
19 with it through cross on rate design or something, but
20 I would like to know the answer as well.

21 WITNESS DANIEL: And one final question, if I
22 may ask the question of the Commission.

23 CHAIRMAN BEARD: Please hold it down where we
24 can hear. Okay, go ahead.

25 WITNESS DANIEL: Here again, I'm referring to

1 this sheet. And I don't know whether this Volume V,
2 No. 26, Florida Public Service, so forth.

3 In this, and I'm still referring to the
4 Spring Hill Utilities, that the SSU is requesting on
5 the gallon usage charge of 65 cents from 74 cents. Yet
6 the Commission has approved an interim amount of \$1.04.
7 I just wonder why.

8 CHAIRMAN BEARD: Well, let me take a stab;
9 and Staff, you help me a little bit.

10 There was a lot of different information that
11 was quickly thrown out on interim rates, and a
12 determination was tried to be made on how to go about
13 that. The Company's request, I don't think, mirrors
14 what we approved, because theirs were -- their interim
15 rate request was much, much closer to their final
16 rates.

17 And, correct me if I'm wrong, it was Staff's
18 recommendation that we finally approved that was to
19 spread that interim more evenly across all the systems
20 more as a percentage increase to all systems as opposed
21 to isolating each system for interim purposes. And as
22 I remember it, those interim rates were fairly close.
23 The requested interim rates by the Company were fairly
24 close to what the final requested rates were.

25 And the decision finally made was that we

1 spread it more as a general percentage, which would
2 have caused essentially to take the 74 cents and
3 increased that by some percentage. And as I look at
4 this, I see that generally to be the case on all of
5 them. And that still leaves the Utility's final rates
6 mirroring what they asked for in the first place. And
7 that's why.

8 Does that help you?

9 WITNESS DANIEL: Yes.

10 CHAIRMAN BEARD: Okay.

11 WITNESS DANIEL: That's all the questions I
12 have. Again, I thank the Commission for allowing me to
13 speak.

14 CHAIRMAN BEARD: And if you will get with
15 Laura, we'll get you some detailed answers.

16 I'm sorry, Mr. Shreve?

17 DIRECT EXAMINATION

18 BY MR. SHREVE:

19 Q On the last question that you just raised
20 concerning the interim, I know there's a lot of
21 information down there; but you received the notices
22 and everything from the Company.

23 Was a part of the problem that you're trying
24 to raise is the fact that although the Company's
25 calculations show that on the sewer utility for Spring

1 Hill, they were overearning by \$180,000 and that
 2 they're still asking for -- they're not asking to
 3 reduce that amount and that you received an interim
 4 increase in spite of the fact that the Company has
 5 calculated that you were overearning?

6 A Yes.

7 MR. SHREVE: Thank you, sir.

8 CHAIRMAN BEARD: I thought your question was
 9 with respect to the water rates?

10 WITNESS DANIEL: That's correct. Water not
 11 sewer, I'm sorry.

12 CHAIRMAN BEARD: I thought I understood your
 13 question.

14 WITNESS DANIEL: We're not on the sewer.

15 MR. SHREVE: Okay.

16 COMMISSIONER EASLEY: Thank you, sir.

17 CHAIRMAN BEARD: Thank you, Mr. Daniel. I
 18 appreciate that.

19 (Witness Daniel excused.)

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1 CHAIRMAN BEARD: Next witness?

2 MR. SHREVE: Mr. Bertocci? (No response.)

3 FRED WALL

4 was called as a witness on behalf of the Citizens of
5 the State of Florida and, after being duly sworn,
6 testified as follows:

7 WITNESS WALL: Good afternoon, ladies and
8 gentlemen. I'm Fred Wall and I live in Spring Hill,
9 Florida.

10 I would like to -- I have four items here
11 that I would like to bring before you. And the first
12 one is the hardship that's going to create for many of
13 our senior citizens who are on fixed income. And as
14 you know, the economy of the country is in very bad
15 shape, and this is quite a handicap added to the
16 handicap that the people are going through every day.
17 So if this goes through, it's going to put the people
18 in a very bad situation.

19 My second one is the information that I have
20 seen, or I have received, and I have been on this
21 matter for ever since it has been announced that they
22 were going to ask for the increase. And I've received
23 the information if this increase is granted, this money
24 will be used in other areas, in other utilities that
25 this corporation owns outside of Spring Hill. And I do

1 feel that we should not be paying for the utilities for
2 another district.

3 The third one is that from my information
4 that I received, I think they made a very bad
5 investment by buying this company. Because the
6 officials of Hernando County had this appraised, they
7 were approached on buying this utilities, and they had
8 to drop it because it was over-priced, or they said
9 there would be much needed repairs in the future. So
10 it wasn't a good investment.

11 Now, this corporation has applied for an
12 increase retroactive since they have had it. And I'm
13 very well abreast of what they are entitled to on
14 interim increases. You people have granted them
15 increases which is fair so far. But they're asking for
16 an increase retroactive since they have owned this
17 Company; so I do not feel that it would be fair for
18 them to make a bad investment, then ask the residents
19 of Spring Hill to bail them out.

20 And the fourth information I've seen, I've
21 tried to get the information so that I and my friends
22 and neighbors could make a fair assessment of their
23 request, the cost that they paid the Deltona
24 Corporation for the utilities. And as of today, for
25 some reason, they have refused to divulge this

1 information to us which would enable us to make a fair
2 assessment if the increase were granted would be fair.
3 And that's what I believe in, in fairness in all walks
4 of life.

5 Thank you very much for your time.

6 CHAIRMAN BEARD: Let me ask you a question.

7 The information you requested on the cost or
8 the amount that was paid to Deltona, was that
9 specifically with respect to Spring Hill?

10 WITNESS WARD: Yes, sir. That was the only
11 one that we was concerned in at that time, and we've
12 asked -- I've pursued it in three or four directions
13 through three or four different channels, and all I
14 received was that that information is confidential.

15 CHAIRMAN BEARD: Is that the case, Staff?

16 MR. FEIL: Commissioner, I'm not sure exactly
17 what information Mr. Ward was looking for, but the only
18 information that was -- there was no salaries
19 information that was deemed confidential, if that's
20 what he was looking for.

