



I N D E X

WITNESSES - VOLUME VII

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NAME:

PAGE NO.

SCOTT W. VIERIMA (Resumed Stand)

Cross Examination by Mr. McLean

934

EXHIBITS - VOLUME VII

<u>Number:</u>		<u>Identified</u>	<u>Admitted</u>
74	(Vierima) Response to OPC Interrogatory No. 6	934	
75	(Vierima) Credit Support Fee	934	
76	(Vierima) OPC Document Request No. 52	934	
77	(Vierima) DO Insurance Premium	934	
78	(Late-Filed) (Vierima) Topeka vs. Deltona Settlement Agreement	949	
79	(Late-Filed) (Vierima) Credit Support Fees	973	
80	(Vierima) Acquisition Adjustment Transactions	988	
81	(Late-Filed) (Vierima) Travel Expenses to and from Minnesota	991	

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P R O C E E D I N G S

(Transcript follows in sequence from Volume ~.)

(Hearing reconvened at 9:00 a.m.)

CHAIRMAN BEARD: Okay. Yesterday was Pasco County day. Yesterday was Citrus County day. Who is up today, Marion? No, I'm just kidding. It's so empty in here this morning I got nervous. We'll start having all the witnesses show up at 8:30.

Okay. We left off with Mr. McLean was going to be asking really intelligent questions when he had -- if he got a chance to take a break.

MR. ARMSTRONG: Mr. Chairman, if I may. There's just one preliminary matter. The Company had discussed last Friday about the possibility of getting Joe Cresse on today, and I've spoken with Public Counsel and Staff and Mr. Jones, and they've agreed that would be okay to put Mr. Cresse on after Mr. Vierima. However, we are pending a phone call with Mr. Twomey, who I know had some cross examination. And we'd like --

CHAIRMAN BEARD: You know, we were just talking about that and we couldn't remember Mr. Cresse ever taking anybody out of order. We couldn't remember Mr. Cresse allowing breaks to go to the bathroom when he was the Chairman. So we're trying to debate whether

1 we should really do this for him or not.

2 MR. ARMSTRONG: Mr. Cresse said he was going  
3 to take a pregnancy test last night. So --

4 CHAIRMAN BEARD: If he passes it we'll take  
5 him out of order. (Laughter) Okay. We'll do the best  
6 we can to accommodate you all's schedules.

7 MR. ARMSTRONG: Thank you very much.

8 MS. BEDELL: Mr. Chairman, on the same line,  
9 Staff would like to remind you all that we need to take  
10 Staff witness Shafer, today, off.

11 COMMISSIONER EASLEY: Well, in order to  
12 decide -- is Mr. Cresse going to take a real long time?

13 MR. McLEAN: No, I think that I shall have no  
14 questions; very few if any.

15 COMMISSIONER EASLEY: Mr. Twomey does, you  
16 think?

17 COMMISSIONER EASLEY: Mr. Jones.

18 MR. JONES: Perhaps one.

19 MS. BEDELL: We don't have a lot of questions.

20 CHAIRMAN BEARD: How about Mr. Shafer?

21 COMMISSIONER EASLEY: Staff witness?

22 CHAIRMAN BEARD: Yeah, Greg Shafer. You've  
23 met him before.

24 MR. McLEAN: No, sir. I don't think we'll  
25 have much for him. I couldn't think of nothing.

1 CHAIRMAN BEARD: Okay.

2 COMMISSIONER EASLEY: It doesn't sound like a  
3 problem.

4 CHAIRMAN BEARD: Okay. We probably can work  
5 this out. If it gets tense, we'll have Greg and Joe  
6 toss a coin to see who goes first.

7 COMMISSIONER EASLEY: As long as it's a coin.

8 CHAIRMAN BEARD: And if we can get to this  
9 witness, we won't have a problem at all.

10 MR. ARMSTRONG: Mr. Vierima is available for  
11 cross examination.

12 CHAIRMAN BEARD: That's great.

13 MR. ARMSTRONG: Thank you.

14 MR. McLEAN: Mr. Chairman, I've arranged to  
15 have four exhibits passed out. I thought we might mark  
16 them now for expedition.

17 CHAIRMAN BEARD: Suits me.

18 MR. McLEAN: The first is Citrus Springs, it  
19 says up at the top in big letters, "Citrus Springs," it  
20 is the response to OPC Interrogatory No. 6, I believe,  
21 although, it doesn't say that on the face.

22 CHAIRMAN BEARD: That will be Exhibit No. 74.

23 MR. McLEAN: The next is OPC document request  
24 No. 81.

25 CHAIRMAN BEARD: Okay, that will be No. 75.

1 MR. McLEAN: And the next docket request No.  
2 52, Document Request No. 52 OPC.

3 CHAIRMAN BEARD: That will be 76.

4 MR. McLEAN: And the last is Document Request  
5 No. 81.

6 CHAIRMAN BEARD: Wait a minute. I thought  
7 you told me that this first one was, not on the face of  
8 it, but it was 81? Exhibit No. 74. The one that says  
9 "Citrus Springs."

10 MR. McLEAN: Okay. The one you've identified  
11 as 76 -- an easy way to identify it --

12 CHAIRMAN BEARD: I mean -- wait a minute, 75  
13 is 81.

14 MR. McLEAN: I'm sorry, yes, you're right.

15 CHAIRMAN BEARD: But then, you've got this  
16 one that we're about to number as 77 and it's listed as  
17 81.

18 COMMISSIONER EASLEY: And they're both second  
19 sets.

20 MR. McLEAN: They have different material  
21 behind them, so we'll have a to identify it in a less  
22 convenient way.

23 CHAIRMAN BEARD: Okay. Exhibit No. 77 will  
24 be -- hang on a second.

25 MR. McLEAN: You can call it "DO Insurance

1 Premium."

2 CHAIRMAN BEARD: Call it what? "DO Insurance  
3 Premium."

4 MR. McLEAN: Yes, sir. And the first one,  
5 75, could be called "Credit Support Fee."

6 CHAIRMAN BEARD: Okay. That last one would  
7 be Exhibit No. 77.

8 (Exhibits Nos. 74, 75, 76 and 77 marked for  
9 identification.)

10 SCOTT W. VIERIMA

11 resumed the stand as a witness on behalf of Southern  
12 States Utilities, and testified as follows:

13 CROSS EXAMINATION

14 BY MR. McLEAN:

15 Q Mr. Vierima, would you direct your attention,  
16 please, sir, to Exhibit No. 74? That's the one with  
17 "Citrus Springs" written in fairly large letters up at  
18 the top.

19 A Yes.

20 Q Now, what we're trying to do here is figure  
21 out what investment Southern States or Southern States  
22 families company has in some of systems that was  
23 purchased in the Deltona purchase, if a purchase it  
24 was. I'm trying to figure exactly that out.

25 So, let me ask you a couple of questions.



1 There was at one time a loan from Topeka to Deltona, is  
2 that correct?

3 A To Deltona Corporation.

4 Q Yes, sir. Let me for purposes of these  
5 questions, I don't want to get -- my focus is not which  
6 member of a particular family we're dealing with, so  
7 let me ask you -- on the one hand, I'm going to ask you  
8 about Topeka and please assume for the purposes of the  
9 question, that I mean Topeka, Minnesota Power and  
10 Light, Southern States or any of its subsidiaries. And  
11 when I mention Deltona, please assume the same sort of  
12 thing about Deltona. So what I'm interested in, if  
13 there was a loan from the Topeka side to the Deltona  
14 side of about \$23 million, are you aware of anything  
15 like that? (Pause)

16 A I'm aware of a preferred stock investment of  
17 approximately \$22 million.

18 Q Preferred stock investment meaning that  
19 Topeka purchased preferred stock from Deltona?

20 A Yes.

21 Q Okay. But there was no preexisting debt or  
22 any preexisting indenture in either direction before  
23 that preferred stock purchase?

24 A There may have been for a short period, as a  
25 part of the funding of the preferred stock purchase,

1 but I don't believe -- if there was, I don't believe it  
2 was any part of a long-term obligation.

3 Q Okay. Was the preferred stock offered as  
4 security for any preexisting debt or obligation?

5 A The convertible preferred stock was purely an  
6 investment by Topeka Group which had conversion options  
7 associated with it.

8 Q Okay. Was Deltona marketing any securities  
9 at that point in time on any sort of open market?

10 A Deltona was a publicly traded Company on the  
11 New York Stock Exchange at that time.

12 Q Okay. But presumably were they trading  
13 preferred stock on that exchange?

14 A I don't believe the preferred stock was  
15 public securities.

16 Q Okay. So if you know, was Topeka the buyer  
17 or the investor?

18 A Yes.

19 Q Okay. And that's Topeka Group. Now, who was  
20 the actual seller, Deltona Corporation?

21 A Correct.

22 Q Now, that Deltona Corporation was the  
23 umbrella corporation, under which one would find  
24 Deltona Utilities, Inc.?

25 A Yes.

1 Q And what other holdings under Deltona  
2 Corporation?

3 A Deltona Corporation had a number of real  
4 estate related subsidiaries, as well as United Florida  
5 Utilities Corporation, which was another utility  
6 subsidiary and Deltona Utility Consultants, Inc.

7 Q Which one of those, or more of those, were  
8 the operators of regulated utility operations in  
9 Florida?

10 A The regulated utility operations were United  
11 Florida Utilities Corporation, Deltona Utilities, Inc.,  
12 and those were being managed by Deltona Utility  
13 Consultants, Inc., which was a service corporation.

14 Q Okay. So, Topeka simply bought preferred  
15 stock in Deltona; is that pretty much what happened?

16 A In Deltona Corporation, the parent, yes.

17 Q Yes. Deltona Corporation. Now, what rights  
18 did Topeka obtain when they bought the preferred stock.  
19 You said convertibility; what are we talking about  
20 there?

21 A With the original issue of the preferred  
22 stock, there were warrants that were issued. Those  
23 warrants gave Topeka Group the right, after a  
24 three-year period, to exercise either on common stock  
25 of the parent corporation, Deltona, or on 100%

1 ownership of the equity securities of the Utility  
2 subsidiaries.

3 Q Did I understand your answer -- did Topeka  
4 acquire the right to common stock in the Deltona  
5 organization?

6 A There were warrants issued with the  
7 convertible preferred stock, and those warrants gave it  
8 the option of either converting on common stock of the  
9 parent corporation or into common stock of the Utility  
10 subsidiaries.

11 Q All right. Now, did it lock in the right to  
12 obtain that common stock at any particular point in  
13 time or at any particular price?

14 A I believe the window of opportunity was  
15 between the third anniversary of the purchase of the  
16 preferred stock, and the fourth anniversary of the  
17 purchase of preferred stock. The pricing on the parent  
18 corporation common, if my recollection serves me  
19 correct, was a function of the parent's book value at  
20 the time of exercise.

21 Q Okay. What consideration was given by Topeka  
22 to Deltona Corporation for the preferred stock?

23 A The purchase price was \$22 million.

24 Q Now, was that market driven or was that a  
25 negotiated price, or what?

1 A I believe it was a negotiated price.

2 Q Did Deltona at that time have any other  
3 outstanding preferred stock?

4 A I don't believe so, no.

5 Q Was Topeka approached by Deltona for a loan  
6 as opposed to preferred stock at any point?

7 A I don't recall.

8 Q When you said -- you mentioned something  
9 about perhaps there might have been a debt incurred in  
10 a purchase price arrangement. Did you have something  
11 specific in mind at that point?

