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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO.

Application for a rate increase and : 950495-WS

increase in service availability charges:

by SOUTHERN STATES UTILITIES, INC. for :

Orange-Osceola Utilities, Inc. in :

Osceola County, and in Bradford, Brevard:

Charlotte, Citrus, Clay, Collier, Duval, :

Highlands, Lake, Lee, Marion, Martin, :

Nassau, Orange, Osceola, Pasco, Putnam, :

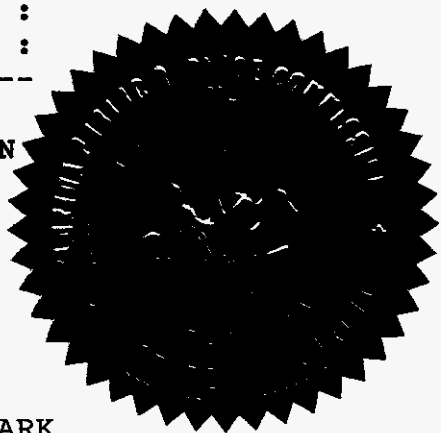
Seminole, St. Johns, St. Lucie, Volusia :

and Washington Counties. :

NINTH DAY - MORNING SESSION

VOLUME 34

Pages 3834 through 3995



PROCEEDINGS: HEARING

BEFORE: CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

DATE: Thursday, May 9, 1996

TIME: Commenced at 9:00 a.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
(904) 413-6732
ROWENA NASH HACKNEY
Official Commission Reporter
(904) 413-6736

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER-DATE

05278 MAY -96

FPSC-RECORDS-REPORTING

WITNESSES

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EXHIBITS

2	NUMBER	ID.	ADMTD.
3	201 (Yingling) JY-1	3929	3929
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P R O C E E D I N G S

(Hearing reconvened at 9:04 a.m.)

(Transcript follows in sequence from
Volume 33.)

CHAIRMAN CLARK: Call the hearing to order.
I have in front of me a new list of witnesses and the
order we will be taking them in. Let me ask Staff,
have we had an opportunity to copy this for the
parties, or do I have the only list?

MS. O'SULLIVAN: I've given them copies.

CHAIRMAN CLARK: Then as I understand it, we
will begin today with Mr. Williams and then Mr. York
and Ms. Kowalski. And as you can see the list, that
will indicate the order we will take the witnesses in
today.

Are there any other preliminary matters I
need to take up this morning?

MS. O'SULLIVAN: None that Staff knows
about.

MR. ARMSTRONG: Just one, Madam Chair, and I
apologize this is late. I've spoken to Mr. Sandbulte,
and he can get a flight out this afternoon which would
get him in about midnight tonight to Minnesota. And
he was hoping that maybe he could switch with Kowalsky
and be taken out of order to make sure he can make

1 that flight. When I told him there was a video
2 conference at 12:30, he started to get concerned.

3 CHAIRMAN CLARK: When is his flight out of
4 here?

5 MR. ARMSTRONG: This afternoon. It's later
6 this afternoon, so I think he said he'd have to leave
7 here around 3:30.

8 MR. McLEAN: No objection.

9 MS. O'SULLIVAN: Will he be taken up then
10 after Mr. York?

11 MR. ARMSTRONG: After Mr. York.

12 MS. O'SULLIVAN: I have to let our Staff
13 attorney know about that, and it shouldn't be a
14 problem.

15 CHAIRMAN CLARK: And I have an indication
16 there is about three-quarters of an hour questioning
17 for him.

18 MR. ARMSTRONG: Right.

19 CHAIRMAN CLARK: Okay. Mr. Williams, you
20 have been sworn, have you not?

21 WITNESS WILLIAMS: Yes.

22 CHAIRMAN CLARK: Staff.

23 MS. CAPELESS: Thank you.

24 - - - - -

25

JOHN D. WILLIAMS

1
2 was called as a witness on behalf of the Staff of
3 the Florida Public Service Commission and, having
4 been duly sworn, testified as follows:

DIRECT EXAMINATION

5
6 BY MS. CAPELESS:

7 Q Mr. Williams, will you please state your
8 name and business address for the record?

9 A My name is John D. Williams. My address is
10 2540 Shumard Oak Boulevard, Tallahassee, Florida
11 32399-0873.

12 Q Are you the same John Williams who prefiled
13 direct testimony in this docket consisting of 12
14 pages?

15 A Yes.

16 Q Do you have any changes or corrections to
17 make to your testimony?

18 A No.

19 Q If I were to ask you the same questions as
20 are posed in your testimony, would your answers be the
21 same today?

22 A Yes.

23 MS. CAPELESS: Madam Chairman, may we please
24 have Mr. Williams' testimony inserted into the record
25 as though read.

1 CHAIRMAN CLARK: The prefilled direct
2 testimony of John Williams will be inserted in the
3 record as though read.
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DIRECT TESTIMONY OF JOHN WILLIAMS

1 |
2 | Q. Would you please state your name and business address?

3 | A. My name is John Williams, and my business address is 2540 Shumard Oak
4 | Boulevard, Tallahassee, FL 32399-0873.

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

6 | A. I am employed by the Florida Public Service Commission (FPSC) as Chief
7 | of the Bureau of Policy Development and Industry Structure.

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

9 | A. For approximately 21 years.

10 | Q. Would you state your educational background and give a summary of your
11 | experience?

12 | A. I received a Bachelor of Science degree from the University of Florida
13 | with a major in Business Administration. During the course of my employment
14 | with the Florida Public Service Commission, I have spent approximately 15
15 | years as a rate analyst, rate supervisor and bureau chief of rates. I have
16 | testified in many cases and have participated in making recommendations
17 | regarding rate structure, rate design and service availability policies and
18 | charges in hundreds of cases over the course of my employment. For the last
19 | seven years, I have been the Bureau Chief of the Policy Development and
20 | Industry Structure Bureau. I have attended many training courses and seminars
21 | on utility regulation and ratemaking sponsored by the NARUC and the American
22 | Waterworks Association. I am chairman of the staff subcommittee of the NARUC
23 | Water Committee, and for the last nine years have been on the faculty of the
24 | Eastern Rate Seminar sponsored by the NARUC Water Committee. I am also a
25 | member of the American Waterworks Association's Rates and Charges Committee

1 | which is responsible for writing the AWWA's rate manuals.

2 | I am currently responsible for the FPSC's Water Legislative program and
3 | am the FPSC's liaison with the Florida Water Management Districts and the
4 | Department of Environmental Protection.

5 | Q. Have you ever testified as an expert witness?

6 | A. Yes, I have testified as an expert witness before the Commission in a
7 | number of cases involving rate structure and design and service availability
8 | policies. I testified in Docket No. 800161 (Investigation of CIAC), Docket
9 | No. 800634 (Dyna-Flo Rate Case), Docket No. 810433 (Seagull Utility Rate
10 | Case), Docket No. 810485 (Palm Coast Utility Company Rate Case), Docket No.
11 | 870743 (Marco Island Utilities New Class of Service), and the previous
12 | Southern States rate case (Docket No. 920199), and the SSU Rate Structure
13 | Investigation (Docket No. 930880). I have also been qualified as an expert
14 | witness in the area of rates and service availability in several proceedings
15 | before hearing officers of the Division of Administrative Hearings.

16 | Q. What is the purpose of your testimony in this proceeding?

17 | A. The purpose of my testimony is to provide an overview of the
18 | Commission's rules and policies on service availability charges and
19 | conditions, as well as SSU's current service availability charges and
20 | conditions, and to discuss how service availability charges relate to the
21 | structure of the monthly service rates. I will also discuss which service
22 | availability goals are consistent with various monthly rate structure options
23 | that Mr. Shafer outlined in his pre-filed testimony.

24 | Q. Please give a brief overview of service availability and the
25 | Commission's policy regarding the collection of CIAC.

1 | A. In the 1950's as Florida developed, growth spilled into un-urbanized
2 | areas leading to the growth of privately owned utilities. These developer
3 | related utilities either included the cost of these facilities in their land
4 | sales or charged some form of connection fee or property contribution to allow
5 | customers to connect to the system. While the Commission had traditionally
6 | reduced rate base based upon each utility's level of CIAC, it became apparent,
7 | in the early 1970's that how such charges were structured and the resulting
8 | level of CIAC were at the discretion of the utility. The Commission began
9 | an investigation into the appropriate levels of CIAC for a water/wastewater
10 | utility in 1980. I was the leader of a group of staff that worked on the
11 | investigation and the rules that were developed as a part of the
12 | investigation. The service availability rules, Part VI of Chapter 25-30,
13 | F.A.C., were adopted in 1983. The rules set guidelines in developing service
14 | availability charges for the first time in this industry in Florida.

15 | Q. What were these guidelines and what was the regulatory basis for their
16 | implementation?

17 | A. The rule established guidelines regarding minimum and maximum CIAC
18 | levels to be determined when the utility's plant and facilities are operating
19 | at design capacity. The Maximum CIAC level is 75% of total plant based upon
20 | original cost. The minimum level is the percentage of either the water
21 | distribution or wastewater collection system to total plant. There are
22 | several rationales for the rule. The maximum provides that the utility retain
23 | some investment in the utility as an incentive to continue ownership and
24 | operation. The minimum is tied to the concept that growth should pay for
25 | itself. If the policy and charges are based upon either the distribution or

1 collection systems, then each new customer would pay a share of those systems
2 and the direct cost for services, laterals or meters needed to provide
3 service. The rule still recognizes that each utility is somewhat unique by
4 providing a wide range in which utility management can establish its policy.
5 Additionally, the rule provides for exemptions from these guidelines if
6 compliance causes unusual hardship or unreasonable difficulty, and it is
7 demonstrated that the guidelines are not in the best interest of the customers
8 of the utility.

9 Q. What has been the impact of this rule?

10 A. When utilities have come before the Commission for rate proceedings, we
11 have evaluated their CIAC levels and taken action, when necessary, to bring
12 utilities within the rule guidelines. In instances of low CIAC levels, we
13 have implemented or increased charges. For over-contributed utilities, we
14 have reduced or eliminated charges. Obviously, changes in charges will only
15 affect a growing utility. To correct these intergenerational inequities, the
16 Commission has varied from each customer paying his pro-rata share of cost to
17 developing charges with the intent to adjust the CIAC level on a total utility
18 basis. Additionally, several utilities already within the guidelines have
19 opted to increase their charges.

20 Q. In your opinion, what is the major problem with CIAC as it applies to
21 this rule?

22 A. A utility's CIAC level, which is the basis for complying with the rule
23 is a moving target. Rule 25-30.580 is a forward looking rule that directs
24 that you look at the CIAC level when the utility plant is at designed
25 capacity. This type of analysis requires projections of growth rates and

1 requires many assumptions that can be controversial. The rule bases
2 compliance on the CIAC level at a given point in time, while all factors used
3 to calculate this level are constantly changing. Cash CIAC is collected as a
4 one-time charge paid in order to connect to the system. For a new utility,
5 CIAC will defray a portion of the original investment and growth will pay for
6 itself as the utility expands. However, in the long run, as facilities
7 depreciate and need replacement or additional capital is needed to meet
8 regulatory standards, there may be little or no additional CIAC depending upon
9 a utility's customer growth. Therefore, over time, it is inevitable that some
10 utilities will be under-contributed with no apparent means available to inject
11 additional CIAC into the system under the traditional scheme.

12 Q. Have you reviewed SSU's service availability filing in this docket?

13 A. Yes, I have.

14 Q. How did SSU arrive at its present situation regarding service
15 availability and its resulting CIAC level?

16 A. SSU has evolved into the largest FPSC regulated water/wastewater
17 utility. Prior to the late 1980's, SSU was growing through acquisition of
18 mostly small utilities, many of which were previously unregulated due to their
19 size or location in a county that was self regulated. At the time of
20 acquisition of these systems, SSU inherited the individual system CIAC levels
21 which were based upon various levels of charges, donated property as well as
22 imputed CIAC. Upon acquisition, SSU would generally impose its own charges
23 which consisted of a charge for a service line, meter and line extension if
24 applicable. SSU did not have plant capacity charges. In the numerous
25 instances when the individual systems were built out, SSU could not change the

1 | CIAC level through implementing its charges.

2 | In the late 1980's, SSU was purchased by the Topeka Group. At that time
3 | the acquisition program of the utility shifted to larger established
4 | utilities. Within a three year period, SSU's acquisitions included Amelia
5 | Island, Lehigh, and the utilities affiliated with the Deltona and Punta Gorda
6 | developments. These later acquisitions were characterized by SSU inheriting
7 | utilities with substantial CIAC based upon property donations as well as
8 | substantial service availability charges, including plant capacity charges.
9 | In these larger acquisitions, the utilities already had established
10 | sophisticated service availability policies and charges that had been in place
11 | for many years. In these cases, the existing policy and charges were not
12 | changed when SSU acquired ownership, and generally are still in place at this
13 | time.

14 | SSU's present mix of individual system service availability charges and
15 | CIAC levels are to a great extent dependent upon the service availability
16 | policies implemented by the prior owners of the systems. Without a historic
17 | goal oriented service availability policy by SSU which was applied to each
18 | system from its inception, wide ranges in CIAC levels are expected.

19 | Q. Has service availability been an issue in the recent rate cases?

20 | A. Prior to the 1990's, service availability was not at issue in SSU cases.
21 | However, in Docket No. 920199-WS, SSU was ordered to file a service
22 | availability case in order that the Commission could evaluate its charges and
23 | policy on a utility wide basis. The utility chose to file this service
24 | availability case as part of its rate case. This is the initial full company
25 | case in which the Commission has had to seriously address whether compliance

1 | with Rule 25-30.580 should be considered on a per plant or utility-wide basis.
2 | As is apparent from SSU's recent rate cases, the uniform rate docket and the
3 | jurisdictional docket, there is much controversy on whether, from a regulatory
4 | standpoint, SSU should be considered one large utility or a conglomeration of
5 | small service areas. It has long been established that there is an inverse
6 | relationship between rates and CIAC level. This relationship is highlighted
7 | and complicated by SSU's many and varied service areas. Therefore, I believe
8 | that the policies regarding rate structure and service availability should
9 | complement one another and should not conflict in reaching broader goals.

10 | Q. What is the impact of service availability charges and the resulting
11 | CIAC level on rate structure?

12 | A. Service availability charges are reflected as CIAC on the utility's
13 | books and records. CIAC offsets the utility's investment in facilities used
14 | to provide service. Since the revenue requirement upon which rates are based
15 | includes a return on investment, the rate level will be lower dependent upon
16 | the level at which CIAC offsets the utility's investment.

17 | Q. Why has this relationship between CIAC and service rates caused
18 | controversy among SSU's customers?

19 | A. From some of the customer's perspective, payment of CIAC has been viewed
20 | as an investment in lower future rates. The impact of initially paying a
21 | hefty charge to connect to the system has been softened by the benefit of
22 | lower service rates. However, inherent in a uniform rate structure is the
23 | averaging of all ratemaking factors including CIAC. The customers' concern is
24 | that this averaging dilutes the benefit of high CIAC levels achieved by
25 | individual plants. This scenario sent a signal to the Commission staff that

1 | in a multiple plant utility, care must be taken to recognize this
2 | interrelationship in developing service rates and service availability
3 | charges. Service availability charges may need to be modified to compliment
4 | the chosen rate structure.

5 | Q. Have you reviewed the testimony of Gregory L. Shafer, wherein he
6 | presents five rate options?

7 | A. Yes, I have.

8 | Q. Could you briefly identify each rate option and comment based upon each
9 | option what you would consider the most desirable service availability
10 | philosophy?

11 | A. Yes, the options noted range from the two extremes of stand alone to
12 | uniform rates. Also presented are variations of either rate structure
13 | designed to recognize other ratemaking factors. For clarity, I will briefly
14 | describe each rate option and discuss the service availability philosophy
15 | which I believe complements the rate structure.

16 | Q. What is your opinion regarding Mr. Shafer's first option?

17 | A. Mr. Shafer's first option is essentially a stand alone rate modified to
18 | include a level of subsidy needed to peg bills at an affordable level at
19 | average consumption levels. Based upon the stand alone nature of the rate,
20 | I believe that individual plant service availability charges are appropriate.
21 | Under this approach, both rates and service availability would be based upon
22 | the same cost and related factors and the relationship of individual plant
23 | CIAC and rates would remain intact. Whatever goal which may be established
24 | for service availability could be accomplished without being impacted by stand
25 | alone rate levels.

1 Q. What is your opinion regarding Mr. Shafer's second option?

2 A. This option is pure stand alone rates. As with the first option, I
3 believe that individual plant charges would be appropriate. This would allow
4 the flexibility to adjust individual CIAC levels in response to whatever
5 overall goal may be established regarding service availability policy.

6 Q. What is your opinion regarding Mr. Shafer's third option?

7 A. This option represents another version of the capped rate structure
8 outlined in option one. The difference being that Option one caps the level
9 of the total bill at average consumption levels and Option three provides that
10 both the base facility charges and gallonage charges will not be set below
11 prescribed minimum levels. Again, as previously discussed for the first two
12 options, I believe individual plant charges are appropriate.

13 Q. What is your opinion regarding Mr. Shafer's fourth option?

14 A. This option is the uniform rate. Since this rate is based upon the
15 average cost and investment of all SSU facilities, it would seem logical to
16 also use these averages to develop a uniform service availability charge.
17 However, if the goal of the utility and/or Commission were to raise or lower
18 individual plant's CIAC levels to move toward equating investment per
19 customer, then individual system charges would be appropriate.

20 Q. What is your opinion regarding Mr. Shafer's fifth option?

21 A. Mr. Shafer's fifth option is a modified uniform rate which uses as a
22 starting point the uniform rate which is then adjusted to fit each plant based
23 upon its treatment type and contribution level. This is a unique rate
24 structure which highlights the need to evaluate rates and service availability
25 in regard to the goals we as a Commission must wish to achieve. This rate

1 | option would lower or increase the rate based upon individual plant CIAC
2 | levels at a given point in time. While the rate recognizes the varying CIAC
3 | levels, it does nothing to change those levels going forward. Only changes
4 | in service availability charges can drastically move these levels. Therefore,
5 | if the goal is to move toward equating investment per customer, then the
6 | flexibility to change the charges of the various plants is desirable. If it
7 | is determined that based upon the structure of the utility, meeting the
8 | minimum CIAC level referenced in the rule is unnecessary, then a uniform
9 | service availability charge at a reasonable level may be appropriate. This
10 | methodology would recognize that an increased charge would have no impact on
11 | a built out system or one with little additional growth.

12 | Q. You had previously mentioned built out plants. Since these plants will
13 | not derive additional CIAC through customer growth, is there any reasonable
14 | way for these plants to generate additional CIAC?

15 | A. Yes. While I am not aware of any similar charge in other
16 | jurisdictions, I do not believe it would be unreasonable to have a surcharge
17 | on customer's bills to share in the cost of replacing facilities or adding
18 | equipment due to regulatory or environmental mandates. Under this scenario,
19 | all or a portion of these additional capital costs would be recovered as CIAC
20 | through a charge which would be separate from the monthly service rate. This
21 | could be viewed similar to the way a governmental authority may levy a special
22 | assessment to existing customers to cover specific capital expenditures. The
23 | key to any such method of cost recovery is that funds be recorded as CIAC and
24 | not revenue.

25 | Q. Do you believe that the current FPSC service availability rules, with

1 | the minimum and maximum levels, should apply to a large, multi-county utility
2 | such as SSU?

3 | A. I believe that the rules should be used as "guidelines". It will
4 | probably be difficult to develop service availability charges that are fair,
5 | just and reasonable, and still be able to achieve the minimum guidelines for
6 | SSU on a total company basis. Among Florida's water and wastewater utilities,
7 | SSU is unique in that it purchases existing systems which come in at varying
8 | levels of CIAC with varying potential for customer growth. Service
9 | availability charges designed to bring the company to a 75% CIAC (maximum)
10 | level would be unreasonably high in many cases, and would unnecessarily stifle
11 | system growth. I believe that the appropriate service availability goal for
12 | SSU would be to design charges that will help to move the utility closer to
13 | the minimum levels as outlined in the rules.

14 | If the Commission finds that it is appropriate to calculate separate
15 | service availability charges for each service area, it will be very difficult
16 | to design reasonable charges and still comply with the minimum/maximum
17 | guidelines contained in the rule. For example, a service area where water is
18 | purchased, would have a minimum level that exceeds the maximum level. In
19 | another instance, for service areas that are near build out, it will be very
20 | difficult to change the level of CIAC in the absence of significant growth.
21 | The charges that would result if the rule were strictly followed would be
22 | unreasonable.

23 | In summary, I believe that, on a total company basis, the service
24 | availability goal should be the minimum guidelines as contained in Rule 25-
25 | 30.580(1)(b), F.A.C. However, the Commission should be prepared to grant

1 | exemptions from the guidelines if charges are set on a service area by service
2 | area basis.

3 | Q. Does this conclude your testimony?

4 | A. Yes, it does.

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1 MS. CAPELESS: Thank you.

2 Q (By Ms. Capeless) Mr. Williams, you didn't
3 prefile any exhibits along with your testimony, did
4 you?

5 A No.

6 Q Have you prepared a summary of your
7 testimony?

8 A Yes.

9 Q Please give that summary now.

10 A My prefiled testimony provides an overview
11 of service availability policy in the Commission's
12 rules on contributions in aid of construction. The
13 prefiled testimony provides an analysis of Southern
14 States Utilities' current charges and policies. The
15 prefiled testimony also provides a recommendation as
16 to the structure of service availability charges for
17 SSU as they relate to the various rate structure
18 options that were outlined in Mr. Shafer's testimony.

19 MS. CAPELESS: Thank you. We tender the
20 witness for cross examination.

21 CHAIRMAN CLARK: Mr. McLean.

22 MR. McLEAN: No questions, thank you.

23 CHAIRMAN CLARK: Mr. Jacobs.

24 MR. JACOBS: No questions.

25 CHAIRMAN CLARK: Mr. Twomey.

1 MR. TWOMEY: Yes, ma'am.

2 CROSS EXAMINATION

3 BY MR. TWOMEY:

4 Q Good morning.

5 A Good morning.

6 Q You recognize on Page 3 of your testimony
7 that the developer related utilities were a result of
8 growth spilling into unurbanized areas, right?

9 A Yes.

10 Q What percentage do you think, if you know,
11 Mr. Williams, of those utilities were at their
12 inception, Commission -- under the Commission's
13 jurisdiction?

14 A Based on my experience, I would say probably
15 a very small percentage were Commission regulated at
16 the time they were created.

17 Q Okay. You then discussed the development of
18 the Commission's rule on CIAC and your role in it and
19 discussed the levels. Now, isn't it generally true
20 that the CIAC rules seek to ensure a range of equity
21 by utility in their various facilities, or systems,
22 whichever you wish to call them, so that they have
23 enough ownership, that is equity, that they'll take
24 care of and maintain the system? Is that generally
25 the concept?

1 A That was the one concept that we used in
2 developing the rules.

3 Q Right. Because isn't it true that the
4 notion is that if they have no equity, they'll get no
5 return on investment and, therefore, be likely to
6 ignore the maintenance?

7 A That was one of the considerations when we
8 designed the maximum level of CIAC.

9 Q And another would be if there was too high a
10 level of equity, then the equity is usually more
11 expensive than debt and the rate can be forced higher?

12 A That was a consideration in designing the
13 minimum levels.

14 Q Now, it is your view, is it not, that the
15 CIAC rule is reasonable for most utilities in the
16 state, right?

17 A Yes.

18 Q Okay. You say on Page 4, in discussing the
19 impact of the rule that "When utilities have come
20 before the Commission for rate proceedings, we have
21 evaluated their CIAC levels and taken action, when
22 necessary, to bring utilities within the rule
23 guidelines."

24 That's not an all encompassing absolute
25 statement, is it? I mean, to the extent that your

1 testimony is not that the Commission, since the
2 inception of the rule, has taken the necessary action
3 to bring all utilities within the compliance of the
4 CIAC rule?

5 A We have attempted to bring all of the
6 utilities into compliance. However, with the number
7 of utilities we regulate and the staffing situation, I
8 would say that we haven't been able to evaluate every
9 single utility. But it was a project that we had
10 ongoing probably in the early '80s, or through the
11 '80s, to attempt to evaluate every utility. I don't
12 believe we probably did analyze each and every one.

13 Q Well, for example, in this utility's last
14 rate case, the attempt to deal with its disparate CIAC
15 levels amongst its various systems was deferred,
16 right?

17 A Yes.

18 Q And would you agree with me that the CIAC
19 levels amongst the many systems that SSU has in this
20 case are disparate in the sense that they range in
21 some cases from close to 100% to in some cases as
22 little as zero?

23 A That's correct.

24 Q And you say, don't you, that in systems,
25 particularly where there is little chance for growth,

1 that it is extremely difficult to deal with bringing
2 the systems into compliance with the rule, right?

3 A That's correct.

4 Q And that would be true, would it not, for
5 systems that have little opportunity for growth, one,
6 because they are built out, correct?

7 A That's correct.

8 Q And likewise for systems where, though they
9 are far from being built out, there is as a practical
10 matter little current chance for growth, like in the
11 case of Sunny Hills. Would you agree?

12 A That's correct, yes.

13 Q Now, tell me, if you would please, what is
14 your understanding of what SSU wants to do in the
15 current case vis-a-vis the CIAC?

16 A They've proposed market-based service
17 availability charges. They have proposed two levels
18 of charges for water and one level for wastewater for
19 all of their systems. And the analysis or the
20 testimony is that it was based on a market analysis
21 rather than a calculated number attempting to reach
22 some level of CIAC at design capacity.

23 Q Yes, sir. But irrespective of how they came
24 up with these so-called market based numbers, isn't it
25 true that they are proposing the same number for all

1 their systems?

2 A Yes.

3 Q And isn't it true, that what they are
4 proposing bears no relation on a system-by-system
5 basis to the Commission's CIAC rule?

6 A That's correct.

7 Q Let me ask you. On Page 4, you've talked
8 about what the Commission has done historically to
9 bring over or undercontributed utilities into line
10 with the rule. In those cases in which the Commission
11 has attempted to deal with overcontributed systems,
12 has it ever ordered refunds?

13 A Not -- well, I believe there may have been
14 one or two cases, but it's not been very common.

15 Q I mean, what is your personal view on that?
16 Isn't it the most equitable thing when you have
17 somebody -- the notion is that an overcontributed
18 system, the people that are current customers would
19 have paid too much by definition, right?

20 A That's correct.

21 Q And when you decide to get the
22 overcontributed system more in line with the rule and
23 therefor reduce future charges for CIAC, isn't it
24 equitable to give refunds to those who have already
25 paid too much?

1 A I believe that there are many other factors
2 that ought to be considered before doing that. As I
3 said, I believe I can remember one case where refunds
4 were required. But it was not my personal
5 recommendation to do so, and I don't believe it's
6 appropriate.

7 Q Okay. Now on Page 5, you indicate that
8 prior to the late 1980s, SSU was growing through
9 acquisitions, mostly small utilities. And I think you
10 go on to say that most of them were, or a large
11 percentage were, undercontributed, right?

12 A I believe it was a mixed bag. There
13 probably were some that were heavily contributed, and
14 there might have been some that had no contributions.

15 Q SSU, if it had engaged in proper due
16 diligence before acquiring those systems, would have
17 been aware, would they not, of what the CIAC levels
18 were?

19 A Yes.

20 Q You say on the next page, Page 6, that in
21 the late 1980s, after the Company was purchased by the
22 Topeka Group, they began purchasing systems that had
23 higher levels of CIAC, right?

24 A They were larger utilities that had
25 sophisticated service availability policies and

1 conditions in place.

2 Q Right. But you say beginning at Line 6, do
3 you not, "these later acquisitions were characterized
4 by SSU inheriting utilities with substantial CIAC
5 based upon property donations as well as substantial
6 service availability charges, including plant capacity
7 charges."

8 Now, and that included the Punta Gorda
9 developments, right?

10 A Yes.

11 Q And they were the predecessor developers of
12 a number of systems including Sugarmill Woods, right?

13 A That's correct.

14 Q Now, isn't it a mathematical fact,
15 Mr. Williams, that if CIAC is properly and legally
16 reflected in rates as it should be, that it reduces --
17 that it reduces the amount of revenue a company can
18 expect to achieve from a given investment -- from the
19 ownership of a given system? If you have a high level
20 of CIAC, it reduces the amount of investment that a
21 utility can earn a return on, right?

22 A Right. It reduces the rate base and,
23 therefore, the return on that rate base would be
24 lower, or the amount of the return would be lower.

25 Q Right. And while I know you are not a

1 lawyer, isn't it true that based upon your many years
2 of experience here, that that's a requirement
3 established by law?

4 A That's correct.

5 Q So at an extreme, if a system had 100% CIAC,
6 the company would be entitled -- it would have a zero
7 rate base, and the company would be entitled to no
8 return on its investment, correct?

9 A That's correct.

10 Q And it would be only allowed through its
11 rates to recover its fair, reasonable, necessary,
12 prudent operating expenses, right?

13 A That's correct.

14 Q Now, if you know off the top of your head,
15 that is pretty close to the situation with the
16 wastewater treatment plants at Sugarmill Woods, is it
17 not? Is there not a very large percentage of CIAC?

18 A I believe that's true.

19 Q Wasn't that one of the problems that you
20 had, Mr. Williams, in the 1993 rate case in
21 recommending against the adoption at that time of
22 uniform rates, that uniform rates didn't adequately
23 deal with the levels of CIAC in the various systems?