21 CHAIRMAN BEARD: The cost that was paid to
22 Deltona to purchase Spring Hill Utility.

23 MR. FEIL: It should not have been and there
24 was no request for confidentiality that I'm aware of.

25 CHAIRMAN BEARD: How about let's do this:

1 When he gets finished on the stand, Laura, your second
2 assignment today is get with this gentleman and see
3 what information he wanted, and let's either one get it
4 or find out why we can't get it. Okay.

5 I want to go back to one comment you made,
6 and I'm not sure I understood. You said that they're
7 asking for rates, retroactively back to when they
8 purchased the utility. I'm not familiar with that
9 request and I don't think that we ever have granted
10 retroactive rates. One, we're precluded from doing
11 that by law, either up or down, we can't take money
12 away retroactively and we can't give it retroactively.
13 So any rate increase they're granted is effective of
14 that date, basically, I think.

15 WITNESS WARD: Well, my information was that
16 they are granted or can make an interim request each
17 year without a public hearing. Am I right on that?

18 CHAIRMAN BEARD: No, sir. What you might be
19 referring to, there are certain things by statute that
20 they are allowed to quote, unquote, "pass through." If
21 the county imposes a tax increase on them, then they
22 are required to file that with us, but they are allowed
23 to pass that increase through. They had no control
24 over that tax increase, it was put upon them, and they
25 are allowed to incorporate that into their expenses. I

1 think certain increases in their electric rates that
2 they have no control over would be allowed to be passed
3 through. It has to come through our agency, but by
4 statute we would just administratively approve that.
5 That may be what you're talking about.

6 WITNESS WARD: No, I was only referring to
7 the water and the sewer that they had, and I think they
8 was granted an interim increase a few months past, and
9 this has gone back for -- the information I received
10 that they were going to upgrade some of the equipment
11 that was being worn out and that's why they were asking
12 -- requesting such a huge increase.

13 COMMISSIONER EASLEY: Was Spring Hill in the
14 last case?

15 CHAIRMAN BEARD: No.

16 COMMISSIONER EASLEY: I didn't think so. So
17 that wasn't it.

18 CHAIRMAN BEARD: I don't know, but maybe we
19 can get somebody from Staff with you to at least get
20 you an answer to your question, one way or the other,
21 because I'm not sure exactly what you're talking about.

22 COMMISSIONER EASLEY: I think there's a
23 confusion in terminology here, and if we could get
24 Staff with you where they could sit down and say, all
25 right, what is it specifically, and you all go back and

1 forth, we might be able to really identify the terms,
2 because we're hearing "interim," and that means one
3 thing to us, and I think when we get into it, it's
4 probably going to turn out it's something else.

5 WITNESS WARD: Yes, ma'am. That will be very
6 helpful. Thank you very much.

7 CHAIRMAN BEARD: We're probably talking PSC
8 talk and you're speaking real language, like English.

9 COMMISSIONER EASLEY: Yeah, that's part of
10 the problem.

11 WITNESS WARD: Well, that's all mine. Thank
12 you very much, Commissioner.

13 CHAIRMAN BEARD: Thank you.

14 MR. SHREVE: Thank you, sir.

15 (Witness Ward excused.)

16

17 MR. SHREVE: Mr. Bartocci.

18 COMMISSIONER EASLEY: Nobody is standing up,
19 Jack, give it another go.

20 MR. SHREVE: Mr. John B-a-r-t-o-c-c-i.

21 COMMISSIONER EASLEY: Bartocci.

22 CHAIRMAN BEARD: Still not standing up. Go
23 ahead to the next name and we'll come back just in case
24 they stepped out for a minute.

25 MR. MOSCA: No, he's here, he's not going to

1 speak.

2 CHAIRMAN BEARD: He's not going to speak?

3 Oh, okay, thank you.

4 MR. MOSCA: I'm going to speak, he's not
5 going to speak.

6 CHAIRMAN BEARD: I understand. I saw which
7 way the thumb was headed.

8 MR. SHREVE: Mr. Jacobellis.

9 TOM JACOBELLIS

10 was called as a witness on behalf of the Citizens of
11 the State of Florida and, having been duly sworn,
12 testified as follows:

13 WITNESS JACOBELLIS: Tom Jacobellis,
14 J-a-c-o-b-e-l-l-i-s. I'm also a resident of Spring
15 Hill, and I'm with the Spring Hill Civic Association.

16 About a year ago I attended Pasco/Hernando
17 Community College and took a wastewater operations
18 course, which was taught by one of the SSU personnel.
19 We toured several plants in the county and they are
20 private plants. Maintenance and upkeep, housekeeping
21 was very, very -- from what I witnessed, was poor on
22 these plants. They were described as even -- there was
23 a county employee also in the class, and we discussed
24 about privatization of county facilities. They were
25 described as "cash cows" money comes out of these

1 profit-wise, and very, very little money goes into
2 them. Personnel can be kept low. They more or less
3 run themselves, and as I witnessed, there was low
4 maintenance and upkeep.

5 Rate of inflation has been very low. A 42%
6 rate hike, I think, is very unfair at this time. You
7 have a very long day, and that's all I have to say at
8 this time.

9 COMMISSIONER EASLEY: I'm sorry, let me
10 clarify something. I thought -- for whom is it a "cash
11 cow?" I understood you to say the county, that's why I
12 need to clear that --

13 WITNESS JACOBELLIS: Well, either the county
14 or the -- wastewater plants were described as "cash
15 cows" whether the county owns them or private
16 facilities.

17 COMMISSIONER EASLEY: Regardless of who or
18 where?

19 WITNESS JACOBELLIS: Who owns it, right.

20 COMMISSIONER EASLEY: Okay. Thank you, I did
21 misunderstand. Thank you. Anything else?

22 WITNESS JACOBELLIS: Thank you.

23 MR. SHREVE: Thank you, sir.

24 (Witness Jacobellis excused.)

25

1 MR. SHREVE: Mr. Tony Mosca.

2 ANTHONY MOSCA, JR.

3 called as a witness on behalf of the Citizens of the
4 State of Florida and, having been duly sworn, testified
5 as follows:

6 WITNESS MOSCA: Mr. Chairman, My name is
7 Anthony Mosca, M-o-s-c-a. For the record, I am junior.
8 My dad is in the audience. He will not be speaking.
9 I'm a user of Southern States Utilities. I am also an
10 elected official in Hernando County, I'm a County
11 Commissioner. I'm also in the Utility business, as a
12 County Commissioner.