12 A The purchase of the preferred stock occurred  
13 in 1985, and again, if recollection serves me, there  
14 may have been some short intercompanies related to the  
15 final issuance on some of the preferred stock. But if  
16 there were, to my recollection, they were short term in  
17 nature.

18 Q Okay. And I would presume then, and tell me  
19 if I'm wrong, that would have been some short-term  
20 borrowing by Topeka or by Topeka parent to come up with  
21 the money to buy the stock, right?

22 A Yes. To my recollection, yes.

23 Q Okay. Was there any discount with respect to  
24 the \$22 million number that you mentioned or is that  
25 actual consideration paid to Deltona by Topeka?

1 A That was cash consideration paid.

2 Q Now, that would exclude any forgiving of any  
3 debt, wouldn't it? Let me ask the question differently  
4 because that may be confusing, was part of the \$22  
5 million purchase price, did it involve any forgiving of  
6 any debt or obligation?

7 A Not to my knowledge, no.

8 Q Okay. Now, referring to the convertibility  
9 of the preferred stock, did Deltona ever exercise any  
10 of those warrants or exercise that option to obtain  
11 common stock of Deltona Corporation?

12 A Did Deltona exercise --

13 Q I think I misspoke. Yeah, did Topeka do  
14 that?

15 A Yes. In 1989 Topeka exercised its warrant  
16 rights on the utility subsidiaries.

17 Q So what did they get in exchange? They got  
18 common stock in the utility subsidiaries?

19 A Correct.

20 Q And did not get common stock in the Deltona  
21 Corporation in general then?

22 A That's correct. With the exception I  
23 believe, as part of the original transaction, there was  
24 a market-based investment of a small amount of common  
25 shares in the parent company, not related to the

1 conversion rights.

2 Q Okay. Now, the \$22 million transaction, the  
3 buying of the preferred stock occurred in what year?

4 A 1985.

5 Q Okay. And then in '89 it was converted into  
6 common stock of the utilities, correct?

7 A Yes.

8 Q Now, was the common stock -- I'm sorry, was  
9 preferred stock, was it sold on any market in the  
10 meantime in those intervening years between '85 and  
11 '89, was the preferred stock sold -- was other  
12 preferred stock sold on any market of which you are  
13 aware?

14 A Not to my knowledge.

15 Q Okay. If you would, direct your attention to  
16 Exhibit No. 74, and that appears to me to be an account  
17 of -- the entire exhibit appears to me to be an account  
18 of how Topeka Group came to be owner of Citrus Springs,  
19 Deltona Lakes and other Deltona systems, am I correct?

20 A The top half of the exhibits summarizes the  
21 equity portion -- a portion of the equity transaction,  
22 yes.

23 Q Okay. As I understand what you said so far,  
24 correct me if I'm wrong, Topeka bought \$22 million  
25 worth of preferred stock in Deltona, and then converted

1 it to common stock in 1989. Did anyone assign any  
2 value to the stock which was purchased in 1989?

3 (Pause)

4 A The conversion formula was established in the  
5 original preferred stock purchase agreement, as well as  
6 a subsequent settlement agreement that evolved out of a  
7 legal dispute between the parties upon Topeka's  
8 exercise.

9 Q Okay. Did the 22 million -- did the  
10 consideration represented there on the 22 million  
11 figure eventually become the 32,296,000 number? Does  
12 the question make sense?

13 A Yes.

14 Q Good. And the answer is yes?

15 A Yes.

16 Q Okay. Tell me how that change in valuation  
17 took place?

18 A The convertible preferred stock had a  
19 cumulative noncash dividend associated with it, and  
20 that dividend accumulated on a deferred basis, so that  
21 at the time of exercise of the warrants, the total  
22 value of the stock was the original \$22 million, plus  
23 the accumulated dividends, which accounted for  
24 approximately \$32 million.

25 Q Okay. So then the exchange that took place



1 in 1989 was for the 22 million which they originally  
2 invested, plus the dividends foregone -- is that a  
3 proper word do you suppose? -- or the accumulated  
4 dividends, which had not been thus far paid?

5 A Effectively the time value of the \$22 million  
6 investment.

7 Q I understand. Okay. And that's how it goes  
8 then to \$31,296,000?

9 A Correct.

10 Q Now, during those years did Deltona pay any  
11 -- did the utilities -- let me ask both questions, did  
12 Deltona Corporation pay dividends during those years on  
13 common stock?

14 A I don't believe so, subject to check.

15 Q Okay. Did they pay any dividends on -- this  
16 was the only outstanding preferred stock of the Deltona  
17 Corporation at that time, wasn't it?

18 A I believe so, yes.

19 Q Okay. So obviously they didn't pay any  
20 dividends on that as well?

21 A The preferred stock carried a dividend, but  
22 it was a noncash dividend.

23 Q I understand. Okay. Now, with respect to  
24 the utilities; both questions, would the answers be any  
25 different?

1           A     I don't believe any dividends were declared  
2 on the utilities during the period when the preferred  
3 stock was outstanding.

4           Q     Okay. Now, with respect to the 7 million  
5 that's listed as cash on Exhibit No. 74, you said that  
6 was the settlement of some disagreement between Deltona  
7 and Topeka; are those the parties?

8           A     Yes.

9           Q     Which Deltona, the utilities?

10          A     No, the parent corporation.

11          Q     The parent corporation. What was the  
12 substance of the disagreement?

13          A     I wasn't a party to the settlement agreement,  
14 but my understanding of a part of the dispute is that  
15 it dealt with liabilities that had to be assumed by the  
16 purchaser of the utilities.

17          Q     Were they liabilities associated with utility  
18 business?

19          A     I believe so, yes.

20          Q     Do you know whether the case actually went to  
21 litigation?

22          A     I don't recall.

23          Q     Okay. Now with respect to the \$7 million  
24 cash, was that an actual cash transfer from Topeka to  
25 Deltona?

1 A To my knowledge, yes it was.

2 Q And it was not, to the best of your  
3 knowledge, to forego any sort of claim or settle any  
4 kind of -- irrespective of whether it was to forego a  
5 claim, you know that money was actually paid, cash was  
6 transferred from Topeka to Deltona?

7 A Yes, I believe it was.

8 Q Okay. Number of preferred shares -- I meant  
9 to ask you before, what was the number of preferred  
10 shares which Topeka bought in Deltona, or invested in  
11 Deltona; do you know?

12 A Subject to check, 65,000.

13 Q 65,000 shares?

14 A Subject to check, yes.

15 Q Okay. Now, when it was converted to common  
16 stock 1989, do you know how many shares were obtained  
17 then?

18 A When it was converted to the common shares of  
19 each of the utility subsidiaries?

20 Q Yes, sir.

21 A Again, subject to check, I believe there were  
22 10,000 shares issued in each one of the Utility  
23 subsidiaries.

24 Q How many were there? How many utility  
25 subsidiaries were there?

1           A     I believe there were four warrants that were  
2 issued as part of the original transaction.

3           COMMISSIONER EASLEY: Does that mean 40,000  
4 common stock shares?

5           MR. VIERIMA: I believe so. 10,000 in each  
6 one of the four subsidiaries, again, subject to check.

7           COMMISSIONER EASLEY: I wanted to be sure.  
8 Thanks.

9           Q     (By Mr. McLean) When they obtained the  
10 40,000 shares, 10,000 in each, what stake did they have  
11 in the company? Did that make them sole owners? Did  
12 that make them half owners? Do you understand what I  
13 mean?

14          A     The conversion rights gave Topeka Group 100%  
15 ownership of the Utility subsidiaries.

16          Q     Now, when they bought the preferred stock  
17 that did not give them 100% ownership, did it?

18          A     The preferred stock had no ownership rights  
19 in the utility subsidiaries.

20          Q     Okay. By ownership rights, we're talking  
21 about control in the Board of Directors and such things  
22 as a that?

23          A     Correct. 100% ownership of the shareholders,  
24 who would elect the Board of Directors.

25          Q     So when the conversion to common stock took

1 place, Topeka then had the right to control the Boards  
2 of Director's of each in these four utility subs?

3 A That's correct.

4 Q And by control I mean appoint, elect,  
5 whatever the case may be, correct?

6 A That's correct.

7 Q Now, if they obtained that -- if they obtain  
8 100% ownership, by converting the common stock, why is  
9 the \$7 million cash listed as partial consideration?  
10 Didn't they already own the four Deltona subs outright  
11 before they gave up the \$7 million cash?

12 A The settlement agreement brought additional  
13 issues into the original transaction, which was the  
14 subject of the dispute; liabilities assumed. There  
15 were additional assets, to my understanding, that were  
16 brought into the settlement agreement, including  
17 additional land that was not part of the original  
18 transaction. There were a number of components that  
19 were part of the settlement agreement and related to  
20 the \$7 million that were not part of the original  
21 conversion.

22 Q Is the settlement agreement reduced to a  
23 writing?

24 A Yes.

25 Q May we have a copy of it as a late-filed

1 exhibit?

2 A I believe it may have already been provided  
3 as an interrogatory, but --

4 MR. McLEAN: We'll defer to counsel to tell  
5 us whether it has been, I don't think we've asked for  
6 it.

7 MR. ARMSTRONG: In their discoveries Public  
8 Counsel asked for all the acquisition files, and we had  
9 indicated that they were voluminous and there were  
10 about 30 boxes of that. There was a closing binder in  
11 there, a black closing binder. You might recall it. It  
12 was one of the first things we did get when you were on  
13 site too. I don't think we copied that whole binder  
14 for you. I know specifically that Staff auditors asked  
15 for a copy, but we'll make it available to you.

16 COMMISSIONER EASLEY: Is the settlement  
17 agreement in the black binder?

18 MR. ARMSTRONG: It sure is. It's in a  
19 closing binder for the purchase of -- the conversion of  
20 the preferred stock.

21 MR. McLEAN: I think we'd like the settlement  
22 agreement. How many page is the settlement agreement?  
23 Is that a voluminous document?

24 MR. ARMSTRONG: That itself it's -- maybe a  
25 quarter of an inch or half inch thick.

1 MR. McLEAN: I think we'd like the settlement  
2 agreement by itself as a late-filed exhibit.

3 MR. ARMSTRONG: Sure. We don't have any  
4 problem with that.

5 CHAIRMAN BEARD: Short title.

6 MR. McLEAN: Deltona v -- Topeka v Deltona  
7 settlement agreement. Should it be dated '89; is that  
8 an appropriate date for that agreement?

9 A The settlement discussions went on subject to  
10 -- or subsequent to the conversion of our warrants, and  
11 it may have, you know, carried on into 1990, but I  
12 think it was the latter half of '89 is when the  
13 settlement agreement was negotiated.

14 Q Solely for purposes of identification, why  
15 don't we just put '89 on it so we'll know what we're  
16 talking about.

17 CHAIRMAN BEARD: That will be Exhibit No. 78.

18 MR. McLEAN: Thank you, sir.

19 (Late-Filed Exhibit No. 78 marked for  
20 identification.)