24 A Yes, that was a concern that I raised in
25 that case.

1 Q Okay. Is it your testimony in your
2 professional opinion that the proposal by the Company
3 in this case eliminates your concerns that you had in
4 1993?

5 MR. HOFFMAN: Objection. I think the
6 question calls for Mr. Williams to state an opinion
7 concerning the Company's proposed rate structure, and
8 I think that's beyond the scope of his testimony, and
9 it's beyond the scope of the three issues for which
10 he's been identified.

11 CHAIRMAN CLARK: Mr. Twomey.

12 MR. TWOMEY: He's here, he's here testifying
13 as a Staff witness broadly on the issue of CIAC, and I
14 think the question is within the scope of his direct
15 testimony.

16 CHAIRMAN CLARK: Let me hear your question
17 again.

18 MR. TWOMEY: I asked him given his concern
19 expressed in the 1993 rate case, do you think that the
20 proposal of SSU in this case, that they, one, have
21 uniform rates, and two, that they deal with CIAC by
22 having a, quote/unquote, uniform level of CIAC charge
23 for each facility. Do you think that those proposals
24 taken together address your concerns on CIAC expressed
25 in the 1993 case?

1 CHAIRMAN CLARK: Mr. Twomey, I do think that
2 is beyond his testimony given. But if you will look
3 at his testimony and indicate to me where you believe
4 it is covered, let me know.

5 MR. TWOMEY: I believe, Madam Chair, that
6 requiring a party in this case to cite to a specific
7 sentence in a witness's testimony and requiring them
8 to ask questions related to the specific words in a
9 specific sentence or paragraph is unduly restrictive
10 on the scope of cross examination. This witness
11 testifies on an extremely important area of CIAC
12 levels. It is a broad expansive area, and I can't
13 point to you a specific sentence in here. I think it
14 is a fair question.

15 CHAIRMAN CLARK: I'm not limiting it to a
16 sentence. If you would point to me where it covers
17 this issue relative to the past rate case, that's fine
18 with me. If you can point that out in his testimony,
19 I'm just asking you to point to it.

20 MR. TWOMEY: I understand. And I don't
21 think I can point to you a specific area where he says
22 he doesn't say I've said this in the past rate case.
23 I'm just suggesting to you, I think that his testimony
24 on the front of it ought to say CIAC concerns. And
25 I'm talking about a CIAC issue. It is implicit in

1 what his testimony addresses.

2 CHAIRMAN CLARK: I think it's beyond -- if
3 you don't have anyplace that you can direct me to, I'm
4 going to not allow the question.

5 MR. TWOMEY: Okay, I just found one.

6 CHAIRMAN CLARK: Okay.

7 MR. TWOMEY: On Page 6, Line 20 -- 21, it
8 addresses the last rate case.

9 CHAIRMAN CLARK: And give me your question
10 again?

11 MR. TWOMEY: Let me ask the court reporter
12 to read it back.

13 (Thereupon, the question appearing on Page
14 3862, Lines 18 through 25, was read back by the
15 reporter.)

16 MS. CAPELESS: Madam Chairman, for the
17 record, Staff objects to the question insofar as it
18 requests a response having to do with any concerns
19 about CIAC levels from the previous case because it's
20 irrelevant and because it goes beyond the scope of
21 this case. Mr. Williams testifies that SSU is ordered
22 to file a service availability case in this case back
23 then, and that's all he says about that. Anything
24 beyond that is irrelevant and beyond the scope.

25 COMMISSIONER JOHNSON: I don't know if this

1 is irrelevant or not. But it seemed to me when
2 Mr. Twomey was questioning Mr. Williams, Mr. Williams
3 acknowledged that his concern -- or maybe he didn't
4 acknowledge. I thought you acknowledged that your
5 concerns with setting uniform rates in the last case
6 had to do or had something to do with the service
7 availability charges and the CIAC. Did he ask you
8 that question, and did you answer? Or was I reading
9 that into something?

10 MR. TWOMEY: He gave that answer.

11 COMMISSIONER JOHNSON: I thought you did.
12 Did you?

13 COMMISSIONER KIESLING: That's interesting
14 because Mr. Twomey said he did, and Mr. Williams is
15 shaking his head, no, he didn't.

16 COMMISSIONER JOHNSON: Maybe it was just me
17 and Mr. Twomey had on one of those line connects. But
18 I thought -- was that a question, because I did have
19 that question.

20 CHAIRMAN CLARK: Let me interrupt at this
21 point. I have read the testimony at 6 and 7, and I
22 think it does open it up enough to allow that
23 question.

24 MR. TWOMEY: Thank you.

25 CHAIRMAN CLARK: Now, Mr. Williams, do you

1 remember the question?

2 A Yes. I think the Company's proposal to have
3 a uniform service availability charge and uniform
4 rates basically don't specifically address the issue
5 of the disparate service availability policies. I
6 think that Mr. Shafer's recommendation, his fifth
7 recommendation with respect to rate structure where
8 you would have an adjustment based on CIAC level,
9 would more adequately address that issue. That also
10 would allow the Commission flexibility in designing
11 individual system service availability charges that
12 could adequately address the disparate CIAC levels.
13 So I think Mr. Shafer's recommended his fifth approach
14 would more adequately address the current situation
15 with this Utility.

16 Q (By Mr. Twomey) Now, let me ask you,
17 Mr. Williams, just to perhaps more fully let
18 Commissioner Johnson understand the situation in the
19 1993 case, isn't it true that you had reservations
20 about the adoption of uniform rates in that case and
21 that one of the reasons you expressed was the
22 disparate CIAC amongst the various systems?

23 MS. CAPELESS: Objection. It's beyond the
24 scope of the testimony.

25 MR. TWOMEY: It's not. For the same reason

1 that the previous question was. And more
2 importantly --

3 CHAIRMAN CLARK: Mr. Twomey, you don't need
4 to go any further. What I would say is I think I'm
5 going to allow the question because I think to some
6 extent it tests, I think, prior statements. And on
7 the issue, tests the credibility of the testimony
8 given today, and I'll allow the question.

9 Q (By Mr. Twomey) And I'd like you to tell
10 Commissioner Johnson, and anybody else in the room who
11 doesn't know, what your reservations were in the 1993
12 case for recommending against the adoption of uniform
13 rates in that case, specifically as it addresses your
14 concerns, or addressed your concerns then for CIAC.

15 A Well, I think I said that I thought that a
16 uniform rate structure might be an eventual goal for
17 SSU. I said that the Commission may want to consider
18 adjusting the service availability charges so that you
19 could move the systems toward a more uniform average
20 investment per customer that would tend to support the
21 concept of uniform rates. So I had suggested that you
22 could modify or tailor make the CIAC policy that would
23 tend to support a uniform rate structure.

24 Q Okay. Let's go to Page 7 for a minute and
25 look at your discussion there. Beginning at Line 5,

1 you say, "It has long been established that there is
2 an inverse relationship between rates and CIAC level."
3 And, of course, as we discussed, the inverse rate is
4 that you expect lower rates with higher levels of
5 CIAC, right?

6 A Yes.

7 Q And the converse is true?

8 A Generally speaking.

9 Q Isn't it true, Mr. Williams, that if a
10 customer were knowledgeable about what type of utility
11 he or she would be served by when they purchased the
12 home, they would know that if they paid a little on
13 the way of CIAC that they would in the long run expect
14 higher rates than if they had paid a larger amount of
15 CIAC. Right?

16 A I would say most customers don't understand
17 that. I think that people who work in this arena do,
18 but I don't believe the majority of customers do.

19 Q You don't know that, though, do you,
20 Mr. Williams?

21 A No.

22 Q You'd agree with me that Budd Hansen knows
23 the difference, don't you?

24 A Yes.

25 Q Now you go on and say, "This relationship is

1 highlighted and complicated by SSU's many and varied
2 service areas." And again, your reference is that
3 they have such disparate levels from service area to
4 service area as you call it, right?

5 A Yes.

6 Q You go on and discuss the notion that CIAC
7 affects the rate base and reduces the return on
8 investment. And still on Page 7 you state at Line 19,
9 "From some of the customers perspective, payment of
10 CIAC has been viewed as an investment in lower future
11 rates. The impact" -- (interruption)

12 CHAIRMAN CLARK: Mr. Twomey, you might be
13 too close to that mike. I'm just kidding. Go ahead.

14 Q (By Mr. Twomey) "The impact of initially
15 paying a hefty charge to connect to the system has
16 been softened by the benefit of lower service rates."

17 Now, would you agree with me that if a
18 consumer, if a customer at a utility understood the
19 impact of CIAC, that the view that hefty payments of
20 CIAC is an investment in lower rates is reasonable, is
21 it not?

22 A Yes.

23 Q In fact, one could expect if they knew
24 anything about ratemaking, that it was mandated by
25 law, correct?

1 A I don't know about that.

2 Q Well, you discuss at Line 12, "Service
3 availability charges are reflected as CIAC on the
4 utility's book and records. CIAC offsets the
5 utility's investment in facilities used to provide
6 service. Since the revenue requirement upon which
7 rates are based includes a return on investment, the
8 rate level will be lower dependent upon the level at
9 which CIAC offsets the utility's investment," correct?

10 A Yes.

11 Q That's a fairly concise statement of the way
12 the Commission has historically treated CIAC, right?

13 A Yes.

14 Q And to your knowledge, it's consistent with
15 Florida law, right?

16 A Yes.

17 Q So doesn't it follow that if a customer
18 understood that CIAC had to be reduced from rate base,
19 that they could necessarily view that as an investment
20 in lower future rates?

21 A Yes.

22 Q Okay. You go on at Page 7, Line 22, and you
23 say, "However, inherent in a uniform rate structure is
24 the averaging of all ratemaking factors including
25 CIAC. The customers' concern is that this averaging

1 dilutes the benefit of CIAC levels achieved by
2 individual plants."

3 Now, my question to you is: It's not just a
4 concern that averaging dilutes the benefit of CIAC
5 levels, it is, in fact, a fact, is it not,
6 mathematically?

7 A Yes.

8 Q And that statement there, the averaging of
9 all ratemaking factors including CIAC being inherent
10 in uniform rates, is the concern you expressed in
11 1993, right?

12 A Yes.

13 Q On Page 8 you go on to suggest that service
14 availability charges may need to be modified to
15 compliment the chosen rate structure. And my question
16 to you is why? I don't understand why you conclude
17 that. Can you tell me why?

18 A Well, you have to keep in mind that a
19 utility is a constantly moving target, that you can't
20 isolate a utility at a given point in time, that there
21 is additional plant investment that's necessary
22 throughout the life of a utility. And, therefore, the
23 CIAC policy and ratemaking treatment move together
24 through the life of the utility. And, therefore, I
25 believe that once a goals and a rate structure is

1 chosen, then you can compliment the chosen rate
2 structure through the service availability charges.
3 That's what my testimony in this case is, that once
4 the Commission determines what's an appropriate rate
5 structure, then you can design a service availability
6 policy that compliments the chosen rate structure.

7 Q Let me ask you this way. Is it your
8 testimony that the Commission can, in the
9 consideration of other factors, dilute the benefit of
10 high CIAC levels that customers of a given service
11 area previously enjoyed?

12 A Yes.

13 Q You are saying that in the consideration of
14 other factors, the Commission can take the resulting
15 low rates Mr. Budd Hansen thought he had by paying
16 high CIAC levels and dilute that benefit to the
17 benefit of customers at other service areas; is that
18 correct?

19 MS. CAPELESS: Objection. That's been asked
20 and answered.

21 MR. TWOMEY: I don't think he answered it
22 quite that way. He didn't answer that question.

23 COMMISSIONER GARCIA: If Staff doesn't mind,
24 I would like to hear the answer again.

25 A Yes, that it can be averaged; the entire

1 company could be put together for ratemaking purposes.

2 Q (By Mr. Twomey) And the converse is, is
3 that he -- for whatever reasons the Commission finds
4 this to be a viable policy -- if Mr. Hansen can lose
5 the benefit of payments he made some years ago, isn't
6 the converse that some other customer in some other
7 service area receives the benefit notwithstanding --
8 the benefit of his CIAC, Mr. Hansen's CIAC --
9 notwithstanding that he or she didn't make those CIAC
10 payments? Isn't that the result?

11 A Yes. And this is something that's inherent
12 in utility ratemaking. It's call intergenerational
13 inequities. It's an issue that the Commission has
14 been dealing with ever since they adopted the CIAC
15 rules that set minimum and maximum guidelines. The
16 Commission recognized at the time they adopted these
17 rules and through the time the rules have been in
18 place that to make an adjustment to get the utilities
19 into compliance, that you are going to have to make
20 substantial changes from what has been done in the
21 past. And that there are going to be
22 intergenerational inequities where some people may
23 have joined the system and paid little or nothing,
24 that customers tomorrow are going to have to pay a
25 very substantial charge.

1 By the same token, in some systems where
2 people paid very substantial charges, the Commission
3 may reduce the charges so that the utility achieves a
4 certain level of CIAC. That was recognized right up
5 front. It was thoroughly discussed when the rules
6 were adopted, and the Commission weighed all the
7 options and still adopted these rules.

8 Q Yes, sir. But isn't it true, Mr. Williams,
9 that at the time of the adoption of the CIAC rules,
10 intergenerational inequities, to the extent that they
11 were considered at all, were only considered within
12 the context of single systems? Isn't that correct?
13 And by "system," I mean single service areas. Isn't
14 that correct?

15 A I don't remember clearly whether we ever
16 concerned ourselves with multiple system utilities at
17 that time.

18 Q Isn't it true, Mr. Williams, that this is
19 the first case in which the Commission has the
20 responsibility and the burden perhaps in dealing with
21 the notion of addressing intergenerational inequities
22 in excess of 100 service areas?

23 A That's probably true.

24 Q Can you think of a single other case
25 involved?

1 A Not with this number of separate systems,
2 no.

3 Q Now, if we take money from Mr. Hansen and
4 his neighbors and others of my clients and others who
5 aren't my clients and give it to other people in the
6 name of some type of economic efficiency or other
7 considerations, isn't that a form of regulatory
8 socialism? I mean that seriously, Mr. Williams.
9 Isn't it a form of regulatory socialism?

10 A I don't agree with that.

11 Q Isn't the low levels of CIAC in some of
12 these service areas perceived as being a form of
13 ratemaking misery?

14 A I don't --

15 MS. CAPELESS: Objection.

16 MR. TWOMEY: I'll withdraw the question.

17 Q (By Mr. Twomey) You proposed that this
18 Commission should take money from my clients and give
19 it to the others purely for the sake of averaging to
20 bring things into a median compliance with the rule,
21 right?

22 A I've recommended several options available
23 to the Commission. Again, my recommendation is that
24 the Commission should choose a rate structure that
25 they believe is appropriate for this utility and then

1 a consistent service availability policy. A policy
2 can be designed that's consistent with the goals and
3 objectives that were selected when they chose the rate
4 structure. But there's a broad range of
5 recommendations that have been put before the
6 Commission.

7 Q Okay. But again, on Page 8, you are
8 suggesting that service availability charges need --
9 may need to be modified to compliment the chosen rate
10 structure. And does it follow then that if the
11 uniform rate structure is adopted, that you believe
12 some type of levelized or uniform service availability
13 charge should result?

14 A I think that conceptually, if they choose a
15 uniform rate, that you could conceptually design a
16 uniform availability charge. However, I still believe
17 there is room for taking care of unusual circumstances
18 even in that type of plan. There's still a great deal
19 of flexibility, and I think the Commission's rules
20 should be used as guidelines in this case, that
21 unusual factors should be considered in designing the
22 service availability policy. And I say that in my
23 testimony.

24 Q On Page 9, speaking on Mr. Shafer's fifth
25 option, the modified uniform rate, if you can, will

1 you tell me how that would be applied to, say, the
2 Sugarmill Woods situation? How would it operate?

3 A Are you talking about the rate structure?

4 Q Yes, sir. How would it deal with folks at
5 Sugarmill Woods, for example, where they have a very
6 low rate base because of the high levels of CIAC?

7 A Well, again, this was Mr. Shafer's area, and
8 the rate structure was his recommendation. However,
9 the way -- my understanding of that rate structure
10 option would be that there would be an adjustment
11 factor made based on the CIAC level, that once a
12 uniform rate would be designed, then it would be
13 either increased or decreased based on the CIAC level
14 of the individual service area.

15 Q Okay.

16 A So, therefore, the rule would be adjusted.
17 You would calculate a uniform rate, but then it would
18 be adjusted based on the CIAC level of the individual
19 system or treatment.

20 Q Now, it strikes me, and let me ask you,
21 isn't that consistent with your statement on Page 10,
22 starting at Line 15, that you apparently believe that
23 it would be reasonable to have a surcharge on a
24 customer's bill to share in the cost of replacing
25 facilities or adding equipment due to regulatory or

1 environmental mandates?

2 A Yes.

3 Q Now, that last suggestion about the
4 surcharge, that could be done on a service area by
5 service area basis, right?

6 A Yes.

7 Q And wouldn't it strike you as fair,
8 Mr. Williams, that if a customer's at a service area
9 now owned by SSU, who historically made very low CIAC
10 payments, that they are having to make surcharge
11 payments, would be reasonable to make up for the
12 mistakes of the past essentially?

13 MS. CAPELESS: Objection. That's been asked
14 and answered.

15 MR. TWOMEY: I don't think I have asked that
16 question at all before.

17 CHAIRMAN CLARK: Let me hear your question
18 again.

19 Q (By Mr. Twomey) Would it be fair, in your
20 opinion, to have these surcharges made at systems to
21 bring current customers more in line with the
22 Commission's rule on CIAC to make up for their -- the
23 failure to charge them proper levels of CIAC in the
24 past?

25 A This type of charge could be used in that

1 scenario. What I talk about in the testimony is more
2 in the case of where new treatment plants or major
3 capital investments are made in a system, that it
4 could be used to offset that investment. Again, this
5 is the nature of a build-out system where you don't
6 have any other ability to have CIAC. I said that it
7 could -- a surcharge that would go to CIAC is an
8 option the Commission would have.

9 Q Okay.

10 A But it could be used under the scenario that
11 you outlined.

12 CHAIRMAN CLARK: Let me ask a question just
13 to follow up. Mr. Twomey used the word "proper" CIAC
14 in the past. Regardless of whether it was proper or
15 not, it's still available as the means of addressing
16 that?

17 WITNESS WILLIAMS: That's correct.

18 CHAIRMAN CLARK: It doesn't turn on whether
19 it's proper or not.

20 WITNESS WILLIAMS: That's correct.

21 CHAIRMAN CLARK: Because we could have
22 followed the rules in the past, but then when you
23 conglomerate them, it creates the problem. And it
24 really has nothing to do with whether they were proper
25 in the past, it has to do with putting them all

1 together.

2 WITNESS WILLIAMS: That's true.

3 MR. TWOMEY: I didn't understand the
4 question that Commissioner Clark just asked you.

5 CHAIRMAN CLARK: Mr. Twomey, in your
6 question you referred to them as if they were proper
7 in the past.

8 MR. TWOMEY: Right.

9 CHAIRMAN CLARK: What I'm suggesting is they
10 could have been proper in the past, but now they
11 create a problem when you put all the systems
12 together. What I'm suggesting, it just doesn't apply
13 to what was improper in the past.

14 WITNESS WILLIAMS: That's correct.

15 Q (By Mr. Twomey) Well, let me ask you this
16 to follow up on my own question and not hers. Would
17 you agree with me that it is more fair for the
18 Commission to try and require customers of a given
19 service area to deal with the intergenerational
20 inequities of prior CIAC charges or decisions than to
21 require customers of other service areas to pay to
22 deal with inequities at another service area? Do you
23 follow that?

24 A Not really. Could you --

25 Q Okay. Let me put it this way. If you are

1 an old customer -- if you are a current customer at a
2 system that is undercontributed to CIAC and I'm a new
3 applicant for service at that place, don't you think
4 it's more fair that the Commission try and make you
5 and I, as customers in one service area being served
6 in the same facility, deal with intergenerational
7 inequities related to CIAC than to try to tap Budd
8 Hansen who is at an entirely separate system. Which
9 is more fair?

10 A Well, under that scenario, you know, to
11 attempt to do it on a system-by-system basis might be
12 the more appropriate way to do it.

13 Q Thank you. Now, help me understand what you
14 mean by your statement on Page 11, Line 3, that you
15 believe that the rules should be used as guidelines.
16 I take it from your text that you are suggesting that
17 the CIAC rule should be a rule for little and
18 medium-sized utilities, but merely a kind of softer
19 guidelines for larger utilities such as SSU. Is that
20 correct?

21 A I think what I say is that SSU is a very
22 unusual utility. And as I mentioned in the testimony
23 throughout, the way it evolved and the fact that it is
24 made up of hundreds of separate facilities, it doesn't
25 quite -- isn't quite the norm. And the rule, of

1 course, was written based on the entire population of
2 utilities we have out there.

3 And I think that even the way the rules are
4 written, they are called guidelines. The minimum and
5 maximum say guidelines in designing service
6 availability charges. And that I think that the
7 minimum and maximum in our rules should be used as
8 guidelines in developing the CIAC policy for SSU.

9 MR. TWOMEY: Okay, thank you. That's all I
10 have.

11 CHAIRMAN CLARK: Mr. Hoffman.

12 MR. HOFFMAN: Thank you, Madam Chairman. I
13 have just a few questions.

14 **CROSS EXAMINATION**

15 BY MR. HOFFMAN:

16 Q Good morning, Mr. Williams.

17 A Good morning.

18 Q In establishing CIAC charges in this
19 proceeding, would you agree, as a policy matter, that
20 CIAC should not be set at a level which would inhibit
21 growth?

22 A That's a difficult question. I believe it's
23 something that should be taken into consideration but
24 shouldn't be controlling.

25 Q Okay. Mr. Williams, I'm going to hand you a

1 copy of a document and ask you to read a passage into
2 the record.

3 MR. HOFFMAN: Madam Chairman, I have not
4 made copies of this tariff sheet. I don't think it
5 will be necessary, I'm just going to ask him to read a
6 few sentences into the record.

7 CHAIRMAN CLARK: Okay.

8 Q (By Mr. Hoffman) Mr. Williams, I've handed
9 you a document, would you agree having looked at that
10 document that that is Southern States current and
11 effective water tariff effective August 26, 1992?

12 A That's what it appears to be.

13 Q And that's First Revised Sheet No. 16.0?

14 A Yes.

15 Q Would you please read into the record the
16 language that I've highlighted in yellow?

17 A It says Service Availability Charges. "The
18 following charges will be applied if applicable. The
19 charges are subject to change from time to time as
20 being necessary by the Company and the Commission.
21 These charges are defined as CIAC and do not entitle
22 the applicant to any rights of ownership. The Company
23 will own and maintain the facilities for which these
24 charges are levied."

25 Q Thank you. Does that language that you've

1 just read into the record from Southern States'
2 current tariff mirror the language found in the
3 Commission's model tariff?

4 A I really don't know. I'm not that familiar
5 with the model tariff at this time.

6 Q Thank you, Mr. Williams. The issue of
7 intergenerational inequity that you discussed with
8 Mr. Twomey, could you just briefly provide a brief
9 explanation of the alleged problems that arise from
10 that issue?

11 A Well, as I said, when the Commission adopted
12 the CIAC rules, there was a recognition that many
13 utilities' CIAC policies were designed prior to the
14 rules being put in place. And it was recognized at
15 the time that to move the utilities towards these
16 minimum and maximum areas, that there was going to
17 have to be a substantial change. And when you change,
18 either increase or decrease the company's charges, the
19 people that paid the lower charge before got a better
20 deal than the new people who come in after, say, an
21 increase goes into effect. So in that respect it
22 creates an inequity when you make a change in a
23 one-time charge made to a utility.

24 But, again, we recognized that there were
25 going to be those inequities either direction, either

1 up or down. But we thought it was still in the long
2 run best interest of the customers to have these
3 levels of CIAC.

4 Q When was that CIAC rule adopted?

5 A In the early '80s, I believe.

6 CHAIRMAN CLARK: 1982.

7 WITNESS WILLIAMS: 1982.

8 MR. HOFFMAN: I think Madam Chairman may
9 have been involved in the appeal of that matter, as I
10 recall.

11 CHAIRMAN CLARK: Yes. John wouldn't let me
12 get out of it.

13 Q (By Mr. Hoffman) At the time the CIAC rule
14 was adopted, Mr. Williams, you would agree, would you
15 not, that the Commission was regulating privately
16 owned water utilities and wastewater utilities that
17 had uniform rates?

18 A Yes.

19 Q Now, this issue of intergenerational
20 inequity, would you agree that intergenerational
21 inequity between customers may apply across two or
22 more different service areas of one utility?

23 A Yes.

24 Q And it may equally apply to customers within
25 one service area of that same one utility; is that

1 correct?

2 A That's correct.

3 Q So, for example, in the case of Sugarmill
4 Woods where Sugarmill Woods has had service
5 availability charges which have run the range of maybe
6 \$700 or \$800 back in the late '70s, early '80s to the
7 current charge of \$1,700 for wastewater, that would be
8 an example of an intergenerational --

9 MR. TWOMEY: Pardon me. I object.

10 Mr. Hoffman is testifying as to what the CIAC levels
11 were or are at Sugarmill Woods, and I think it
12 probably would be more appropriate if you were to ask
13 Mr. Williams if he knew what the levels were first.

14 MR. HOFFMAN: I think that Mr. Hansen
15 testified about this issue, Madam Chairman.

16 CHAIRMAN CLARK: So it's your statement that
17 it's already in evidence?

18 MR. HOFFMAN: Yeah. But I don't mind posing
19 the question to Mr. Williams.

20 Q (By Mr. Hoffman) Mr. Williams, are you
21 aware that Sugarmill Woods has imposed wastewater
22 service availability charges in a range running from,
23 as I recall, \$700 or \$800 to the current charge
24 \$1,700?

25 A I'm not aware of those specific charges, no.

1 Q If you would just assume for the purpose of
2 this question that there will be evidence in the
3 record which establishes that fact, would that be an
4 example of intergenerational inequity in service
5 availability charges within one service area?

6 A Yes.

7 MR. HOFFMAN: Thank you. That's all I have.

8 CHAIRMAN CLARK: Commissioners. Redirect.

9 MS. CAPELESS: Staff has no redirect.

10 CHAIRMAN CLARK: Thank you very much,
11 Mr. Williams.

12 Is it Mr. York or Dr. York?

13 MR. ARMSTRONG: Yes, Madam Chair, Dr. York
14 will be next, and he has not been sworn.

15 **DAVID YORK**

16 was called as a rebuttal witness on behalf of Southern
17 States Utilities, Inc. and, having been duly sworn,
18 testified as follows:

19 **DIRECT EXAMINATION**

20 BY MR. ARMSTRONG:

21 Q Good morning, Dr. York.

22 A Good morning.

23 Q Could you please state your name and
24 business address?

25 A My name is David York. I work for the

1 Florida Department of Environmental Protection,
2 business address 2600 Blairstone Road, here in
3 Tallahassee, Florida.

4 Q Thank you. Would you please provide your
5 educational background and work experience?

6 A From the standpoint of education, I hold a
7 bachelor's degree in civil engineering from Case
8 Western Reserve University; a master's degree in
9 sanitary engineering from the University of Tennessee
10 and a doctorate in environmental systems engineering
11 from Clemson University.

12 Q Are you a registered professional engineer
13 in Florida?

14 A I'm a registered professional engineer in
15 Florida as well as in Missouri.

16 Q And I'm not sure, did you state your current
17 position with DEP?

18 A I currently serve as Reuse Coordinator,
19 working with the Bureau of Wastewater Facilities.

20 Q And what are your duties in that position?

21 A As reuse coordinator, I basically get
22 involved in all aspects of the state's reuse program.
23 I coordinate and try to promote communication amongst
24 all of the agencies involved in reuse in the state,
25 including the Public Service Commission Staff, the

1 water management districts and others.

2 I'm involved heavily in rulemaking related
3 to reuse of reclaimed water. I get involved in the
4 legislative process related to reuse. I chair the
5 Reuse Coordinating Committee. Serve as basically a
6 technical resource for DEP, as well as other agencies,
7 as well as the public and utilities. Basically to do
8 everything that there is in the reuse arena.

9 Q Okay. Thank you. Do you have the authority
10 today to represent DEP's position regarding reuse
11 issues.

12 A I do.

13 Q In fact, a couple of other witnesses have
14 referred to you as DEP's expert on reuse issues. Is
15 that an accurate characterization?

16 A I've served in the capacity of reuse
17 coordinator really since the Department initiated the
18 reuse program back in the 1987 time frame, so, yes,
19 that is an accurate assessment.

20 Q Thank you. And what's the purpose of your
21 testimony today?

22 A I'm here as a result of receiving a
23 subpoena. My understanding is that I will be asked to
24 answer questions related to the state's reuse program.

25 Q Okay, thank you. Could you briefly describe

1 what constitutes reuse from the DEP's perspective?

2 A Okay. First of all, the statutes, both
3 Chapter 373 as well as 403, clearly indicate that
4 reuse shall be defined by Department. Our definition
5 of reuse is contained in Chapter 62-610 of the Florida
6 Administrative Code, Section 200.

7 The definition, and I'll paraphrase, is
8 basically reuse is the deliberate application of
9 reclaimed water in concert with the department, as
10 well as water management district rules, for a
11 beneficial purpose. That definition is followed by
12 the statement that classification criteria for judging
13 projects as either reuse or effluent disposal are
14 contained in Section 810 of Chapter 62-610.