13 You have received a letter from Mr. Francis
14 Carello, who is an owner at Greenbrier Lake
15 condominiums in Spring Hill. The Greenbrier Lake
16 Condominiums is comprised of 37 units. 34 of them are
17 owned by senior citizens. This is a moderate cost
18 facility. The individual condos are appraised for tax
19 purposes in the low to high thirty thousands.

20 The individual owners pay a monthly
21 maintenance fee ranging from 69.56 to \$95.95 based on
22 their square footage. The maintenance fee covers
23 water, sewer, electricity, trash pickup, taxes, both
24 state and local, building and grounds maintenance, pool
25 care, insurance, repairs and so on.

1 The 1992 budget totaled \$28,753.12. The
2 service -- the services with the highest cost are
3 maintenance at \$7,890. And water and sewer at \$6,198.
4 When they learned that Southern States Utilities was
5 asking for a rate increase, it was requested that the
6 Spring Hill Utilities office, to project how this would
7 affect them.

8 The condo has four water meters, one
9 irrigation, one pool and two sewer. The Spring Hill
10 Utility Company provided a projection for the 1993
11 water and sewer of \$11,537.50, an increase of \$5,239.
12 This amounts to over 33% of the total proposed 1993
13 budget, of \$33,802 for the condominium owners. Due to
14 this over \$5,000 increase, they must now raise each
15 owner's annual maintenance fee by an average of \$145 --
16 by \$145 for the year. That's being adjusted for square
17 footage. The Executive Board and the 37 unit owners
18 are greatly disturbed by the unwarranted increase in
19 the rates. They were not promised better service or
20 better quality. They only hear they needed to make
21 more profit. They presume that the extra money will
22 not be used to serve them, but applied to shore up and
23 improve other areas of the Southern States operations,
24 not the Spring Hill operation.

25 They feel this planned increase is not fair

1 and they ask that the Commission not approve the
2 increase. Mr. Chairman, that was from Mr. Carello, one
3 of the owners and a representative of the Greenbrier
4 Lake Condominium Association.

5 Mr. Chairman, Honorable Chairman, Honorable
6 Commissioners, I, above everybody, knows what you go
7 through in these hearings, sitting there day after day,
8 week after week, month after month. I assure you I go
9 through the same ones, maybe not as grander as this up
10 here in Tallahassee, but certainly down on the home
11 front where the troops are there on my head and
12 shoulders every day. And I appreciate that and I enjoy
13 it. I enjoy the confrontations that I get into. I
14 enjoy being part the solutions to the problems is what
15 my bottom line really is.

16 The growth of Hernando County has been
17 unreal. In 1972, when I first moved there in Spring
18 Hill, there were 5,000 people. County-wide, there were
19 12,000. Today there's 110,000 in Spring Hill, with
20 53,000 people living in Spring Hill or attached to
21 Spring Hill by some other subdivision, using SSU
22 services.

23 Keep in mind that a home in -- on the water
24 systems and on sewer systems of our community are not
25 just water and sewer. They're water, sewer, and in

1 some cases, irrigation meters, because we're not all
2 sewer customers. I happen to be on a septic tank. But
3 these irrigation meters and water/sewer meters -- I'm
4 not saying they're measuring sewerage, but they're
5 measuring it indirectly through the water -- are
6 counted as two customers. It's not counted as one
7 customer. When I asked them, they count them as two
8 separate accounts, two separate customers. And what
9 bearing that may have may have an influence on your
10 decision.

11 Recently, they approached the county to get
12 easement rights, which for some reason they never did,
13 for their gas lines. We granted them the easement
14 rights, for the potential sale of the gas company. If
15 they're selling the gas company, they're not going to
16 have to read those meters any longer. Whether or not
17 they read them for the new gas owner, while they're
18 reading their water meters, if they do read them for
19 their gas -- for the gas owner, they will probably be
20 compensated for it. If not, there's still going to be
21 a savings because the person doing the job, being paid
22 by the hour, is going to work less, not having to walk
23 from the sidewalk to the side or back of the house to
24 read the gas meter. There's a potential savings there.
25 Is that going to be reflected as a profit for the

1 company -- as a surprise profit, or is that going to be
2 reflected as a rate decrease for utility customers?

3 You know, I heard testimony this morning,
4 call it what you will, a bonus is a bonus by any other
5 name is a bonus. I don't care what kind of charade you
6 want to mask it with, whether it was because he did a
7 good job or you reached a goal that we set for you --
8 for the Company, it's still a bonus. When a Company is
9 not making money -- I own a business, when I'm not
10 making money, I'm not paying bonus money. I can't
11 afford it. When we're all asked to tighten our belts,
12 from the president of the United States, asking us to
13 grin and bear it, tighten your belt, we'll get through
14 this, we must submit that the big corporations must do
15 the same. And asking for these profits, because they
16 have -- and one of the things that was brought to me, I
17 hate to get off this train of thought, but reading it
18 that reminded me, the financial performance rate
19 structure and quality of service, utilities are seeking
20 a fair return for their investment, what they say,
21 cannot currently earn due to substantial plant
22 improvements and increased costs. I do not believe
23 they have documented the increased costs for operation.
24 But I do know that they made some major expansions out
25 there, and I submit that it was projected on future

1 use. And that they missed it because the economy went
2 into a recession, they got stuck with this investment,
3 now they want the user that's using the system now, to
4 pay for that investment they made in the expansion of
5 their wastewater treatment plant there in Spring Hill.

6 Hernando County is in the utility business.
7 Our rates are lower and our service is higher. Just
8 recently we learned, as a matter of fact, the day
9 before election, we got the word that we were chosen by
10 the EPA as No. 1 in the region, which consists of eight
11 states in the southeast corner of these United States.
12 We are No. 1, Hernando County, little old Hernando
13 County, with this little old water and wastewater
14 treatment plants. We are No. 1, something that we are
15 certainly proud of. It comes at a time when most
16 counties are turning to private industry to solve their
17 municipality problems. I'm referring to not only water
18 and sewerage, I'm referring to fleet management, public
19 works management, janitorial services, lawn care
20 services. It seems that -- and by the way our county
21 jail has been privatized. All these private companies
22 can save us money, yet, here we have a private company,
23 that says it's not doing well in these hard times.

24 Users pay for everything. We pay for the
25 profits, we pay for the losses. Truly the question is

1 what is the risk of the investor? The risk is so
2 minimized to attract investors, profits should be set
3 aside to pay the cost of upgrades and capital
4 improvements.