21 Q (By Mr. McLean) Now, when they exercised --  
22 am I using the proper term, exercise the warrants?

23 A Yes.

24 Q Good. They got -- "they" meaning Topeka got  
25 Deltona Utilities, Inc., United Florida Utilities,

1 Deltona Utilities Consultants; did they get anything  
2 else? There were four that you mentioned.

3 A Yes. I believe there was a fourth subsidiary  
4 at the time called Pelican Utilities, which was a minor  
5 subsidiary. It just happened to be one of the  
6 corporations that were associated with the utility  
7 operations.

8 Q Did Pelican Utilities, Inc. have any assets?

9 A I believe so, yes.

10 Q Do you know what the nature of the assets  
11 were?

12 A Subject to check, I believe that Pelican  
13 Utilities, in essence, was Marco Shores, subject to  
14 check, which is a small utility.

15 Q Now, Topeka then had 10,000 shares in Pelican  
16 Utilities, apparently, is that correct?

17 A Subject to check.

18 Q What I want to focus on a little bit and make  
19 sure that I understand, you said they got 10,000,  
20 Deltona Utilities, Inc., 10,000; United Florida  
21 Utilities, Inc., Pelican Utilities, Inc., 10,000 shares  
22 of that; Deltona Utilities Consultants, 10,000 shares  
23 of that, correct?

24 A Correct.

25 Q Was there any allocation of the purchase



1 price -- which is represented on Exhibit 74 to be 38  
2 million and change, was there an allocation of that  
3 purchase price to each of the four, and, if so, what  
4 was the allocation?

5 A Since it was a stock transaction, I believe  
6 that each of the major subsidiaries -- the two major  
7 subsidiaries were United Florida and Deltona Utilities,  
8 Inc. Each of them reflected any adjustments associated  
9 with the purchase price.

10 Q When you say "adjustments," would you value  
11 the stock differently for each system? In other words,  
12 was a share of Deltona Utilities worth \$5 and Pelican  
13 Utilities worth \$1, or something of that nature? Or  
14 how did you deal with that problem?

15 A Any differences between the consideration  
16 paid for the stock and the book value of the stock at  
17 the time of acquisition was booked as acquisition  
18 adjustments.

19 Q Do you know of any Commission proceeding in  
20 which the Commission has directly addressed the amount  
21 of consideration given for Deltona Utilities, Inc., on  
22 the one hand, or United Florida Utilities on the other?

23 A I believe the issue was addressed in the  
24 900329 docket.

25 Q Okay. Addressed but arguably not decided,

1 correct?

2 A Correct.

3 Q Okay. Deltona Utility Consultants, did it  
4 have any assets of the time of the warrant exercise?

5 A I believe so. I believe the assets were  
6 primarily general plant associated with the services  
7 being provided by Deltona Utility Consultants, Inc.

8 Q And what was the nature of those services?

9 A As a service corporation, they provided  
10 engineering services, ratemaking services, I believe  
11 accounting services, administrative services, those  
12 types of things.

13 Q Deltona Utilities, Inc., was it in the LP gas  
14 operation at the time of the exercise?

15 A Could you repeat the question, please?

16 Q Yes, sir. Deltona Utilities, Inc., was that  
17 corporation in the business of providing LP gas service  
18 at the time of the stock -- of the warrant exercise?

19 A Yes, it was.

20 Q Was there at that time of the exercise, or at  
21 any other time, for that matter, was there any attempt  
22 by Southern States or Topeka to assign any portion of  
23 the consideration given to Deltona to the LP gas  
24 operations?

25 A Each of the corporations on which the

1 warrants were exercised had multiple business  
2 activities that were not separately incorporated.  
3 Therefore, the purchase price was assigned specifically  
4 to the corporate securities, and gas was strictly an  
5 operating portion of that entity.

6 Q So there was some in-house evaluation by  
7 Topeka of the various securities and some distinction  
8 drawn between their values by Topeka, is that correct?

9 A The transaction was priced as a whole,  
10 including all of the subsidiaries and all of the issues  
11 that were raised during the settlement agreement.

12 Q Do you remember the Raymond James Report we  
13 had down at Lehigh that approved your suggested method  
14 of allocating the purchase price on the Lehigh  
15 Corporation?

16 A Yes.

17 Q Was there a similar study performed here by  
18 anyone, including in-house?

19 A I don't recall.

20 Q If the Commission develops an interest in how  
21 much consideration you gave for Deltona Utilities on  
22 the one hand; United Utilities on the one hand; Pelican  
23 Utilities on the one hand; and Deltona Utility  
24 Consultants, Inc. on the last hand, what evidence could  
25 you point them to rely upon to figure out how those

1 things should be valued?

2 A I believe the audited financial statements at  
3 the end of 1989, which reflected any differential  
4 between the purchase price and the book value of the  
5 securities acquired would be the best representation of  
6 individual values for those.

7 COMMISSIONER EASLEY: Is there anything in  
8 there that would give us a feel for how much of each  
9 one of those systems was LP or other business interests  
10 included in that corporate structure?

11 WITNESS VIERIMA: Yes. I believe gas  
12 revenues are broken out separately in those financial  
13 statements.

14 COMMISSIONER EASLEY: How about the other  
15 revenue?

16 WITNESS VIERIMA: Water and wastewater is  
17 also.

18 COMMISSIONER EASLEY: Well, you indicated  
19 that some of these corporations had other business  
20 activities. I got the impression it was something  
21 beyond water/wastewater and LP gas.

22 WITNESS No. Those were the primary  
23 businesses.

24 COMMISSIONER EASLEY: Oh, okay. Thank you.

25 Q (By Mr. McLean) You're suggesting, then,

1 that those financial statements -- that the investment  
2 probably tracked, the relative investment, probably  
3 tracked those financial statements, then. Is that what  
4 you're saying?

5 Do you understand what I mean, first of all?

6 A Could you rephrase that, please?

7 Q Yeah, I'll try. That the relative investment  
8 among those four entities which I mentioned on the part  
9 of Topeka should closely track the difference in the  
10 book values and so forth as reflected in the financial  
11 statements of each of the entities.

12 A Yes, if you include all of the financial  
13 statements for the years '89, '90 and '91. Because  
14 there were subsequent adjustments made by the  
15 independent auditors to the purchase accounting that  
16 was used.

17 Q Okay. Let's look back a minute to the \$7  
18 million settlement, if you please.

19 Can you say whether that was -- whether that  
20 disagreement was over some purported obligation on any  
21 one of these entities or was it on behalf of all of  
22 them?

23 A I was not a party to this settlement  
24 agreement. I would be speaking out of turn.

25 Q Okay. But the answer is that you don't know,

1 correct?

2 A Correct.

3 Q Okay. The response to Interrogatory 6 says  
4 the liabilities pertain to future utility main  
5 extensions. And I'm interested to know whether you  
6 know, on the one hand, the question I just asked you,  
7 namely, who is the obligor?

8 My next question is, who is the obligee? Who  
9 was in a position to expect one of these companies to  
10 do something worth \$7 million, if you can accept that  
11 phraseology?

12 A Again, the \$7 million was not totally  
13 associated with the assumed liabilities. There were  
14 other factors to consider, additional real estate that  
15 was brought in.

16 When the dispute arose, the parties listed  
17 all of the issues that were a part of the dispute, one  
18 of which was real estate necessary for future  
19 expansion; liabilities to be assumed; there were some  
20 debts, I believe, intercompany debts that were in  
21 dispute. And the settlement agreement represented the  
22 sum total of all of those issues.

23 Q Now, when you say "intercompany debt," who is  
24 on each side of the intercompany debt to which you just  
25 referred?

1           A     I believe there were some obligations between  
2 Deltona Corporation and the utilities at the time of  
3 our exercise that were in dispute as to, you know, the  
4 substance of the liabilities.

5           Q     Do you know whether or not the settlement  
6 agreement will speak to those issues?

7           A     I believe it would, yes.

8           Q     Okay. So what we're dealing with here in the  
9 \$7 million settlement is not only a disagreement  
10 between Topeka and Deltona family, but perhaps  
11 disagreements within the Deltona family itself. Is  
12 that correct?

13          A     At that point the Deltona Utilities were  
14 really considered a part of the Topeka family; and so  
15 the dispute, I believe, was really between Deltona  
16 Corporation and the Topeka Group of companies.

17          Q     Okay. And, needless to say, Deltona  
18 Corporation itself survived all of this transaction and  
19 remained as an entity, even after the utilities and so  
20 forth had been split off, correct?

21          A     Yes, it has.

22          Q     Is there any surviving obligation or  
23 indebtedness between the two corporations, namely,  
24 Topeka and Southern States family on the one hand and  
25 Deltona Corporation on the other?

1           A     I believe there are some surviving activities  
2 or requirements between the two parties relative to  
3 developer agreements. Again, I'm not familiar with  
4 what those would be.

5           Q     Okay. But they would be incident to the  
6 utility business, then, rather than purchase price, is  
7 that correct?

8           A     Correct.

9           Q     And they might be something like maybe -- I'm  
10 going to draw an objection here if I'm not careful, I  
11 don't want you to speculate, but go ahead and  
12 speculate. (Laughter)

13                     Basically, we're dealing with the potential  
14 obligation with a Deltona Utilities sub, which they may  
15 have to serve land which was one time, either one time  
16 or is now held by the Deltona Corporation. Is that the  
17 sort of obligation to which you refer?

18           A     I believe Topeka Group is also a part of that  
19 obligation in terms of one of the root questions of the  
20 settlement agreement was who steps into the shoes of  
21 the developer on certain developer obligations. And  
22 Topeka was drawn into that settlement.

23           Q     Does Topeka Group now have any equity  
24 position in the surviving Deltona Corporation?

25           A     It does not.



1 Q Okay. Does Deltona Corporation have any  
2 surviving -- have any equity position in Topeka or any  
3 of the Southern States?

4 A No, it does not.

5 Q Is there any indebtedness remaining,  
6 financial indebtedness, i.e. loan, long-term,  
7 short-term, or otherwise?

8 A Indebtedness between?

9 Q Between Topeka and Deltona, in either  
10 direction.

11 A No, there is not.

12 Q So, I can conclude, then, that the only  
13 surviving business between Deltona Corporation and  
14 Topeka within the Southern States family is that  
15 incident to the normal operation of a water and sewer  
16 utility?

17 A Correct.

18 Q Okay. (Pause)

19 I forgot to ask you in which direction the \$7  
20 million flowed. I see from the sum here it must have  
21 flowed from Topeka to Deltona, is that correct?

22 A That's correct.

23 Q Now, did Deltona -- I'm sorry. Did Topeka  
24 get any assets in exchange for that \$7 million?

25 A I believe there was some additional land

1 involved that was outside the original transaction.

2 Q Can you place any sort of value on it  
3 whatsoever? I didn't mean that to imply that there is  
4 none. I meant can you assign, or what portion of \$7  
5 million went for the assets and what \$7 million went  
6 for foregone causes of action or whatever?