15 Q Okay. Dr. York, what is DEP's position
16 concerning the percentage of a reuse project which
17 should be considered used and useful?

18 A DEP's position, which I think tracks the
19 statutory language in Chapter 403, Section .064, is
20 that, in essence, the full cost of reuse facilities
21 should be allowable to be recovered through a
22 utility's rates and should be considered 100% used and
23 useful.

24 Q Thank you, Dr. York. Although Section
25 403.064 that you just referred to states that reuse is

1 a state objective, in your experience, do you know of
2 any factors which discourage a utility from
3 constructing reuse facilities?

4 A Certainly there are a number of factors that
5 enter into a utility's decision to either pursue reuse
6 or not to pursue reuse.

7 One of the major concerns is with regards to
8 cost; that there is very definitely a cost factor
9 associated with implementing wastewater treatment
10 facilities needed to provide reclaimed water as well
11 as distribution lines for getting reclaimed water out
12 for beneficial use. So cost is certainly one of the
13 key considerations.

14 Q Thank you. Does the DEP keep records of how
15 much reuse is being provided throughout Florida?

16 A We do. At the present time that record
17 keeping is rather informal. We basically are relying
18 on water management district annual reports to the
19 legislature dealing with reuse which in large part
20 have been based on previous DEP inventories. But
21 through those reports we are maintaining an annual
22 inventory, if you will, of reuse activity.

23 With recent rule revisions to our reuse
24 rules, we have implemented an annual reporting program
25 where folks, the utilities, will be reporting to the

1 Department, an annual basis, their reuse activity; how
2 much reclaimed water is going for various activities.
3 Largely twofold: One, to help us maintain a tracking
4 system to monitor the effectiveness of the overall
5 reuse program, but also to develop a rather detailed
6 inventory of reuse activity in the state largely to
7 assist utilities that are interested in getting into
8 the reuse business to be able to identify other
9 utilities that are already in that business.

10 Q Dr. York, could you briefly describe the
11 process DEP pursues when a utility comes in and
12 requests a permit to convert a facility to reuse?
13 What type of evaluation does that kind of an
14 application receive?

15 A First of all, let me preface the response by
16 saying that I do not work in the permitting arena. I
17 do not review permit applications. The basic process,
18 however, is one of reviewing an application, the
19 details of what the applicant proposes to do. That is
20 reviewed against state rules and statutory
21 requirements. If it, indeed, complies with our rule
22 requirements, and basically Chapter 403 requirements,
23 we're in a position to issue a permit.

24 For reuse systems we're looking for
25 compliance, of course, in Chapter 62-610, which is

1 rather detailed in terms of what you can or can't do
2 with regards to a reuse system. And then we go
3 through the normal formal public notification process
4 before issuing a permit.

5 Q Okay. Thank you. You referred to earlier
6 to a Reuse Coordinating Committee. Could you just
7 explain the purpose of that committee?

8 A The Reuse Coordinating Committee was formed
9 back in about 1991 or 1992 at the request of the
10 Secretary of our agency.

11 It consists of members at the present time
12 of the five water management districts, Staff from the
13 Public Service Commission, as well as staff from the
14 Department of Environmental Protection. I have the
15 pleasure and honor of chairing that particular
16 committee.

17 The committee largely serves a focus of
18 trying to promote communication and coordination
19 amongst those various agencies, recognizing that reuse
20 is kind of an interesting beast. It involves both
21 wastewater management aspects, which, of course, are
22 DEP's bailiwick, but also water supply and water
23 resource management, which gets into the realm of the
24 water management districts. And, of course, we're
25 doing it both public as well as investor-owned

1 utilities, and hence the Public Service Commission
2 also plays a role for some investor-owned utilities.

3 So it's largely designed to keep people
4 talking, to identify issues, to coordinate issues and
5 concerns. And we always, back in the 1992 time frame,
6 the Reuse Coordinating Committee also took on a dual
7 role of being a conventions committee. What this
8 amounted to was in that time frame the water
9 management districts were charged with developing
10 district water management plans. And the Department,
11 as well as the water management district, entered into
12 informal agreement that we would try to make these
13 district water management plans consistent as
14 possible, and, hence, we formed a series of 18
15 convention committees, including one dealing with
16 reuse, which is the Reuse Coordinating Committee, to
17 outline terminology, strategies, uniform conventions
18 for use in publishing those district water management
19 plans.

20 Q Thank you, Dr. York.

21 Earlier you recited -- I guess recited Rule
22 62-610 in reference to the fact that that's where the
23 DEP's definition of reuse is contained?

24 A Yes.

25 Q And that rule contains classifications of

1 reuse; is that correct?

2 A It does. As I mentioned, Section 810 of
3 Chapter 62-610 outlines, is what is reuse and what is
4 disposal. Paragraph 2 deals specifically with
5 categorization of reuse, and it includes the majority
6 of the parts in 62-610.

7 Part 2, dealing with slow land applications
8 systems, spray irrigation systems. Part 3 dealing
9 with public access types of systems, irrigation of
10 golf courses, public access areas, residential
11 properties, edible food crops. Part 4 dealing with
12 rapid rate land application systems, which includes
13 two types: It includes absorption fields as well as
14 rapid infiltration basins, commonly referred to as
15 perc ponds. It includes those that involve multiple
16 basins with alternative watering and drying cycles.
17 It will also include industrial uses of reclaimed
18 water under Part 7 of the rule. Under Part 5 of the
19 rule it will include groundwater recharge and reuse.
20 And there are other sections within that section of
21 the rule that deal with wetlands enhancement creation
22 and restoration. I think those are the major ones.
23 There are some catch all's with regards to other
24 beneficial purposes.

25 Paragraph 3 then categorizes effluent

1 disposal. It includes virtually everything else; the
2 two terms are mutually exclusive. It does include
3 single-cell continuously loaded percolation ponds.
4 The single pond system that is always wet, that has
5 been specifically excluded from the definition of
6 reuse.

7 Q So with the exception of the specific
8 exclusion you referred to, the other items classified,
9 the other types of reuse classified, is it true that
10 those would fall within the class that meets the
11 state's objective of reuse facilities?

12 A Yes.

13 Q Okay.

14 A If you meet the definition under Paragraph 2
15 you are considered a reuse system.

16 Q Okay. And is it your opinion that those
17 types of reuse facilities are the types contemplated
18 in 403.064 which should be considered 100% used and
19 useful?

20 A Yes, sir.

21 Q Thank you. If you have any opinion, could
22 you give that opinion as to Southern States's
23 reputation regarding adherence to the state goal of
24 providing reuse?

25 A I guess I really can't speak to a reputation

1 per se. Based on my own experiences with Southern
2 States Utilities, I found they are very active in the
3 reuse arena. They certainly have been very active in
4 our rulemaking, and a number of representatives from
5 the Utility have participated throughout rulemaking
6 proceedings dating back to the 1988 time frame.

7 They've also been in regular attendance at
8 meetings of the Reuse Coordinating Committee and have
9 had viable input into that process. They also operate
10 a number of reuse systems. One of their systems was
11 awarded the David York award from the Florida Water
12 Environment Association a couple of years ago, which
13 is awarded on an annual basis to utilities who exhibit
14 excellence in the reuse arena.

15 Q Thank you, Dr. York.

16 MR. ARMSTRONG: Madam Chair, he's available
17 for cross examination.

18 CHAIRMAN CLARK: Mr. Reilly.

19 **CROSS EXAMINATION**

20 BY MR. REILLY:

21 Q Just a few questions, Mr. York.

22 In the PSC making its determination of what
23 constitutes a prudent investment in utility plant
24 construction, do you believe the Commission should
25 consider the degree to which the Utility plant is

1 utilized? Could that be part of their consideration?

2 A I'm sorry, sir. Let me offer one note. I
3 am hearing impaired. And I normally obtain a fair
4 amount of input from lipreading. And based on
5 distance here, I'm going to have trouble picking up
6 some of input from you even though the volume is
7 relatively loud.

8 CHAIRMAN CLARK: Dr. York, we do have
9 devices that you can use to help you hear better.
10 Would that be helpful?

11 WITNESS YORK: I'm sorry?

12 CHAIRMAN CLARK: We do have some devices
13 that you can plug into your ear that help you hear
14 better. Would that be helpful for us to get that?

15 WITNESS YORK: I'm not 100% certain. I've
16 got an amplifier at this point.

17 CHAIRMAN CLARK: We'll just try and continue
18 on and if it becomes difficult, let us know.

19 THE REPORTER: I also have realtime
20 capabilities, writing realtime for him.

21 CHAIRMAN CLARK: We'll continue on and if it
22 becomes difficult and we need to make adjustments, let
23 us know, okay?

24 MR. REILLY: I'll try to talk loudly and
25 slowly.

1 Q (By Mr. Reilly) but basically you
2 understand that this Commission frequently has to make
3 decisions concerning the prudence of the construction
4 of certain utility facilities?

5 COMMISSIONER KIESLING: What happened to
6 slowly?

7 MR. REILLY: That is slowly for me.

8 Q Given that, do you believe it's appropriate
9 that part of this decision making of what is prudent,
10 that the Commission should consider the degree to
11 which the facilities are to be utilized?

12 A Are to be utilized. Yes, I would agree with
13 that.

14 Q Okay. And you made reference to the statute
15 the 403 -- 403.064 reuse of reclaimed water?

16 A Yes, sir.

17 Q And in particular (10) which talks about
18 Chapter 367 of the Florida Public Service Commission,
19 allowing in certain situations reuse investment to be
20 recovered in rates. Is that correct?

21 A Yes, sir.

22 Q In this statute it says, does it not, to
23 recover the full prudently incurred cost of such
24 facilities as a condition to allowing recovery in
25 rates?

1 A Yes, sir.

2 Q And actually to go a step further, the term
3 is "rate structure," is it not? Do you have any
4 opinion as to whether, included in the concept of rate
5 structure would include the whole range of rates and
6 charges that are available to this Commission to
7 impose upon various customer groups? Does that seem
8 reasonable?

9 A I would say that's a reasonable --

10 Q -- interpretation?

11 A Yes.

12 Q All right.

13 In various reuse applications that are
14 involved with recharging either the aquifer or other
15 groundwater, is it your understanding of DEP rules
16 that such discharges shall not cause a degradation of
17 those waters; that that would be a condition of
18 permitting any and classifying anything as a reuse
19 application?

20 A Actually that really doesn't enter into it.
21 There is no antidegradation policy that is applied to
22 groundwaters. Rather, any land application system is
23 charged with meeting groundwater quality criteria at
24 the edge of the zone of discharge, which typically
25 extends hundred feet off of the edge of the wetted

1 area to the site boundry, whichever is more stringent.

2 COMMISSIONER KIESLING: Let me interpret
3 you, Mr. Reilly, for just a minute. Mr. Armstrong,
4 I'm going to ask you to move down one seat, and
5 Mr. Reilly I want you to go down there and anyone who
6 has questions for Dr. York will sit there and ask
7 those questions.

8 MR. REILLY: Take a second to reorganize
9 here.

10 CHAIRMAN CLARK: Thank you, Mr. Reilly.

11 WITNESS YORK: Thank you very much, sir.

12 Q (By Mr. Reilly) Okay. My question was in
13 classifying any disposal of effluent into the
14 groundwater, and somehow classifying that discharge as
15 a reuse process, I wondered if there was some DEP
16 requirement that said discharge would not cause any
17 kind of degradation to the waters, to the groundwaters
18 that are being discharged into. Do you follow that
19 question?

20 A Our rules do not specify, do not preclude
21 degradation. They preclude causing or contributing to
22 violation of groundwater quality criteria, groundwater
23 standards.

24 So, in essence, if let's say a parameter has
25 a level, a groundwater quality criteria of ten

1 milligrams per liter in the groundwater, the current
2 groundwater condition is at 1, if you were to
3 discharge to the groundwater, you could, indeed,
4 elevate the groundwater concentration somewhere
5 between 1 and 10, you could not exceed the 10. But
6 you could grade it; you could increase the
7 concentration of the groundwater above the one that it
8 currently was at.

9 Q You're familiar with Chapter 62-600.530
10 Reuse of Reclaimed Water and Land?

11 A Yes.

12 Q And again I just need you to help me
13 understand particularly (3)(b), which talks about
14 these applications not causing a degradation, at least
15 that was my reading of it -- I'm sorry, I'll restate
16 that as (4). So we're reading from 62-600.530(4).
17 And it's titled Protection of Groundwater Quality.
18 And then it goes on, it seems to say to me -- and you
19 can clarify it -- that these applications will not
20 cause, and should not cause, a degradation of the
21 background water quality.

22 A Whereabouts are you reading, sir? I've
23 gotten as far as Section 530.

24 Q 64-600.530(4). Am I reading from a -- it's
25 600 not 610. This is the Domestic Wastewater

1 Facilities chapter.

2 A Okay. As I read it, it includes language
3 that in which case land applications shall not result
4 in degradation of background water quality in excess
5 of the water quality criteria.

6 Q What water criteria are we referring to
7 there?

8 A Those would be the groundwater quality
9 standards.

10 Q Okay. Explain that. So you're saying that
11 you would find it acceptable to discharge effluent,
12 and are we talking about secondary treatment here, at
13 least secondary in this rule?

14 A Secondary treatment is the absolute state
15 minimum treatment --

16 Q For it to be considered --

17 A -- level for any type of system.

18 Q To be considered reclaimed?

19 A Yes.

20 Q And that's by definition, is it not? It
21 specifically states that in the rules?

22 A Yes.

23 Q Okay. So the question is you read this rule
24 to indicate that it would be acceptable to
25 discharge -- that that's an acceptable reuse, to

1 inject into the groundwater effluent, which is of a
2 lower quality than the water that you were injecting
3 it into?

4 A You use the term "injection."

5 Q Well, I don't mean injection. Introducing
6 it however, through whatever means.

7 A Through a land application system of some
8 sort.

9 Q Right. Okay.

10 A You are charged with meeting groundwater
11 quality criteria at the edge of the zone of discharge.
12 In essence, if the state standard is 10, at the edge
13 of the zone of discharge, the groundwater condition
14 must be 10 over less. But it does not preclude you
15 from increasing the concentration in that groundwater
16 up to a maximum of what the groundwater quality
17 criteria is.

18 Q So if you have higher quality groundwater,
19 you're allowed to degrade it possibly?

20 A That is correct.

21 Q So long as you meet these minimum DEP
22 standards?

23 A That's correct.

24 Q Okay.

25 MR. REILLY: Okay. No further questions.

1 CHAIRMAN CLARK: Mr. Jacobs.

2 MR. JACOBS: I have no questions. Thank
3 you.

4 CHAIRMAN CLARK: Mr. Twomey.

5 MR. TWOMEY: No questions.

6 COMMISSIONER CLARK: Staff.

7 CHAIRMAN CLARK: Mr. Reilly, the Staff has
8 some questions so if you could move --

9 **CROSS EXAMINATION**

10 BY MR. PELLEGRINI:

11 Q Okay.

12 A Good morning. And thank you for making the
13 shuffle. I appreciate that.

14 Q It's not a problem at all. Good morning,
15 Dr. York.

16 Doctor York, to begin with, I believe that
17 in answer to -- in response to Mr. Armstrong's -- one
18 of Mr. Armstrong's questions, you paraphrased the
19 definition of reuse as -- and tell me if I have this
20 correctly -- as the reclamation of wastewater for
21 beneficial purposes. Is that an accurate and complete
22 paraphrase?

23 A Well, I believe I used the term it's a
24 deliberate application of reclaimed water in concert
25 with the Department of Water Management rules for

1 beneficial purposes. And if you'd like I can read the
2 exact definition if that would help.

3 Q No. No. That's sufficient.

4 Dr. York, I assume that you have a detailed
5 understanding of the operational characteristics of
6 percolation ponds and drip irrigation systems; is that
7 correct?

8 A I am somewhat conversant, yes.

9 Q Would you agree that these systems -- that
10 these systems constitute an inefficient method for
11 aquifer recharge?

12 A Speaking specifically in terms of a rapid
13 rate system?

14 Q No. Generally speaking.

15 A You need to be more specific than that. In
16 terms of -- you mentioned both spray irrigation type
17 of systems as well as rapid rate systems.

18 Q Let's take them one at a time.

19 A Okay.

20 Q Percolation ponds.

21 A Percolation ponds. And the question was do
22 these represent --

23 Q An inefficient method for recharging the
24 aquifer.

25 A Well, I think the actual efficiency is going

1 to be somewhat site-specific, but no, I don't concur
2 with that. I believe that a rapid rate system
3 designed under Part 4 of our rules can and will serve
4 as a good means of aqua recharge.

5 Q Does that answer consider the effects of
6 evaporation?

7 A Yes, indeed.

8 Q Then what about drip irrigation systems?

9 A Drip irrigation systems, as a means for
10 recharging groundwater, and I'm assuming that by a
11 drip irrigation system we're talking about a slow rate
12 system to be permitted under Part 2 of Chapter 62-610,
13 really is more designed to grow vegetation on the
14 ground surface. It will have some benefit for
15 groundwater recharge, but certainly at a much lower
16 rate and magnitude than a Part 4 rapid rate system.

17 Q Your testimony then is that these methods
18 essentially are efficient methods for recharging the
19 aquifer, correct?

20 A For the Part 2 type system. The slow rate
21 system. It is a less efficient means of aquifer
22 recharge in terms of you not putting as much water on
23 the system, therefore, less water is going into the
24 the groundwater itself. It will provide some degree
25 of recharge but certainly much less than a Part 4

1 rapid rate system just due to the magnitude of the
2 differences in the amount of water that you're
3 applying.

4 Q Dr. York, in any event, despite the effects
5 of these systems, there still is a depletion of the
6 water resources in several areas of this state. Isn't
7 that correct?

8 A I'm sorry, sir?

9 Q Despite the operation of these systems, the
10 recharging effect of these systems, there still is a
11 depletion of water resources in several areas of this
12 state?

13 A There's an attrition in water resources?

14 Q Attrition?

15 A Is that --

16 Q Depletion is the word I used --

17 (Simultaneous conversation)

18 A Well, certainly, and probably the most noted
19 is the southern water use caution area associated with
20 the Southwest Florida Water Management District. Yes,
21 there are water resource problems existing in some
22 sections of the state.

23 Q That's the case despite accepting your
24 opinion that these systems are efficient, operated at
25 a high level efficiency, that still is the result,

1 there still is a depletion of the aquifer?

2 A I guess I'm having difficulty really
3 grasping the basis of the question.

4 Indeed, rapid rate systems, and slow rate
5 systems to a more limited extent, will provide some
6 degree of recharge to the groundwater system. The
7 question is has that totally eliminated any potential
8 water resource problems exhibited in the groundwaters
9 of the state, the answer is no. There are still
10 problems out there. It has not been a total solution
11 and probably may never be a total solution.

12 Q I think the point is that despite the
13 widespread use of percolation ponds and drip
14 irrigation systems in this state for the purpose of
15 recharging the aquifer, those systems, by
16 themselves -- those systems by themselves considered,
17 there still is a depletion of the water resource.
18 That they, in themselves, have been incapable of fully
19 replenishing the aquifer.

20 A As they have been designed and implemented
21 to this point, I basically agree with your premise.

22 There are a large number of rapid rate land
23 application systems and reuse systems in the state of
24 Florida. Most of them are relatively small and have
25 relatively limited impacts in terms of spatial impact

1 on groundwater resources. Some of them are rather
2 large, and as you look toward the Conserve II project
3 which serves portions of Orange County-Orlando,
4 there's a total permitted capacity of about 44 million
5 gallons a day. It involves wholesale, pretty large
6 scale citrus irrigation, as well as a very large
7 network of rapid infiltration basins. There they
8 certainly have had an impact on groundwater resources.
9 The Reedy Creek Utility system, which is also the same
10 general vicinity as the Conserve II project, features
11 a very large system of rapid infiltration basins,
12 which again has had, and will continue to have, a
13 significant impact on the groundwater resource.

14 It's one of those things where if you design
15 these things, you certainly can have impacts on the
16 groundwater system.

17 Q And Dr. York, would you agree with me that
18 percolation ponds do not contribute to a customer's --
19 to a customer reduction in demand on the water
20 resource?

21 A That they do not result in a reduction on
22 demand and resource.

23 Q Their their effect --

24 A Yes, in general their effect is in terms of
25 recharging groundwater as contrasted to reducing

1 irrigation demands rather than nonpotable demands on
2 the system.

3 Q On the other hand, would you agree that if a
4 user, such as a golf course, with a consumptive use
5 permit and its own well, that it is placing a separate
6 demand on the water resources?

7 A Assuming that you're again using a
8 groundwater well, yes, it exerts a demand on the
9 groundwater reserve.

10 Q This is the case of a user having an option
11 and electing the one that reduces the demand on the
12 aquifer, correct?

13 A For the golf course then to consider going
14 to use of reclaimed water and abandoning a well,
15 certainly has an advantage from the standpoint of
16 reducing demands on the potable supply.

17 Q Dr. York, is it true that we need to reduce
18 the demand on water resources in Florida in addition
19 to recharging the aquifer to ensure a continued supply
20 of fresh water for consumers?

21 A I think certainly that as you look at the
22 future of Florida, as population continues to increase
23 and facing a constant water supply, that certainly
24 makes every sense to use water as wisely as possible,
25 which means to conserve -- be conservative in your

1 usage of water as well as to recycle, reuse water, and
2 to implement other wise water management provisions.

3 Q Dr. York, Mr. Reilly called your attention
4 to reclaimed water statutes 403.064 and 367.0817, I
5 believe; isn't that correct?

6 A We talked about 403.064.

7 Q And you're conversant with the provisions of
8 those statutes?

9 A Of 403.064?

10 Q Yes.

11 A Yes.

12 Q And of 367.0817 as well?

13 A 367, I'm aware that it's there, I've read
14 it, but I do not regard myself as resident expert on
15 that particular section of the statute.

16 Q In limiting your reponse to 403.064, would
17 you agree that this statute confers upon the
18 Commission the obligation to consider the prudence of
19 costs incurred in reuse systems?

20 A Well, the word "prudence" was added to the
21 statute in the 1994 time frame. Certainly I think
22 that any investment should be reviewed from the view
23 of whether it is indeed a prudent investment. From
24 the standpoint of reuse in the 403.064 section in
25 particular, it dates back to the original adoption of

1 that section of the statute which dates back to the
2 1989 time frame.

3 The original language is very similar to
4 what is contained there with a few exceptions, the
5 language was added in the 1994 time frame.

6 I played a role in writing the language that
7 went into that statute back in '89. At that point the
8 statute basically read that the Public Service
9 Commission, pursuant to Chapter 367, shall allow
10 utilities to recover the full cost of reuse systems
11 through the rate structures.

12 And at that time the intent of the folks
13 that were drafting that language, of which I played a
14 prominent role, was indeed what that meant, was that
15 we were looking for allowance of considering those
16 facilities as being 100% used and useful and recovered
17 through the rate structure.

18 Q In the development of the Department's reuse
19 rules, did the Department take into specific
20 consideration in any way at all the economic impact of
21 those rules upon customers?

22 A Well, all of our rulemaking proceedings are
23 subject to publication of an Economic Impact Statement
24 that assesses the environmental as well as economic
25 effects of those rules. So, yes, I have to say that

1 virtually all of our rules have looked at some of the
2 economics involved in their application.

3 Q But specifically the economic impact upon
4 customers involved with reuse systems.

5 A Specifically to the economic impact on
6 customers in saying that this level of regulation will
7 cause rates to be increased by some percentage or some
8 absolute dollar amount, no. The evaluation has been
9 of a more generic nature; you know, what does this
10 really do to the utility and its customers in terms of
11 rates.

12 So the evaluation has been more generic than
13 detailed assessment of rates on individual customers.

14 Q I assume then that the Department would not
15 have considered -- would not have considered the issue
16 of the allocation burden amongst different customer
17 classifications?

18 A No. The Department really doesn't get into
19 issues regarding who gets charged for various types of
20 facilities, whether it's allocated to wastewater
21 customers or water customers or users of reclaimed
22 water in the case of a reuse system.

23 Q Would you agree that the reuse of reclaimed
24 water benefits both water customers and wastewater
25 customers?

1 A Yes, very much so.

2 Q Would the benefits -- can you describe the
3 benefits that would inure to one and the other?

4 A Well, from a wastewater standpoint -- first
5 of all, you have to realize that within Florida all
6 reuse systems involve some elements of wastewater
7 management and some elements of water resource
8 management. And I think that's reflected by the state
9 objective that's been established in both Chapter 373
10 Section 250, as well as in Chapter 403, Section .064.
11 And in both those statutes, one of which 373 deals
12 with water resource management, and the other, 403,
13 deals with basically environmental control and
14 wastewater management, we've established the state
15 objective of encouraging and promoting reuse of
16 reclaimed water. So obviously there are benefits on
17 both sides of the ledger.

18 From the wastewater management side, the
19 utility that's providing wastewater service simply
20 must provide a means for handling of wastewater that
21 comes down the pipe day after day after day. That
22 there must be a means for handling that wastewater in
23 an environmentally sound fashion that will protect
24 public health. And, of course, you basically have two
25 options: Either reuse or dispose of.

1 In the disposal option are largely coming
2 down to surface water discharge, ocean outfalls being
3 a major component, as well as deep well injection;
4 injecting it into a subsurface formation, saline in
5 nature, unusable, and in both cases both injection
6 wells as well as surface water discharge, you are in
7 essence eliminating that water from the normal realm
8 of utilization that pass through the hydrologic cycle;
9 you're either losing it to tide or you're losing it to
10 a saline groundwater. It's not usable. You're
11 disposing of it.

12 From the reuse perspective, you're offering
13 the advantage of taking that water and possibly
14 getting it back into the groundwater cycle, or using
15 it for nonpotable purposes at this point. That will
16 offset demands on other either surface or
17 groundwaters. So from the wastewater management
18 perspective, you have something with wastewater that
19 you've got to do. From the water supply perspective
20 most of the reuse technologies that are covered by our
21 rules will allow some level of groundwater recharge.
22 And whether that's the ultimate answer to groundwater
23 problems within an area may remain to be seen. But
24 you are having a positive impact. You are
25 contributing water to that groundwater reserve.

1 Some of the systems, such as residential
2 irrigation, irrigation of golf courses or other
3 landscape areas, used for toilet flushing, used for
4 fire protection, in essence it allows the use of a
5 reclaimed water in lieu of precious potable drinking
6 water for those purposes that do not require a true
7 drinking water quality source. So you effect a great
8 deal of water conservation by implementing that type
9 of reuse system.

10 Q These benefits of reuse systems, are they
11 limited to the customers of the particular -- of a
12 particular utility or do they extend to others within
13 a region?

14 A It really depends, I think, largely on the
15 hydrogeologic conditions in the area; the size of the
16 utility in its scope. A very small utility with a
17 very small system probably has less of a regional
18 impact than a very large system. And again, Conserve
19 II featuring large portions of Orange County-Orlando
20 would be an example, having much more regional impacts
21 and regional benefits to be associated with it.

22 Q Apart from the Orlando system which you
23 speak about, are there other systems in this state
24 that -- other reuse systems in this state that have a
25 regional impact similar to the Orlando system?

1 A Well, I think very definitely so, for the
2 larger systems in particular that the impacts will be
3 more regional.

4 And it's not necessarily limited to
5 groundwater recharge projects, rapid rate type of
6 systems, but for large residential irrigation systems,
7 public access irrigation systems where you are
8 reducing demands on the potable supply, you very
9 definitely have a favorable impact on the point of
10 withdrawal. So if you're in, let's say, the West
11 Coast Regional Water Supply Authorities' area down in
12 the Tampa Bay area, you may be implementing reuse of a
13 residential irrigation, public access irrigation. In
14 Pinellas County or St. Petersburg, you are reducing
15 demands on the well fields that they are drawing from
16 in Pasco and Hillsborough County. So yes, you are
17 having a favorable impact on the regional scale.

18 Q Dr. York, earlier you cited an exclusion,
19 that is the exclusion of a single pond system.

20 A Okay.

21 Q Can you explain why -- I believe you
22 described a single pond as one always wet. Can you
23 explain for me why that is excluded from the --

24 A Let me take a crack at that and if I lose
25 you please stop me.

1 Q We probably will.

2 A We have within our rules, in Chapter 62-610,
3 a Part 4 that deals with rapid rate plant application
4 systems, and it includes rapid infiltration basins.

5 Rapid infiltration basins, as covered by
6 this part of our rule, include multiple basins,
7 multiple ponds, if you will, such that these ponds are
8 operated in an alternating wetting and drying cycle.
9 You will apply water to one pond while a second pond
10 is being allowed to dry. And after a period of a week
11 or so, you will flop your operation and the pond that
12 had previously been allowed to dry you'll put water
13 to, and the pond that you previously had been flooding
14 you will allow to dry. And by effecting this
15 alternating watering and drying cycle, you very
16 definitely do some very nice things in the ground-
17 wastewater system in terms of managing that applied
18 reclaimed water, largely in terms of nitrogen control.
19 In essence, you take advantage of different
20 populations of micro-organisms that will first
21 nitrofy, convert the nitrogen into ammonia, and a
22 second -- excuse me, will convert nitrogen into a
23 nitrate form, and a second set of bugs that will
24 convert nitrate into a nitrogen gas and release it to
25 the atmosphere.

1 And it works very effectively. But to do
2 that you must have this alternating watering and
3 drying cycle. Those types of Part 4 projects that
4 involve alternating watering and drying cycles would
5 clearly identify as being reuse.