5 I hope that I have been clear in what I've
6 tried to put before you this afternoon. I know your
7 decision is a hard one. I know it's not going to make
8 everybody happy, but I'm here telling you, in my
9 experience, that any profit -- I'm sorry, any increase
10 that's given to anyone in today's economic times, must
11 be scrutinized to the fullest. I would suggest that a
12 moratorium be put on this request for profit -- or
13 request for rate increase, until such a time that the
14 economic structure of our community, our state and our
15 country has turned around.

16 Hernando County enjoys fiscal responsibility
17 of 10% of the counties across the nation. We are the
18 best. We're one of the best. Private companies should
19 be doing the same. They keep telling us they can do it
20 better than government. I challenge them to look at
21 the way we do things.

22 Now, I don't know what's going down, I've
23 heard some rumors here lately and some statements -- or
24 questions that were put to us by our counsel, Public
25 Counsel, that I'd like to share with you, Jack, after I

1 get through testifying --

2 MR. SHREVE: Okay.

3 WITNESS MOSCA: -- that -- I don't want to
4 make it public at this time. I think it's best that
5 you know about it first. But the point that I'm making
6 is simple. I'm just going to ramble on now, economic
7 development of our community is based on the people
8 that we have living there. We will not attract people
9 if our rates keep going up. We can't live during these
10 economic times. We have slowed down, like everybody
11 else. The moving industry has slowed down. The
12 building industry has slowed down. We have not gone up
13 on impact fees, because we recognize what building
14 industries are going doing. We do not want to choke
15 and stunt their growth. We're doing the best we can.
16 Now, it's in your hands.

17 The one thing I did want to leave you with,
18 you know, I sometimes have a bunch of people in front
19 of me, that tell me, you know, "We're voters, and if
20 you don't do the right thing by us, come election day
21 we're going to get you."

22 Well, the shoe is on the other foot now. You
23 all are appointed. And there is a movement, and it's
24 going to start up with this little mouse that roared in
25 Spring Hill, to put the Public Service Commission back

1 in the hands of the electorate. You must do the right
2 thing as appointed officials, to within the confidence
3 of not only the elected officials in the counties
4 throughout the state, but the constituents that we
5 serve. It appears -- it's the appearance, and trust me
6 when I say I know what appearances can do to you --
7 that you're bought and paid for. That you're
8 protecting the position that you were appointed to. I
9 know that's not true because I live it every day, but
10 that appearance is there. And once, for once, let the
11 people win. Let us have a win on our side. Say "no,"
12 absolutely "no" to any increase at this point in time.
13 Ladies and gentlemen, thank you for your time.

14 (Applause.)

15 COMMISSIONER EASLEY: Thank you. Hold on.

16 COMMISSIONER CLARK: It is Mr. Mosca?

17 WITNESS MOSCA: Yes.

18 COMMISSIONER CLARK: You testified at the
19 hearing down in Hernando County?

20 WITNESS MOSCA: Yes, ma'am.

21 COMMISSIONER CLARK: And you had information
22 relative to the economy down there, and one of the
23 things you were talking about -- and I'm interested in
24 your experience because we do have to sort of take into
25 account what the economy and what the financial markets

1 and things like that are going to look like when -- for
2 the period we're reflecting a rate increase for. And
3 you had said -- you had given some testimony -- you're
4 in moving and storage, are you not?

5 WITNESS MOSCA: Yes, ma'am.

6 COMMISSIONER CLARK: And you had said that
7 hiring of your moving -- people who hire you to move
8 them is way down, but then --

9 WITNESS MOSCA: What I believe I told you at
10 that time is I'm in the moving and storage business. I
11 am also a U-haul dealer. And one of the --

12 COMMISSIONER CLARK: And the U hauls were
13 going out of state, if I recall.

14 WITNESS MOSCA: Right. What I was trying to
15 relate to is, I do \$130,000 a year as a U-haul dealer,
16 and that's a lot for an independent dealer. And that's
17 business is booming. Okay, and you say, well, gee, if
18 business is booming, what are you crying about? I
19 says, well, you don't know the analysis of my
20 statistics. I make money on -- that big money when
21 trucks go out of town. They're leaving me, they're
22 going one way north. And that's 80 percent of my
23 business, of that \$130,000 -- that's gross by the way,
24 that's not my net -- it goes to U-haul for trucks going
25 back north. 80% of that money.

1 COMMISSIONER CLARK: And that --

2 WITNESS MOSCA: And that is people leaving
3 our community because they can't make it. Now these
4 people, I might add --

5 COMMISSIONER CLARK: I wanted to ask you,
6 what is the trend now?

7 WITNESS MOSCA: The trend is about the same.

8 COMMISSIONER CLARK: Okay.

9 WITNESS MOSCA: The trend is about the same.
10 Usually I'm moving these people out of town, but
11 they're doing it themselves now, because it's more
12 economical for them to do it.

13 COMMISSIONER CLARK: That's still continuing?

14 WITNESS MOSCA: Yes, ma'am.

15 COMMISSIONER CLARK: When did that start?

16 WITNESS MOSCA: It started about four years
17 ago. The increase in my U-Haul business, outgoing,
18 started about four years ago. And it hasn't -- my
19 opinion, has not peaked out yet. I could have done
20 more the 130,000 last year if I had the equipment. We
21 couldn't keep up the demand.

22 COMMISSIONER CLARK: Thank you.

23 COMMISSIONER EASLEY: Commissioner, I can't
24 help but ask you this question, I was very interested
25 in your position as a utility operator from the county

1 standpoint, I mean, and the fact that you all have been
2 recognized, and I think that's remarkable. But I
3 assume you are aware that your county could opt to
4 regulate all the systems within the county and get them
5 out from under us, aren't you?

6 WITNESS MOSCA: I am not aware of that. I
7 have always been taught that the Public Service
8 Commission in the state prevails. If you're telling me
9 I can take Southern States out from under Public
10 Service Commission and bring it to the county, where do
11 I put the application in?

12 COMMISSIONER EASLEY: It's in the law,
13 Mr. Mosca.

14 CHAIRMAN BEARD: Staff, I want you to get
15 with the county commissioner as soon as he finishes
16 here on the stand and give him the details.

17 COMMISSIONER EASLEY: I'll loan you my pen.

18 COMMISSIONER CLARK: Well, before you get too
19 excited about that, there is -- for systems which cross
20 county lines, you cannot acquire jurisdiction, so you
21 may be able to acquire it or you may not, depending on
22 the circumstances.