7 A I would estimate about \$5.8 million.

8 Q Was for land, is that correct?

9 A Correct.

10 Q And the remaining not for land.

11 A Correct.

12 Q Well, how do you come up with the \$5.8  
13 million?

14 A I believe that was the amount specified in  
15 settlement agreement documents, subject to check again.

16 Q Yes, sir. Okay. Now, we have asked for, I  
17 think, what is a fair characterization of what your  
18 investment is in a number of systems: Citrus Springs,  
19 Deltona Lakes, Marco Island, Marion Oaks, Pine Ridge,  
20 Spring Hill, Sunny Hills, each of which are, or were,  
21 members of the Deltona system. Is that correct?

22 A That's correct.

23 Q Were any of these under the United Florida  
24 Utilities, Inc.?

25 A Yes. When I speak of the Deltona Group of

1 companies, I'm talking about the utilities we acquired  
2 from Deltona Corporation.

3 Q Okay. Now, each one, of course, the answer  
4 that you all gave us shows purchase price of the  
5 \$31,296,000, which we discussed, and the \$7,000  
6 settlement, and so forth, for a total of 38. Now, that  
7 is \$38,296 is the amount of money that, or the amount  
8 of consideration, that Topeka tells us that they gave  
9 for all of these systems. Is that correct?

10 A 38,296,000 --

11 Q I'm sorry.

12 A -- but that excludes closing costs, which  
13 amounted to approximately \$2 million.

14 Q Okay. Does it include Marco Island as well?  
15 Marco Island is one of the ones I read off, so  
16 presumably it would, correct?

17 A That's correct.

18 Q All right. Now, thus far, if the Commission  
19 develops an interest in assigning a particular purchase  
20 price or level of investment to any one of these  
21 systems, I think the best evidence that we've come up  
22 with so far is the original -- the financial statements  
23 of Deltona and United, and so forth. Is there a better  
24 means by which the Commission could allocate that \$38  
25 million -- if that number be the correct number to

1 allocate -- is there some means by which they could  
2 allocate that to each of these systems? (Pause)

3 A There could be various judgmental means of  
4 allocating the purchase price of a corporation, an  
5 audited corporation, down to its various asset  
6 components.

7 Q But presumably those considerations would not  
8 flow from anything we know about any of the stock  
9 transactions we've discussed thus far, correct?

10 A Correct.

11 Q So, basically, what you're saying is take a  
12 close look at each one of the corporations and see what  
13 its worth and then back into the purchase price, right?

14 A The audited financial statements should  
15 accurately reflect the purchase price, purchase  
16 consideration.

17 Q Okay. Do you know -- you're familiar with an  
18 issue in this case, 16.1% debt that was litigated and  
19 so forth. Is that number -- is any consideration of  
20 that debt reflected anywhere on Exhibit 74 that you  
21 know of?

22 A Repeat the question, please.

23 Q Yes, sir. Let me ask one question at a time  
24 this time. That will help, I suppose.

25 The 16.1% debt, are you familiar with that as

1 an issue in this case?

2 A Yes, I am.

3 Q Issue No. 40. Can we tell by looking at  
4 Exhibit 74 whether there was any consideration given to  
5 that 16.1% debt?

6 A Consideration given in terms of?

7 Q Was it -- yeah. I should probably wait later  
8 to get into that issue; but, basically, what I want to  
9 know is, is there anything on the purchase price on the  
10 face of this instrument which shows that the \$16.1  
11 million -- oh, I'm sorry -- the 16.1% was considered in  
12 any way in either the purchase of the preferred stock  
13 or the conversion to common stock?

14 A That is not reflected in this exhibit, no.

15 Q Okay.

16 Q Mr. Vierima, let's change focus a bit. Refer  
17 to the exhibit which the Chairman has marked No. 75 if  
18 you would, please.

19 COMMISSIONER CLARK: Mr. McLean, are you  
20 through asking questions on that 16.1%?

21 MR. McLEAN: No.

22 COMMISSIONER CLARK: Good. Okay.

23 MR. McLEAN: I want to return to that area.

24 COMMISSIONER CLARK: You just had reference  
25 to this exhibit. You were wondering if it was reflected

1 -- okay.

2 MR. McLEAN: Actually, I should have asked the  
3 question perhaps more precisely.

4 Q (By Mr. McLean) Do you know -- we will have  
5 a copy of the settlement agreement, presumably, but do  
6 you know whether the settlement agreement makes any  
7 reference to that particular debt?

8 A No, I don't know.

9 Q Did you negotiate any of these, either the  
10 preferred stock purchase or the common stock  
11 conversion?

12 A No, I did not.

13 Q And you did not negotiate the settlement?

14 A No, I did not.

15 Q Who did negotiate the settlement on behalf of  
16 the Utility? I'm sorry, on behalf of Topeka?

17 A Minnesota Power executives.

18 Q Who negotiated for Deltona, do you know?

19 A No, I do not.

20 Q Do you know who represented -- you said MPL  
21 executives. Which MPL executives? If you know.

22 A I would say the primary negotiators were  
23 Mr. Don Crandall, Mr. Jack McDonald, Mr. Arend Sandbulte.

24 Q I asked you before, I don't know whether you  
25 answered it or whether I can't remember the answer,

1 whether there was actual lawsuits filed?

2 A I recall that there were attempts at  
3 temporary restraining orders, and some other activity  
4 going on, but whether it actually reached the  
5 litigation stage, again, I wasn't a party to the  
6 settlement agreement.

7 Q Where was the Deltona Corporation  
8 headquartered at the time of the negotiations?

9 A Miami, Florida.

10 Q Now, with respect to what lawsuits that you  
11 know of, perhaps restraining orders and so forth, do  
12 you know, if filed, were they filed in Florida?

13 A Yes, I believe they were.

14 Q All right. Let's change the focus again. I  
15 want to ask you about the credit support fee, which is  
16 represented -- which appears to be represented in  
17 Exhibit No. 75. There is apparently a monthly credit  
18 support fee paid to Topeka by Southern States; is that  
19 correct?

20 A There are multiple credit support fees paid  
21 by Southern States to Topeka Group on various issues.

22 COMMISSIONER EASLEY: Would you tell a  
23 roaring dummy what a "credit support fee" is?

24 WITNESS VIERIMA: If an individual borrower  
25 does not exhibit the credit capacity to borrow funds or

1 execute another financial transaction on its own  
2 financial strength, it can rely on such instruments as  
3 a guarantee or indemnification, et cetera.

4 COMMISSIONER EASLEY: Co-signer, guarantor.

5 WITNESS VIERIMA: Right. Exactly.

6 COMMISSIONER EASLEY: Okay. Thank you. Got it.

7 Q (By Mr. McLean) Okay. Now you didn't just  
8 tell the Commissioner that Topeka Group was a co-signer  
9 on any obligation incurred by Southern States, did you?

10 A No. It's not a co-signer.

11 Q Okay. What is it? Is it a guarantee?

12 A It has in the past provided guarantees and  
13 indemnification agreements.

14 Q Now, an indemnification agreement, who is  
15 indemnified and against what risk?

16 A An example would be the revenue subject to  
17 refund in the multiple cases that SSU has currently  
18 filed. Some sort of bonding arrangement is required to  
19 support those. And where we receive a bond, again, if  
20 the financial strength of the underlying company is not  
21 adequate, the bonding company will require credit  
22 support, such as indemnification from Topeka Group.

23 Q I'm interested in discriminating, if you  
24 will, please, between the legal obligation on the part  
25 of Topeka Group to step into the shoes of the obligee,



1 should that be necessary, on the one hand, and on the  
2 other hand, some softer representation on the part of  
3 Topeka Group. Do you understand my question? I'm not  
4 sure I asked it but did you understand the distinction  
5 that I'm trying to reach? Let me ask it differently.

6           Just take one, for example, let's look at the  
7 first one in the package, February 27, 1991. Is that  
8 \$4,700 consideration extended by Southern States to  
9 Topeka for Topeka's guaranteeing any debt incurred by  
10 Southern States?

11           A     The fee represents a guarantee to Sun Bank  
12 who would not issue a letter of credit on the Collier  
13 County industrial development revenue bonds without  
14 credit support.

15           Q     Okay. Now, I guess we're kind of getting  
16 circular here, and I hate to ask the question again,  
17 but are we talking about a legal obligation in which  
18 Topeka Group steps into the shoes of Southern States if  
19 Southern States fails to pay?

20           A     If Southern States defaults on its industrial  
21 development bonds, the holders of the bonds have the  
22 right to call on the letter of credit, the bank who has  
23 issued the letter of credit has the right to go back  
24 against Topeka Group for repayment of any amounts paid  
25 under the letter of credit.

1 Q Okay. How did you come to know this was a  
2 Collier County matter?

3 A The amount that is shown.

4 Q Okay. That just tips you off that that's what  
5 the premium is

6 A Correct.

7 Q Or the amount. Incidentally, as an aside, I  
8 want to ask you, I asked you some questions about this in  
9 your deposition, and you used the term "comfort letter."  
10 That's not what we're talking about here, is it?

11 A No. A comfort letter is a separate issue.

12 Q Okay. Tell the Commission what a "comfort  
13 letter" is, if you would, please?

14 A A comfort letter is what we view as a soft  
15 guarantee where the Topeka Group provides certain  
16 representations that it, for example, will continue to  
17 own 100% of a subsidiary, and that it will do what it  
18 can to exercise its authority over its subsidiary to  
19 make sure that its subsidiary pays on a timely basis.  
20 It is not a legal obligation.

21 COMMISSIONER EASLEY: It's sort of a warm and  
22 fuzzy feel-good.

23 WITNESS VIERIMA: Yes.

24 COMMISSIONER EASLEY: Okay.

25 COMMISSIONER CLARK: Well, they have no legal

1 right to go against the Topeka Group, but certainly if  
2 Topeka wants to protect its investment in Southern  
3 States, it will do what it can to ensure its continued  
4 viability.

5 WITNESS VIERIMA: There is a business ethics  
6 question involved, too, that if Topeka did not maintain  
7 its comfort letter, obviously it would be viewed  
8 differently in the future by its creditors.

9 COMMISSIONER CLARK: Okay.

10 COMMISSIONER EASLEY: As long as we've got  
11 you interrupted in the explaining mode, written on  
12 here, say, in July 29th, I can't read a page number,  
13 but it's in several places. Apparently this was not  
14 paid, the fee amount; there's a notation with a line  
15 going to that, it says "agrees to accrual." Is the fee  
16 accruing and who has agreed to do what?

17 A Southern States Utilities, because of its  
18 cash flow problems, has occasionally requested that  
19 Topeka Group defer any interest payments or credit fee  
20 payments, which Topeka Group has done on occasion  
21 without charge.

22 Q Okay. So that's the same thing as another  
23 notation in September, "Check is not to be issued, to  
24 be deducted from AR," which I assume is accounts  
25 receivable, "from TGI."

1                   WITNESS VIERIMA: That's a separate issue  
2 that -- between Topeka Group and SSU there are routine  
3 payables and receivables. And this is just a -- rather  
4 than actually exchanging funds, there's just a  
5 reduction of any payables that we would have.

6                   COMMISSIONER EASLEY: Okay. Thank you.

7           Q        (By Mr. McLean) Okay, now, I want to reach the  
8 allocation issue a bit here. The credit support fee, did  
9 I use the right term -- credit support fee is ultimately  
10 allocated to the various systems in this rate case, right?