6 There's another section within section --
7 within that Part 4 dealing with rapid rate systems
8 that speaks to other types of rapid rate systems.
9 These may be systems in unfavorable hydrogeologic
10 conditions, karst areas, areas where you have clean
11 sugar sands over an unconfined potable aquifer that is
12 the primary drinking water supply in the area, or
13 systems that are being loaded at higher rates than
14 normally would be allowed under Part 4. It also
15 includes some single-celled percolation ponds.

16 This section 525 that deals with these other
17 types of systems involves much higher levels of
18 treatment and disinfection prior to release to that
19 system. Those type of systems will be categorized as
20 reuse, and that could include a single-cell system,
21 but that single-cell system would involve reclaimed
22 water that has been treated to meet drinking water
23 standards, and that's before you put it into the basin
24 and you have to provide reasonable assurance that with
25 a continuous loaded system that it would continue to

1 perk on a long-term basis.

2 What is excluded are single-celled
3 continuously loaded ponds that typically were
4 permitted, that would be permitted before Chapter
5 62-610 became effective back in the 1989 time frameq.
6 Those continuously loaded single-celled ponds
7 typically serve small utilities. I'm not aware of any
8 large ones in the state of Florida. And typically we
9 have had some problems with them.

10 You load a pond on a continuing basis for
11 long periods of time and what you tend to do is plug
12 the bottoms of these things up with little amounts of
13 suspended material that is contained and with algae
14 that is being grown in the Florida sunshine, to the
15 point where you build a layer on the bottom that
16 doesn't allow water to percolate through it very much.
17 And suddenly you have a percolation pond that really
18 doesn't perk, and then we start finding difficulties
19 arising. Perhaps illegal discharge pipes into a
20 service stream; possibly water going through the bank
21 and flooding adjacent properties. They just don't
22 work as well. Plus you're not taking advantage of the
23 nitrification/denitrification processes that are
24 inherent in a system where you have alternating
25 watering and drying cycles in multiple basins. So as

1 a result, we've excluded those old single-celled
2 percolation ponds from the definition of reuse, and
3 we're seeing those things as an effluent disposal
4 mechanism and not going to receive any favored
5 consideration by the Department.

6 CHAIRMAN CLARK: Mr. Pellegrini, how much
7 more do you have?

8 MR. PELLEGRINI: Maybe five minutes.

9 Q (By Mr. Pellegrini) Dr. York, do you know
10 what exfiltration basins are?

11 A Rapid exfiltration basins.

12 Q Yes.

13 A The common terminology that we use is rapid
14 infiltration basin, designed to get it into the
15 groundwater system. Perhaps you could explain your
16 concept of rapid exfiltration basin.

17 Q No, I can't. But we're dealing here in a
18 particular permit with a system containing rapid
19 exfiltration basins, and my question is do you
20 understand the term?

21 A Can you share with me the utility site?

22 Q Buena Ventura Lakes.

23 A Okay. This is the Orange-Osceola system?

24 Q Yes.

25 A Okay. Yeah, I have some familiarity with

1 that particular system.

2 It's a system that, from my recollection,
3 involves basically linear basins that have a feature
4 in the side of the basin that looks very much like a
5 french drain. In essence, typically you build your
6 berms surrounding the basin with relatively
7 impermeable material to keep the water in the basin
8 and allow it to percolate out the bottom into the
9 groundwater system. In this case there's a horizontal
10 filler material made up of gravels and sands basically
11 designed to allow water to percolate through the berm
12 in a horizontal direction, where immediately adjacent
13 to the berm is a surface water body.

14 So in essence, water is loaded into the
15 basin, exfiltrates through the sand and gravel packing
16 and into the service water body.

17 Q Just a final question, Dr. York. Are you
18 familiar with a letter dated June 29, 1995, from
19 Richard Harvey, then the Director of Water Facilities
20 at DEP to Mr. John Williams of this commission?

21 A Yes, sir, I am, and I have a copy in front
22 of me.

23 Q And with the attachment of DEP comments
24 dated May 12, 1995?

25 A The attachment labeled "DEP comments on

1 Public Service Commission, May 12, 1995, draft rule
2 regarding used and useful?"

3 Q Yes.

4 A Yes, sir.

5 Q Then you are familiar with both the letter
6 and the attachments. Would you turn to Page 6 of the
7 attachment.

8 A Yes, sir.

9 Q Paragraph 19, particularly.

10 A Yes, sir.

11 Q Do you agree with the DEP position stated
12 there?

13 A Yes, I do.

14 Q Did you contribute to the drafting of that
15 letter?

16 A Yes, sir, I did.

17 Q Would you agree with me that an
18 interpretation of that position would be that 100%
19 used and useful means that existing ratepayers must
20 pay for the entire reuse system, even if it is greatly
21 oversized with respect to existing flows?

22 A Yes. I would say that it is subject to --
23 the rates being passed along to existing customers
24 with inclusion of appropriate margin reserve.

25 Q And it would be your opinion that that would

1 be a fair, just and reasonable treatment with respect
2 to the existing customers?

3 A Yes, sir.

4 MR. PELLEGRINI: That concludes the
5 questioning.

6 CHAIRMAN CLARK: Thank you. Mr. Armstrong.
7 Do you have any redirect?

8 MR. ARMSTRONG: If I could have just one
9 minute to consult I might not.

10 CHAIRMAN CLARK: Commissioners, do you have
11 any questions?

12 MR. PELLEGRINI: Did I do it in five
13 minutes?

14 CHAIRMAN CLARK: Yes, you did.

15 MR. ARMSTRONG: Madam Chair, I have three,
16 what I believe, will be very brief redirect.

17 **REDIRECT EXAMINATION**

18 BY MR. ARMSTRONG:

19 Q Hi, Dr. York.

20 Your attention has been drawn specifically
21 to the two words in Section 403.064 regarding
22 prudently incurred.

23 Could you describe for the Commission how
24 many levels of review a reuse project goes through
25 before it is permitted and constructed?

1 A Well, within the DEP process the review is
2 very thorough. It has been reviewed, up, down and
3 sideways by our permitting review engineers in our
4 district office. On some of the more complex systems
5 I may also get involved in some of the conceptual
6 review. It's a pretty thorough review.

7 Q How about the Water Management District
8 level, are you familiar at all with the reviews they
9 have of these types of projects?

10 A I really can't speak with any certainty with
11 regards to the water management districts. Typically
12 they are not involved in our direct review of a permit
13 application for a reuse system. They would be more
14 involved in the consumptive use permitting which may
15 have some reuse ramifications.

16 Q Thank you, Dr. York. Could you please
17 assume that a utility was not permitted to recover the
18 full cost of reuse through rates to current customers.
19 Do you believe that would provide an incentive or a
20 disincentive for the utility to actually propose and
21 construct reuse projects?

22 A Well, it certainly would not provide an
23 incentive, and would probably tend towards a
24 disincentive. And again, the language that's in
25 403.64, the paragraph 10 as it is currently numbered,

1 dates back to relatively early stages of development
2 of the state's reuse program.

3 And at the time that the legislature was
4 establishing encouragement, promotion of reuse of
5 reclaimed water as formal state objective, and again
6 from both the water supply 373, as well the
7 environmental control, Chapter 403 perspectives, in
8 looking at the investor-owned utilities, it was
9 believed that there really needed to be incentives
10 there to encourage these folks to move the direction
11 of implementing viable reuse programs. And, hence,
12 this language, or the predecessor of this language,
13 was added to the Section 403.064 at that time.

14 MR. ARMSTRONG: Thank you very much,
15 Dr. York. I have no further questions.

16 CHAIRMAN CLARK: Thank you very much
17 Dr. York, for taking the time to come over here. The
18 Commission has appreciated the information DEP and the
19 Water Management Districts have provided in this
20 proceeding. Thank you for coming.

21 WITNESS YORK: Thank you.

22 CHAIRMAN CLARK: We'll go ahead and take a
23 ten-minute break and reconvene at 11:10.

24 MR. ARMSTRONG: Madam Chair, if I might,
25 there are a couple of things -- the Company has agreed

1 to withdraw, relieve Elsa Potts of her obligation to
2 appear under subpoena, so that would be stricken. And
3 we have agreed among all parties to have the testimony
4 of Jay Yingling stipulated into the record, so if we
5 could accomplish that we can check those two off.

6 CHAIRMAN CLARK: We'll do that when we come
7 back. Thank you.

8 (Brief recess taken.)

9 - - - - -

10 COMMISSIONER JOHNSON: We'll reconvene the
11 hearing.

12 Mr. Armstrong.

13 MR. ARMSTRONG: Thank you, Madam Chair.

14 The first course of action is to incorporate
15 into the record the rebuttal testimony of Jay Yingling
16 that consists of three pages of prefiled rebuttal
17 testimony, by stipulation of the parties, we can
18 stipulate that into the record without Mr. Yingling
19 appearing.

20 CHAIRMAN CLARK: Okay. The prefiled
21 rebuttal testimony of Jay Yingling will be inserted
22 into the record as though read.

23 MR. ARMSTRONG: Thank you, Madam Chair.

24 CHAIRMAN CLARK: Should we mark his exhibit?

25 MR. ARMSTRONG: Yes, Madam Chair, we request

1 that that exhibit be identified with the next
2 available exhibit number.

3 CHAIRMAN CLARK: JY-1 will be marked as
4 Exhibit 201, and it will be entered into the record
5 without objection.

6 (Exhibit No. 201 marked for identification
7 and received in evidence.)

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1 Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

2 A. My name is Jay Yingling. My Business address is
3 2379 Broad Street, Brooksville, Florida 34609-6899.

4 Q. WHO IS YOUR CURRENT EMPLOYER AND WHAT IS YOUR
5 POSITION?

6 A. I am a Senior Economist with the Southwest Florida
7 Water Management District ("SWFWMD"). A copy of my
8 resume is provided in Exhibit 201 (JY-1).

9 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND
10 EXPERIENCE?

11 A. I received a Bachelor's and Masters of Science in
12 Food and Resource Economics from the University of
13 Florida in 1982 and 1984, respectively. I have
14 spent the last nine years of my career as an
15 economist with SWFWMD where I am primarily
16 responsible for analyzing the economics of both
17 regulatory and non-regulatory matters. I was
18 responsible for administering SWFWMD's contract
19 with Brown & Caldwell to perform the Price
20 Elasticity Study. I developed the scope of work
21 for the study and worked very closely with the
22 consultant to design the customer surveys used to
23 gather data for use in the demand estimation
24 equations.

25 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

1 A. I will respond to the testimony of Office of Public
2 Counsel Witness David Dismukes that the SWFWMD's
3 Price Elasticity Model does not apply in SSU's case
4 and I will comment on Dr. Whitcomb's rebuttal to
5 Dr. Dismukes testimony.

6 **Q. DO YOU AGREE WITH DR. DISMUKES'S TESTIMONY THAT THE**
7 **SWFWMD MODEL IS NOT APPLICABLE TO SSU IN THIS**
8 **PROCEEDING?**

9 A. No. I would have to agree with Dr. Whitcomb's
10 observations in his rebuttal testimony. Dr.
11 Dismukes mistakenly argues that SSU's rate
12 structure is different than the increasing and
13 declining rate structures mostly used in the SWFWMD
14 study. He states that SSU has a non-block
15 ("uniform per unit") quantity charge. He
16 overlooks, however, the fact that sewer price is
17 also an integral part of the total price signal
18 sent to customers. When sewer price is considered,
19 SSU has a combined water and sewer declining block
20 rate structure, as the sewer quantity charge is
21 capped at 6,000 gallons per month in most
22 communities. Dr. Dismukes assertion that SSU's
23 rate structure is not similar to the utilities in
24 the SWFWMD study is false.

25 **Q. WHAT IS YOUR OPINION OF DR. WHITCOMB'S REBUTTAL TO**

1 **DR. DISMUKES TESTIMONY REGARDING THE ELASTICITY**
2 **MODEL?**

3 A. I agree with the opinions expressed by Dr. Whitcomb
4 in response to Dr. Dismukes' criticism of the use
5 of SWFWMD's Elasticity Model.

6 **Q. DOES THIS CONCLUDE YOUR PRE-FILED TESTIMONY?**

7 A. Yes it does.

1 MR. ARMSTRONG: Thank you. I'm not sure if
2 it was on the record for Southern States previously,
3 but Southern States has relieved Ms. Elsa Potts of her
4 obligation to appear, so she will not be appearing.

5 CHAIRMAN CLARK: Okay. And Mr. Wilkening
6 will be part of the Jacksonville teleconference; is
7 that correct?

8 MR. ARMSTRONG: That's correct, Madam Chair.
9 That would bring us to Mr. Sandbulte.

10 CHAIRMAN CLARK: Good.

11 - - - - -

12 **AREND J. SANDBULTE**
13 was called as a rebuttal witness on behalf of Southern
14 States Utilities, Inc. and, having been duly sworn,
15 testified as follows:

16 **DIRECT EXAMINATION**

17 BY MR. ARMSTRONG:

18 Q Good morning, Mr. Sandbulte.

19 A Good morning.

20 Q Mr. Sandbulte, do you have before you 27
21 pages of your prefiled rebuttal testimony that was
22 filed in this case?

23 A Yes, I do.

24 Q Do you have any changes you'd like to make
25 to that testimony?

1 A No.

2 Q If I were to ask you any of the questions
3 contained in that 27 pages, would your answers be the
4 same?

5 A Yes.

6 MR. ARMSTRONG: Madam Chair, I request that
7 the prefiled direct testimony of Arend Sandbulte be
8 incorporated into the record as though read.

9 CHAIRMAN CLARK: The prefiled rebuttal
10 testimony of Mr. Sandbulte will be inserted into the
11 record as though read.

12 Q (By Mr. Armstrong) Mr. Sandbulte, you have
13 attached to your testimony an exhibit identified as
14 AJS-7; is that correct?

15 A Yes.

16 Q Do you have any changes you'd like to make
17 to that exhibit?

18 A No.

19 MR. ARMSTRONG: Madam Chair, I request that
20 the exhibit identified as AJS-7 be identified with the
21 next available exhibit number.

22 CHAIRMAN CLARK: It will be identified as
23 Exhibit 202.

24 MR. ARMSTRONG: 202.

25 (Exhibit No. 202 marked for identification.)

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REBUTTAL TESTIMONY OF AREND J. SANDBULTE
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
ON BEHALF OF
SOUTHERN STATES UTILITIES, INC.
DOCKET NO. 950495-WS

1 Q. ARE YOU THE SAME AREND J. SANDBULTE WHO PREVIOUSLY
2 FILED DIRECT TESTIMONY?

3 A. Yes, I am.

4 Q. ARE YOU AWARE THAT THE INTERVENERS IN THIS CASE
5 DISPUTE YOUR ASSERTION THAT MINNESOTA POWER HAS ANY
6 EQUITY INVESTED IN SSU?

7 A. Yes, I have read the testimony of intervenors'
8 witnesses which attempt to cast doubt on my
9 statements.

10 Q. DO YOU WISH TO REBUT THE INTERVENER'S TESTIMONY?

11 A. Yes, I do. First, it must be clear that Minnesota
12 Power's investment in SSU is significant, \$78
13 million or approximately 14% of Minnesota Power's
14 equity. This \$78 million equity investment has
15 remained relatively constant since 1992. Since
16 1992, the return on Minnesota Power's simple
17 average equity investment in SSU has been -3.0% in
18 1992, +1.3% in 1993, +16.3% in 1994 and it is
19 projected that there will be another loss on
20 investment in 1995 of -3.1%. These returns include
21 income from extraordinary events, both gains and
22 losses. Without the 1994 gain on the sale of
23 assets in Sarasota County, MP has lost over two and
24 one half million dollars of invested equity in the
25 four year period 1992-1995. Of course, investors

1 give little consideration to extraordinary events,
2 particularly gains from the sale of operating
3 assets, when making their long term investment
4 decision. Not only Minnesota Power's shareholders,
5 but also our board of directors consider SSU's
6 financial performance from continuing operations
7 unacceptable.

8 In fact, the poor performance of SSU has
9 reached a critical point. Within the last month
10 both Standard and Poors and Moodys rating agencies
11 downgraded Minnesota Power's bond rating citing the
12 poor performance of SSU as a key reason for the
13 downgrade. Of great concern to the rating agencies
14 is the inability of SSU to improve its return over
15 the past several years which as I discussed
16 previously has been averaging about 0% since 1992
17 except for 1994 when SSU's return was 16.3% due to
18 the sale of VGU.

19 One area of particular concern is the used and
20 useful methodology. It is my understanding that
21 the used and useful adjustment was developed to
22 prevent a few customers from having to bear the
23 cost relating to plants and lines installed to
24 eventually serve an entire built out service area.
25 The allowable margin reserve for lines was 12

1 months and for plant was 18 months with a CIAC
2 offset which essentially gave you "0" months of
3 margin reserve. Eventually the AFPI was developed
4 to allow the utility to recover costs from future
5 customers if they connect for up to five years
6 beyond the margin reserve. In other words the
7 shareholder doesn't recover any return on
8 investments made for the 12-18 month margin reserve
9 period and only recovers a return on investment for
10 the 5 years beyond the margin reserve if customers
11 connect. This means that all the risk is on the
12 shareholder and that every dollar invested into
13 plant does not earn a full return because you have
14 no return during the margin reserve period and
15 beyond that you have to hope there is a good
16 economy and you have growth. The harmful part of
17 this policy is that the utility suffers because it
18 never gets a full return on its dollar because of
19 the margin reserve and because even if you get full
20 buildout in five years, you have to be building for
21 the next 5 years of customer growth. Also the
22 customer eventually suffers through higher rates
23 because by building in small blocks he does not
24 benefit from economies of scale.

25 The solution to this problem lies with multi-

1 plant facilities like SSU that can have uniform
2 rates across plants. Uniform rates could allow
3 utilities such as SSU to build plants to maximize
4 economies of scale by extending the margin reserve
5 to an optimum 10 to 20 year margin reserve for each
6 plant as would be defined by an analysis of each
7 type of plant. In this way the start up costs for
8 new facilities would not be borne by a few
9 customers but by all customers and at the same time
10 facilities could be built to maximize economies of
11 scale which would eventually benefit all customers
12 and put utilities back into a make whole situation.
13 This is exactly what happens in the electric and
14 telephone industry which is why they don't have non
15 used and useful adjustments. Those water utilities
16 that are not multi plant could still have the
17 option to utilize AFPI.

18 This would be a win for the customer, the
19 Company and the elimination of the used and useful
20 micro regulation should reduce regulatory costs by
21 significantly streamlining the rate process.

22 **Q. WHY DID SSU DECIDE TO SELL THE FACILITIES SERVING**
23 **THE VENICE GARDENS SERVICE AREA TO SARASOTA COUNTY?**

24 A. SSU sold the facilities to Sarasota County under
25 threat of condemnation. SSU had little choice in

1 the matter. Attached as Exhibit _____ (AJS-7) are
2 copies of Sarasota County's "hit list" of investor
3 owned utilities to be purchased, by condemnation or
4 otherwise, by the County. SSU remained at or near
5 the top of the list since the date the list was
6 created by the County. The acquisition by the
7 County of the Venice Gardens facilities was not a
8 matter of "if" but rather "when." In the meantime,
9 the County took obvious steps to thwart the
10 economic viability of SSU's Venice Gardens service
11 area. A typical example was the refusal of the
12 Sarasota County Board of County Commissioners,
13 which we'll refer to as the "Board," to recognize
14 and adopt the findings of the County's own hearing
15 examiners, after extensive and protracted
16 evidentiary and customer service hearings, that
17 approximately 90% of the revenue increases
18 requested by SSU in 1991 be granted. Instead, the
19 Board created two issues from whole cloth to
20 justify denial of the hearing examiners'
21 recommendation. The significance of these acts is
22 heightened by the fact that the proceeding was to
23 be an "expedited" Phase II rate proceeding. It
24 took over 18 months for the Company to obtain this
25 "expedited" relief. As a result, SSU was forced to

1 implement the rates recommended by the hearing
2 examiners without Board approval under relevant
3 portions of the Florida Statutes. Subsequently,
4 SSU obtained confirmation that the County was
5 acting in a manner designed to facilitate
6 acquisitions of the investor owned utilities
7 operating in the County -- such as an increased
8 level of scrutiny of IOU utility operations.

9 **Q. DO YOU BELIEVE THE GAIN ON THE SALE OF THE VENICE**
10 **GARDENS FACILITIES AS PROPOSED BY MS. DISMUKES**
11 **SHOULD BE CONSIDERED BY THE COMMISSION WHEN**
12 **DETERMINING SSU'S REVENUE REQUIREMENTS?**

13 A. No. The Commission reviewed a startlingly similar
14 occurrence in one of SSU's last rate proceedings
15 regarding the condemnation by St. John's County of
16 SSU's St. Augustine Shores facilities. The
17 Commission agreed that the gain resulting from that
18 sale should not be considered for ratemaking
19 purposes.

20 As with the St. Augustine Shores facilities,
21 or any other utility facilities, SSU's customers do
22 not gain any ownership rights through the payment
23 of monthly fees for service or up front
24 contributions in aid of construction, commonly
25 referred to as CIAC. I note that another name for

1 contributions in aid of construction are "service
2 availability fees." That is all CIAC payments are,
3 payments made by customers to ensure that water
4 and/or wastewater service is available to their
5 property. It is not reasonable to suggest that the
6 payment of service availability charges somehow
7 gives customers an ownership interest in the
8 utility's property such that customers should share
9 in a gain or loss from a sale or other disposition
10 of such property. The folly of such an assertion
11 is found in the fact that some utility customers --
12 of SSU, the Hernando County Utilities Department
13 and I am sure many other utilities -- do not and
14 have not paid any service availability charges at
15 all. Instead, these customers pay for services
16 solely through their monthly bills. Do customers
17 who pay service availability charges somehow
18 possess different degrees of ownership based on the
19 amount of service availability charges they paid
20 and those customers who paid none have no ownership
21 interest?

22 Ms. Dismukes' proposal should be rejected by
23 the Commission for the following reasons:

24 (1) SSU's remaining ratepayers contributed nothing
25 to Southern States' recovery of its investment in

1 the Venice Gardens facilities and they bore none of
2 the risk of any loss.

3 (2) The sale to Sarasota County under the threat
4 of condemnation involved not only the sale of
5 Southern States' assets but also the loss of
6 customers to whom service had been previously
7 dedicated and provided through those assets.

8 (3) At the time of the sale under threat of
9 condemnation, the Venice Gardens system was
10 regulated by Sarasota County and was not under
11 Florida Public Service Commission jurisdiction.

12 (4) The Venice Gardens system always has been
13 treated on a stand alone basis for ratemaking
14 purposes.

15 (5) A Commission determination that a utility's
16 revenue requirements must be reduced by the gain on
17 the sale of facilities providing service to an
18 entire service area (or a portion thereof) would
19 require the Commission to increase the utility's
20 revenue requirements in the event of a loss on the
21 sale such facilities (or a portion thereof)
22 regardless of the absence of any relationship
23 between the remaining customers and the facilities
24 (or portion thereof) sold. This would be an
25 unacceptable result. Whereas Ms. Dismukes refers

1 to an alleged sharing of a loss from the sale of a
2 facility in Skyline Hills, we note that there does
3 not appear to have been any hearing in that matter
4 and no issue raised regarding whether the loss
5 should have been recovered. SSU, and apparently
6 Public Counsel, have no further knowledge at this
7 time regarding any particular facts or
8 circumstances which might have influenced the
9 Commission to allow the de minimis loss of \$5,643
10 to be recovered from customers.

11 (6) To deny utility investors the opportunity to
12 offset the erosion of their investment through the
13 receipt of capital gains would be a deterrent to
14 the reinvestment of retained earnings by the
15 utility and to the attraction of new capital from
16 investors.

17 (7) The Commission's policy concerning gains and
18 losses on the disposition of the facilities serving
19 an entire service area should be consistent with
20 the Commission's recently confirmed acquisition
21 adjustment policy -- that is, absent extraordinary
22 circumstances, when a utility purchases a system
23 rates are not adjusted for any discount under or
24 premium over book value. For instance, please
25 refer to the Commission's Order No. 25729 issued

1 February 17, 1992 in Docket No. 891309-WS.
2 Likewise, customer rates should not be adjusted
3 after a sale to reflect gains or losses absent
4 extraordinary circumstances.

5 (8) If the utility selling the facilities operated
6 in only one service area, and all of the facilities
7 were sold, the utility owner would receive the
8 entire benefit/detriment from the gain/loss. The
9 proceeds from the sale of the Venice Gardens and
10 other facilities should be treated no differently.

11 This same rationale applies to the gain
12 realized by SSU as a result of the condemnation in
13 1991 by St. John's County of SSU's St. Augustine
14 Shores water facilities -- and, as I indicated
15 earlier, the Commission previously acknowledged
16 these facts and rejected Public Counsel's plea in
17 Docket No. 920199-WS that SSU shareholders be
18 denied the gain.

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

21 A. Ratepayers pay for the use of utility property
22 employed in providing service. They do not acquire
23 a proprietary interest in that property.
24 Similarly, ratepayers have no proprietary interest
25 in non-utility and non-regulated property, and

1 hence, are not entitled to share in the gain and
2 are not required to bear the impact of any loss
3 arising out of the disposition of such property.
4 Ownership of both utility and non-utility property
5 is indistinguishable in this regard -- ownership
6 continues to reside in the shareholders who,
7 accordingly, must bear the risk of loss.

8 I understand that it has been argued before
9 the Commission in the past that customers acquire
10 an equitable interest in depreciable assets since
11 depreciation expense is factored into rates, and
12 hence, customers should realize the benefits of a
13 portion of a gain realized on the sale of such
14 assets. This argument has no application to the
15 facts in this proceeding. It would be inequitable
16 and unreasonable to flow through to the remaining
17 SSU customers the gain from the sale by
18 condemnation of the St. Augustine Shores facilities
19 or sale under threat of condemnation of the Venice
20 Gardens facilities since they never have been
21 assessed any of the capital or depreciation costs
22 associated with the facilities nor have they been
23 subject to any risk for potential losses associated
24 with the facilities. The same rationale applies
25 whenever the sale includes all of the facilities

1 serving an entire service area and customers should
2 not share in those gains either. I am not aware of
3 any instance in which ratepayers were found to be
4 entitled to share in the gain on the sale of
5 property absent, at minimum, a demonstration that
6 ratepayers either have contributed to the utility's
7 recovery of its investment or have borne the risk
8 of loss. Neither of these circumstances exist here
9 concerning the Venice Gardens or St. Augustine
10 Shores facilities. Rates for utility service from
11 these facilities historically were set on a stand-
12 alone basis in accordance with separate accounting
13 data, rate base, depreciation, expenses, etc.
14 Therefore, other SSU customers have been unaffected
15 by the existence of these physical assets in the
16 past and should remain so. In this vein, I note
17 that SSU witness Ludsen will address Ms. Dismukes'
18 allegation that the gain should be shared as a
19 result of the Commission's finding in Docket No.
20 930945-WS that SSU operates one system.

21 I also must note that if any of SSU's
22 facilities had been sold at a loss, I am unaware of
23 any legal or equitable principle that would
24 authorize the Commission to reimburse the Company
25 for its loss on its investment. However, if Ms.

1 Dismukes' proposal were adopted, it does not appear
2 that the Commission would have any alternative but
3 to do so in the future.

4 In addition, the remaining SSU ratepayers
5 should not be affected by a gain or loss on the
6 sale of a non-jurisdictional entity. Under these
7 circumstances, using the gain generated by the
8 condemnation of the non-jurisdictional St.
9 Augustine Shores facilities or sale under threat of
10 condemnation of the Venice Gardens facilities to
11 reduce rate relief to which the Company is
12 otherwise entitled for its FPSC jurisdictional
13 service areas would deprive the Company and its
14 shareholders of "just compensation."

15 Also, under the Commission's repeatedly
16 reaffirmed acquisition adjustment policy, absent
17 extraordinary circumstances, when a utility
18 purchases an additional system, customer rates are
19 not adjusted for any discount under or premium over
20 book value. Likewise, the Commission's policy on
21 the sale of facilities should be to ignore any gain
22 or loss absent extraordinary circumstances. No
23 such circumstances have been identified in this
24 proceeding.

25 **Q. WHY IS IT RELEVANT THAT THE ST. AUGUSTINE SHORES**

1 **FACILITIES WERE CONDEMNED AND THE VENICE GARDENS**
2 **SALE WAS A SALE UNDER THREAT OF CONDEMNATION OF**
3 **FACILITIES SERVING AN ENTIRE SERVICE AREA?**

4 A. These facts are important for several reasons. SSU
5 not only sold all plant assets which were used to
6 serve the St. Augustine Shores and Venice Gardens
7 service areas, but SSU also lost customers and part
8 of its business as a result of the sales. In this
9 situation, SSU was not just selling excess capacity
10 but rather was required to liquidate part of its
11 on-going enterprise. These types of sales have
12 hidden costs. For instance, opportunities to
13 stabilize SSU's business and achieve long-term
14 investment returns are lost as a result of these
15 forced sales.