23 CHAIRMAN BEARD: In this this event -- I
24 don't know who else is in that county besides Spring
25 Hill, but I think the option is available to you, as I

1 understand the law, but we'll help you research that
2 law.

3 One last thing, to the extent that Mr.
4 Shreve can't dispel any rumors you're hearing, I
5 understand the appearance and appearances, and to the
6 extent that Mr. Shreve can't dispel any rumors that you
7 heard, if you'll let me know, I'll help you either
8 confirm or dispel them, because while I appreciate
9 appearance, I deal with fact, that's all I can do, and
10 I'll help you in anyway that I can.

11 WITNESS MOSCA: Yes, sir, and I can't
12 emphasize how much I understand that. And when I base
13 my decisions on fact, sometimes I don't make all my
14 constituents happy, but at least you are cushioned by
15 200 miles, between you and Spring Hill and I've got --
16 I'm as close as their local coffee shop.

17 Fortunately, for me, the constituents that I
18 serve, obviously believe in me, they help me do the
19 job, and when I come back to them and say, "Look,
20 folks, this is the best we can do," they thank me, that
21 we've done as best we can.

22 CHAIRMAN BEARD: Well, the two most thankless
23 jobs I'm aware of are city council and county
24 commission, where you're a local phone call away. So I
25 truly appreciate your position. You've got the

1 toughest of all jobs.

2 WITNESS MOSCA: We have a bunch of fine folks
3 down there, and like Mr. Carello, he wasn't unable to
4 attend today, and I know that he forwarded this
5 information off to you. But a \$5,000 a year increase,
6 say what you will, I say it's absurd. If they're
7 making expansions, if they're doing improvements to
8 their system, you know, that comes out of profits. But
9 if they took a gamble and they expanded the system, and
10 the growth isn't there to use it, then that's the risk
11 that they took. Don't ask us to pay for that loss.
12 You know, government has tightened its belt all the
13 time and we haven't reduced any services to our people.
14 And what little bit we get on tax assessments, the
15 increases, is barely to cover the cost of living that
16 we're giving our people. It's tough to convince the
17 folks that you're being frugal. It's even tougher for
18 a private company to do it, because they're in the
19 business to make a profit, and I don't condemn them for
20 that. But let's do it realistically, and, you know, if
21 Southern States Utilities had been more community-
22 oriented, as Deltona once was, when these problems came
23 up and the rates were being asked for, they wouldn't
24 have 20,000 people angry at them. This came out the
25 blue, there was no word that this was coming down the

1 pike.

2 CHAIRMAN BEARD: Good deal. Thank you.

3 MR. SHREVE: Thank you, Mr. Mosca. And I'll
4 get with you.

5 (Applause.)

6 (Witness Mosca excused.)

7

8 MR. SHREVE: Mr. Maurice Lubee.

9 MAURICE LUBEE

10 was called as a witness on behalf of the Citizens of
11 the State of Florida and, having been duly sworn,
12 testified as follows:

13 MR. SHREVE: Is that Lubee or Lubec?

14 WITNESS LUBEE: Maurice Lubee, L-u-b-e-e,
15 Spring Hill, Florida. I'm a member of the Spring Hill
16 Civic Association. And I'm also an irrigation
17 contractor, so I thought I could contribute, perhaps, a
18 little by looking at this from the ground up.

19 We work quite closely with the utility. We,
20 on occasion, have them put in one-inch meters. And one
21 of the reasons that a one inch meter is put in is
22 because with a one-inch meter you accomplish two
23 things, one, you can put a given amount of water on the
24 lawn quicker, so the sprinkler system runs for a
25 shorter period of time, enabling you to run it during

1 the night time hours rather than getting into the
2 daytime when we have a higher evaporation rate. You
3 also have less problems with wind, you have a simpler
4 system, less likely to break and waste water. You also
5 need to look at the fact that any given lawn is going
6 to take X amount of gallons of water to accomplish a
7 half inch of watering. If it goes through a three-
8 quarter inch meter it may take six hours, if it goes
9 through a one-inch meter it takes four hours, but you
10 still use 1,200 gallons of water. So to have two
11 different rates being paid by people living
12 side-by-side, one with a one-inch meter and one with a
13 three-quarter meter, I would say, is highly
14 discriminatory.

15 Also in working with the Utility, it's been
16 my experience -- in fact, it's really an open joke
17 around our community, that if a pipe breaks on the
18 homeowner's side of the meter, he'll call a plumber;
19 one man comes out and fixes it. He'll call a sprinkler
20 contractor. I send a serviceman out and fixes it for a
21 \$28 service charge.

22 On the other hand, if a equal size pipe on
23 the Utility side of the meter breaks where it's running
24 into the water meter and you call our Spring Hill
25 Utility, generally three trucks and six people will

1 show up. (Laughter)

2 They'll huddle, they'll discuss, they'll
3 talk. Finally, one guy'll dig and in a hour or two
4 they'll have the pipe fixed, and they'll be on their
5 way.

6 And I think what is going on here is a kind
7 of escalation of expenses, if you will. There's almost
8 an invitation to waste, because we don't have the free
9 enterprise system at work here. We have a situation
10 where -- well, me being a sprinkler contractor, the way
11 I look at it is that they have a guaranteed profit.
12 The more they waste, the more they can ask for an
13 increase. The higher they build their operating
14 expenses, the better case they can build when they come
15 in here and ask you for an increase, which is exactly
16 what we have got going on here.

17 You're speaking about the impact on the
18 shareholders, and we beg you to please look at the
19 impact on the customer, because it's the customer
20 that's really bearing the true impact here: the impact
21 of inefficiency, the impact of a noncompetitive
22 situation, the impact of a monopoly, and the impact of
23 waste without any fear of real discovery or retribution
24 of any kind of justice.

25 It would be my fond wish that any utility

1 governed by your Public Service Commission that would like
2 a rate increase would first subject themselves to an
3 independent performance audit. And I'm quite sure that
4 from my experience in watching our particular utility in
5 operation, that they'd have a problem with that.