11           A        In this rate case, we filed on a combined  
12 capital structure, and the credit support fee is  
13 associated with the cost of that capital.

14           Q        Okay. Now, you mentioned Collier County  
15 here. What systems are in Collier County that are also  
16 in this rate case?

17           A        Marco Island -- or excuse me. (Pause)

18           Q        Is Marco Shores perhaps in this one?

19           A        Yes.

20           Q        It, too, is in Collier County, is it not?

21           A        Yes.

22           Q        Now, the \$11,125,000 amount secured, is that  
23 debt incurred in any way in the -- is that incurred in  
24 any way in the Marco Shores system, or do you know?

25           A        I'm not sure.

1 Q All right. Now, with respect to credit  
2 support fees in general, are there other credit support  
3 fees, other than the ones that are listed in this  
4 exhibit, which are paid by Southern States to Topeka?

5 A Yes.

6 Q Can you tell us what those are?

7 A Topeka Group has also guaranteed lines of  
8 credit for Southern States Utilities, and has also  
9 provided guarantees for revenues subject to refund;  
10 particularly in the case of the 900329 case, to the  
11 extent of, I believe, \$2.8 million.

12 Q \$2.8 million in total guaranteed fee or is  
13 the obligation --

14 A That's the obligation.

15 Q Okay. Do you know what the fee is?

16 A I believe it's 50 basis points.

17 Q Do you know whether that's in the test year?

18 (Pause)

19 A I believe a small portion of it may be in the  
20 test year.

21 Q Okay. 50 basis points means essentially you  
22 charge a half of a percent for providing whatever  
23 assurance that you do with respect to the principle  
24 obligation, is that --

25 A Yes, 50 basis points is one-half of 1%.

1 Q Okay. Now, was any portion of that credit  
2 support fee extended for any sort of corporate  
3 undertaking that Southern States wrote itself to the  
4 Commission?

5 A No. I believe in the case of Docket 900329,  
6 a Letter of Credit was issued by Sun Bank to support  
7 the obligation, and again, Sun Bank would not issue the  
8 Letter of Credit without a direct guarantee from Topeka  
9 Group.

10 Q Now, when Southern States issues a corporate  
11 undertaking to the Commission for whatever purpose, and  
12 Topeka Group enters its own guarantee of that corporate  
13 undertaking, is there a credit support fee paid for  
14 that guarantee?

15 Let me rephrase that question because I don't  
16 want to get hung up on guarantee. Where Southern  
17 States issues a corporate undertaking to the  
18 Commission, and where Topeka Group provides any  
19 assurance of that corporate undertaking whatsoever, is  
20 there a credit support fee paid to Topeka Group under  
21 those circumstances by Southern States?

22 A I'm not aware of those circumstances, but  
23 under the situation where the Commission accepted a  
24 corporate undertaking under the condition that it be  
25 indemnified or guaranteed by Topeka Group, such a

1 credit support fee would be assessed.

2 Q Okay. So if Southern States represented to  
3 this Commission that a corporate undertaking didn't  
4 have any cost associated with it, and I'm not saying  
5 they've done that, but should they do that, if they did  
6 that, then that would be neglecting whatever cost is  
7 represented by this credit support fee, wouldn't it?

8 A Again, as a hypothetical.

9 Q Yes.

10 A Yes.

11 Q I mean it that way. Okay.

12 Mr. Vierima, we would like to request from  
13 you a late-filed exhibit which sets forth all of the  
14 credit support fees paid to Topeka Group by Southern  
15 States or any of its sister corporations, companies,  
16 subsidiaries, what not, during the test year.

17 MR. McLEAN: May we have that marked,  
18 Mr. Chairman, as "Credit Support Fees."

19 CHAIRMAN BEARD: That will be Late-Filed 79  
20 (Late-Filed Exhibit No. 79 identified.)

21 Q (By Mr. McLean) Assuming that the Company is  
22 successful, or moderately successful, in this rate  
23 case, do you believe these credit support fees will  
24 still be necessary?

25 A Yes, I do.

1 COMMISSIONER CLARK: For how long will it  
2 continue to be necessary?

3 WITNESS VIERIMA: Credit support fees are  
4 typically a function of financial indicators that are  
5 used by lenders, such as interest coverages, cash flow,  
6 those types of things. And since the companies are in  
7 a severe financial situation right now, it will take a  
8 few years before those ratios meet, I think, the  
9 comfort level where creditors will be willing to lend  
10 at reasonable rates to Southern States Utilities  
11 without credit support.

12 COMMISSIONER CLARK: You need to put more  
13 equity in them?

14 WITNESS VIERIMA: I believe that will be the  
15 case, yes.

16 COMMISSIONER CLARK: Go ahead.

17 Q (By Mr. McLean) So, on the one hand, if  
18 Southern States were a stand-alone utility and they had  
19 to go into the capital markets to borrow, they would no  
20 doubt borrow higher if they couldn't offer the full  
21 faith and credit of Topeka, correct?

22 A I don't believe they could borrow at all  
23 right now if they didn't have credit support.

24 Q Okay. So I would like to know if the  
25 Company, either Topeka or Southern States, has examined



1 the notion of whether it is cheaper to obtain credit by  
2 means of a credit support fee on the one hand, or a  
3 higher price for money on the other hand.

4 A The position we're in right now, as I  
5 mentioned, is that I don't believe we could borrow at  
6 all, which makes that comparison somewhat moot.

7 The financial indicators for Southern States  
8 Utilities right now indicate what would be called a  
9 "noninvestment grade credit," which is very difficult  
10 for a lender to convince their lending committees to  
11 step into a noninvestment grade credit.

12 Q Okay. But that pretty much -- you're saying  
13 you all simply haven't done that study because you're  
14 convinced Southern States simply could not borrow money  
15 as a stand-alone utility, correct? As a stand-alone  
16 entity. (Pause)

17 A Would you repeat the question please?

18 Q Yeah. You all hadn't done a study to  
19 determine which is the cheaper way to go, i.e, higher  
20 price for money on the one hand or credit support fee  
21 on the other hand. The reason you haven't done the  
22 study is because you think it's totally unrealistic to  
23 expect that Southern States could borrow money in any  
24 capital market just now?

25 A We have made benchmark comparisons

1 internally. Right now market conditions would suggest  
 2 that a noninvestment grade credit would be borrowing at  
 3 250 to 400 basis points above comparable maturity,  
 4 comparable maturity treasury securities for senior  
 5 secured debt. And the rates that Topeka or SSU is  
 6 currently getting, much of its short-term debt funding  
 7 from Topeka Group, those rates are well below what that  
 8 would be in the open market.

9 Q Now, the reason that Southern States is in  
 10 dire financial straits, if that is true, is primarily  
 11 because the last rate case was denied; is that correct?

12 A That's a piece of the formula, yes. We're  
 13 also under heavy construction spending requirements,  
 14 which continually require increased sources of capital.

15 Q Pardon me just a moment. (Pause)

16 CHAIRMAN BEARD: Before you shift focus, I  
 17 think we want to shift our bodies for about 15 minutes.

18 (Brief recess.)

19 - - - - -

20 COMMISSIONER EASLEY: Are we ready to go back  
 21 on the record? All right.

22 Mr. McLean, I believe you were inquiring.

23 Q (By Mr. McLean) Mr. Vierima, referring back  
 24 to my first line of inquiry, Seaboard was mentioned in  
 25 this transaction, as well, wasn't it?

1 A Seaboard was a part of the transaction, yes.

2 Q Was Seaboard a utility?

3 A Yes, it was.

4 Q Was it regulated by the PSC?

5 A I don't believe so, no.

6 Q Okay. Now, how does Seaboard figure into the  
7 four corporations in which Topeka received common  
8 stock?

9 A Seaboard is a -- was a wholly-owned  
10 subsidiary of Deltona Utilities, Inc. (Pause)

11 Q Okay. Mr. Vierima, I've arranged for you to  
12 be handed a ten-page unnumbered exhibit. It has a lot  
13 of little print on the front of it.

14 Refer, if you would, to the first page and  
15 tell me if you know what it is.

16 MR. ARMSTRONG: Objection.

17 Commissioners, could I have some sort of  
18 identification of what these pages are from? Would it  
19 be something provided by the -- I'll just take  
20 counsel's representation if this was provided by the  
21 Company or prepared by somebody else?

22 MR. McLEAN: I don't know what the objection  
23 is. I asked the witness if he knew what it is.

24 MR. ARMSTRONG: I'm just asking if there's  
25 some identification of this thing. Otherwise, I'll

1 have to object to any questions on it.

2 COMMISSIONER EASLEY: Where is this from, Mr.  
3 McLean?

4 MR. McLEAN: I have no idea.

5 COMMISSIONER EASLEY: Did it just appear in  
6 the magic paper box or --

7 MR. McLEAN: I have the right to ask this  
8 witness if he knows what anything is. I don't know  
9 what it is, I don't know exactly where it came from,  
10 and I'd like to know if the witness knows. But I don't  
11 like admitting all those things that I don't know about  
12 before I ask this witness if he knows what it is.

13 What's the objection?

14 COMMISSIONER EASLEY: I'm going to allow the  
15 question. I'm not sure there was one. I think he was  
16 asking for information and then was going to raise an  
17 objection, depending upon your answer. But I think the  
18 quickest way is for you to ask the witness your  
19 question.

20 WITNESS VIERIMA: Would you restate the  
21 question, please?

22 Q (By Mr. McLean) Yes, sir.

23 Do you know what that first page of the  
24 instrument in front of you is?

25 A It appears to be a reconciliation of an

1 acquisition adjustment.

2 Q Can you tell by whom the reconciliation was  
3 prepared?

4 A No, I cannot.

5 Q Would you turn to page, unnumbered page --  
6 (Pause)

7 Would you turn to unnumbered Page 4?

8 A Yes.

9 Q And tell me whether it appears to address the  
10 same subject, namely, acquisition adjustments, that is  
11 mentioned in the SSU Services memo?

12 A Page 4 begins with Augustine order number?

13 COMMISSIONER EASLEY: I think you're talking  
14 about Page 5, Mr. McLean.

15 MR. McLEAN: I'm sorry. Page 5.

16 WITNESS VIERIMA: Repeat the question,  
17 please.

18 Q (By Mr. McLean) Can you tell whether the  
19 schedule to which you referred on Page 1 is associated  
20 in any way with the subject of the memo which comprises  
21 Page 5, and, for that matter, Page 6?

22 A They appear to be related, yes.

23 Q All right, sir. Now, if they are related,  
24 can we conclude from that that the first page was  
25 prepared by Southern States or one of its employees?

1           A     I can't verify that, no.

2                    COMMISSIONER EASLEY:  Isn't it kind of  
3 logical to assume, if you look at the bottom of that  
4 first page and it shows "Debit accounts payable Deltona  
5 Corp, and credit acquisition adjustment credit," that  
6 it's got to be at least Company-generated?

7                    WITNESS VIERIMA:  I haven't seen this exhibit  
8 before, so I really --

9                    COMMISSIONER EASLEY:  Okay.

10           Q     (By Mr. McLean)  Well, Mr. Vierima, would you  
11 turn, please, to unnumbered Page 7, which appears to be  
12 Southern States' response to an Office of Public  
13 Counsel's request on the third set of interrogatories?  
14 Do you see that?