16 **Q. DOES THE FACT THAT THESE SALES WERE FORCED SALES**
17 **PROVIDE FURTHER SUPPORT FOR YOUR POSITION THAT THE**
18 **GAIN SHOULD BE RETAINED BY THE COMPANY AND ITS**
19 **SHAREHOLDERS?**

20 A. Yes. Sales like the Venice Gardens and St.
21 Augustine Shores sales are essentially a partial
22 liquidation of the utility's business. In the case
23 of a total liquidation of a utility, it is clear
24 that any gains or losses should go to the owners of
25 the utility, in other words, the shareholders. As

1 in Docket No. 920199-WS, Ms. Dismukes fails to
2 present any evidence that explains how the Venice
3 Gardens, St. Augustine Shores or River Park sales
4 differ from a sale of a single utility system which
5 happens to be the only system owned by a particular
6 entity. In such circumstances, no reasonable
7 argument can be made that the owner of the system
8 can be ordered to return all gains to the former
9 customers served by the system. Similarly, the
10 Commission cannot authorize the former owner to
11 look to former customers for compensation of losses
12 the owner may have incurred as a result of the
13 condemnation.

14 **Q. SHOULD SSU BE REQUIRED TO TREAT THE GAIN FROM SALES**
15 **OF FACILITIES ABOVE THE LINE?**

16 A. No. The best analogy to the situation which
17 occurred when SSU sold the Venice Gardens and St.
18 Augustine Shores facilities is the following:

19 Mr. X has owned an apartment building for 10
20 years. Over the 10 year period tenants come and
21 tenants go, sometimes apartments are vacant for
22 extended periods, sometimes the building is fully
23 rented. In year 11, Government decides it wants to
24 own the apartment building. If Mr. X accepts the
25 offer and sells the building, do the tenants

1 receive a portion of the gain? If so, do only
2 current tenants receive a share or do past tenants
3 also receive a share? The answer is obvious. Mr.
4 X is not required to share the gain with any tenant
5 just as he would not request reimbursement of a
6 loss from tenants.

7 Public Counsel and possibly others might
8 suggest that a customer of SSU obtains ownership
9 rights to the utility property serving them. In
10 Florida, it is clear that customers do not obtain
11 ownership in utility property, either by virtue of
12 paying contributions in aid of construction or
13 charges for monthly service. Let's assume that Mr.
14 X has 5 apartment buildings and he sells one of the
15 apartment buildings for a gain. Do the tenants in
16 the sold apartment building as well as tenants in
17 the remaining four buildings have a right to share
18 in the gain? I do not think this would be
19 justified under any circumstances. What if one of
20 Mr. X's four remaining apartment buildings burns
21 down and he was uninsured which results in a total
22 loss? Are the tenants that lived in that apartment
23 building or in the other apartment buildings
24 required to pay Mr. X to build a new apartment
25 building? Of course not. Likewise utility

1 customers are like renters in an apartment
2 building. They pay their monthly bill for the use
3 of SSU's water service similar to a renter paying
4 his monthly bill for the use of apartment space.
5 If the utility is sold for a gain or loss, the
6 customer does not share in that gain or loss
7 because he does not own the utility but rather
8 rents the service. I am sure if SSU had lost \$19
9 million on the sale of the Venice Gardens
10 facilities we would not be addressing this issue
11 right now.

12 **Q. HAVE SSU'S RATEPAYERS BEEN ADVERSELY AFFECTED BY**
13 **THE SALE BY CONDEMNATION OF THE ST. AUGUSTINE**
14 **SHORES FACILITY OR SALE UNDER THREAT OF**
15 **CONDEMNATION OF THE VENICE GARDENS FACILITY OR**
16 **VOLUNTARY SALE OF THE RIVER PARK FACILITY?**

17 A. No. OPC witness Dismukes argues that Southern
18 States' remaining customers are absorbing the
19 common costs that would have been allocated to the
20 customers served by these facilities but for the
21 sale and that this reallocation of common costs
22 alone justifies her proposal. I do not believe
23 that this argument is persuasive, particularly
24 since the customer base sharing in the allocation
25 of Southern States' common costs actually has grown

1 over the years despite the condemnation or other
2 sales. Moreover, Ms. Dismukes' strained allocation
3 argument does not apply to the sales of assets when
4 no customers were lost from the sale. Therefore,
5 Ms. Dismukes has provided no justification
6 whatsoever for her proposal regarding sales of
7 assets when no customers were lost.

8 **Q. ARE THERE ANY ADDITIONAL REASONS WHY SOUTHERN**
9 **STATES' SHAREHOLDERS SHOULD RETAIN THE GAIN ON THE**
10 **SALE OF UTILITY PROPERTY?**

11 A. Yes. If the Commission denies shareholders the
12 opportunity to offset the erosion of their
13 investment through the receipt of capital gains, it
14 would deter the reinvestment of retained earnings
15 by utilities and inhibit the attraction of new
16 capital from investors. The deterrent effect of
17 such a denial would be magnified significantly were
18 Southern States required to return the capital
19 gains to ratepayers in this proceeding. I say this
20 because the remaining customers of SSU whom Ms.
21 Dismukes would have share in the condemnation (St.
22 Augustine Shores) or threatened condemnation
23 (Venice Gardens) gains have neither contributed to
24 Southern States' recovery of its investments in the
25 assets nor borne any risk of loss of such

1 investments. Southern States operated the Venice
2 Gardens and St. Augustine Shores water system under
3 the jurisdiction of Sarasota County and St. Johns
4 County, respectively not the Florida Public Service
5 Commission. Rates for these service areas, without
6 exception, were determined on a stand alone basis.
7 Therefore, none of SSU's remaining customers
8 contributed to the Company's recovery of its
9 investments in those facilities or the depreciation
10 of plant assets.

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

14 A. Yes, I am. In fact, as I indicated in Docket No.
15 920199-WS, numerous commissions and courts have
16 reached the same conclusion that I have with
17 respect to the distribution of the proceeds from
18 the sale of utility assets, including gains from
19 the land sales which Ms. Dismukes also would
20 confiscate from shareholders. Most noteworthy
21 among these decisions are the following:

22 • In Maine Water Company v. Public Utilities
23 Commission, 482 A2d. 443 (Me. 1984), the court
24 reversed the Maine commission and held that
25 the gain on the sale of two utility divisions

- 1 to a municipal district should be retained by
2 the utility and not used to reduce rates to
3 customers in the remaining divisions. This
4 case involved the transfer of both depreciable
5 and non-depreciable assets.
- 6 • The Missouri Public Service Commission held in
7 Associated Natural Gas Company, 55 PUR 4th 702
8 (Mo. P.S.C. 1983), that where the utility
9 proposed to apply the proceeds of the
10 condemnation of a gas distribution system to
11 the retirement of bonds and to invest in new
12 plant, resulting in a reduction in interest
13 expense and increased debt coverage, the gain
14 need not be allocated to ratepayers.
 - 15 • The New Hampshire Supreme Court held in Appeal
16 of the City of Nashua, 435 A.2d 1126 (N.H.
17 1981), that the New Hampshire commission
18 correctly determined that a water utility
19 should be allowed to retain the gain on the
20 sale of land no longer needed to provide
21 utility service.
 - 22 • In Philadelphia Suburban Water Company v.
23 Pennsylvania Public Utility Commission, 427
24 A.2d 1244 (Pa. Commw. Ct. 1981), the court
25 reversed the Pennsylvania commission's

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

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

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

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

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

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

18 A. No, they should not for the reasons I have
19 described above. In addition, to my knowledge,
20 none of the precedent cited involved utility plant
21 which never had even been included in rate base or
22 otherwise recovered by the utility in rates in any
23 way.

24 **Q. DO YOU AGREE WITH MR. LARKIN'S ALTERNATIVE PROPOSAL**
25 **THAT DOLLARS ASSOCIATED WITH THE GAINS FROM ANY**

1 **SALE EVER MADE BY SSU APPARENTLY DATING BACK TO**
2 **INCORPORATION SHOULD BE REMOVED FROM SSU'S CAPITAL**
3 **STRUCTURE, THUS ELIMINATING ALL EQUITY FROM THE**
4 **COMPANY'S OVERALL EQUITY RATIO?**

5 A. No, I do not agree with this alternate proposal. In
6 fact, the Commission previously has rejected the
7 same type of proposal put forth by Ms. Dismukes on
8 behalf of Public Counsel in Docket No. 920199-WS.
9 On this basis, it appears that Mr. Larkin's
10 proposal should be summarily rejected. This
11 capital rightfully belongs to SSU and its
12 shareholders, and SSU should not be penalized from
13 the sale particularly when the sale was forced upon
14 SSU and deprived SSU of its property and the right
15 to a continued stream of earnings on such assets
16 into the future. Finally, Mr. Larkin identifies no
17 justification for this alternative proposal. Mr.
18 Larkin's alternative proposal is without merit for
19 the same reasons I previously identified concerning
20 Ms. Dismukes' proposal. Moreover, Mr. Larkin's
21 resort to such an alternative is a transparent
22 attempt to reduce the Company's revenue
23 requirements in any way possible, regardless of the
24 absence of justification for such action. Only
25 when the equity ratio is too high should the

1 Florida Commission act to disallow a return on the
2 portion that is excessive; clearly not an issue in
3 this proceeding. In fact, SSU is having difficulty
4 funding its capital program with current low levels
5 of earnings. Disallowing a return on equity in its
6 entirety is counter-productive to what is needed to
7 restore and sustain SSU's financial capacity.

8 It also is noteworthy that, as I indicated
9 previously in this testimony, SSU's shareholders
10 have experienced several years of indisputably
11 dismal returns on their investment in SSU. I can
12 think of no equitable rationale for suggesting that
13 shareholders should bear the brunt of these dismal
14 returns for a period of years and then, in
15 addition, be forced to relinquish to SSU's
16 customers gains from sales of assets, forced or
17 otherwise.

18 **Q. IT HAS BEEN SUGGESTED THAT SSU'S ADMINISTRATIVE AND**
19 **GENERAL COSTS SHOULD BE REDUCED TO REFLECT AN**
20 **ADJUSTMENT MADE BY THE COMMISSION IN DOCKET NO.**
21 **920199-WS WITH RESPECT TO ALLOCATED A&G COSTS**
22 **RELATIVE TO SSU'S FORMER ST. AUGUSTINE SHORES**
23 **CUSTOMERS. DO YOU AGREE WITH THIS SUGGESTION?**

24 **A.** No, I do not. The Commission's order in Docket No.
25 920199-WS suggests that I agreed that SSU's

1 administrative and general costs should be reduced
2 in that case by an amount equal to the A&G costs
3 which would have been allocated to SSU's customers
4 in the St. Augustine Shores service area. I did
5 not make such a concession. I simply pointed out
6 that Public Counsel's proposed sharing of the gain
7 in that proceeding was preposterous and identified
8 the maximum reduction which would have been
9 rational even under Public Counsel's analysis.

10 The adjustment made by the Commission in
11 Docket No. 920199-WS was not equitable. SSU cannot
12 be disallowed recovery of A&G costs every time
13 assets are sold and customers are lost -- absent
14 some evidence that the associated A&G costs no
15 longer are necessary to serve SSU's remaining
16 customers. Also, how can it be fair to disallow
17 the recovery of A&G costs which would have been
18 allocated to the lost customers but give no
19 recognition to the fact that SSU also acquires new
20 customers through acquisitions? These customers
21 permit SSU's A&G costs to be spread over a larger
22 customer base. The Commission's adjustment was one
23 sided and should not be repeated in this
24 proceeding. Moreover, the St. Augustine Shores
25 transaction took place in 1991. The test year in

1 this case is 1996. Is it Public Counsel's position
2 that such an adjustment must be made in perpetuity?
3 If so, does a similar adjustment occur for every
4 condemnation or sale of SSU's facilities by
5 counties or cities? Surely, the Commission can see
6 that it would not be long before the disallowances
7 of A&G costs would be dramatic -- even if SSU's
8 customer base were to grow over time. Such a
9 result is not logical. The Commission should
10 reject Public Counsel's proposed adjustment to A&G
11 costs. Moreover, SSU sold the Venice Gardens
12 facilities in 1994 with a loss of about 15,380
13 customers. In 1995, SSU purchased Buenaventura
14 Lakes with 15,488 customers as well as Lakeside,
15 Spring Gardens and Valencia Terrace which added
16 another 1,231 customers. Therefore, through
17 acquisitions, SSU added more customers than we lost
18 which has actually benefitted our remaining
19 customers with respect to the allocation of common
20 A&G costs. On a net basis, our customers have not
21 been penalized at all in the manner implied by Ms.
22 Dismukes' adjustment.

23 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

24 **A.** Yes, it does.

1 Q (By Mr. Armstrong) Mr. Sandbulte, do you
2 have a summary of your rebuttal testimony?

3 A Yes, I do.

4 Q Could you provide that now?

5 A Yes, I will.

6 Good morning, Madam Chairman, and members of
7 the Commission. I have a brief summary, as I've
8 indicated, of my rebuttal testimony.

9 First, as to SSU's equity investment, the
10 MFRs show about \$78 million, an amount that has
11 remained essentially flat since 1992 simply because
12 we've made no money on water and wastewater operations
13 in Florida since that time.

14 In fact, we've lost about \$3 million in
15 terms of net income over that five-year period. This
16 fact was brought out last week during my direct
17 testimony, and that the rating agencies had lowered
18 Minnesota Power's bond rating in large part because of
19 unacceptably low earnings on our water utility
20 business.

21 I want to reaffirm that testimony that
22 unduly restrictive treatment from an investor's
23 viewpoint of used and useful situations, such as lot
24 count, margin of reserve, utility versus nonutility
25 plant determinations, imputation of future CIAC as an

1 offset against margin reserve is, and if continued,
2 will be a significant cause of underperformance by
3 SSU. All we ask is that you treat us fairly so that
4 both customers and investors get a fair shake. Treat
5 us the same as electric, gas and telephone utilities
6 with respect to these and related issues, and coupled
7 with the use of a projected test year, we will
8 certainly feel that fairness had been served. It's up
9 to us to control expenses and capital expenditures so
10 that increased revenue from growth, that is new
11 hookups, is offsetting to the maximum extent possible
12 to expense growth, and so that we can avoid rate cases
13 as much as humanly possible. That's certainly our
14 strong desire and our pledge.

15 Some intervenors' apparently have a somewhat
16 different agenda. They want to keep us on the edge of
17 financial disaster. A press for a grossly inadequate
18 ROE, unreasonable eliminations from our rate and
19 equity basis, and disallowance of what we believe are
20 reasonable expenses.

21 On top of that, however, they claim SSU has
22 no equity investment. They arrive at this extreme
23 conclusion by first supplying double leverage
24 criterion on Minnesota Power's equity investment in
25 SSU. They say that SSU common equity in reality is

1 made up of a blend of debt and equity supplied by
2 Minnesota Power. This is false as the FPSC, and Staff
3 and other reasonable people know very well.

4 Intervenors have outdone themselves,
5 however, by then suggesting the elimination of the
6 balance of SSU's equity, the leftover of about
7 \$35 million, through adjustments that I can only call
8 bizzare. They took the 1989 gain from the sale of our
9 telephone company headquartered in Wisconsin, having
10 no telephone operations in Florida, and deducted it
11 from the SSU equity base.

12 The intervenors approach make me wonder what
13 else would have been deducted from SSU's equity base
14 if the result of their ratemaking theories hadn't
15 already reduced our equity base to a minus 3 million.
16 Perhaps profit from MP electric would be imputed if
17 that hadn't happened.

18 The Commission's common sense and
19 understanding of fairness, will, I believe, cause you
20 to reject any such suggestions. Intervenors are also
21 rearguing the St. Augustine Shore gain on sale issue,
22 and along with it a gain realized on sale of Venice
23 Gardens under threat of condemnation.

24 The FPSC rejected the same arguments raised
25 here by Public Counsel in the 1993 "Giga" case. In

1 that final order, the Commission rejected Public
2 Counsel's argument stating, and I quote, "We agree
3 with Mr. Sandbulte that customers who did not reside
4 in the SAS service area did not contribute to recovery
5 of any returns on investment in the SAS system.
6 Further, when this system was acquired by St. Johns
7 County, SSU's investment in the SAS system, and its
8 future contributions to profit, were forever lost.
9 Thus, the gain on the sale serves to compensate the
10 utility shareholders for the loss of future earnings.
11 Arguably, if that sale of this system had been
12 accompanied by a loss, any suggestion that the loss be
13 absorbed by the remaining customers would be met with
14 great opposition. However, the rationale for sharing
15 a loss is basically the same as the rationale for
16 sharing a gain. Since SSU's remaining customers never
17 subsidize the investment in the SAS system, they are
18 no more entitled to sharing the gain from that sale
19 than they would be required to absorb a loss from it."
20 Unquote.

21 Now, this sounds very much to me like the
22 Florida Supreme Court in GTE; that fairness needs to
23 prevail; that ratepayers and investors must be treated
24 equitably and in a similar manner.

25 The Venice Gardens sale contains the same

1 set of facts as St. Augustine Shores, except that the
2 condemnation did not run its course because a
3 negotiated settlement was arrived at under threat of
4 condemnation. As the FPSC stated succinctly in the
5 "Giga" case regarding St. Augustine, I believe there's
6 no equitable basis in the Venice Gardens sale for the
7 gain to be passed through to customers.

8 As a generic proposition, going beyond the
9 specifics of St. Augustine and Venice Gardens
10 customers, customers do not become owners or obtain
11 ownership rights simply because they take service.
12 Even if the FPSC had rate jurisdiction over Venice
13 Gardens, or St. Augustine, and there had been uniform
14 rates, that still wouldn't make customers owners.
15 They are still paying rates, including depreciation
16 charges, which recover operating expenses and the
17 wearing out of assets, that is depreciation, and a
18 return on investment.

19 The customers are not and should not be
20 affected by an asset sale. If the current or new
21 owner pays more or less than original installed cost
22 depreciated, it's for their account. I might add
23 parenthetically, that we have about a negative
24 \$500,000 net negative acquisition adjustment on our
25 books throwing all of our acquisitions together.

1 The FPSC has reaffirmed this several times
2 by not applying positive or negative acquisition
3 adjustments in the setting of customer rates, lacking
4 unusual circumstances. Simply, customers are
5 unaffected by a sale or an acquisition. The FPSC
6 should reaffirm St. Augustine Shores and apply its
7 logic and order in 1993 "Giga" case to the Venice
8 Gardens sale. As a corollary issue, intervenors
9 suggest that SSU's A&G expense should be reduced due
10 to the Venice Gardens sale, arguing that such expenses
11 are now higher because they are spread over a smaller
12 base.

13 I agree that SSU must always contain its
14 expenses, not only A&G but all expenses, while
15 maintaining good reliable service for customers so
16 that those customers are fairly treated. In this
17 specific situation, the acquisition of Orange-Osceola
18 Utilities or Buena Ventura, and several smaller
19 utilities more than offset the Venice Gardens sale.
20 We've added more customers than we've lost. Hence,
21 the intervenor proposal to reduce A&G expenses should
22 be rejected.

23 In summary, we believe fairness and equity
24 prevail in your final decision and we look forward to
25 playing a key role in Florida's water and wastewater

1 arena for many years to come. Thank you very much.

2 MR. ARMSTRONG: The witness is available for
3 cross.

4 CHAIRMAN CLARK: Mr. Beck.

5 MR. BECK: Thank you, Madam Chairman.

6 **CROSS EXAMINATION**

7 BY MR. BECK:

8 Q Mr. Sandbulte, are you familiar with the
9 term "abandoned project"?

10 A Abandoned project.

11 Q Yes.

12 A In a general sense, I guess; if you can be
13 more specific.

14 Q Could you describe in a general sense what
15 abandoned projects are?

16 A Abandoned projects would be those that have,
17 in a utility sense, no longer have a purpose for which
18 they were originally intended and were, hence,
19 abandoned.

20 Q Are they projects that are abandoned before
21 the project actually provides service to customers?

22 MR. ARMSTRONG: Objection. Madam Chair,
23 where are we going with this line of questioning?
24 This witness -- I don't think he's testified about any
25 Southern States' policy regarding abandoned projects.

1 I just don't see a connection.

2 MR. BECK: I'll be glad to state the reasons
3 for the questions.

4 Mr. Sandbulte objects to sharing any of the
5 gains on sale from the Venice Gardens sales --

6 CHAIRMAN CLARK: I'll allow the question.

7 MR. ARMSTRONG: Thank you.

8 Q (By Mr. Beck) Are abandoned projects
9 projects that are abandoned before providing service
10 to customers?

11 A Well, I can think of a possibility, I
12 suppose, in the electric industry where perhaps a
13 plant never got completed, but that would be certainly
14 the exception, if they never provided service.

15 Q Do customers obtain any ownership interest
16 in abandoned projects of the Company?

17 A No, they don't acquire any ownership
18 interest.

19 Q Doesn't Southern States propose to pass
20 through the loss on abandoned projects to customers
21 above the line?

22 A Well, I'm not aware of each and every
23 situation, but the depreciation reserve is normally
24 adjusted for the original cost of the property once
25 projects are eliminated from the rate base or are

1 abandoned, and in that sense, because it is an
2 estimate, and there's averaging involved, customers
3 do, in some cases, pay for plant that hasn't been
4 fully depreciated and they also get a benefit from
5 plant that runs longer than the estimated service
6 life.

7 Q And the net effect of that is that customers
8 pick up the loss on abandoned projects, isn't it?

9 A It's in the depreciation reserve
10 calculation. It's like I have a thousand utility
11 poles, 500 of them last for 20 years and 500 last for
12 50 years, and the average life is 35 years. Those
13 poles that were retired early and didn't provide their
14 service life expectations are, in effect, paid for by
15 the consumer. However, the extra life gotten out of
16 the other poles are free of charge, so to speak. If
17 that's what you're talking about, that's normal
18 business in the utility industry.

19 Q And would you agree, Mr. Sandbulte, that
20 customers pick up the loss on abandoned projects?

21 A It all depends on the circumstance. In the
22 situation I've described with depreciable property,
23 each specific unit, sure they can pick up some losses,
24 just like the gains I've mentioned.

25 MR. BECK: Thank you, that's all I have.

1 CHAIRMAN CLARK: Mr. Jacobs.

2 MR. JACOBS: Thank you, Madam Chairman.

3 CROSS EXAMINATION

4 BY MR. JACOBS:

5 Q Mr. Sandbulte, my name is Buddy Jacobs and
6 I'm one of those intervenors you're talking about. I
7 represent the consumers and customers of your utility
8 company located on Amelia Island. We serve folks on
9 the island and in Naussau County.

10 A Okay.

11 Q You're president of Minnesota Power; is that
12 not correct?

13 A No, actually, as was discussed last time
14 around when I prepared my original testimony, I think
15 I was either Chairman or president CEO, or chairman
16 CEO -- I'm currently Chairman of Minnesota Power.

17 Q You're chairman of the board then?

18 A That's correct.

19 Q As chairman of the board, do you in any way
20 become involved, or have you been involved in the
21 policy making decisions for Southern States Utilities
22 Company?

23 A In a broad sense, yes. Capital allocation
24 for example.

25 Q Now as chairman of the board of trustees --

1 board of directors, you answer to the stockholders?

2 A Excuse me?

3 Q You answer to the stockholders. You work
4 for the stockholders.

5 A Yes. That is correct.

6 Q Okay. So the customers of Southern States
7 Utilities Company, you do not work for them, you work
8 for the stockholders of Minnesota Power; is that not
9 correct?

10 A Well, I like to think I work for three
11 constituencies: the shareholders, the customers and
12 the employees. And I think that's what I do. I
13 certainly have to serve the interests of the
14 shareholder. I also have to keep this business viable
15 and alive and competitive. And that means meeting
16 customer needs and satisfaction. And, of course, I
17 have to deal with employee issues as well. In a
18 literal sense I work for the shareholders; in a sense
19 of satisfying several publics I work for three.

20 Q In a legal sense your allegiance, in other
21 words, the people that write your check are the folks
22 that invest in Minnesota Power which are the
23 stockholders; is that not correct?

24 A I wouldn't agree with that. I think the
25 customers are certainly contributing to writing my

1 paycheck.

2 Q Customers can't hire you or fire you,
3 though, can they?

4 A Again, technically possibly not, but I do
5 think I answered the question.

6 MR. JACOBS: Madam Chairman, I'd like a yes
7 or no and then he can explain.

8 CHAIRMAN CLARK: Mr. Sandbulte, if you would
9 answer yes or no and then explain your answer that
10 will be fine.

11 MR. JACOBS: It would be a lot shorter if he
12 would do that. Appreciate that.

13 A The short answer is no. The expanded answer
14 is, however, if our customers raise complaints and
15 express concerns, I'm sure that -- since many of them
16 are also shareholders, that's certainly a factor in my
17 employment.

18 Q Mr. Sandbulte, you stated in your verbal
19 testimony that your losses for the four-year period
20 '92 to '95 were 3 million, and yet on Page 2 of your
21 testimony you state that it was over 2.5 million.
22 That's a difference of 500,000 there. Is it
23 2.5 million or is it 3 million?

24 A Well, if you note, this is written in the
25 future case. Like where it said "And there will be

1 another loss of about 3%." An actual number, based on
2 audited figures, is approximately \$3 million. At the
3 time this was written there was not a final audited
4 information available.

5 Q When was this written?

6 A Well, it was written in February.

7 Q And since that time you've lost another
8 500,000?

9 A No, I didn't say that. I said that we
10 didn't have the final audited figures available.

11 Q And now you have those?

12 A That's correct.

13 Q Is that attached to your testimony?

14 A No.

15 Q Is there any way to get that?

16 A I think so.

17 Q You made the statement earlier that the
18 customers are unaffected by the sale of utilities.
19 You're familiar with Charles Sweat, aren't you,
20 Mr. Sandbulte?

21 A Yes.

22 Q He's your vice president of development
23 since 1992; is that correct?

24 A At SSU, yes.

25 Q Yes. He's testified here, and I'm sure

1 you're familiar with his testimony?

2 A I didn't hear him, no.

3 Q Have you read his written testimony?

4 MR. ARMSTRONG: Objection. There is no
5 written testimony.

6 Q (By Mr. Jacobs) You have no knowledge what
7 he said here. Let me just suggest to you that he
8 stated that at the time that he made a presentation to
9 members of SSU, and perhaps Minnesota Power, the fact
10 that he recommended a sale of 20 companies of the ones
11 that you hold in Florida, are you familiar with any
12 discussions about the sales of those companies?

13 A No. He did not make any such representation
14 to Minnesota Power.

15 Q Subject to check, do you realize that 20 of
16 those companies in your holdings here in Florida would
17 be approximately 13%?

18 MR. ARMSTRONG: Objection. Subject to
19 check, if there's information that this cross examiner
20 can provide to the witness I prefer to have that
21 information provided.

22 MR. JACOBS: I'll rephrase the question, if
23 I might, Madam Chairman.

24 Q He's suggested that they have an aggressive
25 policy of acquisition for Southern States Utilities.

1 Are you familiar with that policy?

2 A Aggressive policy of acquisition did you
3 say?

4 Q Yes. For SSU.

5 A Well, our policy -- yes, our policy has been
6 to acquire. I don't know if I'd call it aggressive.
7 I don't think it's very aggressive at the moment.

8 Q You just acquired a few, you said, recently
9 to offset the customer losses. That was in your
10 closing paragraph of your opening, oral statement.

11 A Yes. I said that we had acquired
12 Orange-Osceola and two or three small systems. But
13 that isn't very large compared to what we have done in
14 the past, so it's an aggressive program, I don't feel.

15 Q You've acquired approximately 150 companies
16 in Florida?

17 A No, I wouldn't say that is correct. I'd say
18 we have acquired service areas, customers that were
19 served out of 150 communities or developments so
20 forth. But we didn't acquire those all individually,
21 separately, in that sense.

22 MR. JACOBS: Madam Chairman, if I might
23 proceed.

24 Q (By Mr. Jacobs) But you have acquired --
25 you may have acquired them in clumps but you've

1 acquired approximately 150 separate utility entities
2 in Florida; is that not correct?

3 MR. ARMSTRONG: Objection. That wasn't the
4 witness's testimony. If he's being asked if they
5 acquired separate legal entities --

6 CHAIRMAN CLARK: Mr. Jacobs, I think the
7 difficulty is a miscommunication, and you're terming
8 something a "utility" and he has responded in terms of
9 "entity" or "development" or something like that. I
10 think there's just a miscommunication.

11 MR. JACOBS: I apologize. I'll try to be
12 clear.

13 MR. ARMSTRONG: Madam Chair, to make it
14 easy, we can stipulate that we've acquired utilities
15 which do operate numerous facilities. And if you add
16 them up it would be somewhere in the neighborhood of
17 150.

18 MR. JACOBS: Fine. Thank you,
19 Mr. Armstrong.

20 Q (By Mr. Jacobs) Of these companies, were
21 you involved in the shaping of the policy of the
22 acquisition of those companies?

23 A Yes, sir.

24 Q Could you explain to me, if you would,
25 please, sir, the policy of due diligence you caused to

1 be followed in the acquisition of these entities?

2 MR. ARMSTRONG: Objection. This is beyond
3 the scope of his testimony.

4 CHAIRMAN CLARK: Mr. Jacobs.

5 MR. JACOBS: Madam Chairman, if you review
6 his testimony very clearly he says, in his verbal part
7 as well as his written part, he says they're on the
8 edge of economic disaster here. And I think it's
9 important for the Commission to know how they got to
10 the edge. And I think it's a legitimate question to
11 see what due diligence they followed as they went
12 about the state of Florida purchasing these entities.

13 CHAIRMAN CLARK: Mr. Armstrong.

14 MR. ARMSTRONG: I believe it's beyond the
15 scope of his testimony to bring in the company's
16 policies.

17 CHAIRMAN CLARK: I think he's exploring
18 issues, an underlying reason to explain the
19 representation that it's on the edge and I'm going to
20 allow the question.

