

JAMES E. "JIM" KING, JR.
PRESIDENT



Charles J. Beck
Interim
Public Counsel

ORIGINAL
STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
850-488-9330

JOHNNIE BYRD
SPEAKER



September 22, 2003

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

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RE: Docket No. 020071-WS

Dear Ms. Bayó:


Enclosed are an original and fifteen copies of Citizens' Post-Hearing Statement for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing Citizens' Post-Hearing Statement in WordPerfect 10 formation. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

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Sincerely,


Stephen C. Burgess
Deputy Public Counsel

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of)
UTILITIES, INC. OF FLORIDA)
for a rate increase in Marion, Orange,)
Pasco, Pinellas and Seminole Counties.)
_____)

Docket No. 020071-WS

CITIZENS' POST-HEARING STATEMENT

CHARLES J. BECK
Interim Public Counsel

Stephen C. Burgess
Deputy Public Counsel

Stephen C. Reilly
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Attorneys for the Citizens
of the State of Florida

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ABBREVIATIONS

All citations to the transcript of the formal hearing will be cited as [T. ____]. All citations to Exhibits introduced at the Formal Hearing will be cited as [Ex. ____] or [Ex ____, sub part]. References to the Prehearing Order in this Case, Order No. PSC-03-0935-PHO-WS shall be abbreviated to Order No. 0935. References to Utilities, Inc. Will be abbreviated to UI, and Utilities, Inc. Of Florida will be abbreviated as UIF, “The Utility” or “the Company.”

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate)
increase in Marion, Orange)
Pasco, Pinellas, and Seminole)
Counties by Utilities, Inc. of)
Florida.)
_____)

DOCKET NO. 020071-WS
FILED: September 22, 2003

CITIZENS' POST-HEARING STATEMENT

The Citizens of the State of Florida, ("Citizens") through their attorney, the Public Counsel ("OPC") pursuant to and consistent with Order No. PSC-03-0935-PHO-WS, hereby file this Statement of Issues and Positions, and Brief.

BASIC POSITION:

OPC's position is that the revenue increases proposed by UIF in its MFR filings, original and revised, are substantially overstated. In fact, OPC's calculations show that reductions in rates are warranted for five of the eight county systems included in this case. On a combined basis, the Company's request, based on the Company's October 3, 2002 2nd Revised MFR filing, results in an overall requested increase in revenues of approximately \$1.1 million. The OPC's calculations show that for all of the systems included in this case, on a combined basis, the overall result should be a decrease in revenues, not an increase. The OPC's position incorporates adjustments sponsored by its witnesses, along with the adoption of many of the recommendations presented by the Commission's Audit Staff in its Audit Reports.

This case has been fraught with problems resulting entirely from the Company's lack of diligence throughout the entire regulatory process. The Company was required to re-file substantial portions of its schedules several times in this case for failure to meet the Commission's minimum filing requirements. The Company was unable to follow some of the most basic and long-standing

MFR instructions, such as the requirement that rate base be determined on a 13-month average basis. It became burdensome to keep track of the number of revisions the Company filed to several of its E schedules due to errors, omissions and discrepancies. Throughout this case, the Company was regularly late in responding to OPC interrogatory requests, in many cases extremely so. The OPC was required to file many Motions to Compel in this case to receive responses to interrogatories and requests for production of documents. The extreme tardiness of the Company in responding to interrogatories and requests for production of documents, coupled with the frequent revisions to the MFR filing schedules and the Company's continued failure to follow the NARUC Uniform System of Accounts, negatively impacted Citizens' analysis of the Company's rate increase requests. If anything, the result is that the revenue requirements calculated by the OPC for each of the County systems are likely overstated and additional adjustments beyond those presented by the OPC and Commission Staff may be warranted. As a result of the numerous problems caused by UIF throughout this case and its continued failure to be in compliance with long-standing Commission rules, at a minimum, OPC recommends that the Commission adopt its recommendation that the allowed return on equity be set at the low-point of the ROE range of reasonableness.

ISSUE 4: Should any amortization expense be included for the Seminole County wastewater system televideo inspection charges?

POSITION: *No. The only reason any balance remains for these charges is that the charges were not recorded properly when they were incurred. If the charges had been properly and timely recorded, they would have been fully amortized before the test year.*

DISCUSSION:

In April, 1994, UIF incurred a charge for video inspection of sewer lines in Seminole County. The PSC audit Staff removed \$2,725 from the Seminole County wastewater rate base. This item was

included among adjustments that Staff initially had recommended be amortized over a five-year period. This particular expenditure, however, was incurred in 1994. As a result, the entire amount would already have been fully amortized by the test year. Ms. DeRonne explained this, as follows:

Additionally, staff removed \$2,725 from Seminole County wastewater rate base for a TV video inspection of sewer lines recorded in April 1994. Staff recommended that the items it removed from plant in these adjustments be amortized into expense over a five-year period. However, as the TV video inspection occurred in 1994, it would have been fully amortized prior to the test year in this case had it been recorded properly. Thus, I disagree that this amortization should be included in test year expenses and have not included the \$272 recommended by Staff as amortization expense for this project in my schedules for Seminole County.

[T. 339, 340].

PSC Staff has agreed with Ms. DeRonne's position [Order No. 0935, p. 12]. The Commission should adopt the position of Ms. DeRonne and its Staff.

ISSUE 5: What adjustments, if any, should be made to the utility's UPIS with respect to common plant allocations from Water Services Corporation?

POSITION: *Rate base should be reduced by \$82,102 to remove the allocations from WSC. UIF utterly failed to demonstrate that the allocation methodology used to allocate costs from WSC was reasonable. In fact, the utility was even unable to produce documents showing how the primary allocation factor was developed.*

DISCUSSION:

The aggregate rate base for UIF should be reduced the entire amount allocated from WSC. In spite of the numerous opportunities it was given, UIF utterly failed to demonstrate that the allocation methodology used to allocate WSC costs was reasonable.

A regulated utility is entitled to recover only those expenditures that are just and reasonable. Further, it is well settled that when a utility is seeking a rate increase, that utility has the burden of

proving its entitlement. Thus, UIF is not entitled to recover any expenditure that it has not proven to be reasonable. UIF has offered no proof to demonstrate the reasonableness of these allocations.

Because of their unique nature, expenditures allocated from an affiliate call for greater regulatory scrutiny than do arm's length transactions. PSC Staff witness Kathy Welch testified:

Q [By Mr. Burgess] Am I correct that in - - under regulatory philosophy, allocations from affiliates would bear particular scrutiny, more scrutiny perhaps than expenses incurred from arm's-length transactions?

A That's true.

[T. 625].

Accordingly, UIF should be held to a higher standard for demonstrating the reasonableness of its allocated expenditures than it is for direct arm's length charges.

In fact, the Commission has codified this higher standard through a rule. Id. Rule 25-30.436(4)(h), Florida Administrative Code, requires:

(h) Any system that has costs allocated or charged to it from a parent, affiliate or related party, in addition to those costs reported on Schedule B-12 of Commission Form PSC/WAW 19 for a Class A utility or PSC/WAW 20 for a Class B utility, (incorporated by reference in Rule 25-30.437) shall file three copies of additional schedules that show the following information:

1. The total costs being allocated or charged prior to any allocation or charging as well as the name of the entity from which the costs are being allocated or charged and its relationship to the utility.
2. For costs allocated or charged to the utility in excess of one percent of test year revenues:
 - a. A detailed description and itemization;
 - b. the amount of each itemized cost.

3. The allocation or direct charging method used and the bases for using that method.
4. The workpapers used to develop the allocation method, including but not limited to the numerator and denominator of each allocation factor.
5. The workpapers used to develop, where applicable, the basis for the direct charging method.
6. An organizational chart of the relationship between the utility and its parent and affiliated companies and the relationship of any related parties.
7. A copy of any contracts or agreements between the utility and its parent or affiliated companies for services rendered between or among them.

Id.

The rule sets the higher standard for demonstrating the reasonableness of expenditures charged by affiliates. It is this need for additional scrutiny that prompted the PSC audit of allocations from WSC [T. 626].

The PSC audit revealed that far from meeting this higher standard proof, UIF failed altogether to present any meaningful support for its allocations. Ms. Welch was “the primary auditor in charge of” the PSC audit of the allocations among the affiliated companies of Utilities, Inc. and UIF [T. 613]. The results of this audit are remarkable.

First, the vast majority of allocations rely to some extent on the Utilities, Inc. customer equivalent factor [T. 626]. Further, UI’s customer equivalent factor is derived from UI’s measure of single family equivalents. The single family equivalent, then, is the linchpin component for virtually all of UI’s allocations. Given its central importance, the method for measuring single family equivalents should be accurately and consistently applied to all systems throughout UI’s

network. Further, an explicit and specific methodology should be carefully documented to assure consistent nationwide compliance. Without clear documentation, the term “single family equivalent” would have as many different interpretations as there are system operators.

Against the backdrop of the above expectations, UI’s failures stand out all the more starkly. First, the utility could not provide Staff auditors with documentation of a formula or methodology for determining single family equivalents. Thus, Staff auditors determined that UI simply does not have a formalized methodology for determining single family equivalents [T. 628]. Accordingly, Staff auditors concluded that this all-important data is collected under subjective interpretation. Ms. Welch explained:

Q So they would ask somebody, though, at the new company, the newly purchased company what the single family equivalents were, but they did not provide that company, obviously, a formalized methodology for determining single family equivalents: is that correct?

A I don’t really know what they asked them to do. All I know is that I asked for backup for the single family equivalent calculations, and I did not receive it because I was told they did not have them.

Q And is that what led you to conclude that one of the problems is that one person might come up with a single family equivalent that’s based on something different from what another person might come up with?

A That was my conclusion.

[emphasis supplied]

[T. 629].

Staff’s audit finding, then, is that each new system purchased by UI may have its own unique way of determining single family equivalents. Troubling as it is, the inconsistency only gets worse

as each system adds new customers. Not only is there no consistency in identifying the initial number, neither is there any uniformity in how to treat each additional customer. Ms. Welch testified:

Q So we have a situation where the utility is purchasing various subsidiaries, and it is seeking a central piece of information from the subsidiaries for its allocation, but it does not have a formalized method for measuring this. What about additional customers? What about when once a unit has been purchased and they have additional customers brought onto the system? Do you know how those were dealt with?

A I asked the same question, but I never got an answer.

[T. 629].

At that point, the Audit Staff would have been perfectly justified to end its examination and simply report UI's total failure to provide meaningful data. Instead, however, the Audit Staff had planned to perform its own calculation of UI's ERC's, as a check for the reasonableness of the single family equivalent allocation method. Once again, the Staff was stymied by UI's failure to supply adequate data. Ms. Welch explained:

Q And as I understand it from this, that you asked the company for the information that you would need to calculate the ERCs; is that correct?

A Yes, I did.

Q And as of the time of this audit report, they did not give you information that you needed to calculate the ERCs; is that correct?

A That's correct.

[T. 630].