6 Also, you mentioned parity of rates. And
7 just as an example, in Spring Hill, in order to drill a
8 good well, you're going to go down about a 100 foot, on
9 the average. Some go 80, some go 120, some might even
10 go 150. Our county to the north, Citrus County, there
11 you have to drill 250, 350, sometimes even 500 foot for
12 a well. So if we're going to have parity of rates with
13 neighboring counties or other counties, other utilities,
14 because these people happen to own them, we're in a very
15 poor situation there. We're in a situation where we're
16 subsidizing the additional expense it costs to operate
17 utilities in areas that don't have as well-defined and
18 easily assessable aquifer as we do in Spring Hill.

19 The thing that I see going on here overall is a
20 waste situation. This Utility, and I'm telling you from
21 experience, I work with them, they are inefficient. They
22 need to look inward to save operating expenses, to save
23 the money that they are spending that comes in.

24 I'm in the business of selling the same thing
25 they are. They sell pipes, they sell wells. Instead of

1 selling sprinkler heads, they sell water meters.
2 Basically, we're in the same business. But if I have to
3 raise my price because I'm inefficient and I waste, and my
4 employees are not made to be efficient and work properly,
5 then I have to raise the price of my sprinkler system. If
6 I raise it beyond what the market will bear, I'm going to
7 go out of business. This is not true of the Utility. The
8 Utility comes to you and shows you their waste, shows you
9 their inefficiency, and uses that to get an increase
10 saying they want a guaranteed profit of 12%. My goodness,
11 I wish I had that kind of a set up. I'd just love it. I
12 think anybody would.

13 I think we touched on privatizing when
14 Commissioner Mosca made his remarks, and I'm pointing in
15 the same direction. That this may be a private company,
16 but they are on the public dole. They are drinking from
17 the public trough, if you will, and waste and indiscretion
18 are rewarded rather than punished, as they are in a open
19 market, competitive market situation.

20 I hope you will look at this very carefully
21 before you grant them any rate increase at all.

22 Thank you very much. (Applause)

23 COMMISSIONER CLARK: Mr. -- excuse me.

24 Mr. Lube.

25 MR. SHREVE: Thank you, sir.

1 CHAIRMAN BEARD: Mr. Mr. Lubee, one second.

2 COMMISSIONER CLARK: I have a question.

3 CHAIRMAN BEARD: He was anxious to get back
4 to his camera duties.

5 WITNESS LUBEE: I'm sorry. (Laughter)

6 COMMISSIONER CLARK: You mentioned your
7 concern about sharing costs in areas where you have a
8 relatively low cost and being asked to subsidize in a
9 high-cost area.

10 Do you have any opinion about -- for this
11 particular rate case, a county Commissioner, I believe,
12 from Citrus County, said if you're going to do that, do it
13 only on a countywide basis. Would you comment on that?

14 WITNESS LUBEE: Well, yes.

15 You have unique circumstances in each county as
16 far as your commissions. We're urbanized, so obviously,
17 if our Spring Hill Utility, in a urban area, with an
18 easily accessible, clean, pure aquifer with a well-defined
19 rock layer. We know it's down around 100 foot; we can
20 drill our wells efficiently and economically. We could
21 provide good clean water to an urbanized area, where your
22 housing is fairly close together, and we manage to do this
23 very efficiently and effectively on a county level. Why
24 can't we do it even better in the Spring Hill area, which
25 is more urbanized?

1 What I'm making the comparison there is that
2 our County has a utility whose rates are just a little
3 bit above that of Spring Hill Utility. But they're
4 serving areas that are very widely disbursed. And if I
5 were in the utility business, without being an expert
6 on utilities, I would say that it would be more
7 difficult to run a utility in a rural-type setting than
8 it would be in a urbanized area. Similar to if you
9 were running a trash collection business, you have more
10 distance between the houses, you're going to have more
11 labor costs or more piping, et cetera, et cetera.

12 So it should be more efficient to run the
13 utility in a urbanized area than it would be in a rural
14 area. And to take our urbanized area and say that we
15 should have parity with some other area that has a
16 poorly defined aquifer, it's a long, long way down to
17 the water, you're drilling 500-foot wells; you're
18 putting in a lot more piping per customer, a lot more
19 labor costs, there shouldn't be a parity there.

20 COMMISSIONER CLARK: Well, let me ask you
21 about Hernando County. You indicate they serve
22 different areas which urban costs less, and in the less
23 populated it costs more. Do you disagree with Hernando
24 County sort of averaging those costs and everybody pay
25 the same rate within the county?

1 WITNESS LUBEE: Well, I don't think that it
2 would really be a germane thing. I know you're a
3 Commissioner and you're asking me that question. I
4 don't think -- for instance, in the classroom, are we
5 going to take everybody's grade and average them? I
6 may get an "A," you may get a "C." We'll average them,
7 we'll get a "B." You may be happy with that, I won't
8 be happy with that.

9 COMMISSIONER CLARK: You would advocate that
10 even Hernando County charge different rates depending on
11 what it costs to serve each individual customer then?

12 WITNESS LUBEE: Yes. I think that you should
13 have to justify your rates, and I think that you should
14 also be required to run the Utility in a efficient
15 manner. And when I see waste before my eyes, and they
16 are using that waste to justify a request for a rate
17 increase, I think that's improper, and I don't think
18 the rate increase should be granted.

19 I think they should be told to go back to the
20 drawing board and get rid of your waste. Check within
21 your operation and come up with a better, more effective
22 way of operating so that you cut your operating costs
23 rather than going to the customer and saying, "We've made
24 this mistake, this mistake and this mistake. And we have
25 too many employees, and they're not really working very

1 hard. We're sending six people out to take a leak one
2 person could fix and repair it, and we want you to pay for
3 the difference." That's what's being done here and I
4 don't think it's right.

5 COMMISSIONER CLARK: Thank you.

6 WITNESS LUBEE: Thank you.

7 CHAIRMAN BEARD: Mr. Shreve, do you have one
8 more?

9 MR. SHREVE: One more.

10 CHAIRMAN BEARD: Okay.

11 MR. SHREVE: Thank you, sir.

12 COMMISSIONER EASLEY: One more witness.

13 (Laughter)

14 CHAIRMAN BEARD: You're back on camera duty,
15 Mr. Lube. (Applause)

16 WITNESS LUBEE: Thank you, sir.

17 CHAIRMAN BEARD: Thank you. (Applause)

18 I have to be careful how I ask questions,
19 don't I?

20 COMMISSIONER EASLEY: Yep.

21 (Witness Lube excused.)