21 MR. JACOBS: Thank you, very much.

22 A Could you repeat the question.

23 Q Yes, sir. You just stated you were involved
24 in the policy development for SSU in their
25 acquisitioning of these entities. My question to you

1 was, sir, what was the due diligence policy in the
2 acquiring of these entities in florida?

3 A Okay. The initial acquisition was made as
4 part of Universal Telephone. Then we began to look at
5 the water business; decided that it was a growing
6 business in Florida, growing at 7 or 8% a year. And
7 the due diligence process was basically to look at the
8 assets, look at the rates, look at the total purchase,
9 compare the price to what the asset base was. Was
10 there a negative or positive acquisition adjustment,
11 so to speak, and make projections and based on that,
12 we decided, or did not decide, to go ahead with the
13 acquisition.

14 Q Do you remember the year that you purchased
15 Southern States Utilities Company?

16 A Yes.

17 MR. ARMSTRONG: Objection. My point here is
18 we're going to go through a lot, a great ordeal of
19 discussion about this. There is no issue in the
20 Prehearing Order. This was not raised as an issue.
21 Regardless of what was in the prefiled rebuttal
22 testimony, if there was an issue that Mr. Jacobs had
23 with it, he should have identified it before this
24 time.

25 The point is there's no issue regardless of

1 what is in his testimony. If he needed to raise an
2 issue, he should have done that already. This is not
3 an issue.

4 CHAIRMAN CLARK: Mr. Jacobs.

5 MR. JACOBS: Thank you, Madam Chairman.
6 Madam Chairman, we find ourselves here today with
7 rebuttal testimony. This is testimony that's
8 certainly before this Commission.

9 He's made statements here today that they
10 are on the edge. The word "edge" is not in any
11 written document I've seen. They've gotten into this
12 economic disaster, as they term it. I think it's
13 important to know how they got there. And I think
14 this is a very fair and legitimate trail to follow.

15 MR. ARMSTRONG: Madam Chair, the prefiled
16 rebuttal was available to Mr. Jacobs a long time ago,
17 and there is no issue that says "Why was Southern
18 States placed on the edge?"

19 CHAIRMAN CLARK: Mr. Armstrong, I would
20 point out to you that we are dealing with the
21 testimony. And I don't recall making limitations that
22 it has to be specifically on an issue that the witness
23 is testifying on. If he's raised a point in his filed
24 testimony, it is legitimate for exploration.

25 MR. ARMSTRONG: My point is the issue is not

1 even an issue in the case.

2 CHAIRMAN CLARK: I understand that. But I
3 think what Mr. Jacobs is saying is that there's been a
4 representation that this company is in precarious
5 financial condition and in need of a rate increase,
6 and I think it's legitimate to explore that.

7 But, Mr. Jacobs, I note that you estimated
8 you had about 15 minutes for this witness, so go
9 ahead.

10 MR. JACOBS: Yes, ma'am. I'll try to be as
11 true to that as I can, if I won't be interrupted in
12 that period of time. And I want you to understand,
13 I've tried to make all of my cross examinations
14 friendly. And I was accused of being too friendly
15 yesterday and maybe I'm unfriendly today. I just
16 wanted to ask these questions.

17 CHAIRMAN CLARK: I think the issue of
18 friendly cross examination has to do with more in a
19 legal sense as to whether this is an adverse party or
20 not.

21 MR. JACOBS: Yes, ma'am. Thank you.

22 Q You've stated that you looked at growing
23 business -- that it's a growing business -- the water
24 business is a growing business in Florida. You look
25 at the assets, the rates in place, the total purchase

1 price, the asset base, and its projections.

2 Now, when did you buy Southern States
3 Utilities Company, sir?

4 A 1984.

5 Q All right. You've made several acquisitions
6 since that time through Southern States Utilities
7 Company; is that not correct?

8 A Yes. Or through Topeka Group.

9 Q Which is also part of your investment base.

10 A Yes. If I understand your meaning there,
11 yes.

12 Q All right, sir. If you don't understand,
13 please ask. I like to be as clear as I can.

14 My point is, is that when you did all of
15 this due diligence of all of these particular
16 companies that you purchased since 1984, you looked at
17 all of these things that you've stated; is that not
18 correct?

19 A Yes.

20 Q And I say "we", or "you" I'm talking about
21 the collective you, of Minnesota Power through
22 Southern States Utilities Company.

23 So at that time you were making projections,
24 you were looking at current rates, and in looking at
25 the infrastructure that needed to be replaced and

1 capital improvements that would have to be done in
2 order to make these viable and prudent investments?

3 A Yes.

4 Q Are you familiar, are you aware of whether
5 or not the projections that were made over the time --
6 as you purchase each one of these particular
7 utilities, are you aware of whether or not those
8 projections held to be true?

9 A Well, as to earnings no, they did not hold
10 up to be true.

11 Q Okay.

12 MR. JACOBS: No further questions.

13 CHAIRMAN CLARK: Mr. Twomey.

14 **CROSS EXAMINATION**

15 BY MR. TWOMEY:

16 Q Mr. Sandbulte, I don't think this is in your
17 prefiled rebuttal testimony, but I believe -- I know
18 you said in your summary that Minnesota Power's bonds
19 were downrated because of SSU's poor water and
20 wastewater earnings in Florida; is that correct?

21 A One of the principle reasons, yes.

22 Q What I wanted to clarify, I didn't hear you
23 say it was one of the principle reasons, and I wanted
24 you to agree with me that there were other reasons,
25 including the Minnesota Power's purchase of the used

1 car auction business that we discussed on your direct
2 testimony, that led to the bond downratings; isn't
3 that correct?

4 A Yes. But I said that it was a large reason
5 or principle reason. I didn't say it was the only
6 reason.

7 Q I'm sorry. I apologize. I thought it was
8 the only reason that you mentioned. Excuse me.

9 A I said in large part because of --
10 unacceptably low earnings.

11 MR. ARMSTRONG: That's on Page 3 of his
12 rebuttal, Mr. Twomey, if you want to see it.

13 Q (By Mr. Twomey) Now, you also mentioned in
14 your summary the GTE decision; is that correct?

15 A Yes.

16 Q And I think what I took from your testimony
17 was the generalized notion that equity had to flow
18 both ways, from the utility to the customers and from
19 the customers to the utility; is that generally how
20 you see it?

21 A That's my interpretation of the GTE
22 decision.

23 Q Okay, sir. If that is correct,
24 Mr. Sandbulte, if you're truly concerned with the
25 equity flowing both ways, why are you requesting

1 12.25% return on equity in your investment in this
2 case overall, but demanding that my clients at
3 Sugarmill Woods pay 81.13% and 366.5%, respectively,
4 on SSU's investment for water and wastewater facility
5 use to serve them?

6 MR. ARMSTRONG: Objection. Madam Chair, I
7 haven't seen any factual predicate for the numbers
8 use. If you want to allow the question, if you just
9 accept that that's your calculations.

10 MR. TWOMEY: I will ask Mr. Hansen to
11 find -- they are from your MFRs.

12 MR. ARMSTRONG: It's just your calculations
13 of the numbers. That's all I'm saying.

14 MR. TWOMEY: Sir?

15 MR. ARMSTRONG: Those are your calculations
16 of the numbers.

17 MR. TWOMEY: I'll ask Mr. Hansen to find
18 them. I'll give you a note directly. They are taken
19 directly from your MFRs. We'll find them in a minute.

20 Q (By Mr. Twomey) But until we do,
21 Mr. Sandbulte, my question to you is how can you
22 believe that equity is supposed to flow in both
23 directions and yet ask my clients to pay what I
24 suggest to you is over 81% return on your investment
25 serving them in water at Sugarmill Woods, and over

1 366% on your investment in wastewater facilities
2 serving them at Sugarmill Woods, how can you do that?

3 MR. ARMSTRONG: Objection. This is a rate
4 structure issue pure and simple, and Mr. Sandbulte is
5 not a witness on rate structure. If he has questions
6 like that, they should be addressed to a rate
7 structure witness.

8 MR. TWOMEY: It's an equity issue, Madam
9 Chairman.

10 CHAIRMAN CLARK: I'll allow the question.

11 A The request for our overall equity return of
12 12-plus percent is based on the credit worthiness of
13 SSU at this time in our opinion.

14 As to the numbers that you quoted, I assume
15 that's a function of the small amount of net plant
16 devoted to serving those particular customers you're
17 talking about as compared to revenue but does not, of
18 course, take into account uniform rates or the single
19 system basis of SSU.

20 So under your categorization or
21 characterization of taking costs that are isolated and
22 so-called directly assignable, I don't know if those
23 are the right numbers or not, but that's not what I'm
24 talking about.

25 I'm talking about overall SSU, and I think

1 the Commission is being asked to look at uniform rates
2 which produce that.

3 Q Okay. You're interested in having equity in
4 getting your requested return, but I hear you saying
5 that it's okay, and it's okay for your customers on
6 average to have that same equity. But you're not
7 concerned with whether the customers, as a group, by
8 service area, receive that same level of equity. Is
9 that what I hear you saying?

10 A I'm saying that there's a single service
11 area. I'm saying that every utility system or set of
12 facilities, a portion thereof, has its day in the
13 barrel -- I think I said that the last time I was
14 here. In other words, a plant wears out, treatment
15 plant wears out, it's got to be replaced. So you go
16 from having very low rate base to having a very high
17 rate base.

18 This is a long-term business and we are
19 simply suggesting that in the interests of all of our
20 customers, uniform rates make the most sense.

21 Q Let me ask you, isn't it true that "a day in
22 the barrel" is a bad time? That's what you mean by
23 it, right? Your term, "day in the barrel," right?

24 A Okay. Let me explain. I'm just simply
25 saying it's great for customers who get the benefits

1 from a single system but get rates set upon a specific
2 facility as long as the cost of those specific
3 facilities is nearly fully depreciated, or is very low
4 because of when it was put in historically or
5 whatever.

6 I'm just saying those sets of equipment wear
7 out and that is going to change. And we can't look at
8 vintage ratemaking in this environment. I don't
9 think -- that's a road to nowhere. That's what you're
10 talking about; vintage ratemaking.

11 Q Last question on this specific area: Isn't
12 it true, Mr. Sandbulte, that you cannot demonstrate in
13 any objective manner that any other system will get
14 their eventual benefits the uniform rate concept?

15 A I think the Commission has spoken to this in
16 the generic proceeding in their decision of June 1995.
17 They said there is a single system.

18 Q Okay. Now, on Page 3 of your testimony,
19 starting at Line 19, you say that you're concerned
20 with the used and useful methodology, and you say, "It
21 is my understanding that the used and useful
22 adjustment was developed to prevent a few customers
23 from having to bear the cost relating to plants and
24 lines installed to eventually serve an entire built-
25 out service area." That's your statement, right?

1 A Yes.

2 Q And my question to you is do you have a
3 problem with that concept?

4 A I realize there will be some nonused and
5 useful. I said that last time when I mentioned Sunny
6 Hills.

7 However, the way that used and useful has
8 evolved into extremely short periods of -- or planning
9 periods for margin of reserve, as I think other
10 witnesses have testified before me, to me says that
11 we're being pennywise and pound foolish. We are not
12 getting economies of scale and those sorts of things.

13 So yes, customers, if rates were set on the
14 basis of specific facilities, that can be a large
15 problem as the Sunny Hills people amply testified.
16 That is not a large problem if you think of the single
17 system approach and that there needs to be a margin of
18 reserve within the system, and that each plant within
19 that system is eventually going to become overloaded
20 and overused or needs to be replaced or whatever are
21 at it too. So I think it makes sense to look at this
22 thing on a single system basis for those reasons.

23 Q Okay. You will concede, will you not, that
24 margin reserve at the overwhelming majority of your
25 systems cannot be utilized to provide utility service

1 at your other service locations.

2 MR. ARMSTRONG: Objection. I don't believe
3 there's any factual predicate for the question.

4 MR. TWOMEY: He just talked about the
5 advantages of having margin reserve on a system-wide
6 basis. And he's, of course, referring to the system
7 as being all of its constituent service areas.

8 MR. ARMSTRONG: Madam Chair, the question
9 asked him to concede a fact not in evidence; the vast
10 majority are overwhelming. He's asking this witness
11 to testify to something that is not in the record.

12 Q (By Mr. Twomey) Isn't it correct,
13 Mr. Sandbulte, that -- if you know, that out of all of
14 the systems or service areas, if you prefer, in this
15 filing that only some six to eight are in fact
16 physically interconnected?

17 A I don't know that for a fact.

18 Q Do you know how many are physically
19 interconnected?

20 A No, I do not.

21 Q Would you agree with me that irrespective of
22 their number, those systems that are not physically
23 interconnected cannot exchange margin of reserve
24 capacity amongst each other?

25 CHAIRMAN CLARK: Mr. Twomey, I think if you

1 ask him that growth in one facility area cannot -- you
2 can't use other facilities to accomodate that growth.
3 That's what you're trying to say, isn't it?

4 MR. TWOMEY: That's a beautiful question.

5 CHAIRMAN CLARK: I think he's having -- I
6 don't think you understood that. Can you transfer
7 capacity at one system to another system that has not
8 physically interconnected in order to accomodate that
9 growth?

10 WITNESS SANDBULTE: The narrow definition of
11 capacity in that plant, no.

12 MR. TWOMEY: Thank you, Madam Chairman, and
13 thank you, Mr. Sandbulte.

14 Q (By Mr. Twomey) Now, Mr. Jacobs asked you
15 about your due diligence, you recall that?

16 A Yes.

17 Q Now, and mentioned Sunny Hills a minute ago.
18 Now, I got from your MFRs, Mr. Sandbulte, that at
19 Sunny Hills you have some capacity or lots there,
20 5,868 and in 1996 you expect to have 439 customers,
21 which is about 7.5% connected lots, including a one
22 year margin reserve.

23 And what I want to ask you is that you
24 presumably knew that there was plant there in those
25 amounts, vis-a-vis the number of customers that were

1 there when you purchased that system. Did you not?

2 A Yes.

3 Q Okay. So in asking for a greater used and
4 useful or greater margin reserve, you are -- including
5 that area, the Sunny Hills area, you are effectively
6 trying to transfer to other customer groups in other
7 service areas the consequences of your economic
8 decision in purchasing that system; are you not? Do
9 you follow my question?

10 A Well, the capacity in Sunny Hills is not
11 transferable physically, unless there is an
12 interconnection; that's obvious. Sunny Hills was part
13 of the Deltona acquisition, the number of utilities
14 were bought at the same time.

15 Q Yes, sir. And as you have acknowledged,
16 it's obvious that you can't use any of the pipes or
17 capacity at Sunny Hills to serve any of your other
18 systems in this case. And my question to you, though,
19 is that notwithstanding that inability, aren't you in
20 fact trying to transfer the revenue responsibility of
21 that system to Mr. Bud Hansen, and to various other
22 customer groups in your corporate umbrella at SSU?
23 Isn't that the effect?

24 A I'm assuming there will still be nonused and
25 useful at Sunny Hills, some nonused and useful.

1 Q Right. But whatever the increase in margin
2 reserve that you would achieve there, if you are
3 successful in having the margin reserve increased in
4 terms of years, that increase in revenue
5 responsibility would then be transferred to other
6 service areas through the device of uniform rates;
7 isn't that correct?

8 A It may be, but we're trying to get economies
9 of scale in the entire system through a reasonable
10 margin reserve. And I guess you can pick out isolated
11 situations. I don't know, but this is the greater
12 good of all that we're talking about here.

13 Q The greater good of all? What do you mean
14 by that?

15 A I mean that in the long term the building of
16 facilities that take into account economy of scale and
17 have uniform rates which provide for reasonable rates
18 for everybody, and doesn't take into account the
19 vintage situation of when a plant is put in or when it
20 is retired on a specific basis. That I think is the
21 best system for Florida in the long haul. It's the
22 best system throughout the country. It's been that
23 way for years in the electric business.

24 Q Well, we'll talk about that in a minute.
25 But you're talking about the greater good for all,

1 you're talking about spreading the immediate revenue
2 consequences, decisions of the systems you run, right?
3 It's a way of spreading the immediate economic pain,
4 isn't it?

5 A There are those who will pay more or less
6 under uniform rates than they would on modified
7 stand-alone rates. So there are some who get a
8 reduction and have lower rates and some who have
9 higher rates.

10 CHAIRMAN CLARK: Mr. Twomey, let me
11 interrupt you. We need to go ahead and break for
12 lunch because we've got to allow some time to get the
13 teleconferencing done.

14 Mr. Sandbulte, I'm sorry, but what we're
15 going to have to do is interrupt your testimony right
16 now and go to the teleconferencing, and then reconvene
17 with your testimony. I realize that we have a time
18 frame we need to be aware of for you. I don't
19 anticipate that the teleconferencing will take the
20 entire three hours. I don't think it will, so I feel
21 certain we'll still be able to allow you to reach your
22 airplane.

23 WITNESS SANDBULTE: At 1:20?

24 CHAIRMAN CLARK: Oh, I'm sorry. I was lead
25 to believe it was 3:30.

1 WITNESS SANDBULTE: Tha was last week,
2 Brian. I don't want to -- I'll just have to
3 reschedule, that's all.

4 CHAIRMAN CLARK: Okay. Because we do have I
5 guess the pipeline set up for 12:30, so we do need to
6 do that.

7 We will reconvene at 12:30. Thank you.

8 (Thereupon, lunch recess was taken at 12
9 noon.)

10

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11 (Transcript continues in sequence in
12 Volume 35.)

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DOCKET 950495-WIS
EXHIBIT NO. 201
CASE NO. 96-04227

EXHIBIT (JY-1)
PAGE 1 OF 6

RESUME

Jay W. Yingling

1315 East Norfolk Street
Tampa, Florida 33604
904-796-7211 (work)

EDUCATION M.S. Food and Resource Economics, University of Florida (1984)

Field of Specialization: Natural Resource and Environmental Economics

Thesis: Urbanization and the Change in Central Florida Citrus Acreage

B.S. (Honors) Food and Resource Economics, University of Florida (1982)

Field of Specialization: Natural Resource and Environmental Economics

A.A. (Honors), St. Petersburg Junior College

Areas of Academic Competence

Natural Resource and Environmental Economics:

Graduate - Natural Resource Economics, Agricultural Land Decisions (special topics seminar)

Undergraduate - Land and Water Economics, Economics of Environmental Quality

General Economic Theory:

Graduate - Intermediate Agricultural Production Economics, Consumption Economics and Markets, Macroeconomics

Undergraduate - Microeconomics (2), Macroeconomics (2), Agricultural Production Economics

Quantitative:

Graduate - Econometrics, Activity Analysis for Economic Decisions (linear programs)

Undergraduate - Calculus, Statistics, Quantitative Analysis in Food and Resource Economics

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 950495 EXHIBIT NO. 201

COMPANY/

WITNESS: _____

DATE: 4/29/96

DOCUMENT NUMBER-DATE

03411 MAR 21 88

FPSC-RECORDS/REPORTING

Finance and Management:
Graduate - Agricultural Finance
Undergraduate - Public Finance, Farm Firm Management

Public Policy:
Graduate - Agricultural Policies and Programs
Undergraduate - Public Policy in Agriculture

EXPERIENCE RESEARCH

RESEARCH ASSISTANT, to Dr. J .Walter Milon, University of Florida, October 1983 to July 1986. Nature of research: Investigate the relationship between levels of exotic aquatic weeds and the economic value of recreational fishing on a freshwater lake ecosystem. Duties: Assist in design and administer survey questionnaire, conduct on-site interviews with fishermen, prepare quarterly reports, present research progress reports at state aquatic plant management meetings, supervision of occasional graduate assistant help, data management, assist in mathematical modelling of recreational activities.

THESIS RESEARCH, involved econometric modelling of urban influenced land use decisions of citrus producers using linear regression.

RESEARCH ASSISTANT, to Dr. Rodney Clouser, University of Florida, August 1982 to October 1983. Duties: Data gathering on agricultural land and community and rural development projects, manuscript preparation. Co-authored "Factors Affecting Agricultural Land Use: A Study of Citrus Acreage in Florida", presented by Dr. Clouser at the Southern Agricultural Economics Assn.(SAEA) meetings, Nashville, Tenn.Feb.5 - 8, 1984. Co-authored and presented "Determinants of Land Prices and Acreage in Florida's Citrus Producing Region" at SAEA meetings in Biloxi, Miss. Feb. 3 - 5, 1985.

APPLIED ECONOMIC AND POLICY ANALYSIS

SENIOR ECONOMIST, Southwest Florida Water Management District, Brooksville, Florida, March 1987 to current. Duties: Preparation of Economic Impact Statements as required by law for rule promulgation, general water management policy and economic analysis, project manager for economic analysis contracts, supervised Planner-Economist.

STAFF RULES ANALYST, St. Johns River Water Management District, Palatka, Florida, July 1986 to March 1987. Duties: Preparation of Economic Impacts Statements as required by law for rule promulgation, performance of economic analysis of District projects.

ADMINISTRATIVE

INVENTORY CONTROLLER - PURCHASING AGENT, CE Morgan Building Products, Largo, Florida, July 1978 to October 1980. Duties: Design and implement inventory control system, supervise quarterly inventories, purchase window and all other millwork products, sales.

STOREKEEPER, U.S.Coast Guard, June 1971 to June 1975. Duties: Clothing Stores Manager for Seventh Coast Guard District (Florida, Georgia, South Carolina and Greater Antilles), supervised one full-time assistant and occasional reserve personnel when available; Bid processing for industrial supplies, non-industrial accounts ledger maintenance for Base Ketchikan, Radio Station Ketchikan, and Cape Decision Lighthouse, Alaska; Base Exchange Operator, Base Ketchikan, Alaska.

HONORSACADEMIC

"Presidential Recognition of Outstanding Student Contribution to the University of Florida" certificate, April, 1983. First Place, American Agricultural Economics Assn. (AAEA) Undergraduate Essay and Public Speaking Session, AAEA Summer Meetings, Logan, Utah 1982; Paper entitled "Beach Zone Use in Florida: Public Goods, 'Non-Market Failure', and Property Rights".

IFAS SHARE General Scholarship, 1981 - 1982.

MILITARY

Coast Guard Achievement Medal for "Outstanding Achievement and Superior Performance of Duty from 19 January 1974 to 1 June 1975."

PUBLICATIONSECONOMIC IMPACT STATEMENTS AUTHORED

General Permit Processing Fees, Chapter 40D-0, F.A.C., May, 1988

Permit Processing Fees, Chapter 40D-0, F.A.C., November, 1990

Procedural Rules & General Permits, Chapters 40D-1, 20 & 40, F.A.C., February, 1988

Procedural Rules, Contract Bidding - Resolution of Protests, Chapter 40D-1, F.A.C., March 1990

Revisions to Water Use Permitting Rules and Adoption of the Basis of Review for Water Use Permit Applications Within the Southwest Florida Water Management District, Chapters 40D-2 & 20, F.A.C., February 1989

Proposed Revisions to General Well Regulation Rules, Chapter 40D-3, F.A.C., and the Incorporation of Chapters 17-524, 17-531, 17-532, and 17-555, F.A.C., March 1989

Proposed Revisions to General Well Regulation Rules, Chapter 40D-3, F.A.C., March 1991

Management and Storage of Surface Water; Addition of Wekiva River Basin Criteria, Chapters 40C-4 & 41, F.A.C., October 1986 (rule withdrawn)

Management and Storage of Surface Waters; Addition of Isolated Wetlands and Wetlands Mitigation Criteria to the Applicant's Handbook, Chapter 40C-4, F.A.C., 1986

Surface Water Management; Definition of Terms, "Project Area", Chapter 40D-4, F.A.C., June 1988

Surface Water Management; Revision of Construction and Noticed General Permit Application Forms, Adoption of Conceptual Permit Application Form, Chapter 40D-4, F.A.C., May 1988

Surface Water Management; Modification of Letters of Conceptual Approval, Chapter 40D-4, F.A.C., May 1988

Surface Water Management; Incorporation of Stormwater Regulation and Adoption of the Basis of Review for Surface Water Management Permit Applications Within the Southwest Florida Water Management District, Chapters 40D-4 & 40, F.A.C., July 1987

Addition of Isolated Wetlands Criteria, Chapter 40D-4, F.A.C., October 1987 (Addendum)

Proposed Revisions to the Basis of Review Concerning Denial of Impacts to Wetlands Deemed to be Environmentally Sensitive Areas, and Minimum Mitigation Requirements, Chapters 40D-4 & 40, F.A.C., February 1991

Surface Water Management; Off-Site Storm Water Treatment Criteria, Chapter 40D-4, F.A.C., June 1988

Schedule of Levels for Lakes and Other Impoundments; Establishment of Water Levels for Lakes Alfred, Blue, Cummings, Echo, Eva, George, Griffin, Medora, Pansy, and Sanitary (Mariana), Chapter 40D-8, F.A.C., November 1990

Schedule of Levels for Lakes and Other Impoundments;
Establishment of Water Levels for Lakes Altamaha, Bonnie,
Cooper (Worth), Crystal, North Lake Wales, Serena, Twin
Lakes, Wales, Warren, and Weader (Weaver) , Chapter 40D-3,
F.A.C., June 1991

Schedule of Levels for Lakes and Other Impoundments;
Establishment of Water Levels for Spring Lake, Chapter 40D-
8, F.A.C., June 1991

General Consumptive Use Permits Within the Coastal Zone,
Chapter 40D-20, F.A.C., June 1988

Year-Round Water Conservation Measures, Chapter 40D-22,
F.A.C., July 1991

Surface Water Management; Conditions for Issuance of General
Permits and Editorial Changes to Threshold Language, Chapter
40D-40, F.A.C., June 1988

Surface Water Management; The Proposed Deletion of the Non-
Phosphate Mining Exemption form Chapter 40D-4, F.A.C. and
The Creation of a Rule and Basis of Review for the
Permitting of the Mining of Materials Other than Phosphate,
Chapters 40D-4 & 45, F.A.C., November 1989

Surface Water Management for the Mining of Material Other
than Phosphate; Proposed Revisions to Water Quality
Monitoring, Allowable Wetland Impacts, and Wetland Impact
Compensation Provisions, Chapter 40D-45, F.A.C., August 1990

ECONOMIC IMPACT STATEMENTS SUPERVISED

Highlands Ridge Water Use Caution Area, Chapter 40D-2,
F.A.C., Prepared by CH2M Hill, May 1990

Eastern Tampa Bay Water Use Caution Area, Chapter 40D-2,
F.A.C., Prepared by CH2M Hill, August 1990

Northern Tampa Bay Water Use Caution Area, Chapter 40D-2,
F.A.C., Prepared by CH2M Hill, January 1991

Economic Impact Statement for Revisions to Chapter 40D-2,
F.A.C., Water Use Permitting, and Chapter 40D-8, F.A.C.,
Water Levels and Rates of Flow, Including Rules Specific to
the Southern Water Use Caution Area, Prepared By Hazen and
Sawyer in association with Resource Economics Consultants
and HSW Engineering, August 25, 1994

OTHER PUBLICATIONS

Milon, J. Walter, Jay Yingling and John E. Reynolds, An Economic Analysis of the Benefits of Aquatic Weed Control in North-Central Florida; With Special Reference to Orange and Lochloosa Lakes. Food and Resource Economics Department Economics Report. Gainesville: University of Florida, 1986.

Proceedings of a Workshop on Water Allocation Strategies. 11 March 1993. Ed. Richard Owen and Jay Yingling. Brooksville: Southwest Florida Water Management District, 1993

Yingling, Jay. "Economic Values." In Indian River Lagoon Joint Reconnaissance Report. Ed. Joel S. Steward and Joel A. VanArman. St. Johns River Water Management District and South Florida Water Management District, 1987

**PROFESSIONAL
AFFILIATIONS**

American Agricultural Economics Association

American Water Resources Association

International Association of Ecological Economics

PERSONAL Born October 28, 1950 in Somers Point, New Jersey

AGENDA ITEM SUMMARY

1. Requested Motion:

Move to approve the Specific Authorization #2 with James M. Montgomery, Consulting Engineers, Inc. (JMM) for engineering consulting in the acquisition of Venice Gardens Utilities, Inc. (including a used and useful study) in accordance with Contract #92-281, call for professional services #126, BCC approved on June 16, 1992.

2. Meeting Date: January 26, 1993

3. Subject: Engineering Consultant Specific Authorization for acquisition of VGU

4. Category: Check where applicable:

- 1. Ordinance
2. Resolution
3. Variance Request
4. County Admin. Report
5. Contracts
6. Public Hearing Required: Yes No X
Time Required minutes
7. Other (specify) Discussion

5. Background:

On December 15, 1992, the BCC directed staff to proceed with the acquisition of Venice Gardens Utilities, Inc. At a deliberative session on July 14, 1992, regarding VGU's requested rate increase, the BCC remanded the case back to the panel of hearing officers with instructions that a recommendation be made as to the used and useful capacity of the plant. The acquisition process will utilize the established Acquisition Negotiation Team (ANT) procedures. JMM will accomplish the engineering analysis required. Since much of the information required for the used and useful study will be obtained by JMM during the acquisition investigation, it is in the County's interest to have JMM also complete the required used and useful study. The Specific Authorization #2 has been developed and is attached for BCC approval as required by JMM Contract #92-281. There are no modifications to the payment provisions. The base price is \$160,974 for the acquisition scope of work, and \$44,510 for the used and useful portion for a total of \$205,484.