The foregoing deficiencies were encapsulated in her direct testimony, as follows:

I believe that the lack of a formalized methodology for determining a single family equivalents can cause inconsistency between divisions. According to a company representative, the company determines the estimated gallons at the time of purchase and inputs a number for single family equivalents based on gallons. This may not be based on the same number of gallons per single family as a different person may use the next year or year after. The company did not state how the single factor equivalent is adjusted for new customers. I attempted to determine gallons of water purchased and pumped and gallons of wastewater treated so that I could determine my own calculation of equivalent residential connections (ERCs) for each company. I planned on using these ERCs to prepare my own customer equivalent schedule and to compare it to the Florida allocations using customer equivalents. If it was significantly different, almost all 11 allocation factors would have to be redone. The company could not provide gallons of wastewater treated for states other than Florida. It claimed that operating reports were not available to provide the information. In addition, some small water plants did not have usage reports. The report of number of customers that the company provided showed water customers and did not break down wastewater number of customers by division. Therefore, I was unable to determine ERCs and unable to determine if the company's computation is reasonable.

[T. 623, 624].

All of the utility's data failures - - one piled on top of the other - - left Ms. Welch unable to determine whether the utility's allocations were reasonable. Ms. Welch stated:

Q Would it be reasonable for me - - should I understand that based on all of the reasons that we've discussed that that is why your conclusion in your audit disclosure is that you were unable to determine if the company's computation of allocations is reasonable?

A That's correct.

[emphasis supplied]

[T. 632].

The Commission cannot and should not require customers to pay for expenditures which have not been demonstrated to be reasonable. After a specific audit on its allocations, the utility has failed to show those allocations to be reasonable. The utility has had more than ample notice that its allocations were under specific examination in this case. It has no excuse for its failure to demonstrate reasonableness. The allocations from WSC should be disallowed.

ISSUE 6: What adjustment should be made to CIAC and amortization of CIAC to reflect the contribution received from the City of Altamonte Springs?

POSITION: *The Weathersfield system's rate base should be reduced by \$105,217 and test year expenses should be reduced by \$3,567. When UIF negotiated the contract with Altamonte Springs to provide the Weathersfield system with wholesale wastewater service, the contract provided that Altamonte Springs would pay UIF \$107,000.*

DISCUSSION:

The utility offered absolutely no evidence on this factual issue. UIF witness Mr. Lubertozzi stated explicitly that he provided no testimony on this issue either in direct or rebuttal [T. 120]. Based on Mr. Lubertozzi's admission, OPC moved for directed verdict on the issue. Initially, UIF's counsel represented to the Commission that Issue 6 had been addressed in the utility's response to the Staff audit [T. 132, 133].

Later, however, Mr. Lubertozzi refuted his counsel's erroneous assertion by agreeing that if the issue was not in the staff audit report, then naturally the issue could not have been in the utility's response to the audit [T. 884]. The issue, in fact, was raised by OPC witness Kim Dismukes [T. 455], not by the Staff audit.

As a result of straightening out the earlier misrepresentation made by UIF's counsel, OPC re-entered the motion for directed verdict [T. 905, 906]. At this point, UIF implicitly conceded its

earlier misrepresentation about the response to the audit, and changed its approach on the issue. UIF switched to an argument that the issue was legal rather than factual, and that the utility would address it as a legal issue [T. 906]. Given that procedural approach, OPC withdrew the motion for directed verdict [T. 910].

The factual circumstance, however, must be taken as presented by Ms. Dismukes because she presented the only testimony on the issue. Ms. Dismukes described the relevant transaction as follows:

The first adjustment relates to a contribution received by UIF from Altamonte Springs for the right to provide wholesale wastewater service to the Weathersfield system. The contract to provide this service provided that at the time of connection, Altamonte Springs would pay UIF \$107,000. It appears from reading the agreement that Altamonte Springs agreed to pay UIF for the exclusive right to treat the wastewater from these customers. When asked how these funds were reflected on the books of UIF the Company indicated that they were not booked to UIF, but to its parent company UI. (Response to OPC Interrogatory 162.) The Company did not provide an explanation why these funds were not treated as a contribution on its books and records. Because this contribution appears to compensate UIF for the exclusive right to service these customers, these funds should have been used to lower the rates charged to Seminole County customers.

[T. 455, 456].

The only testimony in the record is unrefuted. That testimony indicates that the \$107,000 payment is for the exclusive right to treat the wastewater from the customers in the Weathersfield system.

From UIF's questions at the hearing and its stated position in Order 0935, it appears the utility is focusing on the semantic issue of whether the payment should be called "CIAC." The issue of substance, however, is who should benefit from the financial effect of the payment. Since the

money was paid specifically for servicing only the Weathersfield system, there is no reason for UI to commandeer the funds up to the parent level. Instead, as Ms. Dismukes' uncontroverted testimony reflects, "these funds should have been used to lower the rates charged to Seminole County customers." [T. 456].

ISSUE 7: What adjustments, if any, should be made to the amount of working capital allocated to each of the utility's operating systems?

POSITION: *This issue should be a fallout, depending on the results of other issues that affect O&M expenses.*

ISSUE 8: If the Commission determines a system or a component of a system to be 100% used and useful in a prior case, is it obligated to keep that system 100% used and useful in a subsequent case?

POSITION: *No. The Commission should reexamine each component of all utility systems in light of present day circumstances. Earlier determinations may not have been critically examined in a contested case; they may have been based on erroneous information or calculations; or no longer relevant because of changes to the system.*

DISCUSSION:

The Utility did not calculate any used and useful (U/U) percentages for the water systems but simply stated that the water distribution systems had been previously considered 100% U/U in a prior docket and that the system had experienced no significant changes and therefore remained 100% U/U [T. 233]. The Utility's systems should not automatically be considered 100% U/U because some changes have occurred to each system [T. 233]. The systems are also not built out [T. 233]. The only way to determine the correct U/U percentage is to actually count the connected ERCs and divide that total by the count of available ERCs. OPC witness Ted Bidy used this long standing and approved rationale and methodology in his U/U calculations included in Exhibit 10, TLB-3.

The Utility also did not bother to calculate a U/U percentage for the wastewater collection systems but instead reasoned that either the system was completely built out or that the system had been found to be 100% U/U in a prior case or that the facilities required to deliver wastewater to a City or County for treatment are considered to be 100% U/U. Mr. Biddy disagreed with the Utility's reasoning because the wastewater systems are not built out and excess capacity does exist in these systems [T. 234]. U/U percentages considerably less than 100% are found when the appropriate lot to lot or connected ERCs to total available ERCs rationale or methodology is correctly applied. Mr. Biddy's calculations in Exhibit 10, TLB-3 demonstrate the correct U/U percentages by applying the Commission's long recognized methodology [T. 234].

In many cases the prior determinations made by the Commission were made in an uncontested case with no critical examination of the U/U determination. When Utility witness Siedman was asked if he knew to what extent the earlier determinations were contested, he indicated that he thought some of them were, but he was not sure [T. 171].

The Utility never bothered to do a lot count analysis of any of their systems, water or wastewater [T. 178]. The Utility didn't test the used and usefulness of the Utility systems because Mr. Siedman considered them "virtually" built out and because prior Commission cases had deemed them to be 100% used and useful [T. 170 and 178]. When questioned if he considered a system that was 5, 10, 15, 20, 25% not built out to be "virtually" built out, he answered it was a "subjective" determination. [T. 178]. It was his "subjective" determination that all of the systems were 100% used and useful [T. 178]. Mr. Siedman was asked if he thought the Commission was bound to follow its prior U/U determinations. In response, he said that he thought the Commission was bound to what it determined was proper in earlier cases unless something could be shown that the earlier

decisions were wrong or based on inaccurate information [T. 172]. Mr. Siedman was asked if the kind of information he was referring to could be a lot by lot analysis that differed from the Commission's earlier determinations [T. 172]. In response he said that the Commission could consider current lot count information to set aside the Commission's prior determinations [T. 172].

Staff witness Redemann was asked what deference he gave to prior Commission U/U determinations. In response he said that the Commission had previously considered the systems to be 100% U/U and that he considered these earlier determinations in making his recommendation [T. 696]. Mr. Redemann was asked if current lot count analysis differing with the Commission's prior determinations would be a legitimate reason to set aside the earlier determinations in favor of the current information [T. 696-698]. He responded, no. He was also asked a specific hypothetical. He was asked if a current lot count analysis revealed that a system was only 80% used and useful, would he believe that would be a basis to set aside the earlier 100% determination made by the Commission. He again responded, no. However, under cross-examination he did concede that Final Order No. PSC-96-1320-FOF-WS, in the Southern States Case in Docket No. 950495-WS, reaffirmed the lots to connected lots available methodology to calculate the U/U of transmission, distribution and collection lines [T. 699-700]. Further, he conceded that the order expressly states that the Commission found that it would be appropriate to decrease the level of U/U plant if the lot count method indicated a lower U/U percentage. Even after reading this Commission pronouncement Mr. Redemann remained resolute and stated he did not share the Commission's view [T. 700]. He stated he considered these systems to be 100% U/U and would not change his recommendation [T. 700]. His mind was made up and even the application of the long-standing Commission methodology could not alter his opinion.

The Citizens argue that the Commission should utilize its established methodology with the most current information to determine the used and usefulness of utility systems. If the results of that analysis yields a lower used and useful percentage than approved in earlier cases the Commission should follow the policy espoused in Order No. PSC-96-1320-FOF-WS and adopt the updated lower numbers.

ISSUE 9: If a local jurisdiction requires fire flow, is the Commission obligated to give the Utility a fire flow allowance even if the system provides little or no fire flow?

POSITION: *No. Simply placing one or two fire hydrants near the wells where larger lines exist and leaving the balance of the system with small lines and no fire flow should not be considered fire flow protection. A fire flow allowance should only be given to the extent it is provided.*

DISCUSSION:

The Citizens' U/U percentages recognize a fire flow allowance when fire flow is actually furnished [T. 231]. If fire flow is actually provided Citizens' Witness Bidy added the fire flow to the "demand" in the numerator of the U/U calculations [T. 231]. The Citizens' fire flow allowance ranged from no allowance to as high as 1,250 gpm times 2 hours duration or 150,000 gallons. [Ex. 10, TLB-3] Through discovery the Citizens obtained from the Utility the fire flow test data for all systems where fire flow was claimed [T. 231]. Mr. Bidy did not include fire flow in systems where only a small portion of the service area was furnished fire flow with the majority of the service area being composed of small water mains with no fire hydrants [T. 231]. The fire flow test data as furnished by the Utility is detailed in Exhibit 10, TLB-7.

It was only in two systems, Oakland Shores and Orangewood, where the Utility requested a fire flow allowance and the Citizens refused to recommend the allowance because of the Utility's failure to provide fire flow service [Ex. 10, TLB-3]. There are only three fire hydrants in the entire

Oakland Shores system and only one fire hydrant in the Orangewood system. [Ex. 10, TLB-3] Despite this failure to provide service the Company argued that some local jurisdictions had a fire flow requirement and for this reason the Utility had an obligation to provide the required fire flows in those jurisdictions [T. 828]. The Utility further argued that to deny the fire flow allowance for these two systems would be to deny the Utility the ability to recover the costs associated with providing a service it was obligated to provide [T. 828].

The arguments made by the Utility are fallacious for several reasons. First, the Utility was unable to show that either of the local fire flow requirements obligated the Utility in any way to actually provide fire flow protection. Generally, an older existing system is not required to be rebuilt to meet a fire flow requirement enacted after the system has been constructed. Witness Redemann was asked if he was aware of an instance where a jurisdiction ever required an existing system to be retrofitted to provide fire flow when it did not currently provide it. He responded, no [T. 683]. Second, if a utility is actually required to provide fire flow service and fails to provide it because of virtually no fire hydrants and inadequately sized water lines why should it be rewarded for its failure to provide service? Third, with these two systems the Utility has virtually no investment to provide fire flow protection that needs to be recovered from a fire flow allowance. Fourth, why should the customers bear the cost for a service they do not receive?