22 - - - - -

23

24

25

1 MR. SHREVE: Martha Bottomley.

2 MARTHA BOTTOMLEY

3 was called as a witness on behalf of Citizens of the
4 State of Florida, and having been duly sworn, testified
5 as follows:

6 WITNESS BOTTOMLEY: Thank you for allowing me
7 to speak. I'm a little bit jittery. It's a little
8 hard to follow Mr. Mosca and Mr. Lube, and we have
9 partially touched upon some of the things I would like
10 to say. Also, I have earlier talked with Bev, and she
11 felt that I should try and make one point, and I would
12 mail my other points to you so as to cut time.

13 And I had, prior to their comments, decided
14 to talk in relation to this irrigation situation
15 because it also touches upon the rates issue in my
16 opinion. And I feel we are perturbed about it.

17 Since August, since this rate issue came
18 about, I have attempted to contact this Utility and get
19 some information. In specifics, how many irrigation
20 meters do we have in Spring Hill?

21 The reason I wanted to do that is that I was
22 particularly concerned about this Company hiding its
23 duplication of certain operating costs on their books in
24 that their rate case is strictly based on connected meters
25 called quote/unquote "ERCs" in your literature, which

1 means Equivalent Residential Connection, and this, in my
2 view, misleads both the public, our residents, as well as
3 you; also the newspapers in their articles.

4 In certain areas of Spring Hill, each
5 customer is treated, as Mr. Mosca said, as two
6 customers instead of just one customer for purpose of
7 billings and for all utility mailings. This is done
8 under the guise of quote "saving the -- these
9 particular customers money."

10 To illustrate, each of these same customers
11 will be paying, under the proposed rate increase, the
12 extraordinarily high base facility charge, twice for
13 water, plus once for sewer. And by adding this up, I
14 have calculated, based on 1991 as the test year, but we
15 have really a problem here in using it as a test year.
16 And I don't know what you use, but if I use the end of
17 the year figures as a base, then it would be a \$13.30
18 increase, which is equivalent to 108.67%. If I'm using
19 the beginning of 1991 as a base, I'm coming up with
20 112.48% as a base rate for each of these customers per
21 month. And it would be \$13.52.

22 And this is before any single gallon of water
23 has been used by these customers. Now that is
24 outrageous to increase this much. I could elaborate on
25 this. It's really upsetting me because I see people in

1 my neighborhood who are terribly hurt by these
2 tremendous base charges.

3 COMMISSIONER EASLEY: Could I ask you to
4 clarify something before you go any further just so I
5 understand.

6 WITNESS BOTTOMLEY: Okay.

7 COMMISSIONER EASLEY: Tell me again which
8 customers are getting two base facility charges for
9 water plus one for sewer?

10 WITNESS BOTTOMLEY: These are the Spring Hill
11 customers in our low housing areas or smaller home
12 areas, which have sewer plus irrigation meter.

13 COMMISSIONER EASLEY: So there is two for
14 water, one for irrigation and one for the household.

15 WITNESS BOTTOMLEY: That's correct.

16 And the reason this is happening, is in the
17 early '80s when I came to Spring Hill, one of the
18 earlier rate cases, it started with base rate plus
19 charging for extra gallons, which prior to this I
20 understood was -- you had a lump sum. You didn't have
21 to pay for extra gallons. And the people in these
22 areas said, "We would like to water our lawn like the
23 rest of Spring Hill is allowed to do. We would like to
24 have a green lawn. We would like to have some flowers
25 here. But we have to pay such outrageously high per

1 gallon charges for the water we use to water our lawn
2 that we can't afford to have a nice looking home and
3 yard.

4 And at that point it was Deltona Utilities,
5 somehow or another came up with a solution for us type
6 of customers, and said, "We can sell you and install
7 for you an irrigation meter, and if you use that water
8 for watering your lawn, we will not charge sewer on
9 that water, therefore, we're trying to save you the
10 sewer charge." This is saving money to us. Okay.

11 Now, in the meantime, things have progressed.
12 Initially, we were getting 2,000 gallons free of charge
13 with that meter per month for watering our lawn and
14 only paying -- now that was stopped and it keeps going
15 up and up and now we're skyrocketing these percentages.
16 At any rate, this is part of it.

17 Okay. Now, furthermore, it really upsets me,
18 again I have tried since August to find out how many of
19 our sewer customers are having this situation.

20 In other words, I called the Utility locally,
21 I went and talked to them personally. I called the
22 Utilities in their central offices. And various of
23 these officials have told me they currently keep
24 absolutely no records whatsoever, and it would be
25 nearly impossible for them to identify which customers

1 in Spring Hill are affected by this situation.

2 And that, to me, is outrageous. To get two
3 billings -- my neighbors are so upset. Every month
4 these two bills come in or two letters notifying them
5 about this rate increase or whatever is being mailed,
6 we get it twice, and it upsets our entire citizens to
7 the point where they are angry inside. This is their
8 direct connection with the Utility. This is how they
9 see it being wasted.

10 Now, what the Utility tells me, repeatedly,
11 different officials, that it is cheaper for them to
12 duplicate mailing, to duplicate all the billing because
13 their computer cannot process two water bills on the
14 same billing.

15 And only yesterday was I told -- no, yesterday I
16 talked to them in addition, because in the meantime, they
17 sold the gas portion, which was previously on our base
18 bill along with the water bill. And I said, "Now you're
19 freeing up computer space. The computer was previously
20 able to read that gas meter, multiply it out and bill it
21 on the same bill. Why can't you use that open space for
22 the extra water meter?"

23 "This is impossible. Our system does not
24 allow it. Maybe two or three years from now we might
25 be able to come to a one billing per customer instead

1 of two." And this is the answer I got and it just
2 plain upsets me.

3 Again, one other thing that upset me very
4 much, back in August when I started pursuing this
5 subject before officials, two officials told me on the
6 phone that I never heard of the situation existing in
7 the SSU system. Finally, several days later, they
8 called me back. They wanted me to be -- the big
9 example, they are using me as a test case. They had me
10 on a speakerphone, and I don't know how many officials
11 were on the other side listening to me. And they would
12 come back and follow up on it and try and find a
13 solution to this.

14 In other words, I didn't have to come to you
15 people to testify on this subject. They will come to a
16 solution. Well, I haven't been contacted. So the last
17 two days I really tried hard to find out why haven't I
18 been contacted? Why has no solution been brought up?
19 And they told me -- the particular official that told
20 me that resigned in the meantime and the rest of them
21 thought he had taken care of it, therefore, they didn't
22 do anything about it.