6. Approval to proceed with contract review:

Deputy Co. Admin. Date:

7. Fiscal Impact:

Expenditure Required: \$ 205,484

8. Submitting Dept: Utilities

Reviewed by: Signature Date
Dept. Director: 1/21/93
Legal Counsel: S. P. ... 1/4/93
Clerk's Finance Officer:
Financial Management: 1/21/93

Amount Budgeted: \$ 226,500.00
Amendment in Progress
Budget Amendment Required: Yes

Funds are available in Account No.
402-059239-533313-00000 (\$160,974)
105-05912-536313-00000 (Study) \$44,510

9. Forwarded for BCC Action:

Deputy Co. Admin. Date: 1-26-93
County Administrator Date:

10. Commission Action:

Approved: Action approved with the following modifications:
C92-281 Denied
Deferred to:
Referred to staff:

JAN 26 1993
BOARD OF COUNTY COMMISSIONERS
CLERK OF COUNTY COURTS
SARASOTA COUNTY
93 JAN 25 AM 9:55
BOARD RECORDS
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Services. Subsequently, it was determined that this was not the case. During October and November, the rate staff coordinated the drafting of engineering scope of services with SUD Engineering staff, Office of the County Attorney, and Purchasing. The final draft of the scope of services went to Purchasing for advertising in mid-November. Call For Professional Services went out late November with a closing date of December 18, 1992. Five responses to the Call For Professional Services were received, one of which was from James M. Montgomery Consulting Engineers, Inc.

On December 15, 1992, the BCC directed staff to proceed with the acquisition of Venice Gardens Utilities, Inc.

The Utilities Department will proceed with the acquisition of the franchise utilizing the BCC approved Acquisition Negotiating Team (ANT). The firm of JMM will accomplish the engineering analysis required including a used and useful study. The Specific Authorization No. 2 has been developed and is attached for BCC approval as required by the JMM contract #92-281. There are no modifications to the payment provisions.

Since much of the information required for the used and useful study will be obtained by JMM during the acquisition investigation, it is in the County's interest to have JMM also complete the required used and useful study.

CONTRACT NO. Ke: 92-281
BCC APPROVED 1/26/93

SPECIFIC AUTHORIZATION NO. 2
SARASOTA COUNTY UTILITIES DEPARTMENT

THIS DOCUMENT, executed this ___ day of _____, 1993, is Specific Authorization No. 2 to the Agreement dated June 16, 1992 (BCC Contract No. 92-281), hereinafter called the Agreement, between the

County of Sarasota
a political subdivision of the State of Florida
hereinafter called County, and

James M. Montgomery, Consulting Engineers, Inc.
a professional engineering consultant,
hereinafter called Consultant,

with an office located at 240 N. Washington Blvd., Suite 303 Sarasota, Florida.

WHEREAS, the Agreement provided that the County may authorize Consultant by Specific Authorization to perform additional services; and

NOW THEREFORE, the County and the Consultant, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. SERVICES OF CONSULTANT

Consultant shall perform professional consulting services, and provide the deliverables as set forth in Exhibit A, Scope of Work, attached hereto and incorporated as though set forth in full.

2. COMPENSATION

The Consultant shall be paid in accordance with the fee schedule as set forth in Paragraph 2.1 of the Agreement. The payment for this Specific Authorization is \$160,974 for the acquisition scope of work, and \$44,000 for the used and useful portion for a total of \$205,000.

BOARD RECORDS
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93 JAN 26 PM 12:49
CLERK OF DISTRICT COURT
SARASOTA COUNTY, FL

3. PERIOD OF SERVICE

The anticipated Period of Service for the services rendered is estimated to be approximately 6 months.

4. OTHER PROVISIONS

All applicable provisions of the Agreement and prior Specific Authorizations not specifically modified herein

shall remain in full force and effect and are incorporated by reference herein.

IN WITNESS WHEREOF, this Specific Authorization has been fully executed on behalf of County's and Engineer's duly authorized officers, effective as of the date hereinabove written.

ATTEST:

KAREN E. RUSHING, as Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners

BY: Paula J. Lintner
Deputy Clerk

WITNESS:

Approved as to Form and Execution Correctness

BY: [Signature]
Attorney
Board of County Commissioners

BOARD OF COUNTY COMMISSIONERS of SARASOTA COUNTY FLORIDA

BY: [Signature]
Chairman

JAMES M. MONTGOMERY, CONSULTING ENGINEERS, INC.

BY: [Signature]

EXHIBIT A
TO SPECIFIC AUTHORIZATION NO. 2

SARASOTA COUNTY

Utility Acquisition Engineering Services
For Acquisition of Venice Gardens Utility
By Sarasota County, Florida

ENGINEERING SCOPE OF WORK

I. GENERAL SERVICES

A. Project Interfaces

1. Meet with Acquisition Team Members

James M. Montgomery (JMM) will meet with the other Utility Acquisition Team Members/County staff for up to two (2) meetings.

2. County Commission Meetings

JMM will brief the Board of County Commissioners twice (2) on the engineering status of the project.

3. Any additional meetings will be reimbursed at the agreed hourly rates.

4. Provide letter report of physical condition and investment required to bring utility to good to excellent condition (for F.S. 125.3401 report).

B. Project Schedule

JMM will prepare a bar chart schedule for the acquisition project. The schedule will be updated monthly. The purpose of a schedule is to identify the interdisciplinary effort and the task relationships required to complete the project in a timely manner.

II. WATER FACILITIES EVALUATION

A. Water Supply

JMM will review an inventory prepared by VGU and analyze the available master water supply.

Utility Acquisition Engineering Services

B. Treatment Plant(s)

JMM will prepare an inventory and analysis of all water treatment plant(s) as well as a description of the on-site facilities. A copy of the permit applications for the water treatment plant(s) will be reviewed to determine the design criteria for the plant(s). A review of the plant(s) operating parameters will indicate whether the current mode of operation is adequate. An investigation of the treatment processes will be performed. A determination of the rated capacity per FDER will be made. Current regulatory compliance of the plant(s) will be investigated. Such investigation will include treatment as well as effluent and sludge handling/disposal.

C. Storage and High Service Pumping Facilities

JMM will review the inventory and evaluate the existing treated water storage and high service pumping facilities to determine permitted and useful capacity.

D. Distribution System

(See XIV.H)

E. Flow Test and Inspection of Existing Fire Hydrants (To be accomplished by others.)**F. Inspect All Existing Water Facilities**

JMM will visually inspect all major existing water distribution facilities, including storage tanks, pumping stations, master supply meter facilities, valve vaults, and control panels. Facilities will be operated to check for abnormal wear, age, vibrations, damage and/or operating conditions which may indicate problems. Based upon these inspections, JMM will identify appropriate corrective actions and related costs to bring facilities into compliance with existing costs to bring facilities into compliance with existing codes and regulations.

G. Water Distribution Model and Analysis

(Deleted)

Utility Acquisition Engineering Services

X. CAPITAL NEEDS PROGRAM

A compilation of the estimated costs of extraordinary maintenance and repairs required in order to return the system to a good to excellent condition will be performed and presented in the form of a capital improvement program (CIP). The capital needs to meet permit requirements, growth, mandates, health and safety needs, and consolidation needs will also be presented as a capital improvement program (CIP). The CIP is expected to be of about a 5 year duration. The compilation will separately state the basis for required renewal and replacement advance funding. JMM will review TV tapes provided by others as an aid in developing CIP.

XI. REPORT PREPARATION

JMM will prepare bound technical memos encompassing items I through IX as an engineering evaluation of the VGU facilities. A total of ten (10) bound draft copies will be provided and five (5) bound final documents will be provided after appropriate review. The draft report will be complete approximately four (4) months after notice to proceed.

XII. ADDITIONAL SERVICES

During the course of this project, the County, other county consultants and/or JMM may identify tasks that require extensive field work or closed circuit TV inspection. These services may include TV inspection of wells, aquifer hydrogeology tests, pump tests, TV inspection of sewer lines, excavation of utilities, Phase II Environmental Audits of existing utility sites. JMM will not commence work on any effort in this task without obtaining written authorization from the County nor have any fees been included in the negotiated fee for acquisition services. Compensation will be for actual time and materials used at the established rates.

XIII. POST UTILITY ACQUISITION**A. Post-Acquisition Assistance**

Upon acquiring the utility system, the County will be required to operate and manage a utility structure in conjunction with the defined operating budget. As this is a unique situation for the County and staff, JMM will provide the newly-formed utility with post-acquisitional assistance. The services include, but are not limited to:

1. Engineering services for developer agreement review and permitting; interconnect and new main design; design services to remedy system

Utility Acquisition Engineering Services

deficiencies; general engineering consultation; site plan and plat review; necessary work to meet D.O.T. and other public entity schedules; address any emergency health and safety issues; coordinate planning issues with other agencies; and assist the utility staff in the development of County-wide ordinances.

- 2. Provide the County recommendations for utility staff organization, facilities management plans, operating procedures and manuals; implementation assistance for safety, preventive maintenance and staff training programs. Engineering services required for legal matters should the acquisition or post-acquisition activities necessitate engineering services. JMM will provide same for expert witness testimony, deposition, and litigation support as required.
- 3. Provide services necessary to complete the injection well FDER permits. Compensation will be for actual time and materials used at the established rates.

XIV. USED AND USEFUL EVALUATION OF WATER SYSTEM

A. Obtain Data

Gather Pertinent data regarding the Venice Garden Utility Corporation's (VGU) Water System. This data source includes:

- Florida Department of Environmental Regulation Consent Orders
- Florida Department of Environmental Regulation Construction Permits
- Southwest Florida Water Management District Water Use Permits
- Sarasota County Franchise Division Documents
- Sarasota County Health and Rehabilitative Services Unit Operating Reports
- Rate Case Document
- Filings of VGU with Sarasota County Franchise Division

B. Review Design Criteria

Review the design criteria for reasonableness based upon:

- Historical Data Trends
- Sarasota County Ordinances
- Sarasota County Rules & Regulations

Utility Acquisition Engineering Services

- Florida Department of Environmental Regulation Regulations
- United States Environmental Protection Agency Regulations
- Industry Standards
- Contracts with Sarasota County and Other Governmental Entities

Draw conclusions regarding prudence of plant sizing based on above criteria. If it is determined that plant has been imprudently oversized, then a recommendation should be made regarding the appropriate plant sizing. (Tasks C, D, and E should also be reviewed as needed prior to this determination.)

C. Review Population

Review the future water demands based upon past water consumption per equivalent dwelling units (EDU). Future EDUs will be based upon County Planning Department projections. Assess the impact of water restrictions on water demand.

D. Water Losses

Complete a water loss analysis of water losses of the system. This will be used on an analysis between finished water produced and water sold to customers. Make recommendation regarding reasonableness of water loss. If water loss is not at an acceptable level, recommend adjustments as needed to reduce electric and chemical expense.

E. Prepare Estimate of Future Water Use Through 1996

Predict water demands through 1996 based upon results of Subtask B, C and D.

F. Site Visits

Conduct site visits of the major components of VGU water system.

G. Capacity Analysis

Review and make a recommendation regarding the appropriate number of years over which to depreciate the reverse osmosis permeators.

Sarasota County rules and regulations allow a utility to request a change in lives from the standard defined in the rules.

In the most recent proceeding in 1991, VGU requested that the life be changed from 22

Utility Acquisition Engineering Services

to 5 years.

Analyze the capacity of the water supply wells and water treatment units. Review the capacity of the major components. Review the continued use of the surficial wells with respect to the Surface Water Treatment Rule. Make recommendation regarding the appropriate treatment of a portion of the shallow wellfields located off of Shamrock Boulevard that is not currently in use for rate making purposes. Should they be permitted to remain the rate base or should they be retired? If the recommendation is to retire the unused wellfields, determine the value of the assets to be retired and determine how the early retirement should be accounted for.

H. Assess the Ability of the Water Treatment System to Provide Water to the Customers Through the Distribution System

Assess the ability of the water distribution system to deliver the finished water from the storage facilities to the distribution unit.

I. Used and Useful Calculations

Prepare used and useful calculations for the water distribution system. Prepare used and useful calculations for the VGU water plant either by major components or system wide as appropriate depending on the previous capacity analysis (See Subtask G).

Task B regarding design criteria should be a primary reference point when preparing the used and useful analysis pertaining to the VGU water plant and components. In addition, other pertinent tasks should be taken into account as needed.

Prepare a detailed report of the results of the used and useful analysis by April 15, 1993.

J. Expert Testimony and Presentation at Public Hearing

Prepare expert testimony to be presented at a public hearing regarding the Utility's rate request. The expert witness shall be available to present findings at a public hearing which may be several days in duration. Compensation will be for actual time and materials uses at the established rates.

K. Project Interface

Meet with Franchise Division staff for up to four meetings.

CLIENT: Sarasota County
 PROJECT: VENICE GARDENS Utility Acquisition Program
 JOB NO.: 0000,0000
 PREPARED BY: J. Higgins
 DATE: 21-Jan-93
 APPROVED BY: J. Higgins

SUBTASK NUMBER	CLASS PERSON COST RATE	HOURS										LABOR HOURS	A LABOR COSTS	B OVER HEAD COL. A x 1.79	C ODC	D TOTAL COSTS SUM A THRU C	
		PRINCIPAL PROFESSIONAL	SENIOR PROFESSIONAL	PROFESSIONAL	ASSOCIATE	DESIGNER	ADMINISTRATOR	SECRETARY	DRAFTER	TYPIST	QUALITY CONTROL						
		\$42.10	\$23.81	\$22.78	\$16.80	\$20.00	\$14.42	\$12.65	\$11.00	\$11.97	\$45.00						
TASK I- GENERAL SERVICES																	
A1. MEET WITH TEAM MEMBERS		8	8										15	527	944	12	1,483
A2. COUNTY COMMISSION MTGS.		8	8										15	527	944	0	1,471
A3. HOURLY RATE MEETINGS		NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC		0	0	0	0	0
A4. F.S. CHPT 123 HEARING		4	4										8	264	472	0	736
B. PROJECT SCHEDULE		16	16			10		24					66	1,502	2,689	62	4,254
TASK II- WATER FACILITIES																	
A. WATER SUPPLY		4	8	16			4	10			1		43	970	1,737	11	2,718
B. WATER TREATMENT		4	16		40	8	10	10			3		91	1,805	3,231	21	5,057
C. STORAGE AND PUMPING		0	0		0	0	0	0	0		0		0	0	0	0	0
D. WATER DISTRIBUTION SYSTEM		0	8	0	16	0	0	4			1		29	564	1,009	4	1,577
E. FLOW TESTS		0	0	8		0	0	0			0		8	200	358	0	559
F. INSPECTION		24	20	20	20						4		88	2,467	4,416	44	6,927
TASK III- SEWER FACILITIES																	
A. WASTEWATER TREATMENT		16	24		40						4		84	2,097	3,754	11	5,862
B. INTERNAL INSPECTION		NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	0		0	0	0	0	0
C. INSPECT MANHOLES		7	20	20				4			2		50	1,190	2,130	52	3,372
D. LIFT STATIONS AND PUMP STAT		24	40					20		24	3		111	2,647	4,734	57	7,442
E. IM ANALYSIS		1	24		64		4	4		8	5		117	2,396	4,288	13	6,696
TASK IV- REGULATORY ISSUES																	
A. Facilities Permits		8			24			4			2		42	920	1,647	285	2,851
B. Site Audits		16	24				16			4	2		62	1,614	2,888	10,011	14,513
TASK V- UTILITY OPERATIONAL EV																	
A. Staffing		8			16			8	4	8	1		45	901	1,612	18	2,531
B. W & WW Treatment Facil.		8			24			4	4	8	2		46	952	1,704	11	2,666
C. Maintenance Practices		8			34			4	8	4	2		50	1,015	1,817	133	2,964
D. FIVE YEAR O&M BUDGET		30	30	20	40			8	16	16	6		166	3,824	6,952	126	10,963
TASK VI- REAL PROPERTY EVALUA																	
NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC		0	0	0	0	0
TASK VII- RECORDS REVIEW																	
A. PLANS REVIEW		8		24							2		34	955	1,710	2,694	5,360
B. CORRESPONDENCE		2	24								1		27	714	1,278	240	2,232
C. GROWTH TRENDS				8	8						1		17	353	631	0	984
D. OPERATION REPORTS			8	16	16						2		42	914	1,636	144	2,692
E. FIRE DEMANDS		2			16						1		19	393	704	165	1,268
TASK VIII- SYSTEM PROBLEMS & NEE																	
16	16			40			4	10	8	10	4		108	2,280	4,082	47	6,409
TASK IX- ESTIMATED VALUE																	
20	24	24	80				4	20		20	7		199	4,187	7,493	306	11,986
TASK X- CAPITAL NEEDS PROGRAM																	
16	10	24					4				3		57	1,415	2,658	225	4,300
TASK XI- REPORT																	
20	20	24	80	24	32		40	24	40	8	8		312	5,777	10,341	770	16,888
TASK XII- ADDITIONAL SERVICES																	
NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	NIC	0		0	0	0	0	0

PAGE 16 OF 61
 EXHIBIT (ASS-7)

CLIENT: Sarasota County
 PROJECT: VENICE GARDENS Utility Acquisition Program
 JOB NO.: 0000.0000
 PREPARED BY: J. Higgins
 DATE: 21-Jan-93
 APPROVED BY: J. Higgins

SUBTASK NUMBER	ODC's												TOTAL ODC's
	XEROX COPIES	BLUELINE PRINTS	PRINTING	OUTSIDE CONSULTANTS	SHIPPING	TRAVEL	MILEAGE	COMPUTER	WORD PROCESSING	PHONE	TESTING	MISC.	
TASK I- GENERAL SERVICES													
A1. MEET WITH TEAM MEMBERS	100							0	0				12
A2. COUNTY COMMISSION MTGS.								0	0				0
A3. HOURLY RATE MEETINGS								0	0				0
A4. F.S. CHPT 125 HEARING								0	0				0
B. PROJECT SCHEDULE	50				30			0	15				62
TASK II- WATER FACILITIES													0
A. WATER SUPPLY								0	6				11
B. WATER TREATMENT								4	8				21
C. STORAGE AND PUMPING								0	0				0
D. WATER DISTRIBUTION SYSTEM								0	2				4
E. FLOW TESTS								0	0				0
E. INSPECTION							200	0	0				44
TASK III- SEWER FACILITIES													0
A. WASTEWATER TREATMENT							50	0	0				11
B. INTERNAL INSPECTION								0	0				0
C. INSPECT MANHOLES	30						200	0	3				52
D. LIFT STATIONS AND PUMP STAT	50						50	0	22				57
E. ANALYSIS								4	3				13
TASK IV- REGULATORY ISSUES													0
A. Facilities Permits	2000				20			0	3	20			283
B. Site Audits				10000				0	6				10,011
TASK V- UTILITY OPERATIONAL EV													0
A. Staffing								2	8				18
B. W & WW Treatment Facil.								2	4				11
C. Maintenance Practices	1000							2	5				133
D. FIVE YEAR O&M BUDGET	200				20			0	18	50			126
TASK VI- REAL PROPERTY EVALUAT								0	0				0
TASK VII- RECORDS REVIEW													0
A. PLANS REVIEW		2500			100		200	0	0	50			2,694
B. CORRESPONDENCE	2000							0	0				240
C. GROWTH TRENDS								0	0				0
D. OPERATION REPORTS	500				40		200	0	0				144
E. FIRE DEMANDS				150				0	0	15			165
TASK VIII- SYSTEM PROBLEMS & NEP					20			4	11				47
TASK IX- ESTIMATED VALUE	400				20			0	21	200			306
TASK X- CAPITAL NEEDS PROGRAM	200							0	1	200			226
TASK XI- REPORT	2000		400					24	48				770
TASK XII- ADDITIONAL SERVICES								0	0				0

EXHIBIT _____ (ASS-7)
 PAGE 17 OF 61

S A R A S O T A C O U N T Y G O V E R N M E N T

UTILITIES DEPARTMENT

INTEROFFICE MEMORANDUM

TO: File

FROM: John D. Knowles, Planning Division Manager

SUBJECT: Venice Garden Utility (VGU) Acquisition

DATE: February 9, 1993

A meeting of the Acquisition Negotiating Team (ANT) for the acquisition of VGU was held on 1 February, 1993 in the 7th floor conference room of the Administration Center. The following individuals were present:

Commissioner Robert L. Anderson
John Wesley White, County Administrator
Larry Turner, Utilities Director
John D. Knowles, Planning Division Manager
Bleu Wallace, Franchise Division Manager
Steve DeMarsh, Assistant County Attorney
Bonnie Dyga, Director of Financial Management
Tom Keys, Operations Division Manager
Nancy Fisher, Administration Division Manager
Dave Cook, Accountant
Steve Dunn, Saffer, Vumbaco Brown & Kersten (SVBK)
Dave Bouck, James M. Montgomery (JMM)
Jim Higgins, James M. Montgomery (JMM)

The meeting was the initial meeting of the ANT for VGU acquisition. The following issues were addressed:

1. Acquisition. Commissioner Anderson noted that the acquisition would be accomplished as a "long take".
2. Completion time. JMM is scheduled to have the used and useful portion complete by April 15, 1993. Both consultants are to complete all of their scopes within 6 months. These times are subject to the consultants being able to obtain the required documents and gain access to the facilities. Commissioner Anderson asked that the consultants review their time lines to determine if they could complete their tasks sooner.
3. Access. Physical access to the property is necessary for JMM to complete his work on the acquisition part. Copies of the plans and drawings are necessary for both the used and useful and acquisition parts. Legal was asked to resolve these issues as SSU had indicated resistance to the County obtaining access.

4. Documentation. JMM and SVBK need copies of the VGU/County agreement on purchase of Carlton Water and copies of the injection well agreement.
5. Updates. JWW requested that SUD set up a monthly meeting of the ANT to update the members on all acquisitions. Attendance by the consultants is not necessary.
6. Overall plan. Commissioner Anderson requested that staff look at an overall plan for the water and sewer service in the southern portion of the County to determine how VGU fits into the County's goals.

appreciate the opportunity to discuss this situation with you personally.

We look forward to your response.

Sincerely,

Ida M. Roberts
Manager of Communications
and Government Affairs

Enclosure

APR. 1985
RESOLUTION
RELINQUISHING
REGULATORY
JURISDICTION
TO PSC

FLORIDA STATUTES. TRANSFERRING COLLIER COUNTY'S REGULATORY JURISDICTION OVER PRIVATE WATER AND SEWER UTILITIES TO THE FLORIDA PUBLIC SERVICE COMMISSION.

WHEREAS, Collier County has embarked on a plan to acquire some of the private water and sewer utilities over which the County exercises regulatory jurisdiction with respect to rates and service areas; and

WHEREAS, the County's acquisition plans and exercise of regulatory jurisdiction may raise an inference of a conflict of interest; and

WHEREAS, the Florida Public Service Commission exercises regulatory jurisdiction over private water and sewer utilities in many other counties and has full time experts on its staff to perform such regulatory functions; and

WHEREAS, Collier County must retain outside experts for each rate application submitted by a private water or sewer utility, the cost of which is passed on to the customers of the utility; and

WHEREAS, it is in the public interest to transfer Collier County's regulatory jurisdiction over private water and sewer utilities to the Florida Public Service Commission.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that it is hereby declared that the provisions of Chapter 267, Florida Statutes, shall become effective in Collier County as of April 16, 1985, and henceforth all private water and sewer utilities operating or proposing to operate within Collier County are subject to the regulatory jurisdiction of the Florida Public Service Commission; and

BE IT FURTHER RESOLVED, that the Board of County Commissioners of Collier County, Florida, ex-officio the governing Board of the Collier County Water-Sewer District does not waive its rights of consent and approval for the construction of water treatment, supply and distribution facilities and sewage disposal, collection and treatment facilities, pursuant to Section 153.86, Florida Statutes, nor does it waive any other rights, authority or powers conferred by Chapter 153, Florida Statutes.

This Resolution adopted after motion, second and roll call vote as follows:

Commissioner	Kaase	Abstained and vote
Commissioner	Cowdight	Seconded and vote
Commissioner	Voss	Aye
Commissioner	Holland	Nay
Commissioner	Pister	Abstain and not voting

12 of 17

APR 16 1985
WILLIAM J. VANCE, Clerk

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

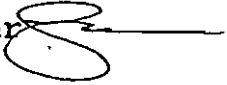
BY: *[Signature]*
FRANK J. VANCE, CLERK

S A R A S O T A C O U N T Y G O V E R N M E N T

UTILITIES DEPARTMENT

INTEROFFICE MEMORANDUM

TO: File

FROM: John D. Knowles, P.E., Planning Division Manager 

SUBJECT: Acquisition Negotiating Team (ANT) Update

DATE: May 3, 1993

An ANT update meeting was held on May 3, 1993. The following individuals were present:

Commissioner Robert L. Anderson
John Wesley White, County Administrator
Robert S. LaSala, Deputy County Administrator
Larry B. Turner, P.E., Utilities Director
John D. Knowles, P.E., Planning Division Manager
Bonnie Dyga, Financial Management Director
David Cook, Utilities Finance
Steve DeMarsh, Assistant County Attorney
Bob Obering, Utilities Engineering Manager
Bleu Wallace, Utilities Franchise Manager

The update sheets attached were distributed and discussed. The following specific issues were addressed:

Atlantic. Larry Turner stated that this issue will be discussed this week with the acquisition attorney.

Myakka. The County's role in reviewing the rates to be charged to County customers by a non-County entity was discussed. Steve DeMarsh was asked to look into this issue. Commissioner Anderson asked that SUD obtain the details of the agreement between the Utility and the City of North Port.

Southeast. Steve DeMarsh is to get with the Attorney handling the case and report back to the ANT.

Contributed CIAC to the County. Commissioner Anderson raised the issue of the status of the ordinance to require developers to donate their lines to the County via the franchise. Commissioner Anderson did not understand why we had to wait for future court rulings before we could process the ordinance. Mr. White stated that the Board of County Commissioners was clear in its directions on this issue. Steve DeMarsh to investigate.

ANT Meeting
Page 2

Acquisition Prioritization Plan. Mr. White asked SUD to look for community groups to brief. He does not expect a large effort to brief small groups of 2 or 3.

Future Meetings. Mr. White stated that the update meetings will be scheduled every two weeks until further notice.

Enclosures

AS OF: May 1, 1993.

ACQUISITION UPDATE

FRANCHISE NAME: Atlantic Utilities

TYPE OF SERVICE: Water (from SUD) and sewer

NUMBER OF CUSTOMERS: water: 4339 residential, 131 commercial
sewer: 4557 residential, 131 commercial

BASIS OF ACQUISITION: County Initiated

BCC NOTIFIED OF INTENT TO ACQUIRE: 4/22/93 - Workshop

BASIS FOR COMPENSATION: Negotiated

ENGINEER CONSULTANT: Montgomery/Watson

CONTRACT AMOUNT:

%COMPLETE:

FINANCIAL CONSULTANT: SVBK

CONTRACT AMOUNT:

%COMPLETE:

KEY DATES/EVENTS:

- 1992-Part of RUD#1 Proposal
- 03/11/93 - BCC rejected RUD#1 Proposal
- 04/22/93 - BCC concurred with SUD decision to begin negotiations for acquisition.
- 04/26/93 - Consultants asked for scope of work to gather additional data for acquisition.
- 04/28/93 - Letter from owner with price quote

CURRENT STATUS:

PURCHASE PRICE:

AS OF: May 1, 1993

ACQUISITION UPDATE

FRANCHISE NAME: Englewood Golf, Inc.

TYPE OF SERVICE: Sewer only, EWD water

NUMBER OF CUSTOMERS: Sewer: 133 residential, 1 commercial

BASIS OF ACQUISITION: Owner initiated

BCC NOTIFIED OF INTENT TO ACQUIRE:

BASIS FOR COMPENSATION: Consolidation clause

ENGINEER CONSULTANT: N/A

CONTRACT AMOUNT: %COMPLETE:

FINANCIAL CONSULTANT: N/A

CONTRACT AMOUNT: %COMPLETE:

KEY DATES/EVENTS:

3/4/94 - Franchise expires

CURRENT STATUS:

* Acquisition proposal to be presented to EWD board

PURCHASE PRICE:

ACQUISITION UPDATE

FRANCHISE NAME: Gulf View Utilities, Inc.

TYPE OF SERVICE: Water and sewer-own supply

NUMBER OF CUSTOMERS: Water: 180 residential
Sewer: 52 residential

BASIS OF ACQUISITION: Owner initiated

BCC NOTIFIED OF INTENT TO ACQUIRE: (5/11/93)

BASIS FOR COMPENSATION: Negotiated

ENGINEER CONSULTANT:

CONTRACT AMOUNT: %COMPLETE:

FINANCIAL CONSULTANT:

CONTRACT AMOUNT: %COMPLETE:

KEY DATES/EVENTS:

1/13/93 - owner offers to sell franchise to the County

CURRENT STATUS:

* BCC to consider authorizing staff to look into acquisition

PURCHASE PRICE:

ACQUISITION UPDATE

FRANCHISE NAME: Myakka Utilities, Inc

TYPE OF SERVICE: Water (from North Port) and sewer

NUMBER OF CUSTOMERS: Water: 2733 residential
Sewer: 2727 residential

BASIS OF ACQUISITION: Initiated by North Port

BCC NOTIFIED OF INTENT TO ACQUIRE:

BASIS FOR COMPENSATION: Negotiated

ENGINEER CONSULTANT:
CONTRACT AMOUNT: %COMPLETE:

FINANCIAL CONSULTANT:
CONTRACT AMOUNT: %COMPLETE:

KEY DATES/EVENTS:
03/11/93 - Request to transfer assets requested from Utility
04/14/93 - Negotiations between Utility and North Port complete.