Utility witness Siedman was asked if a fire flow requirement is imposed locally, but the Utility has no practical ability to provide that fire flow to its customers, should the Utility receive a fire flow allowance in its U/U calculation? Mr. Siedman responded no, if the Utility didn't have the capability to serve [T. 185]. However, what the Citizens believe constitutes the "capability" to provide fire flow service seems to differ drastically from what the Utility and Staff believes

constitutes "capability." Mr. Siedman said whether the Utility has one fire hydrant or a hundred hydrants it doesn't matter as long as there is some capability, no matter how small, the Utility should receive a full fire flow allowance [T. 181-183]. Mr. Siedman believes that as long as the Utility is obligated and it possesses any fire flow protection at all, even one hydrant for the entire service territory, the Utility should be rewarded with a full fire flow allowance [T. 181-183].

Staff witness Redemann agrees with Mr. Siedman. Mr. Redemann was asked if a local jurisdiction had a fire flow requirement and the Utility had only one hydrant next to the treatment plant to serve its entire service territory, would he recommend the Commission to give that Utility a full fire flow allowance. He responded, yes [T. 714]. Being somewhat taken back by the witnesses' complete indifference to the interests of the public not to be forced to pay for an important service that is in fact not provided by the Utility, the Citizens asked a number of follow-up questions:

Q And your reason for that?

A If a fire occurs, the fire department will go there and use the fire hydrant to put out the fire.

Q It's your understanding that a single fire hydrant in an entire subdivision would be sufficient to you to give the utility a fire-flow allowance?

A Yes. The utility is required to provide fire-flow at their fire hydrants.

Q Do you think that such a single fire hydrant provides the means, the practical means of that water system to provide fire-flow protection?

A If there is a fire hydrant there, they need to provide fire-flow. And the fire department will go to the fire hydrant and draw from that fire hydrant for water. So, yes.

Q Your judgment is a single hydrant - - what if the house that is burning down is a mile away, and you have a system that provides one fire hydrant, that is your testimony that that constitutes fire protection?

A Fire protection is provided by the fire hydrant.

Q Excuse me? The fire protection is not provided by the fire hydrant?

A Well, the fire protection would be provided by the fire hydrant.

MR. REILLY: No further questions.

[T. 714-715].

No matter how many times Mr. Redemann repeats that a single fire hydrant provides fire protection for an entire service territory it does not make it so. His assurances about the single fire hydrant providing fire protection will be of little solace to the poor customers, whose house is located some distance from the hydrant, and consequently burns to the ground. This approach fails to protect the public interest to have adequate fire protection and fails to address the Company's failure to provide that protection. So long as the Utility meets the barest, even infinitesimal satisfaction of any form of fire protection, Engineering Staff apparently will recommend the reward of a full fire flow allowance [T. 714-715]. This allowance is further magnified by a factor of twelve, because the Utilities and Staff both expressed the fire flow as a flow rate per minute rather than the historically granted volume determined by the flow rate per minute for 2, 3 or 4 hours duration [T. 681 and 683-689]. The inescapable result of the Utility's and Engineering Staff's recommendations is to make all of the Utility's water plant 100% U/U; and in most cases many times over 100% U/U.

Consider an example using flow rates rather than volumes in the U/U calculations. First, consider the numerator in the U/U calculation for a system having a max daily flow of 350,800 GPD with a fire flow requirement of 500 GPM for a 2 hour duration. The MDF would then be peaked by some, by a factor of 2 to 701,600 GPD, and this volume converted to a flow rate of 487.22 GPM for a supposed peak hourly flow. A fire flow rate of 500 GPM would then be added to the max day flow of 487.22 for a total of 987.22 GPM. This value would constitute the numerator of the U/U calculation, modified by an insignificant unaccounted for water flow rate and a 5 years growth flow rate.

Then consider the derivation of the denominator in this U/U calculation methodology. Some would use a firm reliable capacity by using the 12 hour flow of the smallest well with a capacity of 330 GPM with the larger well of 440 GPM out of service. This value would amount to 165 GPM for the denominator.

The U/U calculation would then become the numerator of about 987.22 GPM divided by a denominator of 165 GPM for a percentage of about 598%. This example demonstrates the extreme results produced in favor of the Utility when employing the methodologies espoused by the Utility and the Staff. The historical method of determining the U/U percentage for source of supply and pumping is to add the max day volume to the volume of fire flow for a two hour duration and divide by the max volume capacity of both wells pumping for 24 hours. In this example the numerator would be the volume of 350,800 GPD added to the volume of the 500 GPM fire flow for a two hour duration which equals 60,000 GPD. The numerator would then become 410,800 plus the volume for 5 years growth less any excessive unaccounted for water. The denominator would be the daily

capacity of both the 330 GPM and 440 GPM wells pumping for a full 24 hours which amounts to 1,108,800 GPD.

The U/U calculation would then become the numerator of 410,800 GPD modified as discussed above divided by the denominator of 1,108,800 GPD. This example is actually the flow values for the Golden Hills/Crownwood system in this case. The 5 years growth volume amounted to 51,743 GPD and excessive unaccounted for water was 42,833 GPD. Adding the 51,743 GPD and subtracting the 42,833 GPD from the 410,800 GPD gives a net value for the numerator of 419,710 GPD. Dividing this numerator by the denominator of 1,108,800 GPD gives the U/U percentage of 37.85%.

For source of supply and pumping a second comparison is required by Ten States Standards, that being Average Daily Flow compared to the Firm Reliable Capacity. In the Golden Hills/Crownwood case, this U/U calculation amounted to 47.8% which controls. But this 47.8% is a far cry from the 598% that would be calculated using flow rates and peaking the MDF by a factor of 2.

ISSUE 10: Should any of the UIF systems be considered as 100% used and useful because they are built out?

POSITION: *Calling a system "built out" when the used and useful percentage is 70%, 80%, 90% or even 95% ignores utility plant which is available to serve future customers. Rounding up the used and useful percentage in this manner is unfair to current customers.*

DISCUSSION:

Witness Siedman states in his prefiled direct testimony that: "[o]nly two of the seventeen systems, Summertree in Pasco County and Golden Hills in Marion County have experienced any measurable growth." [T. 139]. At the hearing he was questioned if this was a true statement. He

conceded that there is measurable growth in far more than two systems, and that it probably would have been a better choice of words to say “significant measurable growth.” [T. 163]. Under questioning he also conceded that in fact 11 of the 17 water systems had an average positive growth over the last five years [T. 163]. He further conceded that three of the five wastewater systems also had positive growth for the past five years [T. 164].

In his prefiled testimony Mr. Siedman states: “In general, UIF is composed of small, simple, built out systems scattered through the several counties served.” [T. 140]. At the hearing Mr. Siedman was questioned what he meant by “built out.” He responded by saying the systems were small, simple, “virtually” built out systems and they were previously deemed to be 100% used and useful [T. 169-170]. He did concede that for the most part he had not performed a total connected ERC to total available ERC analysis on the systems [T. 169-170]. He also conceded that 16 of the 17 water systems were less than 100% built out with one as low as 73.9% [T. 170].

Staff witness Redemann considers all of the Utility’s water service territories in Seminole, Pinellas and Orange counties and all of the water systems in Pasco county except Summertree to be “built out.” [T. 647]. Under questioning, Mr. Redemann said he had conducted some lot to lot analysis in Orange and Seminole counties to help validate his conclusions that the systems were “built out.” [T. 691]. This revelation prompted some follow-up questioning. In response to these questions Mr. Redemann admitted he had not offered any of the results of these lot count analyses into evidence in this proceeding [T. 691]. He could not recall whether the lot count analyses was for just water systems or included wastewater systems [T. 691]. He also couldn’t recall the results of the analyses, except that they were pretty high [T. 691]. When pressed to define “pretty” high and whether some percentage results could have been in the 80's he could not recall, but indicated it

could be possible [T. 692]. He conceded that it would not surprise him if 10 of the 17 water systems still had positive annual growth [T. 692].

Mr. Redemann helped validate his conclusion about the systems being built out by driving a vehicle through the service territories to help establish a personal subjective impression about the degree to which each service territory was “built out.” [T. 694]. When asked if his personal cursory drive-through had more influence on him than studying the Utility’s maps which delineated active customer connections versus empty lots he answered:

A Yeah, because there’s **some**, you know, houses for sale and **some** houses with - - on much more than one lot and **some** people **probably** with their own wells. There **probably** also were **some** areas that, you know, couldn’t be developed in there. I didn’t see a **lot** of vacant lots. So I **considered** the systems to be 100 percent used and useful. (Emphasis supplied) [T. 694].

The subjective assumptions and conclusions highlighted in bold all inure to the benefit of the Utility and help Staff Engineering to conclude that virtually all of the system should be considered “built out,” even if the lot count methodology indicates they are not “built out.”

The Citizens expect and have received in the past more objective and quantitative support for Staff Engineering’s recommendations. It is difficult, if not impossible, for the customers to overcome such subjective support for the Utility’s positions. The Citizens implore the Commission to apply the more objective and long-standing methodologies, and conclude that very few of these systems are truly “built out” and that U/U adjustments are appropriate for many of the components of the Utility’s systems.

ISSUE 11: What methodology should be employed to calculate the used and useful percentages, and what are the appropriate used and useful percentages for the utility’s water treatment systems, including source of supply and pumping, water treatment plants, and storage and high service pumping?

POSITION: *Each component of the Utility's water system should be separately considered and individual used and useful percentages calculated. The proper methodology for calculating the used and useful percentage of each component and the appropriate used and useful percentage of each component can be found in Exhibit 10, TLB-2 and 3.*

DISCUSSION:

The Citizens believe that each of the major components of the water systems, exclusive of transmission and distribution, including: a) source of supply and pumping; b) water treatment; and c) storage and high service pumping should be separately evaluated and individual used and useful percentages calculated. This is important because often some components of a system are far less used and useful than other components. It is also important because the appropriate methodology to use to evaluate the used and usefulness of these three different major components differs. The Utility and Staff have combined the major components and have evaluated each water system as a whole. This wholistic approach eliminates the ability of the Commission to identify components that are under utilized to serve current customers. The Utility and Staff have selected portions of one methodology historically used to determine the used and usefulness of one component and applied that portion of the methodology to determine the used and usefulness of the whole system. This wholistic approach and mismatch of methodologies to perform the used and useful calculation has a combined effect of covering up underutilized components, understating available capacity and overstating current demand. The combined effect of these manipulations is to overstate the used and usefulness of the water systems. This overstatement is further exaggerated by the Staff's use of a peak hourly flow equal to twice the GPM of the max day (for systems without storage); granting a

fire flow allowance for fire flow service which is not provided and in which the Utility has little or no investment; and utilizing GPM flow rates rather than quantities of water expressed as so many gallons per day of demand. The above overstatement of the used and usefulness of each water system is further exaggerated by the Utility, because it utilizes an even more unfair “instantaneous” GPM demand. This fiction even further exaggerates the used and usefulness of the Utility’s water systems. The Citizens’ recommendation concerning the methodologies that should be employed and the appropriate used and useful percentages for the Utility’s source of supply and pumping, water treatment, and storage and high service pumping follows:

A) Source of Supply and Pumping

The source of supply and pumping should be evaluated in accordance with the Florida Department of Environmental Protection’s (FDEP) rule for design of these facilities [T. 237]. This rule is a FDEP design guideline under Chapter 62.555, FAC, which sets forth Section 3.2.1.1 of *Ten States Standards* as the governing rule which is as follows:

Section 3.2.1.1 of *Ten States Standards* states: “The total developed groundwater source capacity shall equal or exceed the design maximum day demand **and** equal or exceed the design average day demand with the largest producing well out of service.” (Firm Reliable Capacity) [T. 237].