15           A     Yes.

16           Q     Okay.  Now, if you turn to the second page of  
17 that memo, which appears to have been prepared by Mr.  
18 Ausman, it says, "OPC requested copies of  
19 preacquisition reports from the following Southern  
20 States acquisitions."  And after listing the number of  
21 systems, it says, "Acquisition reports are attached for  
22 all of the above except Crystal River.  We have been  
23 unable to locate any report," and so forth.  Does that  
24 appear to refer to the schedule in front?  (Pause)

25           A     I don't believe so.  The schedule on the

1 front appears to refer to the Deltona divisions,  
2 whereas the other systems listed are not associated  
3 with the Deltona acquisition.

4 Q I see. All right. With respect to the first  
5 page, then, you mentioned that that was the  
6 reconciliation of acquisition adjustments?

7 A That's what it appears to be, yes.

8 Q Do you believe it was prepared by someone  
9 other than the Company?

10 A I don't know.

11 Q You simply don't know who it's prepared by?

12 A That's correct.

13 Q Does it appear to be an accurate rendition of  
14 the reconciliation of the acquisition adjustment?

15 A Looking at the bottom right-hand corner, the  
16 net credit shown there --

17 Q Yes, sir.

18 A -- appears to be close to the acquisition  
19 adjustment that existed at the end of the conversion  
20 year.

21 Q Then it most assuredly deals with the same  
22 systems that we have been discussing earlier this  
23 morning, correct?

24 A Yes, it does.

25 Q Would you refer to the second page, if you

1 would, please? (Pause)

2 Would you tell us what it appears to be?

3 (Pause)

4 A Again, it appears to be an expansion of an  
5 analysis of the acquisition adjustment.

6 Q All right, sir. By "expansion," do you mean  
7 it furnishes additional information about the same  
8 subject matter?

9 A Yes, it appears to.

10 Q Okay. Would you refer to the second column  
11 there and tell, if you know, what the significance of  
12 the "forgiveness of debt to Deltona Corporation" column  
13 is?

14 A As I mentioned, as part of the settlement  
15 agreement, one of the items was the forgiveness of  
16 certain intercompany obligations, to my recollect.

17 Q Okay. And this would be a numerical  
18 rendition of what those debts were?

19 A It appears to be, yes.

20 Q Let's just choose Deltona, the second entry  
21 there, the 296,253.20. Can I tell by looking at this  
22 column -- can you tell by looking at this column -- to  
23 whom this money was owed and by whom? (Pause)

24 A It would appear to be money owed by Deltona  
25 Corporation to Deltona Utilities or to Deltona, the



1 Deltona Lakes Division of Deltona Utilities, Inc.

2 Q Does that appear to be -- let me ask the  
3 question differently.

4 With respect to the transactions and the  
5 forgiveness of debt to which you earlier referred in  
6 your testimony, does this appear to be an accurate  
7 rendition of the financial accounting for that  
8 transaction?

9 A I'd have to go back and look at the specific  
10 entries that were made.

11 COMMISSIONER EASLEY: Based on your first  
12 answer, go down to Marco Island under that same column,  
13 the 1.6 million shows as a credit. To whom would the  
14 1.6 million have flowed? Which way does that work in  
15 this one?

16 WITNESS VIERIMA: I believe that in that case  
17 Marco Island owed Deltona Corporation.

18 COMMISSIONER EASLEY: All right.

19 Q (By Mr. McLean) Mr. Vierima, if the  
20 Commission develops an interest in the specifics of  
21 this transaction that we discussed in my first line of  
22 questioning, can they rely on this document for the  
23 specifics, do you think?

24 A I don't know.

25 Q Well, I asked you about the \$296,000 figure

1 there and you said you'd have to go refer to something  
2 to know if it's accurate. To what would you refer?

3 A I'd have to go back to the accounting records  
4 for 1989 and see if any entries were made that  
5 resembled that.

6 Q All right, sir. Can you tell me whether the  
7 \$296,253.20 is an accurate number?

8 A No, I can't.

9 Q Is that because you don't want to go back or  
10 what? I don't understand. If you'd have to go back,  
11 please do so, is what I'm asking you to do.

12 Please tell me whether that number is an  
13 accurate number or not.

14 A Oh, you're requesting a late-filed?

15 Q No, sir. I want to ask you about all these  
16 numbers and whether they are accurate.

17 A I honestly don't know if those numbers are --

18 COMMISSIONER EASLEY: Is that information  
19 that you have available here?

20 WITNESS VIERIMA: No, it isn't.

21 Q (By Mr. McLean) Mr. Vierima, did the Company  
22 list you as the appropriate witness to inquire about  
23 acquisition adjustments?

24 A Yes.

25 Q All right, sir. Now, this document directly

1 addresses acquisition adjustments, doesn't it?

2 COMMISSIONER CLARK: If I understand it, the  
3 dilemma is he's not sure where this adjustment -- where  
4 this piece of paper was generated. And that's the  
5 concern you have; not that you can't provide the same  
6 sort of information.

7 WITNESS VIERIMA: my concern is that the  
8 transaction, as I mentioned earlier, was conducted on a  
9 closing on corporate stock. And these exhibits appear  
10 to make an attempt to allocate that purchase price to  
11 various components that I'd have to verify the  
12 allocation methodology and other things.

13 COMMISSIONER CLARK: Mr. McLean, do you have  
14 any idea as to where this came from?

15 MR. McLEAN: I think it came as a response to  
16 a discovery request. I think it came as a response of  
17 that discovery request that I mentioned on unnumbered  
18 Page 6, or whatever it was. I think the Company  
19 furnished it to us when we asked that. I can't say for  
20 sure, though.

21 MR. ARMSTRONG: Commissioner, just to point  
22 out to your attention on Page 7. This docket number  
23 that this discovery request was 900329. Mr. Vierima  
24 wasn't even a member of the Company at that time. He  
25 was with Topeka.

1           COMMISSIONER EASLEY: That may lead us to the  
2 root of the problem here.

3           MR. McLEAN: I think you remember in an  
4 earlier question I asked the witness was the best  
5 evidence that he could show us on how these things were  
6 apportioned. And I think this is probably the best  
7 evidence, and I think it was prepared by the Company.

8           COMMISSIONER EASLEY: Well, we're still in a  
9 little bit of a dilemma. He wasn't with the Company  
10 when this docket was done, and I don't know where that  
11 leaves us.

12          MR. McLEAN: Unless he can say whether the  
13 Company prepared the document. Apparently, he can't.

14          COMMISSIONER CLARK: Well --

15          MR. McLEAN: It seems reasonably likely to me  
16 that they did, but I don't think this witness prepared it.

17          COMMISSIONER CLARK: The question I have is,  
18 can we give him time to find out?

19          MR. McLEAN: I think so. Sure.

20          COMMISSIONER CLARK: I don't think he can do  
21 it sitting here.

22          MR. McLEAN: No. I'd like to know whether  
23 this document was prepared by the Company and for what  
24 purpose and by whom. And perhaps that would be the  
25 best evidence of how it should be allocated and perhaps

1 not; we'll see.

2 COMMISSIONER CLARK: Okay.

3 COMMISSIONER EASLEY: Since Ms. Kimball is  
4 coming up at some point, is this something that could  
5 be determined?

6 MR. ARMSTRONG: Commissioners, I will commit  
7 to have our people try and do this as soon as possible.  
8 I will commit to that. But there might be another  
9 alternative; and if you have a witness that  
10 participated in that case that could tell us, or you  
11 guys can look at your interrogatory responses in the  
12 case.

13 MR. McLEAN: No. And, too, I don't accept --

14 MR. ARMSTRONG: We'll do it if we can.

15 MR. McLEAN: -- the distinction between the  
16 two cases.

17 We're looking to figure out how much money  
18 goes to each system, and this document might help us.

19 COMMISSIONER CLARK: I think all he's saying  
20 is if you can help him by identifying the discovery  
21 request or somehow give him a lead that allows them to  
22 trace it, that's all he's asking.

23 MR. McLEAN: I think we can accomplish that  
24 off the record.

25 COMMISSIONER EASLEY: Well, that's what I was

1 asking is, maybe during the lunch hour you guys could  
2 communicate with each other. Since they were not  
3 involved in the last case, this witness was not  
4 involved in the last case, I mean, we may be doing a  
5 great key here that doesn't need to be quite this  
6 complicated.

7 MR. McLEAN: Okay. Perhaps we should -- I  
8 never did ask you to mark it simply for identification.

9 COMMISSIONER EASLEY: All right. For  
10 identification, it will be marked as Exhibit 80; and  
11 for this purpose, short title will be "Acquisition  
12 Adjustment Transactions."

13 (Exhibit No. 80 marked for identification.)

14 MR. McLEAN: Yes, ma'am. I heard you mention  
15 Ms. Kimball. However, Mr. Vierima is the acquisition  
16 adjustment.

17 COMMISSIONER EASLEY: I understand that, but  
18 on the production of documents request, Ms. Kimball's  
19 name does appear.

20 Q (By Mr. McLean) Mr. Vierima, referring one  
21 last time perhaps to the earlier line of questioning:  
22 You mentioned in exchange for the \$7 million Topeka  
23 received \$5.8 million worth of assets, and I think you  
24 said that was primarily land?

25 A I believe so, yes.

1 Q Now, do you know if that land was used in any  
2 way for production of water and sewer services?

3 A I believe it was a combination of land held for  
4 future use and land currently used for production of.

5 Q Okay. And referring a bit more specifically,  
6 you don't know whether -- or do you know whether any  
7 portion of that land, the \$5.8 million worth of land,  
8 was included by the Commission as used and useful?

9 A No, I don't.

10 Q -- in the Utility case, sir?

11 A No, I don't.

12 Q Thank you. Do you know if that land is in  
13 rate base in this instant case?

14 A No, I don't.

15 Q Thank you, sir. Okay. Let's change focus  
16 entirely.

17 During the test year, Minnesota Power and  
18 Light and Topeka charged the Company approximately  
19 \$350,000 for services rendered. Would you accept that  
20 number subject to check?

21 A That sounds accurate, yes.

22 Q Can you say what portion of that was related  
23 to travel between Minnesota Power and Light and  
24 Florida?

25 A No.

1 Q Can you furnish us with a late-filed exhibit  
2 which accomplishes that?

3 A I believe we could, yes.

4 Q Okay. Now, precisely what I'm looking for is  
5 travel expenses incurred by employees of Minnesota  
6 Power and Light or by Topeka traveling to Florida on  
7 business associated with Southern States Utilities.

8 A During the test year?

9 Q Yes, sir, please, during the test year.

10 And as a separate entry, probably, on that  
11 same late-filed exhibit, we'd also like to know about  
12 travel expenses incurred by employees of Topeka or  
13 Southern States in traveling to and from Minnesota, if  
14 you will.

15 Do you understand the intent or what's to be  
16 included?

17 A The second part is Southern States Utilities  
18 employees traveling back and forth from Minnesota  
19 Power?

20 Q Yes, sir. We want to focus a little bit on  
21 the travel that takes place between Minnesota and  
22 Florida by any employees, and we want to address the  
23 necessity of that travel.