- CURRENT STATUS:**
- * Acquisition public hearing in County not required
 - * Public hearing for transfer of assets required
 - * North Port will hold two community meetings
 - * Customers will not pay any capacity fees to North Port
 - * Utility has the action to submit transfer request

PURCHASE PRICE:

AS OF: May 1, 1993 .

ACQUISITION UPDATE

FRANCHISE NAME: Southbay Utilities, Inc.

TYPE OF SERVICE: Water & Sewer (own)

NUMBER OF CUSTOMERS: Water: 515 residential, 25 commercial
Sewer: 515 residential, 25 commercial

BASIS OF ACQUISITION:

BCC NOTIFIED OF INTENT TO ACQUIRE:

BASIS FOR COMPENSATION:

ENGINEER CONSULTANT:
CONTRACT AMOUNT: %COMPLETE:

FINANCIAL CONSULTANT:
CONTRACT AMOUNT: %COMPLETE:

KEY DATES/EVENTS:

- 7/21/92 - owners request 10 year extension; BCC approved one year extension
- 4/16/93 - meeting between County Attorney & franchise lawyer

CURRENT STATUS:

- * Franchise expires in August 1993, or August 1994
- * Owners want to negotiate new franchise agreement
- * County attorney to resolve

PURCHASE PRICE:

AS OF: May 1, 1993 .

ACQUISITION UPDATE

FRANCHISE NAME: Southeast Utilities, Inc.

TYPE OF SERVICE: Water (bulk, from SUD) & Sewer (diverted to Atlantic)

NUMBER OF CUSTOMERS: Water: 136 residential
Sewer: 132 residential

BASIS OF ACQUISITION:

BCC NOTIFIED OF INTENT TO ACQUIRE: 1985

BASIS FOR COMPENSATION:

ENGINEER CONSULTANT:
CONTRACT AMOUNT: **%COMPLETE:**

FINANCIAL CONSULTANT:
CONTRACT AMOUNT: **%COMPLETE:**

KEY DATES/EVENTS:
1985 - Owner abandoned system
1985 - Court appointed receiver
9/27/90 - Sewer interconnected to Atlantic

CURRENT STATUS:
* Trial on owner's claim of inverse condemnation June & Aug 93
* Receiver heavily in debt
* System has massive I & I

PURCHASE PRICE:

AS OF: May 1, 1993

ACQUISITION UPDATE

FRANCHISE NAME: Southgate Water & Sewer Co., Inc

TYPE OF SERVICE: Water (from SUD) (Sewer by Florida Cities)

NUMBER OF CUSTOMERS: 250 Residential, 103 Commercial

BASIS OF ACQUISITION: Owner initiated

BCC NOTIFIED OF INTENT TO ACQUIRE: 1/19/93 - SVBK Contract approval

BASIS FOR COMPENSATION: Negotiated

ENGINEER CONSULTANT: Minder & Rhodes

CONTRACT AMOUNT: \$9,600

%COMPLETE: 90%

FINANCIAL CONSULTANT: Saffer, Vumbaco, Brown & Kersten

CONTRACT AMOUNT: \$14,530

%COMPLETE: 90%

KEY DATES/EVENTS:

03/29/93 - Utility asked to provide their asking price along with explanation of derivation of price.

CURRENT STATUS:

*Target date to complete acquisition - August 1993

*Consultants prepared to review asking price upon receipt

PURCHASE PRICE:

ACQUISITION UPDATE

AS OF: May 1, 1993 .

FRANCHISE NAME: Sunrise Utilities, Inc.

TYPE OF SERVICE: Water(Bulk from SUD) & Sewer

NUMBER OF CUSTOMERS: Water: 361 residential, 16 commercial
Sewer: 361 residential, 19 commercial
(Also serves 37 EDU's from SERENOA)

BASIS OF ACQUISITION: County initiated

BCC NOTIFIED OF INTENT TO ACQUIRE:

BASIS FOR COMPENSATION: Water - county receives without cost
Sewer - negotiated

ENGINEER CONSULTANT: N/A

CONTRACT AMOUNT:

%COMPLETE:

FINANCIAL CONSULTANT: N/A

CONTRACT AMOUNT:

%COMPLETE:

KEY DATES/EVENTS:

03/31/93 - Meeting with CCU to discuss bulk rate

CURRENT STATUS:

- * Sewer plant needs to be taken out of service.
- * Flows can go to either Bent Tree or CCU.
- * CCU has action to propose rate agreement to SUD

PURCHASE PRICE:

ACQUISITION UPDATE

AS OF: May 1, 1993

POTENTIAL ACQUISITIONS/CONSOLIDATION

COUNTRY MANOR: 4/22/93 - owner requests to connect sewer to Atlantic via County owned lines

WOODLAND PARK: 4/29/93 - owner request to connect to another system and decommission plant

ACQUISITION UPDATE

ACQUISITION PRIORITIZATION PLAN

KEY DATES/EVENTS:

4/22/93 - Concept and results of Northern Sector review presented to BCC

4/29/93 - Sarasota Bay National Estuary Program Director briefed

(5/14/93) - Argus briefing

CURRENT STATUS:

* Engineering analysis of all franchises complete

* Financial analysis to be completed upon review of new SSU/VGU data

8/23/93

SUMMARY OF ACTIVITIES
SINCE LAST ANT UPDATE MEETING OF JULY 26, 1993

ATLANTIC UTILITIES

07/29/93 - Nabors requests additional data from consultants to complete evaluation methodology

CASEY KEY WATER ASSOCIATION

08/10/93 - Closing. FINAL REPORT.

GULF VIEW UTILITIES, INC.

08/01/93 - SUD staff completed review of existing rates

MYAKKA UTILITIES, INC.

08/18/93 - Owner signs Purchase & Sale Agreement
North Port City Commission to consider 8/23/93

SOUTHBAY UTILITIES, INC.

07/26/93 - meeting with Southbay
Southbay to come to SUD with proposed franchise extension

SUNRISE UTILITIES, INC.

08/04/93 - meeting with CCU re: bulk rate
CCU not receptive to bulk agreement

VENICE GARDENS UTILITIES

07/22/93 - Circuit Judge halts VGU's rate increase
08/04/93 - 2nd District Court of Appeals denies VGU's appeal

AS OF: August 23, 1993

ACQUISITION UPDATE

FRANCHISE NAME: Atlantic Utilities

TYPE OF SERVICE: Water (from SUD) and sewer

NUMBER OF CUSTOMERS: water: 4339 residential, 131 commercial
sewer: 4557 residential, 131 commercial

BASIS OF ACQUISITION: County Initiated

BCC NOTIFIED OF INTENT TO ACQUIRE: 4/22/93 - Workshop

BASIS FOR COMPENSATION: Negotiated

ENGINEER CONSULTANT: Montgomery/Watson

CONTRACT AMOUNT:

%COMPLETE:

FINANCIAL CONSULTANT: SVBK

CONTRACT AMOUNT:

%COMPLETE:

KEY DATES/EVENTS:

1992-Part of RUD#1 Proposal

03/11/93 - BCC rejected RUD#1 Proposal

04/22/93 - BCC concurred with SUD decision to begin negotiations for acquisition.

04/26/93 - Consultants asked for scope of work to gather additional data for acquisition.

04/28/93 - Letter from owner with price quote

05/20/93 - Meeting with owner to discuss general approach toward establishing price.

05/27/93 - Meeting between consultants and Nabors, to discuss evaluation methods.

07/02/93 - Consultants provided data to Nabors for proposed evaluation method.

07/29/93 - Nabors requests additional data from consultants to complete evaluation methodology.

CURRENT STATUS:

PURCHASE PRICE:

FINAL REPORT

ACQUISITION UPDATE

AS OF: August 23, 1993

FRANCHISE NAME: Casey Key Water Association

TYPE OF SERVICE: Water only (SUD bulk customer)

NUMBER OF CUSTOMERS: 440 Residential, 1 commercial

BASIS OF ACQUISITION: Owner initiated

BCC NOTIFIED OF INTENT TO ACQUIRE: 4/6/93 - Franchise surcharge hearing

BASIS FOR COMPENSATION: Assumption of all liabilities

ENGINEER CONSULTANT: None

CONTRACT AMOUNT: %COMPLETE:

FINANCIAL CONSULTANT: None

CONTRACT AMOUNT: %COMPLETE:

KEY DATES/EVENTS:

9/14/92 - Meeting with SUD and CKWA to agree upon actions to be taken for acquisition

10/6/92 - CKWA's Engineer submits plans for back flow devices to meet consent order

11/5/92 - Plans for back flows disapproved as not meeting code

12/1/92 - CKWA's Engineer agrees to modify plans and submit revised cost data for rate hearing.

1/5/93 - Meeting with CKWA and SUD Director to update status

2/2/93 - Consent order to CKWA issued for chlorination equipment

2/24/93 - Data needed for rate hearing received by SUD

3/30/93 - Public hearing for rates (continued)

4/6/93 - Last easement for water-line route obtained.

5/19/93 - Meeting with CKWA and their lawyer & engineer

6/29/93 - BCC approved acquisition and rates

~~8/10/93 - Closing~~

CURRENT STATUS:

PURCHASE PRICE: NONE

AS OF: August 23, 1993

ACQUISITION UPDATE

FRANCHISE NAME: Englewood Golf, Inc.

TYPE OF SERVICE: Sewer only, EWD water

NUMBER OF CUSTOMERS: Sewer: 133 residential, 1 commercial

BASIS OF ACQUISITION: Owner initiated

BCC NOTIFIED OF INTENT TO ACQUIRE:

BASIS FOR COMPENSATION: Consolidation clause

ENGINEER CONSULTANT: N/A

CONTRACT AMOUNT:

%COMPLETE:

FINANCIAL CONSULTANT: N/A

CONTRACT AMOUNT:

%COMPLETE:

KEY DATES/EVENTS:

3/4/94 - Franchise expires

7/ /93 - Franchise submitted request to transfer assets to

EWD.

CURRENT STATUS:

- * EWD must conduct public hearing in accordance with FS. 189.423

- * EWD will be required to present facts to BCC in public hearing

- * BCC resolution to exercise consolidation clause required

- * Utility submission needs additional data

PURCHASE PRICE:

ACQUISITION UPDATE

FRANCHISE NAME: Morstar Utilities Corp. (Lemon Bay Shopping Center)

TYPE OF SERVICE: Sewer only (EWD water)

NUMBER OF CUSTOMERS: sewer: 21 commercial

BASIS OF ACQUISITION: Initiated by EWD

BCC NOTIFIED OF INTENT TO ACQUIRE: 5/27/93

BASIS FOR COMPENSATION:

ENGINEER CONSULTANT:

CONTRACT AMOUNT: %COMPLETE:

FINANCIAL CONSULTANT:

CONTRACT AMOUNT: %COMPLETE:

KEY DATES/EVENTS:

5/14/93 - Interconnect to EWD completed

5/27/93 - Morstar taken off-line

6/4/93 - Franchise Division received final report with check for Franchise fees to date.

7/9/93 - Utility informed that they must submit request to transfer assets.

CURRENT STATUS:

PURCHASE PRICE:

ACQUISITION UPDATE

AS OF: August 23, 1993

FRANCHISE NAME: Myakka Utilities, Inc

TYPE OF SERVICE: Water (from North Port) and sewer

NUMBER OF CUSTOMERS: Water: 2733 residential
Sewer: 2727 residential

BASIS OF ACQUISITION: Initiated by North Port

BCC NOTIFIED OF INTENT TO ACQUIRE:

BASIS FOR COMPENSATION: Negotiated

ENGINEER CONSULTANT:

CONTRACT AMOUNT:

%COMPLETE:

FINANCIAL CONSULTANT:

CONTRACT AMOUNT:

%COMPLETE:

KEY DATES/EVENTS:

03/11/93 - Request to transfer assets requested from Utility

04/14/93 - Negotiations between Utility and North Port

complete

08/18/93 - Owner signs Purchase & Sale Agreement

CURRENT STATUS:

- * Acquisition public hearing in County not required
- * Public hearing for transfer of assets required
- * North Port will hold two community meetings
- * Customers will not pay any capacity fees to North Port
- * Utility has the action to submit transfer request
- * Projected completion of construction and closing - Dec 93
- * North Port City Commission to consider 8/23/93

PURCHASE PRICE: \$1,350,000**

** includes cost of constructing lift station and interconnect

ACQUISITION UPDATE

AS OF: August 23, 1993

FRANCHISE NAME: Proctor Road Utilities, Inc.

TYPE OF SERVICE: Sewer only

NUMBER OF CUSTOMERS: 103 Residential

BASIS OF ACQUISITION: Owner initiated

BCC NOTIFIED OF INTENT TO ACQUIRE: Yes

BASIS FOR COMPENSATION: Negotiated

ENGINEER CONSULTANT: None

CONTRACT AMOUNT:

%COMPLETE:

FINANCIAL CONSULTANT: None

CONTRACT AMOUNT:

%COMPLETE:

KEY DATES/EVENTS:

05/11/93 - Association President offers to sell system to County for \$1.

06/04/93 - Florida Cities agrees in principle to take flows

07/08/93 - Meeting with Florida Cities; they will not take flows

07/12/93 - Options to solve briefed to ANT; decision was to acquire and operate by contract.

07/13/93 - Owner informed; when the Association's key people return from vacation, they will call SUD to set up meeting.

CURRENT STATUS:

* Joint meeting with Association will be scheduled to detail steps to complete closing and to minimize workload of Association.

PURCHASE PRICE: \$1.00

AS OF: August 23, 1993

ACQUISITION UPDATE

FRANCHISE NAME: Southbay Utilities, Inc.

TYPE OF SERVICE: Water & Sewer (own)

NUMBER OF CUSTOMERS: Water: 515 residential, 25 commercial
Sewer: 515 residential, 25 commercial

BASIS OF ACQUISITION:

BCC NOTIFIED OF INTENT TO ACQUIRE:

BASIS FOR COMPENSATION:

ENGINEER CONSULTANT:

CONTRACT AMOUNT: %COMPLETE:

FINANCIAL CONSULTANT:

CONTRACT AMOUNT: %COMPLETE:

KEY DATES/EVENTS:

7/21/92 - owners request 10 year extension; BCC approved one year extension

4/16/93 - meeting between County Attorney & franchise lawyer

5/ /93 - owner's attorney told that they must petition the BCC to negotiate new agreement.

6/22/93 - meeting between SUD and Utility

07/26/93 - meeting with Southbay

CURRENT STATUS:

*southbay to come to SUD with proposed franchise extension

PURCHASE PRICE:

AS OF: August 23, 1993

ACQUISITION UPDATE

FRANCHISE NAME: Venice Garden Utilities

TYPE OF SERVICE: Water and Sewer

NUMBER OF CUSTOMERS: Water: 6699 residential, 471 commercial
 Sewer: 6679 residential, 404 commercial

BASIS OF ACQUISITION: County initiated

BCC NOTIFIED OF INTENT TO ACQUIRE: 12/15/92 - BCC directed acquisition

BASIS FOR COMPENSATION: Negotiated

ENGINEER CONSULTANT: Montgomery Watson
 CONTRACT AMOUNT: \$160,974

%COMPLETE: 1%

FINANCIAL CONSULTANT: Saffer, Vumbaco, Brown & Kersten
 CONTRACT AMOUNT: \$65,000

%COMPLETE: 8%

KEY DATES/EVENTS:

12/15/92 - BCC directed staff to begin acquisition
 02/05/93 - SUD meeting with SSU in Apopka
 04/16/93 - Commissioners, County Attorney, Florida Board of Professional Registration informed by SSU that MW has conflict of interest
 05/17/93 - SSU informed by DCA that there is no conflict of interest as far as County is concerned.
 07/12/93 - 07/15/93 - Interim Rate Hearings
 07/22/93 - Circuit Judge halts VGU's rate increase
 08/04/93 - 2nd District Court of Appeals denies VGU's appeal

CURRENT STATUS:

- * Issue of access for acquisition study on hold
- * Draft Used and useful study due July 26, 1993
- * BCC Deliberative session for interim rates 09/93

PURCHASE PRICE:

ACQUISITION UPDATE

AS OF: August 23, 1993

ACQUISITION PRIORITIZATION PLAN (APP)

KEY DATES/EVENTS:

4/22/93 - Concept and results of Northern Sector review presented to BCC

4/29/93 - Sarasota Bay National Estuary Program Director briefed

5/4/93 - Briefing/discussions with Nabors, Giblin & Nickerson

5/14/93 - Argus briefing

5/19/93 - Brief SCUWWA

6/4/93 - Brief Pollution Control

6/14/93 - Brief Citizen's National Estuary Program

6/21/93 - PUAB briefed

(9/14/93) - Briefing to SC Civic League

CURRENT STATUS:

* Engineering analysis of all franchises complete

* Financial analysis completed

* Construction phasing evaluated

* Results briefed to BCC 7/27/93

ACQUISITION PROFILE OF FRANCHISE UTILITIES
AS OF AUGUST 9, 1993

UTILITY	FRANCHISE AGREEMENT		CONSOLIDATION CLAUSE	CUSTOMERS		RATES PER 6,000 GAL		COMMENTS
	ISSUED	EXPIRATION		WATER	SEWER	WATER	SEWER	
Atlantic Utilities of Sarasota, Inc.	05/25/55	7/31/99	NO	4470	4608	20.85	28.71	Negotiations in progress.
Beakman Place Utility Corp.	07/19/79	9/13/03	YES		24		13.00	
Bee Ridge Utility Corp.	05/23/83	8/16/03	YES		74		78.45	Commercial customers only.
Beneva Creek Utility Corp.	07/19/79	3/05/05	YES		2		27.66	
Central County Utilities, Inc.	12/02/83	11/29/03	NO		1398		18.20	
Circlewoods Owners Assoc., Inc.	06/11/73	03/21/04	YES	442	442	10.81	16.30	
Country Manor H.O. Assoc., Inc.	12/13/88	09/24/08	NO		85		*15.15	
Dolomite Utilities / Fruitville	12/19/60	09/11/04	NO	1453	2107	32.35	22.95	
Dolomite Utilities / Tri-Par			NO			29.91	45.27	One franchise; two rate structures.
El Jobean (Gasparilla Condo Assoc)	09/09/60	08/09/00	YES				None	Condo assessment.
Englewood Golf, Inc.	03/05/74	03/04/94	YES		134		21.21	EWD acquisition pending.
Englewood Utilities Corp.	01/10/84	01/10/04	NO		524		*20.97	
Florida Cities	05/05/66	09/26/09	NO	5227	8265	24.48	13.64	
F.M.F. Utilities, Inc.	03/17/87	01/27/07	YES		1		10.93	
Gulf View Utilities, Inc.	04/20/81	12/16/00	YES	180	52	17.20	*12.02	
Kensington Park / Monica	06/30/79	05/01/00	NO	3185	3216	28.59	*46.73	
Lake Forest Utilities, Inc.	01/11/83	01/11/03	YES		10	26.53	19.04	
Longwood Run Utilities, Inc.	09/04/84	09/04/04	YES		602		*30.91	
Meadowood Utility Division	12/17/75	12/16/95	YES-PUD		3848		15.66	
Morstar Utility (Lemon Bay)	11/03/81	11/03/03	YES		21		25.80	EWD acquisition pending.
Myakka Utilities, Inc.	02/04/63	09/24/90	NO	2733	2727	16.30	17.00	North Port acquisition pending.
Proctor Road Utilities, Inc.	07/30/82	05/29/82	NO		103		28.56	Association wants to sell.
Roblnhood Utilities	12/17/85	12/17/05	YES		4		42.90	Commercial customers only.
Siesta Key Utilities Authority, Inc.	05/28/68	05/24/08	NO	3201	3112	24.50	*20.42	
Skandia (Heron Bay)	05/30/80	04/29/00	YES		7		None	Condo assessment.
Southbay Utilities, Inc.	08/21/73	08/23/93	NO	540	540	31.19	*18.01	Negotiating extension.
Southfield Utilities, Inc.	02/11/86	12/18/04	YES		195		21.60	SUD acquisition in progress.
South Gate Water/Sewer Co., Inc.	08/25/58	11/08/02	NO	4273		26.53	13.64	Negotiations in progress.
Sproat Kinay (Manasota Beach)	12/03/74	11/26/94	YES		10		24.00	
Sunrise Utilities, Inc.	07/03/73	07/03/93	YES		367		*16.65	In receivership.
Sylvan Lea, Inc.	07/11/78	07/11/09	YES		31		30.37	
Tamaron Utility Authority, Inc.	07/24/74	08/06/94	YES		500		None	Condo assessment.
Tangerine Woods Utility, Corp.	03/14/84	03/13/04	YES		367		20.89	
The Trails Unlimited	03/06/79	01/06/01	YES	69	69		None	Shopping center assessment.
Venice Gardens	07/12/61	01/06/01	NO	7172	7083	29.86	15.64	
Village Oaks Utilities, Corp.	03/01/82	03/01/02	YES		167		22.00	
Vroom Utilities, Inc.	11/16/82	11/16/02	YES				None	Off line: Southbay water and sewer.
Woodbridge Estates	07/23/85	07/23/05	YES		15		None	Condo assessment.
Woodland Park Utilities	04/27/84	04/24/04	YES		210		31.48	

* = Billing Fee Added
1/123\USTSIACO-8-93mh

EXHIBIT _____
(A55-7)
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Page 1

TO : John Knowles
FROM : Stephen DeMarsh @ LEGAL
SUBJECT: Utility Acquisitions
DATE : 06/02/1993 3:43:52 PM

*** 06/02/1993 11:45:40 AM
*** Author John Knowles:

*** 06/01/1993 2:54:53 PM
*** Author Stephen DeMarsh:

Larry and John:

I met with Bob Nabors, Mark Lawson, Steve Dunn and Dave Bouck in Orlando last week. Mr. Nabors has requested that SVBK and Montgomery Watson supply information to him concerning matters that they would look at in determining the "going business" value of a utility. Each has asked that a P.O. be issued to cover the cost of the work. Could you please get involved to authorize these efforts? Steve

cc: Larry Turner, John Knowles,

STEVE, AFTER TALKING TO BOB NABORS AND FINDING OUT WHAT HE IS LOOKING FOR, I CAN TELL MW AND SVBK TO ACCOMPLISH THE WORK UNDER AN EXISTING CONTRACT FOR VGU REVIEW AND I HAVE THE \$. WILL NOT HAVE TO GO BACK TO BCC. BOB NABORS IS PUTTING TOGETHER A SCOPE OF WORK TODAY; AFTER MW AND SVBK REVIEW AND I AGREE THAT THEIR ESTIMATED TIME TO ACCOMPLISH IS REASONABLE, THEY CAN BEGIN AT ONCE.

John: I also spoke with Bob, sounds good. Thank you. Steve

**SARASOTA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

1. Requested Motion: Move to approve Change Order #1 to Specific Authorization #2 for the Montgomery Watson Contract for consulting services for the Venice Gardens Utilities, Inc. used and useful study.

2. Meeting Date: September 7, 1993
3. Subject: Witness Testimony-VGLI rate hearing
4. Category: Check where applicable
1. Ordinance _____
2. Resolution _____
3. Variance Request _____
4. County Admin. Report _____
5. Contracts _____ **X** _____
6. Public Hearing Required: Yes _____ No _____
Time Required: _____ Minutes
7. Other (specify) CONSENT

5. Background: On January 26, 1993, the Board of County Commissioners approved Specific Authorization #2 with James M. Montgomery, Consulting Engineers, Inc. for engineering consulting in the acquisition of Venice Gardens Utilities, Inc. (including a used and useful study) in accordance with Contract #92-2B1, call for professional services #126, BCC approved on June 16, 1992. In this document Expert Testimony and Presentation at Public Hearing was approved. At the time of this contract, staff could not estimate the hours that would be required. Staff now has an estimate of these hours and estimates this service will cost \$8,000.00.

Contact Person: Bleu Wallace Ext: 6106

6. Approval to proceed with contract review:
Deputy Co. Admin. _____ Date: _____

7. Fiscal Impact:
Expenditure Required: \$ 8,000
Amount Budgeted: \$ 86,000
Budget Amendment Required: Yes _____ No **X**

8. Submitting Dept: Utilities/Franchise
Reviewed by:

	<u>Signature</u>	<u>Date</u>
Dept. Director:	<u>[Signature]</u>	<u>8/16/93</u>
Legal Counsel:	_____	_____
Clerk's Finance Officer:	_____	_____
Financial Management:	_____	_____
Risk Management:	_____	_____

Funds are available in Account No. 105.059512.536313.00000
9. Forwarded for BCC Action:
Deputy County Admin. _____ Date: _____
County Administrator _____ Date: _____

10. Commission Action:
_____ Action approved with the following modifications: _____
_____ Denied: _____
_____ Deferred to: _____
_____ Referred to staff: _____

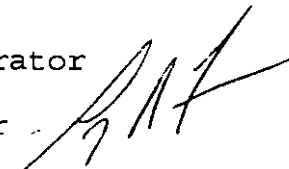
S A R A S O T A C O U N T Y G O V E R N M E N T

UTILITIES DEPARTMENT

INTEROFFICE MEMORANDUM

TO: John Wesley White, County Administrator

THROUGH: Robert S. LaSala, Deputy County Administrator

FROM: Larry B. Turner, P.E., Utilities Director 

SUBJECT: BOARD OF COUNTY COMMISSIONERS ITEM-CONSENT TO APPROVE EXPENDITURE FOR EXPERT WITNESS TESTIMONY FOR SEWER USED AND USEFUL STUDY OF VENICE GARDENS SYSTEM FOR RATE HEARING

DATE: August 12, 1993

RECOMMENDATION:

The Utilities Department recommends that the Board of County Commissioners take the following action: "Move to approve Change Order #1 to the Specific Authorization #2 with James M. Montgomery, Consulting Engineers, Inc., (now known as Montgomery-Watson) for a used and useful study in accordance with Contract #92-281, call for professional services #126, Board of County Commissioners approved on June 16, 1993".

REPORT:

Venice Gardens Utilities, Inc. (VGU) is a water and sewer franchise serving approximately 6600 retail customers and 400 commercial customers. Venice Gardens operates its own water and wastewater treatment plants.

On April 30, 1993, Southern States Utilities filed an application for a general rate increase for their Venice Gardens system. On May 14, 1993, Southern States Utilities met the Minimum Filing Requirements. A used and useful study was needed for the rate review process. On January 26, 1993, the Board of County Commissioners approved Specific Authorization #2 with James M. Montgomery, Consulting Engineers, Inc. for engineering consulting in the acquisition of Venice Gardens Utilities, Inc. (including a used and useful study) in accordance with Contract #92-281, call for professional services #126, BCC approved on June 16, 1992. In this document Expert Testimony and Presentation at Public Hearing was approved. At the time of this contract, staff could not estimate the hours that would be required. Staff now has estimated these hours and the cost for this service will be \$8,000.00.

The Change Order #1 to Specific Authorization # 2 has been developed and is attached for the Board of County Commissioners approval as required by the James M. Montgomery contract #92-281. There are no modifications to the payment provisions. The price for the expert testimony is \$8,000.00.

CHANGE ORDER #1 TO SPECIFIC AUTHORIZATION #2

THIS CHANGE ORDER, made and entered into this ____ day of _____, _____, by and between:

Sarasota County,
a political subdivision of the State of Florida
hereinafter referred to as "COUNTY", and

Montgomery Watson (formally James M. Montgomery), Consulting
Engineers, Inc., 240 North Washington Blvd., Suite 303
Sarasota, Florida
hereinafter referred to as "ENGINEER"

WITNESSETH

WHEREAS, the COUNTY and the ENGINEER entered into a Contract dated January 26, 1993, for engineering services relating to the used & useful study of the Venice Gardens Utilities, and

WHEREAS, Contract provided for modifications to be in writing for revisions or additions to scope and costs; and,

WHEREAS, the COUNTY and ENGINEER are desirous of effecting such a modification;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinunder contained, it is agreed by and between the parties as follows:

I.

SERVICES OF ENGINEER

As per Specific Authorization #2, Engineer will prepare expert testimony to be presented at a public hearing regarding the Utility's rate request. The expert witness shall be available to present findings at a public hearing which may be several days in duration.

II.

BASIS OF COMPENSATION

As per Specific Authorization #2, Compensation will be for actual time and materials uses at the established rates.

<u>Task Description</u>	<u>Budgeted Cost</u>
Expert Testimony and Presentation at Public Hearing	\$8,000

III.
OTHER PROVISIONS

All applicable provisions of the Agreement, not specifically modified herein, shall remain in full force and effect and are incorporated by reference herein.

Except as provided herein, the parties reaffirm the provisions of the Contract.

IN WITNESS WHEREOF, the parties have set their hands and seals on the ____ day of _____, 1993.

ATTEST:

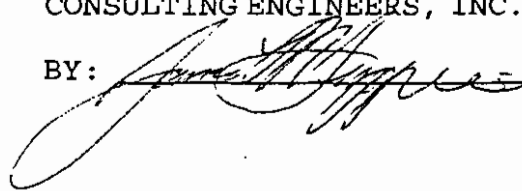
KAREN E. RUSHING, as Clerk of
the Circuit Court and Ex Officio
Clerk of the Board of County
Commissioners

BOARD OF COUNTY
COMMISSIONERS
of SARASOTA COUNTY
FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

WITNESS:
Mary Katherine Curcio

MONTGOMERY WATSON,
CONSULTING ENGINEERS, INC.
BY: 

Approved as to Form
and Execution

BY: _____
Attorney
Board of County Commissioners