From this rule, it is clear that two comparisons are required, namely Total Maximum Day Demand to Total Capacity and the Average Day Demand to the Firm Reliable Capacity. It is obvious that the largest percentage of the two comparisons must be used to satisfy the Ten States Rule [T. 237]. When computing the maximum day capacity and firm reliable capacity, the well pumping rate should be taken for the full 24 hour period since we are dealing with extreme cases of short duration and well pumps can operate at full flow for these periods [T. 237]. Modern pumps are guaranteed to run

continuously for several thousand hours. Rarely are these pumps running continuously except perhaps during peak demand times since controls shut the pumps off for brief periods when enough pressure exists in the distribution system [T. 237]. Therefore, there is no reason to restrict the flow to a 12 hour period when calculating a firm reliable capacity of a well. The recently changed Staff rationale restricting the flow of the well or wells to 12 hours (with the largest well flow not considered) is simply without merit or reason and is probably due to a misunderstanding of a FDEP rule requiring operating personnel a minimum time on site of 12 hours, which bears no relationship to pump run time [T. 238].

At the hearing, questions were asked of Witness Redemann concerning his assertion that the recommendation to cut the capacity of the remaining wells in half, to 12 hours after subtracting the capacity of the largest well, had been adopted by the Commission not only in several recent cases, but also in the Southern States case, Docket No. 950495-WS, Order No. PSC-96-1320-FOF-WS. The exchange went as follows:

Q And we were aware that this is a recommendation that has been made by the engineering department for the last very few years, but that it was a fairly recent phenomenon. That has been our testimony, and yet in your testimony you refer to this same order of which I just gave you one page to, the Southern States case, you said in this order they also endorsed the 12-hour approach, is that correct?

A I believe so.

Q Could you -- is that -- was that just in a calculation that was made or is in the text of the order? Because we have looked at the order and cannot find such language.

A When I was reviewing the orders, I saw that information in there, as far as I can recall.

Q But you cannot cite to me anything in that order that would endorse the 12-hour, or the - -

A Not at this time.

Q Would you expect the section in that order that dealt with firm reliable capacity to provide the support that you are looking for?

A It may be in there. It could have been in the exhibits in the back.

Q Subject to check, would you concede that such language is not in the firm reliable capacity section of that order, or would you like to refresh your understand and I can hand you a page of it, of the order?

A Well, the order consisted of hundreds of pages. The engineering piece was, I think, like ten pages long.

Q Well, the order obviously will speak for itself, so - -

A Yes.

MR. REILLY: I just want to bring to the Commission's attention that we made an effort to look at the language of that order and could not find the support that is being suggested by this witness, and that will be a matter that will be briefed. [T. 705-707].

A post-hearing review of the entire Order No. PSC-96-1320-FOF-WS, including exhibits in the back of the order, reveals that, contrary to the assertion of Mr. Redemann, there is no endorsement by the Commission in that Order to reduce the capacity of the remaining wells by 1/2

or to 12 hours, after removing the largest well, when calculating firm reliable capacity. This modification of the methodology to determine firm reliable capacity is a recent phenomenon and contrary to earlier long standing Commission policy.

In support of its recommendation to cut in half the capacity of the remaining wells Staff suggests that the wells should have some down time to allow the aquifer to recharge [T. 650]. Staff claims it is environmentally responsible and prudent to rest a well for 12 hours per day so that the ground water can recharge [T. 650]. Excessive pumping has caused wells to draw air, sand and gravel into the water system, and has caused saltwater intrusion, land subsidence and wells to collapse [T. 650]. The use of 12 hours per day of pumping also reflects the general usage pattern of customers [T. 650].

These arguments are without merit because we are not measuring general usage patterns we are measuring unusual peak conditions that rarely occur when the largest well is off line. At these limited times there is absolutely no problem for the remaining wells to operate continuously on a 24 hour basis. Cutting it in half is arbitrary and unfair to the customers. Mr. Redemann was asked at the hearing if he was aware of the FDEP requirements for well spacing. The exchange went as follows:

Q In your discussion of limiting firm reliable capacity or actually cutting in half firm reliable capacity by imposing the 12-hour requirement, on that issue are you aware that the spacing of wells must be designed so that the draw-down effect is not experienced from one well to the next, that DEP requires that?

A I don't recall. But if they are spaced too closely, that could affect the wells.

Q But my question is are you aware of the DEP requirements concerning spacing of wells?

A I have read it awhile ago, I don't remember the exact language.

Q Would you expect that the DEP requirement requires the placing of wells to be in such a manner that they do not cause a draw-down on each other?

A Yes, it is probable.

Q Are you aware of the DEP requirements for well tests that require - - a flow test that require one and a half times the capacity for a 24-hour period without any draw-down?

A I think that part is when you initially test the well, if I recall, that you have to test to make sure it doesn't do that, yes.

Q That requirement does exist?

A I believe so, yes.

[T. 707-708].

When calculating max day flow it is always better and more representative of the true maximum day flow to use the average of the five maximum days of the maximum month, and that is what Mr. Biddy used for the maximum flow [T. 240]. Using the average of the five maximum days of the maximum month rather than the single maximum day of the year lets one avoid such anomalies as fire flow, broken mains or other large leaks [T. 240]. In Mr. Redemann's formulas and assumptions listed in Exhibit 21, RPR-2 he states he recommends use of the single max day if it appears there is no anomaly that day. That is precisely why the Citizens recommend the use of the average of the five highest days of the max month. But for an anomaly one would expect the single

highest day to be close to the amount of the average of the next four highest days. If it isn't, it probably should not be used. If it is, there is no harm to the Utility to use the average of the highest 5 days of the max month. For years the Commission used the average of the five highest days of the max month to avoid anomalies and accurately represent the max day. In more recent years, in response to recommendations by Engineering Staff, the Commission has occasionally used single max days.

To make matters worse Engineering Staff, in this case, is advocating the use of a peak flow more representative of single max or peak hour rather than single max day. This major expansion of the numerator of the used and useful formula is recommended for systems with little or no storage [T. 651]. Since Utilities do not have hourly flow data, Staff recommends that the peak hour demand should be estimated based upon the max day flow divided by the number of minutes in the day (1440) to get an average flow rate per minute for the max day and then multiply times two [T. 651-652]. The peaking factor used by the Staff came from an American Water Works Association (AWWA) Manual of Water Supply Practices M32 [T. 652]. According to the manual the ratio of peak hour demand to maximum day has been observed to vary from 1.3 - 2.00 [T. 652]. At the hearing Mr. Redemann was asked why he used the highest end of the range of 2 as his peaking factor instead of 1.3. He answered that he wanted to make sure that his calculation allowed the maximum water that could be required to serve the customers [T. 708-709]. The Citizens asked if he thought using the higher peaking factor would better serve the interests of the customers. He answered, yes [T. 709]. With all due respect, the selection of a peaking factor of 2 instead of 1.3 serves the interests of the Utility by overstating the used and usefulness of water plant and is detrimental to the interests of the customers for the same reason.

Utility Witness Siedman recommends use of instantaneous peak demand which is even more generous to the Utility than Staff's peak hour demand. Under questioning, Mr. Siedman conceded that the Commission has never accepted his recommendation to use a peak minute or instantaneous flow demand in the used and useful calculations [T. 180]. However, for most systems he proposes using a demand in the numerator of the U/U formula based on an instantaneous demand that he derives from a table of instantaneous demands charted for various numbers of residences served [T. 231]. The table that Mr. Siedman attaches to his calculations is labeled "Table XXI" from the publication "Community Water Systems Source Book" authored by Joseph S. Ameen, S.M., Sanitary Engineer, Third Edition from the Technical Proceedings, High Point, North Carolina [T. 231]. Mr. Siedman then computes the value of his numerator in his U/U formula by adding to this peak flow the fire-flow and five years growth and subtracting excessive unaccounted for water [T. 231-232].

Mr. Siedman completes his U/U calculation by dividing the numerator as explained above by a denominator equal to a "firm reliable capacity" that he derives either as the high service pumping capacity or the daily flow with the largest well removed [T. 232]. Both of Mr. Siedman's derivations of the numerator and denominator in his U/U formula are flawed and should be summarily rejected. Such a formula almost guarantees a 100% U/U percentage because of the huge instantaneous flow that he derives for the numerator in the calculation [T. 232]. His derivation of the capacity used in the denominator is also incorrect. Nothing in Mr. Siedman's rationale recognizes anything connected with the sizing criteria for water plants as mandated by the FDEP [T. 232]. Without explanation, Mr. Siedman states in his testimony, "Based on the availability of well capacity, storage capacity and high service pumping capacity I made a determination as to whether

demand should be evaluated on the basis of maximum day demand or instantaneous demand.” [T. 232].

At the hearing Staff questioned Mr. Siedman if his instantaneous flows were actually occurring would he expect to have some pressure problems since his instantaneous flows are consistently higher than total well capacity [T. 189]. He answered he didn’t know, but that it was possible that the duration of the water shortage would be for a short enough duration that the customers might not complain about the quality of their service [T. 189]. Witness Siedman conceded that he was not aware of any specific pressure problems, and he had not recommended the Utility to increase its water treatment plant capacity [T. 189]. This questioning helps demonstrate that the Utility’s instantaneous demand requirement is a fiction to help justify 100% used and useful percentages for its water systems.

The demand in these calculations must be modified by three factors. First, by Florida law, a five year growth factor must be added to the demand. Secondly, the appropriate fire flow, if furnished, must also be added to the demand [T. 238]. A detailed discussion of the fire flow requirements that are appropriate in this case can be found in the discussion section of issue 9. Finally, the demand flow should be reduced by any excessive unaccounted for water [T. 238]. A detailed discussion of the amount of excess unaccounted for water for the systems in this case can be found in the discussion section of issue 26. All of the Citizens’ calculations of used and useful percentages for source of supply and pumping are shown in detail in Exhibit TLB-3. The Citizens computed the various flows that are necessary to evaluate the two comparisons required by Section 3.2.1.1 of *Ten States Standards*. The used and useful percentages OPC calculated varied from a low

of 13.2% to a high of 100% compared to a used and useful percentage of 100% calculated by the Utility for all systems [T. 238].

B) Water Treatment Plant

The FDEP requires that water treatment plants be designed for maximum day flow plus whatever other demands are on the system. [Ex. 10, TLB-2]. Therefore to calculate a proper U/U percentage the maximum day demand modified by other factors such as fire flow, 5 years growth and excessive unaccounted for water should be compared to the maximum capacity. [Ex. 10, TLB-2]. The maximum day flow should be determined from the Utility's records as the average of the five maximum flow days of the maximum month [Ex. 10, TLB-2]. As stated previously, using the average of the five maximum days of the maximum month rather than the single maximum day of the year avoids such anomalies as fire flow, broken mains or other large leaks [T. 240]. The average max five days of max month flow is always better and more representative of the true max day flow rather than the max flow day of the year [T. 240].