23 CHAIRMAN BEARD: Let me ask a question. Who
24 is the witness for the Company that is going to be able
25 to talk about billing and records?

1 MR. HOFFMAN: Helena Loucks.

2 CHAIRMAN BEARD: Excuse me a minute, please,
3 ma'am. Who?

4 MR. HOFFMAN: Helena Loucks.

5 CHAIRMAN BEARD: Okay.

6 COMMISSIONER EASLEY: Go ahead.

7 CHAIRMAN BEARD: I'm sorry, go ahead.

8 WITNESS BOTTOMLEY: This is more or less I'm
9 just saying that this here is a tiny situation. It
10 affects only a portion of our Spring Hill residents.
11 And I feel it --

12 CHAIRMAN BEARD: Excuse me. Please hold it
13 down so we can hear. Thank you.

14 WITNESS BOTTOMLEY: Thank you. It is a
15 minority of our residents; and because it is a
16 minority, I feel we have just not been heard or thought
17 about or nothing in the rate case.

18 Yesterday, SSU officials told me, "If we
19 wanted to pay attention to these irrigation meters, we
20 would need to start filing a whole new rate case and
21 this costs us too much and it is not warranted. And
22 there is no reason in the world why we should be
23 considering this situation." And I really felt upset.

24 CHAIRMAN BEARD: Well, we will get you some
25 answers.

1 WITNESS BOTTOMLEY: I thank you.

2 COMMISSIONER EASLEY: Mr. Shreve?

3 MR. SHREVE: Yes, ma'am.

4 COMMISSIONER EASLEY: There has been a
5 late-filed exhibit identified that is going to be the
6 Company's responses to the customer complaints and
7 questions that have been raised, not only at the ten
8 service hearings but additionally today.

9 It seems to me we discussed this with Mr.
10 McLean either at the prehearing or one of the service
11 hearings. Was it your intention to help us get that
12 information to the customers?

13 MR. SHREVE: We always want to help in any
14 way we can, Commissioner.

15 COMMISSIONER EASLEY: Well, you know what I
16 mean, Mr. Shreve, come on.

17 MR. SHREVE: No. We will be glad to do
18 whatever we can. We can work with the residents of
19 Spring Hill and other customers. The problem we have
20 as far as customers, the ones that were at the meetings
21 we can get the information to. The Company has all the
22 names. We don't necessarily have the mailing list, but
23 we'll work with them.

24 COMMISSIONER EASLEY: Maybe what I'm doing is
25 asking, like this Civic Association and perhaps the

1 others to make known to your office who should be their
2 contact person to receive and distribute this
3 information when it does become available, because it
4 is going to be kind of tough. It will probably be even
5 worse for us to try to do it than it would be for your
6 office to try.

7 MR. SHREVE: We will be glad to work with you
8 on that and give it a try. We have contacted a lot of
9 them, particularly this one.

10 COMMISSIONER EASLEY: Right, right. Okay.
11 Thank you.

12 WITNESS BOTTOMLEY: Again, thank you for
13 hearing me and I will write you on my other matters.

14 COMMISSIONER EASLEY: Thank you.

15 (Witness Bottomley excused.)

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17 MR. SHREVE: That's the last witness we have.
18 Commissioner Mosca has asked to make one more
19 point.

20 CHAIRMAN BEARD: Very briefly.

21 WITNESS MOSCA: Mr. Chairman, once again for
22 the record, my name is Anthony Mosca.

23 CHAIRMAN BEARD: Excuse me. Please hold the
24 conversation down. If you need to have a talk, there's
25 a hallway out there. We've got to be able to hear.

1 Thank you.

2 WITNESS MOSCA: Mr. Chairman, once again for
3 the record, my name is Anthony Mosca, Jr., County
4 Commissioner for Hernando County, Florida.

5 I did want to make mention that I had two
6 fellow Commissioners that were willing to come up today
7 to testify, those were Commissioners John Richardson
8 and June Ester, that could not attend because they're
9 attending another water meeting with the Withlacoochee
10 Regional Water Supply Authority, which is opening up
11 their Central Citrus Water Well Field. That's a tongue
12 twister.

13 Meanwhile, I'm here as a County Commissioner.

14 The one point that I forgot to make and I
15 thought was important as to what is going on today,
16 these public hearings. Some referred to it as a
17 "dog-and-pony show, take the show on the road, the
18 circus on the road, the circus of the stars."

19 (Laughter)

20 WITNESS MOSCA: I submit to you that this
21 show that you are putting on which is worthwhile is
22 going to cost someone something. And that someone are
23 the people of this state, the users of the Utility.
24 And that figure can be anywhere from 1.5 to \$2 million
25 by the time it's all said and done.

1 To work on this expeditiously would be
2 prudent. It will save us all money in the long run.
3 From the state officials on down, we're all taxpayers,
4 and some way or another, mostly the user of the
5 utilities, is going to pay this bill.

6 I ask you to expedite and get an answer to
7 these folks and save us additional money.

8 Thank you very much.

9 CHAIRMAN BEARD: Thank you. Okay. Again?

10 MR. SHREVE: Mr. Daniel would like to make
11 one more comment.

12 CHAIRMAN BEARD: Mr. Daniel, very briefly,
13 and then we've got to move on, because we've got some
14 witnesses we have to get to. I'm not trying to cut
15 people off, but --

16 WITNESS DANIEL: When I was up before, I was
17 talking; I didn't have the information on the one-inch
18 meter and your able Staff gave me that information.
19 But I quoted some percentages based on the information
20 I had, which was on the three-quarter-inch meter, and
21 the percentages are even more drastic on a one-inch
22 meter. I would just like to mention those.

23 On the interim rate, it's going up 209%, and
24 on the final proposed, 227%. And I don't have a
25 calculator, but I did that pencil like. So I just

1 appreciate your taking that into consideration, and
2 thank you very much.

3 CHAIRMAN BEARD: Thank you, sir. Okay.

4 MR. HAAG: Mr. Chairman, I would like to
5 announce for the record that Mike Twomey with the
6 Attorney General's office will serve as co-counsel for
7 Citrus County.

8 CHAIRMAN BEARD: Okay. We are going to take
9 about ten minutes while you get your witness on the
10 stand and we'll be back in here at ten minutes until
11 2:00.

12 (Brief recess.)

13 (Transcript follows in sequence in Volume III.)

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