24 A I understand.

25 Q And we have to quantify it.



1 A I understand.

2 Q Now, these travel costs are obviously driven,  
3 to some extent, by the distance between --

4 CHAIRMAN BEARD: Did you want to number this  
5 late-filed exhibit?

6 MR. McLEAN: I'm sorry. Sure.

7 CHAIRMAN BEARD: We don't have to if you  
8 don't want to.

9 MR. McLEAN: It would be easier to find if we  
10 do, yes.

11 CHAIRMAN BEARD: Okay. How about 81?

12 MR. McLEAN: Sounds great.

13 CHAIRMAN BEARD: "Travel expenses to and from  
14 Minnesota"?

15 MR. McLEAN: Yes, sir.

16 (Late-Filed Exhibit No. 81 identified.)

17 Q (By Mr. McLean) Now, I think it's obvious  
18 that the amount of that expense is driven somewhat by  
19 the distance between the the situs of SSU, which is  
20 primarily Apopka, and situs of Minnesota Power and  
21 Light, I think, which is primarily Duluth, Minnesota.  
22 Is that correct?

23 A Yes, as well as the air fares in effect at  
24 the time.

25 Q Of course. Now, can you provide --

1 obviously, if Minnesota Power and Light, if their  
2 corporate offices were located in Apopka as well, those  
3 travel expenses would be considerably less, correct?

4           That would be an odd place for the  
5 headquarters to be; but, nonetheless, if it were in  
6 Apopka, wouldn't the travel expenses be considerably  
7 less? When it's necessary, for example, for you to  
8 come down to Minnesota, you could just come over from  
9 Apopka, right?

10           A     If Minnesota Power and Light were  
11 headquartered in Apopka, there probably would be no  
12 travel expenses.

13           Q     Substantially reduced.

14           CHAIRMAN BEARD: Kind of hard to land a  
15 plane, though.

16           MR. McLEAN: They could just have the office  
17 in the plane.

18           Q     (By Mr. McLean) And I don't want to be  
19 absurd. But, obviously, if Minnesota Power and Light  
20 office were, you know, in London, they would be  
21 considerably more, presumably, if the fares were higher  
22 and so forth. So, what I'm trying to get at is there  
23 is an increment of costs borne by Southern States'  
24 customers which is occasioned by the distance between  
25 Apopka and Duluth. Pretty much what it boils down to,

1 isn't it?

2 A Yes, there is.

3 Q Okay. (Pause) So if the corporate  
4 headquarter of Minnesota Power and Light Company were  
5 in Apopka, then when officials had to travel to  
6 Minnesota for the business of that company, then their  
7 customers, under current theory, anyway, their  
8 customers would pay for that rather than Florida  
9 customers, right?

10 A If it were business related to the activities  
11 of Minnesota Power and Light affiliates outside of  
12 Florida, that's correct.

13 Q Okay. And Southern States' customers would  
14 obviously be relieved of the present burden of paying  
15 for the travel to and from Minnesota, correct?

16 A If the travel was associated with activities  
17 not related to Southern States Utilities.

18 Q Okay. Let's change focus again.

19 And refer, if you will, please, to Exhibit  
20 No. 76.

21 A That's Document Request No. 81.

22 Q Analyzing costs from the parent and so forth  
23 -- allocated from the parent to Southern States. Is  
24 that a fair summary of what it says?

25 A The request reads "Provide a copy of all

1 bills rendered in the Topeka Group to the Company for  
2 the years 1990, 1991 and 1992 to date."

3 Q All right, sir. I want to make sure you have  
4 No. 76. There may be some confusion in how they are  
5 numbered. This one should say "Document Request No. 52."

6 A Okay. I have it.

7 Q Okay. Basically, the spirit of that  
8 particular request is for you to provide documents  
9 which show allocations from the parent to Southern  
10 States, right?

11 A The request asks for documents discussing and  
12 analyzing costs allocated from the parent or any  
13 affiliate for the years '90 and '91.

14 Q All right, sir, and the Company's response to  
15 his Appendix DR 52-A, which lists the number of  
16 expenses and 52-B as well, correct?

17 A 52-B is a memorandum from Minnesota Power.  
18 52-A is a schedule showing charges for various types of  
19 activities.

20 Q Okay. The letter says "All actual charges  
21 are for actual services rendered, including time, labor  
22 and so forth." Is that correct?

23 A The letter reads, "Minnesota Power has  
24 administrative service agreements with all of their  
25 subsidiaries, including Topeka. These agreements

1 provide for the furnishing of, and charging for,  
2 administrative and general services. The agreement  
3 between MP and Topeka indicates that charges billed and  
4 paid shall be actual costs for labor, transportation,  
5 employee expenses, materials and supplies, building  
6 space rental, telephone service and other expenses."

7 Q All right, sir. Look to Exhibit No. 77;  
8 that's the one we called the D&O Liability Insurance  
9 Premium. Now, there appears to be part of the premium,  
10 at least, allocated from Topeka to SSU services, is  
11 that correct?

12 COMMISSIONER CLARK: You're on Exhibit 77?

13 MR. McLEAN: Yes, ma'am, for the moment

14 COMMISSIONER CLARK: Document Request No. 81?

15 MR. McLEAN: Correct.

16 COMMISSIONER CLARK: Okay. What page?

17 WITNESS VIERIMA: Page 2?

18 MR. McLEAN: Yes, sir.

19 COMMISSIONER CLARK: What was the question  
20 again?

21 MR. McLEAN: It appears that my question is:  
22 Is there some D&O liability insurance premium allocated  
23 from Topeka Group to SSU services, Southern States.

24 A There is a charge on this invoice for  
25 coverage provided to SSU management for directors and

1 officers insurance, yes.

2 Q All right, sir. Now refer back to the cover  
3 page of Exhibit No. 76, if you will. Read with me, if  
4 you will, in the response down at the bottom of the  
5 page. It says "There are no allocated charges from  
6 Minnesota Power and Light or Topeka Group to the  
7 Company."

8 A That's correct.

9 Q Okay. Now, why is the allocation, which is  
10 reflected in Exhibit No. 77, that appears to be -- why  
11 the apparent discrepancy?

12 A I believe it has to do with the definition of  
13 "allocation." In this case, for directors and  
14 officers' insurance, the coverage is provided by the  
15 Chub Group of insurance companies for the total  
16 affiliated group of Minnesota Power. They do not  
17 distinguish in that policy the separate entities unless  
18 we specifically ask them to do that. They price the  
19 policy for the entire group of affiliated companies.  
20 Therefore, some methodology has to be determined for  
21 charging an appropriate portion of the insurance  
22 premium to each one of the affiliated entities. In  
23 this case an asset allocation was used, but it  
24 represents a direct charge for the D&O coverage  
25 provided to the executives and management of Southern

1 States Utilities.

2 Q Okay. Now, I think you agreed with me that  
3 Document Request 76 is an attempt to get the Company to  
4 disclose all documents which show any allocation from  
5 Topeka or Minnesota Power and Light to Southern States.  
6 You do still agree with that?

7 A Yes.

8 Q Then are you saying that the allocation  
9 reflected in Exhibit No. 77 is not included within  
10 those allocations that we asked for?

11 A The charge for the insurance, I believe, is  
12 included in there.

13 Q Exactly. And isn't it an allocated expense  
14 from Topeka Group to Southern States?

15 A It is an assessment for direct insurance  
16 coverage.

17 Q It's an assessment by whom?

18 A By Minnesota Power to its affiliates.

19 Q Okay. So Minnesota Power gets a bill from  
20 the insurance company, and instead of allocating a  
21 portion of that bill to each subsidiary, they assess  
22 it. And it's your testimony that that's the reason  
23 that it wasn't included in response to Document Request  
24 No. 76?

25 A Some formula has to be developed to assign

1 the costs associated with director and officer  
2 coverage. And in this case, if it's viewed as an  
3 allocation, you know, I guess that's the way it's  
4 represented. But it represents direct benefits  
5 received by Southern States Utilities of \$22,000 worth  
6 of director and officer coverage that would otherwise  
7 have to be acquired outside.

8 Q You're not telling the Commissioners that  
9 this is not an allocation, are you? (Pause)

10 A Again, I believe it's a terminology question.  
11 It is an allocation based on assets.

12 Q It's also an allocation based on Page 5,  
13 isn't it?

14 MR. ARMSTRONG: Commissioners, before we go  
15 further, could we just have -- for clarification  
16 purposes, I think Mr. McLean indicated that Exhibit 76  
17 the Company did not disclose the D&O liability  
18 coverage, and I think that is disclosed on Page 3.

19 It's called Appendix DR 52-A, Page 1 of 5.  
20 It's numbered by the Office of the Public Counsel as  
21 Page 3, and a D&O cost is indicated. So it was  
22 disclosed by the Company. I think what we're talking  
23 about is a question of terminology here. If they'd  
24 like us to stipulate that that is a charge and that was  
25 identified here, we would be willing to do that.



1           MR. McLEAN: No. I don't think we agree with  
2 any of those representations at all. We asked for  
3 allocations. To give us some number somewhere isn't to  
4 disclose what the allocation was. Our whole intent is  
5 to question the means by which it was allocated, that's  
6 why we asked that question. That's why we sought that  
7 in discovery. To give us an obscure number somewhere  
8 in a document doesn't really answer that. We ask for  
9 allocations, and this is one we didn't get.

10           CHAIRMAN BEARD: Okay.

11           Q     (By Mr. McLean) Page 5 refers to an  
12 allocation, doesn't it, sir?

13           A     That's the schedule of directors and officers  
14 liability insurance allocation.

15           Q     Yes, sir. And then if you look at the  
16 heading on Page 7, "Topeka Excess Liability  
17 Allocations."

18           A     Yes.

19           Q     Okay. Looking at the insurance premium for  
20 the moment, and I want to look at the means by which  
21 this was allocated. There was one liability insurance  
22 -- I mean one liability insurance premium from the Chub  
23 Group to cover the various officers and directors of  
24 Minnesota Power and Light, Topeka Group, Southern  
25 States and anyone else?

1           A     Yes. All of the directors and officers of  
2 the Minnesota Power and Light group of affiliated  
3 companies are covered under the same policy.

4           Q     Okay. Now, it looks to me, on Page 2, that  
5 \$22,000 was allocated to Southern States? Is that  
6 correct?

7           A     That's correct.

8           Q     Now, what allocation formula did you all use  
9 to come up with that number?

10          A     I believe it was the allocation used on Page  
11 5 that shows percent of total assets.

12          Q     Okay. What is the rationale for using the  
13 percentage of assets? Does that relate in any way to  
14 the potential liability of the directors or officers of  
15 the firm? (Pause)

16          A     Director and officer liability is meant to  
17 cover such things as board liability for participation  
18 on corporate boards, as well as nonprofit organizations.  
19 Any employee claims, commercial crimes, fiduciary  
20 liability for management of benefit plans, and the  
21 selection of the asset basis for assessing SSU's portion  
22 of the director and officer coverage was based on  
23 simplicity as well as the fact that other indicators, such  
24 as revenues, number of personnel, et cetera, perhaps are  
25 no better or worse than an asset allocation.