The formula for U/U percentage for the water treatment plant may be expressed as follows:

$$U/U = (\text{Avg. 5 Max. Days Flow} + \text{FF} + \text{5 yrs. Growth} - \text{Excess UFW}) / \text{Total Capacity}$$

When high service pumping exists, also compare to firm reliable capacity [Ex. 10, TLB-2].

Two of the water systems purchase their water and have no treatment plant in rate base. The simplest water systems, with a well and hydro-pneumatic tank, have chlorination of the raw water [Ex. 7, FS-2]. Three systems have iron sequestration and chlorination treatment [Ex. 7, FS-2]. One system has a corrosion inhibitor and chlorination treatment [Ex. 7, FS-2]. Another system has force draft aeration and chlorination treatment [Exhibit 7, FS-2]. Three systems have cascade aeration and chlorination treatment [Exhibit 7, FS-2].

The various water systems have varying degrees of water treatment processes and varying degrees of investment in water treatment. The water treatment component should not be ignored and merely thrown into source of supply and pumping or into a single U/U percentage for all water plant assets. The design criteria are different for the different components and the methodologies to determine their used and usefulness also differ.

C) Storage and High Service Pumping.

Citizens will not detail in this section the proper methodology for determining the used and usefulness of storage plant, because all of this plant in each of the systems is 100% used and useful. In this case the failure of the Utility to provide adequate storage has been the basis for their request to increase the used and usefulness of other components of water plant. Five systems, Weathersfield, Oakland Shores, Park Ridge, Raveena Park/Lincoln Heights and Bear Lake all have two high service pumps to deliver water to their transmission and distribution systems. These components should have their own used and useful percentages based upon the methodology detailed in Section 11a, which addresses source of supply and pumping.

ISSUE 12: What methodology should be employed to calculate the used and useful percentages, and what are the appropriate used and useful percentages for the utility's wastewater treatment plants?

POSITION: *It is settled Commission policy to compare the wastewater plant's actual flow rate (numerator) to the FDEP permitted flow rate (denominator), expressed on the same basis. If the FDEP permit basis is annual average daily flow (AADF), then the actual test year AADF should also be used.*

DISCUSSION:

The Utility's filing included three wastewater treatment plants in rate base that had been physically dismantled and removed in favor of receiving treatment from county or municipal treatment plants [T. 227-228]. Prior to hearing the Utility agreed to remove the plants from rate base and not seek further recovery for the plants, because recovery had already been received.

The Utility has simply not used any of the longstanding and Commission recognized and approved methodologies for any of its U/U calculations [T. 234]. It seems that the Utility is intent on breaking new ground and is asking the Commission to change its long standing approved methodologies for U/U calculations [T. 234].

The one U/U calculation performed for the Crownwood Treatment plant by the Utility's engineer, Frank Siedman was calculated according to his testimony by, "dividing (peak demand – excess inflow & infiltration + property needed to serve five years after the test year) by the rated capacity of the system." [T. 234]. This methodology is obviously at odds with the Commission's long standing and approved methodology of dividing the demand (appropriately modified by any excessive I/I and 5 years growth), determined on the same basis as the FDEP permitted capacity [T. 234]. This rationale is to compare the flow rate of the plant to the FDEP permitted flow rate with the plant flow rate being on the same basis as the basis shown in the FDEP permit [Ex. 10, TLB-2]. In other words, if the FDEP permit basis is annual average daily flow (AADF), then the test year AADF should also be used [Ex. 10, TLB-2]. This rationale insures that both the numerator and denominator of the U/U formula are arrived at from the same basis and that like quantities are being compared. Comparing flows arrived at from a different basis would be mathematically meaningless [Ex. 10, TLB-2].

The U/U formula should be expressed as follows:

$$U/U = (\text{Test Year Flow} + 5 \text{ yrs. Growth}) / \text{FDEP Permitted Flow}$$

The test year flow should also be adjusted for any excessive inflow and infiltration. See discussion of excessive inflow and infiltration included with issue 27.

Normally the treatment plant and its effluent disposal facility have the same capacities. However, if the effluent disposal facilities provide for reuse, then by Florida law, all such reuse facilities are to be considered 100% used and useful [Ex. 10, TLB-2].

The Crownwood wastewater treatment plant is 67.75% used and useful. The used and useful calculation for the Crownwood wastewater treatment plant can be found in Ex. 10, TLB-3.

ISSUE 13: What methodology should be employed to calculate the used and useful percentages, and what are the appropriate used and useful percentages for the utility's water distribution and wastewater collection systems?

POSITION: *The Commission's long standing methodology compares total connected equivalent residential connections (ERCs) to total ERCs available for service. The relationship is expressed as a fraction with the total connected lots in the numerator plus 5 years growth and the total available ERCs in the denominator.*

DISCUSSION:

The Utility ignored the long standing and Commission approved rationale and methodology for calculating the used and useful percentages for these systems which is to simply compare total connections (connected ERCs) to total available connections (total available ERCs). This is a very fair rationale and methodology that has been recognized by the Commission for many years [T. 233].

The Utility did not calculate any U/U percentages for the water systems but simply stated that the water distribution systems had been previously considered 100% U/U in prior dockets and that the systems had experienced no significant changes and therefore remained 100% U/U. See discussion following issue 8. Witness Biddy does not agree with the Utility that these systems

should automatically be considered 100% U/U because some changes have occurred to each system [T. 233]. The systems are also not built out [T. 233]. See more detailed discussion following issue 10. The only way to determine the correct U/U percentage is to actually count the connected ERCs and divide that total by the count of available ERCs [T. 233]. Mr. Bidy used this long standing and approved rationale and methodology in his U/U calculations included in Ex. TLB-3.

The Utility also did not bother to calculate a U/U percentage for the wastewater collection systems but instead reasoned that either the system was completely built out or that the system had been found to be 100% U/U in a prior case or that the facilities required to deliver wastewater to a City or County for treatment are considered to be 100% U/U [T. 233-234]. Mr. Bidy disagrees with the Utility's reasoning because the wastewater systems are not built out and excess capacity does exist in these systems [T. 234]. Used and Useful percentages considerably less than 100% are found when the appropriate lot to lot or connected ERCs to total available ERCs rationale or methodology is correctly applied [T. 234].

Mr. Bidy counted the total connected ERCs and the total available ERCs of all water distribution systems and wastewater collection systems from the system maps furnished by the Utility in combination with his onsite inspections of a number of systems [T. 241]. OPC had to request corrected system maps for several systems after his inspections revealed a number of errors in the originally furnished maps [T. 241]. The final counts so derived were used in the used and useful calculations shown in Exhibit TLB-3.

The U/U percentages that he calculated for the 17 water distribution systems varied from a low of 73.9% at the Oakland Shores System to a high of 100% at the completely built system of Davis Shores in Orange County [Ex. 10, TLB-3 and 3a]. The Utility showed 100% for all systems,

except for the Golden Hills/Crownwood wastewater treatment plant, although as discussed above, no calculations were performed [T. 241].

The U/U percentages that Mr. Biddy calculated for the 5 wastewater collection systems varied from a low of 51.47% at the Golden Hills/Crownwood System to a high of 97.20% at the Wis-Bar System [Ex. 10, TLB-3 and 3a]. The Utility showed 100% for all systems but no calculations were performed in support of the claimed percentages [T. 242].

ISSUE 14: What is the appropriate rate base?

POSITION: *This is a fall-out issue impacted by other issues.*

ISSUE 16: What is the appropriate return on equity (ROE) for UIF?

POSITION: *The leverage formula should be used without the 50 basis point adjustment that was created for small water and wastewater companies. This results in a range of 9.41% to 11.41%.*

DISCUSSION:

During the late 1970's the PSC developed a leverage formula (codified in §367.081(4),(f), Florida Statutes) to be used for determining a utility's rate of return. The statute allows a utility, in lieu of presenting evidence, to "move" the Commission to adopt the leverage formula in a particular case. In the instant case, UIF apparently in lieu of testimony "moved" the Commission to adopt the leverage formula. In response, Mr. Mark Cicchetti presented testimony in which he raised a disputed issue of material fact in the application of the leverage formula that had been moved by UIF.

Based on its statutory mandate and the very nature of general application, the leverage formula is calculated for application to an "average" Florida water and wastewater utility. By calculating a return formula for an average utility, the Commission is assured that it will have broad-

based usage. Its broad-based usage accomplishes its primary purpose: reducing hearing time and expense for both the Commission and the parties.

On the other hand, it is axiomatic that a calculation that targets the average, does not - - cannot - - apply to a company that is not average. The Commission recognized this truism when it adopted the current leverage formula. Mr. Cicchetti quoted an exchange between Commissioner Deason and Staff analyst Pete Lester, as follows:

Q. [By Mr. Burgess] Was the fact that the adjusted leverage formula would be applied to large Florida firms as well as small Florida firms - - absent a protest by an interested party - - addressed at the hearing where the three adjustments for small size were proposed?

A. [By Mr. Cicchetti] Yes. Commissioner Deason questioned staff witness Lester concerning such application. Page 235 line 15 through Page 237 line 2 of the hearing transcript, which follows, is the dialogue between Commissioner Deason and staff witness Lester:

COMMISSIONER DEASON: I have a question concerning your adjustment for small companies.

THE WITNESS: (Mr. Lester) Yes, sir.

COMMISSIONER DEASON: Fifty basis points. And I understand in your analysis you chose to compare bond yields for triple B and BB plus. I don't know what the terminology is.

THE WITNESS: That's BB+.

COMMISSIONER DEASON: And you came out with an average of 83 basis points and then a range. And then you tempered that calculation somewhat, and correct me if I'm wrong, but I think you tempered that calculation somewhat for the fact that we really shouldn't consider regulated utility companies as speculative grade, and so you chose 50 basis points - -

THE WITNESS: That's correct.

COMMISSIONER DEASON: - as some type of quantification of the risk factor of a small company; correct?

THE WITNESS: That's correct, yes, sir.

COMMISSIONER DEASON: Okay. First of all, let me ask you this. Do you consider all of the companies that we regulate in Florida to be companies?

THE WITNESS: No. I consider the average to be.

COMMISSIONER DEASON: The average to be.

THE WITNESS: Yeah.

COMMISSIONER DEASON: Okay. But any company in Florida can come in and choose the leverage formula, and if that is not protested by Public Counsel or someone else, then that's what's used regardless of the size of that company; correct?

THE WITNESS: Yes, sir.

COMMISSIONER DEASON: But since the statute uses the term "average," you think it's appropriate then to allow any company to come in and choose that if they think it's appropriate.

THE WITNESS: Yes, sir. I based my analysis on the statutory language, which I think is an average water and wastewater utility.

[T. 501, 502].

There are five relevant points that stand out from the above conversation: (1) the average Florida water and wastewater company is considered a "small company"; (2) the formula is calculated for application to the average; (3) by definition, the formula is calculated for application to "small companies"; (4) the ROE formula includes a separately identified additur that was incorporated explicitly for these small companies; (5) not every Florida water and wastewater company is considered to be a small company.

Based on the five points listed above, it is inescapable that the fifty basis point additur applies only to the average (small) Florida water and wastewater company, but does not apply to every Florida water and wastewater company. More specifically, the additur does not apply to those

Florida companies that are large enough not to be considered one of the “small” and “average” companies referenced by Commissioner Deason and Mr. Lester.

The only real question, then, is whether UIF (or UI, since the parent issues any stock) is one of those small average Florida Companies that Mr. Lester had in mind. If it is not, then the leverage formula should be adjusted to remove the 50 basis point additur.

It should be beyond debate that within the context of Florida water and wastewater companies, UIF is neither average nor small. As Mr. Cicchetti states: “Utilities, Inc. of Florida is significantly larger than the average water and wastewater utility in Florida” [T. 502]. No one challenged that statement.

Accordingly, the fifty basis point additur should be removed from the leverage formula if the formula is to be applied to UIF. Removing the fifty basis point will result in an ROE range of 9.41% to 11.41%.

ISSUE 17: Should UIF’s ROE be lowered as a penalty to reflect the quality of its books and records?

POSITION: *Despite a long history of Commission warnings about record keeping deficiencies and failures, UIF’s filing (and re-filing, etc.) suffered from a staggering number of problems. As an incentive to correct these, UIF’s ROE should be set at the low end of the range, 9.41%.*

DISCUSSION:

OPC witness Donna DeRonne identified a long list of past cases in which the Commission notified Utilities, Inc. that it was not in compliance with the NARUC Uniform System of Accounts.

Ms. DeRonne testified:

Commission Order No. PSC-00-1528-PAA-WU, issued August 23, 2000 contains a section dealing with Utilities, Inc.’s non-compliance with the NARUC Uniform System of Accounts. It references

numerous Staff Audit reports addressing non-compliance and cites the following other Commission Orders in which Utilities, Inc. was notified it was not in compliance with the NARUC Uniform System of Accounts required under Commission Rule 25-30.115: PSC 95-0574-FOF-WS issued May 9, 1995 in Docket No. 940917-WS, Utilities Inc. of Florida; PSC-97-0531-FOF-WU, issued May 9, 1997 in Docket No. 960444-WU, Lake Utility Services Inc.; PSC-96-0910-FOF-WS, issued July 15, 1996 in Docket No. 951027-WS, Lake Placid Utilities, Inc.; and PSC 98-0524-FOF-SU, issued April 16, 1998 in Docket No. 971065-SU-Mid-County Services, Inc. Obviously non-compliance with Commission Rule No. 25-30.115 has been a long-standing issue with Utilities, Inc. and its utility systems.

[T. 379].

With UIF's continued history of consistent disregard for the PSC record keeping requirements, one might have hoped that the utility would be meticulous in filing a case as large and important as the instant one. To the contrary, however, the utility's filing contained a myriad of deficiencies. Ms. DeRonne listed a chronology of the numerous re-filings that were required by the deficiencies. The chronology reads as follows:

- 1) June 28, 2002 - UIF filed its MFRs.
- 2) July 19, 2002 - PSC sent a four-page list of deficiencies, including (among many other deficiencies) that the filing was not based on a 13-month average test year.
- 3) September 3, 2002 - UIF filed updated MFRs, purportedly correcting all deficiencies.
- 4) September 12, 2002 - PSC sent a three-page list of deficiencies, including that plant-in-service and accumulated depreciation were still not based on a 13-month average basis.

- 5) October 3, 2002 - UIF filed updated MFRs, purportedly correcting all deficiencies.
- 6) October 31, 2002 - UIF refiled MFR Schedule E-1 and E-2 (Pasco).
- 7) December 2, 2002 - UIF refiled MFR Schedules E-14 for each of the counties.
- 8) February 4, 2003 - UIF refiled MFR Schedules E-2 and E-14.
- 9) February 17, 2003 - UIF refiled MFR Schedules E-1, E-2 and E-3.
- 10) April 17, 2003 - UIF refiled MFR Schedules E-1 and E-2 for each county.
- 11) August 18, 2003 (6 P.M. - two days before the hearing) - UIF refiled MFR Schedules E-1 and E-2.

[T. 373, 374].

It is also worth noting that there was never any need for UIF to be uncertain about what was being required by the PSC Staff. As Staff witness Jenny Lingo testified, the Staff continuously worked with UIF throughout all of the re-filings. Ms. Lingo stated:

Q Do you know, can you tell me how many times the E Schedules have been filed or refiled in this case?

A We evaluated portions or all of eight different filings of the Utility's Schedules before I filed my testimony.

Q And when you say eight different, you mean eight sequentially? You don't mean with several at one time, you mean eight that one would come in, and then later a refiling would come in?

A What I mean is we would receive a filing, let's say, in June, and then subsequently in September some or portions of that filing might have been revised and we would receive that. When I indicate filings, I do not necessarily indicate that the entire E filing would have been revised, just mainly it would be the E-1s, or E-2s, or E-14s.

Q Now, when a company would refile these, I assume that is because they had received some type of indication that they were deficient in some way, the previous filing was deficient in some way, is that right?

A That staff noticed that there were problems in the filing, yes.

Q And when staff noticed there were problems in the filings, did staff seek to communicate to the company what those problems were? In other words, what I'm getting at is did staff try to help them out as to what they were looking for, or did you just say, "These are insufficient. Refile."?

A No, whenever we would receive a new filing, we typically would go over the information, and then there would be a phone call to the utility trying to outline where we thought the problems were in that filing.

Q So even with the Commission staff's guidance as to what they were seeking, it took eight different times before you received the schedules upon which your testimony is based, is that right?

A Yes.

[T. 790, 791].

As it turned out “eight is not enough,” because the Utility faxed revised E schedules one more time (ninth) on the night of August 18. So even with PSC Staff actively trying to guide UIF in the right direction, the utility still refiled multiple MFR schedules up through the day before the hearing. No party and no regulator should be required to endure such lack of diligence on the part of a petitioning party.

Ms. DeRonne cited even further significant problems, testifying:

An additional factor that had substantial impact on the review of the Company’s rate increase requests was the fact that the rate base schedules included in the Company’s MFRs do not completely tie into the Company’s general ledgers. The Company used its 2001 Annual Report in preparing its filing, and for rate base, the accounts in its annual reports do not tie entirely into the general ledger balances. In fact, Staff Audit Exception No. 26 quoted Order No. PSC-00-2388-AS-WU, issued December 13, 2000, as follows:

The utility shall correct any remaining areas of non-compliance with the NARUC USOA by January 31, 2001. Further, the utility and its parent shall file, in future rate proceedings before this Commission, MFRs which begin with utility book balances, and show all adjustments to book balances after the “per book” column in its MFRs. The utility shall file a statement which affirms that the MFRs begin with actual book balances.

This quoted Order, involving another Utilities, Inc. subsidiary, was issued well before this case was filed. Despite this fact, the Company did not use its per book, or general ledger, balances as the starting point in its MFRs. Rate Base MFR Schedules A-1 and A-2 use the Company’s annual reports as the starting point, not the utility’s general ledger balances. The schedules then provide a column showing the amount of adjustment needed to tie the Company’s general ledgers to the annual report balances. However, these amounts are only given on an overall basis, and the filing does not provide a breakout of the amounts on an account by account or system by system basis.

Staff's Audit Report, in Exception Nos. 1 and 2, also points out numerous instances in which the Company has incorrectly booked the impact of prior Commission Orders. In many cases the Company either booked adjustments to the wrong accounts or booked incorrect amounts. These adjustments made by Staff in Exception Nos. 1 and 2 would apply to both the Annual Reports used as the starting point in the Company's MFRs and to the general ledgers.

[T. 374, 375].

Finally, Ms. DeRonne provided a partial list of additional problems with the utility's filing as follows:

Q [By Mr. Burgess] Can you give further examples of problems with the company's accounting and general ledgers?

A Yes. In fact, numerous problems are identified throughout the Exceptions contained in Staff's Audit Report. These problems resulted in numerous adjustments to the Company's revised MFRs being necessary. Examples of problems include:

- The impact of prior Commission Orders being booked to incorrect accounts or in incorrect amounts;
- The mid-2000 purchase of the Wisbar and Bartelt (Buena Vista) systems were not booked in the correct rate base accounts in the general ledger until mid-2002;
- Non-recurring expenses associated with repairs to the water and wastewater systems were improperly booked to plant in service accounts;
- In many instances the Company failed to record the retirement of plant on its books when such plant was replaced, resulting in both the old plant and the replacement plant remaining on the books;

- In many instances the Company recorded items in the incorrect accounts and did not adhere to the NARUC Uniform System of Accounts, particularly for items booked to Account Nos. 301 and 351 - Organization costs;
- Amounts remain in plant in service and accumulated depreciation accounts in the Company's general ledger for the Summertree wastewater treatment plant which, to the best of my knowledge, was demolished quite some time ago;
- In many cases, the plant in service items are included in the Company's general ledger in different account numbers than they appear in on the Company's MFR Schedule Nos. A-5 and A-6;
- The Company removed all of its equipment from the Davis Shores water system site and disposed of the utility land, yet items remain in both plant in service and accumulated depreciation on the Company's general ledger;
- The Company has used incorrect depreciation rates in depreciating plant Account Nos. 371 and 380;
- During the test year, the Company recorded expenses associated with purchased wastewater treatment for the Lincoln Heights system in Seminole County in the subaccount on its general ledger for the Buena Vista system in Pasco County.

The above listed items should be considered as examples. Staff's Audit report, along with my testimony, point out additional problems with either the Company's MFRs or its general ledgers.

[T. 375-377].

With this incredible list of failures, deficiencies and problems, it is abundantly clear that UIF has absolutely no regard for the Commission or its record keeping or filing requirements. Further, given UIF's consistent history of ignoring the many previous Commission admonitions, it should

be clear that UIF has absolutely no intention of complying unless some more emphatic measures are imposed. UIF's remarkably cavalier response to this very issue is particularly telling:

[T]his issue had been addressed in the recent Cypress Lakes Utility rate case.

[Order No. 0935, p. 28].

Yes, the issue had been addressed in that case, as well as the numerous other past cases cited by the Staff audit and by Ms. DeRonne. The sad point is, however, that UIF continues to ignore the Commission's requirements.

Because of UIF's steadfast refusal to improve, Ms. DeRonne recommended that the rates be set at the bottom of the reasonable range on equity. As Ms. DeRonne explains, this approach will give UIF the monetary incentive that it obviously needs to become a more responsible regulated utility [T. 371]. UIF's ROE should be set at 9.41% until such time as it can demonstrate consistent compliance with PSC requirements.

ISSUE 18: What is the appropriate cost of overall rate of return for water and wastewater for each county?

POSITION: *The Citizens recommend a ROE of 9.41% to be used in conjunction with the recommendations made in Staff Audit Exception 16.*

ISSUE 19: What is the appropriate amount of test year revenue?

POSITION: *This is a fallout issue subject to the resolution of other issues.*

ISSUE 22: What adjustments, if any, should be made to the utility's operation and maintenance expense with respect to amounts allocated from WSC?

POSITION: *The entire allocation should be disallowed. The utility totally failed in its burden to prove reasonableness. This failure is documented and explained in the testimony of Kathy Welch and Kim Dismukes, as described in the Citizens' position on Issue 5, which addresses the WSC allocations to rate base.*

ISSUE 23: Should adjustments be made to the amount of salaries, pensions and benefit expense and payroll taxes included in the Company's MFR filing?