1 Q Yeah, but the asset allocation, any kind of  
2 allocation -- strike all of that.

3 What should drive the allocation methodology,  
4 presumably, is the amount of risk to officer and  
5 director malfeasance or nonfeasance, shouldn't it?

6 A The allocation should closely track the risks  
7 that are being covered, yes.

8 Q Sure. And the Company apparently believes  
9 that the risks, the relative risks, are relative to the  
10 relative asset base, correct?

11 A That's correct.

12 Q Now, looking at the last page --

13 COMMISSIONER CLARK: Which one?

14 MR. McLEAN: The last page of the exhibit,  
15 which I believe is --

16 COMMISSIONER CLARK: Which exhibit? What 77?

17 MR. McLEAN: Ma'am?

18 COMMISSIONER CLARK: Which one? 76 or 77?

19 MR. McLEAN: Good point. 77.

20 COMMISSIONER CLARK: Okay.

21 Q (By Mr. McLean) There is what appears to be  
22 there a comparison between the '90-91 year and the '91  
23 to '92 year. Okay, I'm sorry. Let's square one thing  
24 away.

25 Page 7 deals with excess liability

1 allocation, correct?

2 A Yes.

3 Q Now, that's a different kind of insurance  
4 that we discussed before. Can you tell us what risks  
5 are being covered here?

6 A Excess liability insurance covers the Company  
7 for bodily injury or property damage to third parties. It  
8 also includes coverage for sudden and gradual pollution,  
9 including any claims made under the superfund laws, and  
10 such items as asbestos clean up, et cetera.

11 Q Okay. And there is one underwriter for the  
12 whole Minnesota Power and Light family of companies?

13 A Actually there are two. The total  
14 comprehensive coverage is provided by Aegis and EIM,  
15 which are underwriters of pieces of the total excess  
16 liability coverage.

17 Q I see. Do they send you -- you pay them  
18 jointly one premium?

19 A That's correct.

20 Q Okay.

21 A Minnesota Power pays them one premium.

22 Q I understand. Now, this, too, isn't it an  
23 allocation by Minnesota Power and Light down to  
24 Southern States?

25 A That's correct.

1 Q And this allocation also was accomplished on  
2 an asset, or was performed on an asset base, wasn't it.

3 A That's correct.

4 Q The premium allocations, as referenced on the  
5 7th page, I think I just asked you if they were based  
6 on an asset base.

7 A That's correct.

8 Q And you agreed. Can you explain the  
9 paragraph that begins with "Premium allocations this  
10 year were based on", there are three items listed  
11 there.

12 A The first item says, "Discussions with MP's  
13 insurance administrator and Offenhauser and Company,"  
14 who I believe was the agent at that point in time, and  
15 that allocation is predominantly based on assets,  
16 according to the Minnesota Power Insurance  
17 Administration.

18 Q All right, sir.

19 A That's a judgment call on the part of the  
20 agent as well as Minnesota Power's Insurance  
21 Administrator. They don't typically make that  
22 allocation, but we request that they do some sort of  
23 review.

24 Q Is this negotiated in any way by Southern  
25 States, vis-a-vis Minnesota Power and Light?

1           A       Typically the negotiations occur between SSU,  
2 Topeka Group, Minnesota Power, and the underwriters.  
3 The primary negotiations are between the underwriters  
4 and Minnesota Power on the overall policy.

5           Q       Of course, that negotiates the premium and so  
6 forth, but I'm wondering about the allocation of  
7 whether Southern States is represented in any way in  
8 the allocation.

9           A       Southern States is typically sent a proposed  
10 allocation and has the opportunity to either accept or  
11 reject the allocation that's suggested.

12          Q       Okay. Look to Page 4, if you would please, of  
13 Exhibit No. 77. If I read the handwriting there, it  
14 says "What do assets have to do with allocation,  
15 directors and officers, liability insurance? Could we  
16 come up with a way to get Southern States a better  
17 deal?" Do you know who wrote that?

18          A       No, I do not.

19                   COMMISSIONER CLARK: Did you write it,  
20 Mr. McLean?

21                   MR. McLEAN: No. I don't even know what  
22 those words mean.

23                   No, ma'am. It appears for our exhibit as it  
24 was received from the Company.

25                   WITNESS VIERIMA: Our benchmark on these is

1 typically what SSU could obtain for similar coverage on  
2 its own relative to the coverage that it gets from  
3 Minnesota Power.

4 In the case of the excess liability, SSU  
5 receives approximately \$64 million worth of excess  
6 liability insurance coverage from the Minnesota Power  
7 group of companies. We have separately priced \$20 million  
8 worth of coverage for SSU stand-alone. We were charged  
9 87,000 for \$64 million, and the estimate we got for \$20  
10 million for a stand-alone was 124,000. So we believe  
11 there's a substantial savings there to SSU customers.

12 Q Okay. I notice on Page 7, if you will refer  
13 to that again, on the excess liability allocation, it  
14 appears to me that '90 to '91, the premium for SSU,  
15 went from -- was 39,000 and then in the following year  
16 it was 87,000, while Topeka remained the same.

17 Do you know why Topeka didn't go up the same  
18 way Southern States went up?

19 A Topeka Group is essentially a holding company,  
20 and it's the one exception to the asset allocation formula  
21 where it's an assigned \$1,000 as its risk because the  
22 assets of Topeka Group are primarily equity ownership in  
23 its subsidiaries and cash reserves. There are very few  
24 physical assets associated with Topeka Group, the holding  
25 company.

1 Q Okay. So whatever ratio or whatever  
2 allocation seemed appropriate, in '90 to '91, why was  
3 that ratio not followed in '91 to '92?

4 A New subsidiaries were added to the formula.

5 Q Well, now, that's obviously true. Lehigh  
6 adds in there, but I'm looking specifically at SSU  
7 whose premium more than doubled, aside from anything to  
8 do with Lehigh or other subsidiaries, and Topeka  
9 remained exactly the same.

10 A Again, Topeka is -- the risk associated with  
11 Topeka is the one exception to the asset rule since  
12 Topeka does not have any assets that would be subject  
13 to superfund liabilities. It's primarily a holding  
14 company with financial assets. It's assigned just a  
15 flat risk of \$1,000.

16 Q Did Southern States provide any work papers  
17 with respect to any of these allocations, do you know?

18 A I believe they may have been the subject of  
19 interrogatory, subject to check.

20 Q Obviously, the work papers -- let me ask you,  
21 would the work papers that support these allocations we  
22 have been talking about, should they have been  
23 provided, if requested?

24 A Yes. If the work papers existed and they  
25 were requested, they should have been provided.



1 MR. McLEAN: All right, sir. May I have the  
2 exhibit marked for identification, Mr. Chairman?

3 CHAIRMAN BEARD: Yes. Are we fixing to  
4 change subjects?

5 MR. McLEAN: Not right away.

6 CHAIRMAN BEARD: Well, I'm looking for a  
7 point to break, I guess is what I'm asking you.

8 MR. McLEAN: I'd rather ask one or two more  
9 questions, and then we can break.

10 CHAIRMAN BEARD: That will be great. This  
11 will be Exhibit No. 82.

12 Q (By Mr. McLean) Would you familiarize  
13 yourself with the document you were just handed,  
14 please, sir.

15 CHAIRMAN BEARD: Before you do, let me  
16 identify that as the "OPC Request 125." Now, go ahead.

17 (Exhibit No. 82 marked for identification.)

18 CHAIRMAN BEARD: Correction that's 125 and 126.

19 Q (By Mr. McLean) Mr. Vierima, would you read  
20 the response that OPC received from the Company to this  
21 question?

22 A To Interrogatory 125?

23 Q Yes, sir.

24 A "There are no allocations from parent  
25 companies to the company."

1 Q Mr. Vierima, does that appear to be contrary  
2 to what you know now having discussed the previous  
3 couple of exhibits?

4 A Again, I believe that the issue deals with --  
5 our interpretation of allocations has always been: Is  
6 the Company allocating any overheads down to the  
7 subsidiaries from the parent company? That's been our  
8 interpretation of the allocation risk that SSU would  
9 have with its relationship with parent companies. The  
10 formula used for insurance expenses has been labeled as  
11 an allocation, and if the Commission views that as  
12 contrary to the representations here, then, you know,  
13 then it would be viewed as an allocation and this  
14 response would be incorrect.

15 Q All right, sir. Refer to the next page as  
16 well. There is a question there, I believe. It says,  
17 "Explain how joint and common costs from Minnesota  
18 Power and Light Company are charged to the company."  
19 Do you agree with that reading of the question?

20 A Yes.

21 Q And down below it says, "Minnesota Power and  
22 Topeka do not share joint and common costs with  
23 Southern States." Now, the question recurs. Do you  
24 think that's an accurate statement after having  
25 examined the previous couple of exhibits?

1           A     The Company could interpret joint and common  
2 costs as being costs that are incurred for both the  
3 benefit of the parent and the subsidiary. In the case  
4 of the insurance, again, we view that as direct  
5 coverage that the subsidiary is receiving. But, again,  
6 it would be subject to interpretation.

7           Q     Of course, you get one bill from the  
8 insurance company.

9           A     Minnesota Power does, yes.

10          Q     Exactly. And then you determine which, if  
11 any, of your subsidiaries are going to share in that  
12 insurance bill and coverage, right?

13          A     That's correct. And we believe the benchmark  
14 should be what SSU could achieve on its own for similar  
15 coverage.

16          Q     Of course, but that's a different point.  
17 What I want to know is don't you think that's a joint  
18 and common cost?

19          A     It could be interpreted as such, yes.

20                COMMISSIONER CLARK: Well, let me ask it a  
21 bit differently.

22                    It seems to me that you have direct costs or  
23 allocated costs. What else is there? They have to  
24 fall in one of those categories.

25                    WITNESS VIERIMA: That's correct.

1           COMMISSIONER CLARK: And to the extent you  
2 don't have an actual cost that is labeled the cost for  
3 insurance for SSU, you have to allocate it. And I  
4 guess my question is: Are there any other costs such as  
5 the insurance costs, that are somehow allocated that  
6 have not been disclosed?

7           A     Not to my knowledge.

8           COMMISSIONER CLARK: Okay.

9           Q     (By Mr. McLean) Now, referring back to Exhibit  
10 82, really the Citizens requested their supporting work  
11 papers. What the answer really says is well, since there  
12 were no allocations there are no work papers. Isn't that  
13 a fair interpretation of what it says?

14          A     That's correct. I believe the definition of  
15 allocation was --

16          Q     Is at issue.

17          A     -- is at issue.

18          Q     Now, this record, you didn't prepare any of  
19 these responses, right? We're not dealing with your  
20 interpretation necessarily, are we?

21          A     That's correct.

22          Q     Okay. Let's change focus a little bit. I  
23 want to ask you about the --

24                CHAIRMAN BEARD: Are we going to change focus  
25 before or after the break?

1 MR. McLEAN: Oh, I forgot.

2 CHAIRMAN BEARD: We're going to take an hour  
3 for lunch. We will not take an hour for dinner,  
4 supper, correction. So we'll be back here at 12:30.  
5 This evening we will take just a short break for the  
6 evening meal, and we'll dine in together and work late.

7 (Lunch recess taken at 11:30 a.m.)

8 (Transcript follows in sequence in Volume VIII.)

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