POSITION: *Numerous adjustments to salaries, pensions and benefit expense must be made to assure that customers are not improperly charged.*

DISCUSSION:

There is a wide range of adjustments that must be made, and the Citizens would break these corrections down into the following areas: (1) correct errors in the calculations included in the MFR filings; (2) reflect the impact of actual salary increases granted instead of overstated estimates included in MFR filings; (3) reflect updated employee levels and positions; (4) reflect that a portion of the increase in salaries and wages has been capitalized instead of expensed; and (5) reflect the allocation of office salaries, benefits and payroll taxes to each of the county systems based on the allocation percentages recommended by the OPC. This discussion will address each area in its turn.

(1) UIF filing errors.

The rate filing contains numerous errors in its salary expense calculations that were revealed in response to the Citizens' discovery. Several examples will show the general nature of these errors. First, one employee's salary was incorporated as \$74,900 in Orange County, but only \$25,044 in Seminole. Discovery revealed that the correct salary was \$25,044. The salary that UIF sought to impose on Orange County, therefore, was overstated by \$50,000, or almost 200% [T. 350]. A second example is that the percentage allocated to UIF for certain employees varied between the different county systems [T. 350]. Specifically, Mr. Pinder's salary was allocated to UIF with a factor of 25% for Orange County and 35% for Seminole. A correction found through discovery shows that it should be 25%. Thus, Seminole County salary was overstated [T. 352]. These and

other UIF errors were revealed through discovery as testified by Ms. DeRonne [T. 349-352]. There is no record evidence to refute these assertions. Since the record is unrefuted, these errors should be corrected as shown on Schedule B-2 of Exhibit 13.

(2) Actual salary increases.

UIF's MFRs sought pro forma across-the-board salary increases for office employees and operators of 4% and 7%, respectively. OPC discovery revealed that the actual increase was 5% and 4%, respectively [T. 350]. Again, this testimony is unrefuted and the Commission should adopt the adjustments reflected in Schedule B-2 of Exhibit 13.

(3) Updated employee positions.

In response to Citizens' discovery, UIF provided updated salary levels and employee positions. Ms. DeRonne made adjustments to reflect updated salaries and to remove a position [T. 353] that had not been filled even by the time of the hearing. Apparently, the Utility believes that if the position is "actively being sought to be filled" in August, 2003, that qualifies it for inclusion in a 2001 historic test year [T. 392]. A position unfilled as of August, 2003, should not be included in the historic 2001 test year.

(4) Capitalized portion of salaries and wages.

Historically (2001), UIF had capitalized 13.14% of its salaries and wages. For its pro forma salary increases, however, UIF did not capitalize any portion. In discovery, OPC asked UIF why it had not capitalized a portion of its pro forma wage increases. UIF responded that the amount is "difficult to estimate" and that its test year amount was the most reliable estimate available [T. 353]. Nevertheless, Ms. DeRonne capitalized 13.14% of the post-test year salary increases to reflect the

reality that a portion would certainly be capitalized. The actual subsequent year's salary capitalization factor turned out to be 13.88% [T. 389, 890]. This is the capitalization amount that actually applies to the salary increases. Certainly that amount is much closer to Ms. DeRonne's factor of 13.14% than it is to UIF's factor of zero. Thus, UIF's initial argument that it should be zero because it was difficult to estimate went up in smoke. Caught by the facts, UIF simply changed its argument. Now UIF says an accurate capitalization factor should not be applied to salary increases because it has no asset account to record it in [T. 889].

The record is irrefuted, however, that UIF's MFR expense levels are inaccurate by the amount of the capitalization factor. That inaccuracy must be corrected to prevent customers from being charged an excessive expense for salaries. Further, the rate base should not be adjusted because that test year level of investment already matches the test year revenue production.

(5) Salary allocation.

The allocations between counties and between water versus wastewater divisions should be based on the allocation percentage recommendations contained in the testimony of Kim Dismukes for the reasons stated therein.

The resulting adjustments for all of the Citizens' adjustments recommended for Issue 23 are reflected in the chart on T. 355, and in Schedules B-2, B-3 and B-4 of Exhibit 13.

ISSUE 24: What adjustments, if any, should be made to the utility's O & M expense in Seminole County with respect to the wastewater interconnection with the City of Sanford?

POSITION: *The expense should be based on data from the twelve-month period of September, 2001 – August, 2002, because these months are representative of the volume of flow that is expected in ongoing operations (at the test year level of usage).*

DISCUSSION:

During the historic test year, on July 1, 2001, the Company's Lincoln Heights wastewater treatment plant in Seminole County was removed from service. Staff Audit Exception 23, which reduces the Seminole County wastewater O&M expense by \$80,751, annualizes the impact on O&M expense due to the resulting wastewater interconnection with the City of Sanford and corrects the adjustments included in the Company's MFRs for the annualizations of the purchase wastewater treatment expense.

The annualized purchased wastewater expense included by Staff in its calculations supporting Audit Exception 23 should be decreased to remove two nonrecurring, non-representative months of the interconnection. The Audit Staff used a 14-month average purchased wastewater treatment expense using the 14-month period July 2001 through August 2002 to calculate a monthly average for purchased wastewater treatment expense. The 14-month total was divided by 14 to determine a monthly average, which was multiplied by 12 to determine the annual total of \$142,086. The problem with Staff's calculation, however, is that the July 2001 and August 2001 amounts that were included in Staff's calculation are not reflective of normal operating conditions or normal monthly expense levels.

Ms. DeRonne's testimony cites UIF's response to the Citizens' discovery wherein UIF itself admits that test year wastewater flows "are higher than normal" [T. 360]. In that discovery response, UIF explains that the flows are "higher than normal" for two reasons. First, it asserts that its first month of billing included start-up and calibration tests and exercises that would not be reflective of ongoing operations. Secondly, when it was taken off-line, all of the existing wastewater in the Lincoln Heights' facility (aeration bays, clarifier, digester) needed to be emptied.

Further, the operation required quantities of liquid to flush and clean the system going off-line. All of this gallonage was recorded in the initial billings from the City of Sanford, but it would not be at all representative of future flow volume. In fact, Mr. Lubertozzi agreed that all of this additional emptying, cleaning, flushing and testing took place [T. 121-124].

Based on those undisputed facts, Ms. DeRonne concluded that the initial two months were not representative of ongoing operations. There is no evidence presented anywhere in the record to contradict Ms. DeRonne's assertion that these months were abnormal and did not reflect ongoing operations. Her conclusion must be taken as a fact for the purpose of any Commission decision.

When a particular circumstance is clearly demonstrated to be abnormal and not representative of ongoing operations, the proper regulatory treatment is to reflect normal operations. Consequently, the annualized purchase wastewater treatment expense should be recalculated based on the actual expense incurred during the twelve-month period from September 1, 2001 through August 31, 2002 to reflect a normal, on-going level. The additional adjustment is calculated in OPC Exhibit 13 for Seminole County, Schedule B-9.

ISSUE 25: What is the appropriate amount of rate case expense?

POSITION: *Customers should not bear costs associated with the unnecessary activity of multiple re-filings and responses to discovery that was required to reveal a substantial number of regulatory adjustments. At this point, OPC recommends that three-quarters of the proposed rate case expense be disallowed.*

DISCUSSION:

The Commission should disallow a substantial amount of the rate case expense requested in this proceeding because UIF has been unable to produce reliable and accurate MFRs. It took UIF four tries to get its MFRs accurate and many more times to provide reliable "E" schedules. In

addition, its responses to OPC's discovery have been inadequate and often extremely late. The Company filed numerous revisions to its MFRs. The costs associated with the deficiencies in the Company's MFRs and discovery responses should not be borne by ratepayers. Instead, these costs should be absorbed by the stockholders of UI. UI is the largest privately held water and wastewater company operating in the United States. The extent of the errors in the MFR filings should not be tolerated by the Commission and the costs should not be borne by ratepayers.

At hearing, UIF used its discovery obligations as an excuse for much of its excessive rate case expense. What UIF ignores, however, is that a substantial number of adjustments (some of which UIF has now agreed to) were revealed through the discovery that was propounded to UIF. (Please refer to the Citizens discussion in Issues 17, 23 and 24, as examples). In other words, the Commission can now arrive at an appropriate regulatory result only because of the discovery that was needed to determine the excesses contained in the Utility's MFRs. Had the MFRs been more forthcoming and reliable, the discovery effort would have been reduced. Customers should not be required to pay UIF for activity that was made necessary by the utility's failure to present an accurate picture of its operations.

OPC recommends that three-quarters of UIF's proposed rate case expense be disallowed.

ISSUE 26: Does UIF have excessive unaccounted for water and if so, what adjustments should be made?

POSITION: *The Citizens analyzed the flow records for the water systems by subtracting total water sold and other permitted uses from total water pumped and divided this difference by total water pumped. These calculations revealed that 10 out of the 17 water systems had unaccounted for water in excess of 10%.*

DISCUSSION:

Mr. Biddy analyzed the flow records for each of the 17 water systems by subtracting the “Total Water Sold” and other permitted uses such as fire flows, line flushing, etc. from the “Total Water Pumped” and dividing this difference by the “Total Water Pumped” [T. 228-229]. This value yields the total percentage of unaccounted for water in each system. These calculations reveal that 10 out of the 17 water systems had unaccounted for water during the test year in excess of 10%, with one as high as 22% [T. 229]. Historically, of course, unaccounted for water in excess of 10% has been considered by the Commission to be excessive and appropriate to be deducted from the “demand” when calculating the used and useful percentages for a system [T. 229]. The excessive unaccounted for water is deducted from the demand in all of Mr. Biddy’s used and useful calculations contained in Exhibit 10, TLB-3. His calculations of unaccounted for water are detailed in Exhibit 10, TLB-4.

In the MFRs, the Utility shows “Acceptable Unaccounted for Water” as 12.5%. While this percentage may be the Utility’s acceptable amount of unaccounted for water, the historical policy of the Commission is a limit of 10% which Mr. Biddy held to in his calculations [T. 229].

In his prefiled rebuttal testimony Mr. Siedman disputed witness Biddy’s calculation of 22.2% unaccounted for water for the Marion County Golden Hills/Crownwood Water system [T. 819-820]. In his prefiled rebuttal testimony Mr. Siedman conceded that Mr. Biddy’s methodology and calculations were correct, but he disputed the gallons pumped figure of 59.497 million gallons found in the Utility’s MFR’s [T. 819-820]. Mr. Siedman alleged that the Utility’s flow meters were reading high and when the meter flow readings were corrected the gallons pumped dropped to 49.536 million gallons, and the amount of unaccounted for water dropped to 6.6% [T. 819].

At the hearing the Utility changed its position and struck the language disputing Mr. Biddy's recommended unaccounted for water adjustments, except for the Utility's recommendation to permit 12.5% unaccounted for water, rather than 10% historically allowed by the Commission [T. 820-821]. Both the Utility and Staff have advanced methodologies to determine the used and usefulness of water plant that are extremely generous to the Utility. If many of these methodologies are followed by the Commission all water plant will be 100% used and useful several times over, and adopting Mr. Biddy's recommendation concerning 10% unaccounted for water will have absolutely no effect on the final used and useful determinations.

ISSUE 27: Does UIF have excessive infiltration/inflow in any of its wastewater systems, and if so, what adjustments should be made?

POSITION: *Infiltration over 200 GPD per inch-diameter per mile of sewer main is excessive. OPC applied this rationale with 5% Inflow to the Ravenna Park System after quantities were belatedly furnished. For other systems, 10% I/I was used as allowable, which proved reasonably accurate when the Ravenna System was revised.*

DISCUSSION:

Witness Biddy analyzed each of the five wastewater systems for evidence of I/I. The first test he applied was to subtract 80 percent of the total water sold from the total amount of wastewater treated [T. 229]. The value obtained was then divided by the total wastewater treated to obtain a percentage that is the approximate I/I. The 80 percent of total water sold is approximately the amount of water that is returned to the system in the form of wastewater [T. 229].

Mr. Biddy found that 4 of the 5 wastewater systems had approximate I/I percentages considerably in excess of 10% which is about the limit of I/I that should be allowable [T. 229]. Only the Wis-Bar system was found to have I/I less than 10% [T. 229]. The Summertree system was found to have 25.62% I/I; the Ravenna Park/Lincoln Heights system was found to have 21.47% I/I;

the Weathersfield system was found to have 11.23% I/I; and the Golden Hill/Crownwood system was found to have 11.43% I/I [T. 229-230].

Normally, Mr. Biddy would proceed to an analysis of the collection lines themselves to determine the amount of I/I per inch of sewer diameter per mile of sewer and then compare these amounts to accepted allowable criteria [T. 230]. However, in this case, the Utility did not furnish to Public Counsel sizes of collection mains or reasonable maps to determine the quantity of sewer lengths [T. 230]. Therefore, in the absence of this information, Mr. Biddy considered all I/I above 10% as being excessive [T. 230].

The calculations in Exhibit TLB-6 show the excessive I/I percentages. However, since three of these four systems with excessive I/I have no wastewater treatment plant to apply the excessive I/I, Mr. Biddy recommends that these excessive I/I percentages should be applied by the accountants to the operational cost of pumping the wastewater to others for treatment and to the cost of purchased treatment. This method of accounting for the excessive I/I seems reasonable [T. 230].

At the hearing, Mr. Biddy indicated he was able to secure the detailed collection line information he needed to more properly calculate the excessive I/I for the Ravenna Park/Lincoln Heights system [T. 217]. As a result of the new information and new calculation for the Ravenna Park/Lincoln Heights system, Mr. Biddy offered a revised TLB-6 to be entered into the record [T. 217]. Mr. Biddy was asked to explain the differences between TLB-6 and Revised TLB-6. In response to this question Mr. Biddy stated:

A. Yes. It's Item Number 3, Ravenna Park/Lincoln systems, Seminole County (as revised). I revised this system, the calculation of excessive I/I, based on the rule of 200 gallons per day per inch of diameter per mile of sewer now that I had the sewer quantities, which I did not have before. Previously I had said, okay, since I don't have these quantities, I'm going to take an approximate 10 percent and say that's the limit of the allowable I/I, but that's not really the way you do it. You're supposed to have quantity of sewer and then test it based on a rule.

This particular rule is the DEP rule for new sewers: 200 gallons per inch of diameter per mile of sewer. I actually came out with more I/I this way than the staff did with their 500 gallon per minute rule. So the adjustment that staff proposes is about \$45,000 based on a 500 gallon per minute rule. We only computed 30,000 based on a 10 percent rule. And all my other calculations of excessive I/I are on the 10 percent rule which shows that that is greatly in favor of the utility, but I simply did not have the quantities, sewer quantities to compute them for the other system. So

that is the change that I made to this system because I did have the correct sewer quantities [T. 220-221].

At the hearing Staff questioned Mr. Bidy. A portion of the exchange went as follows:

Q. On page 8 of your testimony at Lines 5 through 7, you state that in this case the utility did not furnish sizes of collection mains or reasonable maps to determine the quantity of sewer lengths. Therefore, in the absence of this information, I considered all I/I above 10 percent as being excessive. Does this testimony change because of the fact that you revised your Exhibit TLB-6, what has been marked for identification as Exhibit 11?

A. It changes insofar as the Ravenna Park system is concerned. I've got good quantities there, I assume. I take these quantities at face value. If those quantities are good - - I first saw them in Mr. Redemann's testimony. He got them by interrogatory from the utility, as I understand it. I didn't receive that, but when I finally got it I used that for the Ravenna Park system. But the other systems I still held to the 10 percent rule.

[T. 313-314].

As provided in Exhibit 11, Revised TLB-6, the Citizens argue that the cost to treat the excessive I/I for the Ravenna Park system is \$57,226.00. It is this amount that should be subtracted from the revenue requirement of the Ravenna Park wastewater system. The excessive I/I outlined and adjustments proposed in Exhibit 10, TLB-6 are otherwise unchanged.

ISSUE 28: Is there a gain on sale with respect to the sale of the Druid Isle water system and of a portion of the Oakland Shores water system to the City of Maitland and/or with respect to the sale of the Green Acres Campground water and wastewater facilities to the City of Altamonte Springs, and if so, in what amounts?

POSITION: *Yes. The amount of the gain on sale is \$67,695 for the Druid Isle sale and \$269,662 for the Green Acres sale.*

DISCUSSION:

In December, 1999, through Order No. PSC-99-2372-FOF-WS, the PSC approved the sale of the Green Acres Campground to Altamonte Springs. The Commission calculated the gain to be \$269,661 [T. 399, 400]. The Citizens agree with that calculation.

In a separate transaction in 1999, UIF sold three systems in Orange County, including the Druid Isle water system [T. 398]. Through Order No. PSC-02-0657-PAA-WU, the Commission calculated the gain for Druid Isle to be \$61,669. This gain was based on information provided by the utility indicating "Selling Costs" of \$27,832 [T. 399]. In the instant docket, however, the OPC sought discovery (POD #93) for documentation to support the \$27,832. UIF responded that "out of the \$20,356 legal costs, UIF was able to find support for approximately \$5,800" [T. 435]. The Commission should not allow an expense for which the utility can produce no support. Since UIF did not provide any support for the remaining \$14,566 of purported legal expense, the Commission should not allow it as a "Selling Cost." Accordingly, the gain should be increased by the \$14,556 purported cost that was unsupported [T. 435, 436].

ISSUE 29: Should gains or losses on the sale of utility assets be included in cost of service for rate setting purposes?

POSITION: *Yes. The Commission should require UIF to amortize the total gain of \$337,357 above-the-line for current ratemaking purposes. OPC recommends that the Commission amortize the gain over five years. Therefore, test year income should be increased by \$67,471.*

DISCUSSION:

Ms. Kimberly Dismukes and Mr. Mark Cicchetti both gave cogent reasons for crediting UIF's customers with the gains derived from the sales of Druid Isles, Oakland Shores and Green Acres Campground.

Ms. Dismukes cited four specific reasons for the Commission to attribute to the customers the gain on the sale of the facilities involved in the transactions of the instant case [T. 401]. First, the PSC “has consistently required customers to absorb losses associated with abandoned plants and early retirements” [Id]. Ms. Dismukes cited cases wherein the Commission insulated the utility from risk of loss by passing the cost of these losses on to the ratepayers [T. 402, 403]. Because Commission practice insulates utilities from loss (except when it is caused by the utility’s own imprudence) by passing those losses to the customers, “[c]onsistency dictates that customers should receive the benefit of gains associated with the sale of utility assets and/or systems.” [T. 401].

Ms. Dismukes’ second reason to attribute the gains to UIF’s customers is the past PSC practice in the electric industry. As Ms. Dismukes points out, in several electric utility cases, the Commission has credited the customers with most of the gain from the sale of major utility assets [T. 404-407]. The Commission’s rationale in these past electric utility cases is that customers pay depreciation expense and capital costs, so they should receive the gain [T. 404]. Ms. Dismukes concluded that “[t]here is no reason why the Commission should treat the water and wastewater any differently than the electric industry.” [T. 401].

Ms. Dismukes’ third reason is that on balance most other regulatory jurisdictions attribute some or all of the gain to customers. Relying on a survey performed by the PSC Staff, Ms. Dismukes described how various other jurisdictions have treated the issue [T. 407-411]. Ms. Dismukes concluded that while there is certainly no unanimity on the proper treatment, most jurisdictions “recognize that ratepayers have borne the risks associated with utility assets and should be allocated any rewards” [T. 408].

Ms. Dismukes' final reason is that the delineated factors on which the Commission allowed a utility to keep its gain in previous cases are not present in the instant case [T. 401]. Ms. Dismukes described those specific variables and the relevant cases in T. 411-420.

Mr. Cicchetti concurred with Ms. Dismukes' conclusion, but he took a somewhat different approach. Mr. Cicchetti is a cost of capital expert who has testified on that subject before the PSC on numerous occasions over the years [T. 497, 498]. Mr. Cicchetti addressed the gain on sale issue within the context of cost-of-service regulation, which he described as follows:

Cost of service regulation as it is practiced in Florida, as well as most of the rest of the country, is a balancing of the interests of shareholders (i.e., the owners) and ratepayers and is based on the premise that shareholders are given the opportunity to recover their costs, including a fair return on their investment, and that ratepayers pay the reasonable and prudent costs associated with the provision of utility service.

[T. 504].

After explaining the evolution of cost-of-service regulation and its legitimate purpose, Mr. Cicchetti described the result of properly applied cost-of-service regulation as:

The result is a socially optimum price that is below average cost. Pricing here would likely result in bankruptcy. Therefore again, regulators set a "fair return" price that allows a utility to recover the reasonable and prudent costs associated with providing utility service, including an appropriate return on common equity.

[T. 506].

Mr. Cicchetti then explained why a utility should not retain gains from the sale of utility plant within the context of properly established cost-of-service regulation. He testified:

Q What are the implications, under cost-of-service regulation, if the gains associated with the sale of utility plant are not attributed to ratepayers?

A Cost-of-service regulation contemplates ratepayers paying the net cost of providing utility service including a fair return on capital. All other things being equal, if the gain on sale of property is not attributed to rate payers then the utility will be allowed to recover more than the cost of providing service. This is equivalent to consciously allowing a utility a return on common equity above the required return. Through depreciation, a utility realizes a return of capital and through a fair allowed rate of return a utility earns a return on capital. Shareholders are rewarded for the risks they take through the allowed return on common equity.


[T. 506, 507].

Mr. Cicchetti's basic point, of course, is very straightforward: to allow a utility MORE than the net cost of providing the utility service plus a fair return on common equity is inconsistent with cost-of-service principles [T. 507]. Without the gain, UIF received rates that cover all net costs of providing utility service plus a return on common equity. It is axiomatic, therefore, that to allow the Utility to keep the disputed gains will allow UIF MORE than the net cost of providing utility service plus a fair return on common equity.

The gains should be credited to the customers who are paying UIF, the net cost of service plus a fair return.

Respectfully submitted,

CHARLES J. BECK
Interim Public Counsel


Stephen C. Burgess
Deputy Public Counsel

Stephen C. Reilly
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

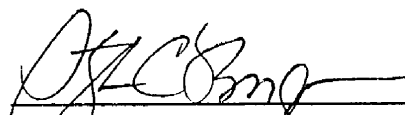
Attorneys for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 020071-WS**

I HEREBY CERTIFY that a correct copy of the foregoing Citizens' Post-Hearing Statement has been furnished by U.S. Mail or hand delivery (*) to the following parties this 22nd day of September, 2003.

Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
600 S. North Lake Boulevard, Suite 120
Altamonte Springs, FL 32701

Rosanne Gervasi, Esquire*
Lorena Holley, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Stephen C. Burgess
Deputy Public Counsel