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December 9, 1992

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. 920199-WS

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Brief.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean
Associate Public Counsel

Enclosure

ACK
AFA 3
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BEFORE THE FLORIDA PUBLIC SERVICE Commission

In re: Application for rate increase in Brevard, Charlotte/ Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by SOUTHERN STATES UTILITIES, INC.; Collier County by MARCO SHORES UTILITIES (Deltona); Hernando County by SPRING HILL UTILITIES (Deltona); and Volusia County by DELTONA LAKES UTILITIES (Deltona)	DOCKET NO. 920199-WS FILED: December 9, 1992

CITIZEN'S BRIEF

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ISSUES

NOTE: An asterisk (*) immediately following OPC: is meant to notice the reader that the material which follows is an addition to the OPC position taken in in the prehearing order.

QUALITY OF SERVICE

ISSUES APPLYING TO MORE THAN ONE SYSTEM

ISSUE 1: Which systems have an unsatisfactory quality of service?

OPC: No position.

ISSUE 2: What adjustments should be made and what corrective action should the Commission require for those systems that are not currently meeting Department of Environmental Regulation standards?

OPC: The rate increase, if granted, should be held in abeyance for those water systems which are not meeting water quality standards.

ISSUE 3: Should a margin reserve be included in the calculations of used and useful plant?

OPC: No. A margin reserve should not be included in the calculations of used and useful plant. The capacity associated with margin reserve should not be paid for by present customers.

No. The Citizens take no issue with the engineering requirement which suggests that a margin of reserve must be maintained to protect existing customers against a deterioration of service occasioned by the addition of customers to the system. Any prudently operated utility should maintain margins of capacity for the benefit of future customers. The issue of " "margin reserve" as addressed in this case and in many others before the Commission is, however, a question of who will pay the carrying charges on the increment of plant which is maintained by the utility for the arrival of new customers. Because the arrival of new customers is of utterly no benefit to existing customers, it is illogical and unfair to require existing customers to pay the carrying charges on the increment of plant which is necessitated by the likely arrival of new customers.

Chapter 367 authorizes a fair return to investors on property used and useful in the public service. That increment of plant known as margin reserve which is awaiting the arrival of new customers is not used and useful to present customers; rates charged to present customers should not include margin reserve.

ISSUE 4: What is the appropriate method for calculating margin reserve?

OPC:* Citizen's disagree with including a margin reserve in the calculation of used and useful. (See Issue 3.) Nevertheless, if the Commission grants a margin reserve, OPC's approach is superior to the one proposed by the

Company. The Commission should reject the Company's method and adopt the one proposed by OPC witness Dismukes. (Tr. 1892.)

OPC witness Dismukes examined in detail the Company's use of the 5-year historical growth in ERCs for use in projecting reserve margin. Ms. Dismukes concluded that in several instances the historic average growth rate did not appear to be reflective of the growth that would occur during the margin reserve period. (Tr. 1891-92.) In many instances the historic growth rates showed a declining trend. (Exhibit 127, Schedule 4) In these instances, in would absurd to use historic growth figures that include abnormally high levels of customer growth that are not expected to continue into the future. The Company's proposal to continue with the use of a 5-year historic growth rate, regardless of the trend for the future, would, in most instances, produce an excessive margin reserve and allow the Company to overearn.

To solve this problem, OPC witness Dismukes proposed relying upon the Company's actual projections for ERCs for purposes of developing margin reserve. (Tr. 1893.) Not surprisingly, the Company's projections[1] showed in most instances that the recent declining growth rate was expected to continue into the future. (Exhibit 127, Schedule 4.)

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[1] OPC notes that these projections were not developed specifically for the rate case, but were apparently credible enough to present to the Company's board of directors.

The data relied upon by Ms. Dismukes were projections provided by the Company in response to OPC's Interrogatory 210. Mr. Hartman explained in his rebuttal testimony that the source of this information was report prepared by the Engineering Department at SSU in March of 1992 to plan for capital improvements in the next 5 years. (Tr. 1405.) Certainly, the Company's projections of ERC growth used for purposes of planning capital improvements is a reliable source of information. In fact this data is more credible than the often biased historical growth rate used by the Company.

Problems with the Company's use of the historical growth rate is also addressed in Staff witness Shafer's testimony when he advocated the use of the linear regression approach to margin reserve. "The linear regression can more accurately quantify a relationship between time and growth and would therefore more reliably reflect positive or negative trends in growth than would simple averaging." (Tr. 1164.) There is no evidence in the record for the Commission to use the regression analysis for projecting ERCs and determining margin reserve. Nonetheless, there is substantial evidence to use the projected ERCs recommended by OPC. Exhibit A attached to this brief shows the used and useful percentages with margin reserve incorporating the recommendations of OPC witness Dismukes.

One last point. In his rebuttal testimony Mr. Hartman alleged, albeit incorrectly, that Ms. Dismukes' approach to calculating margin reserve was one-sided because she

only examined 30 out of 90 water systems and 22 out of 37 wastewater systems. (Tr. 1407.) Evidently, Mr. Hartman failed to examine the number of systems for which the Company was requesting a margin reserve. A review of the Company's F Schedules in the MFRs, clearly demonstrates that SSU only asked for margin reserve for 30 water systems and 22 wastewater systems. Exhibit 127, Schedule 4 (Ms. Dismukes exhibit) compared to the MFRs demonstrates without a doubt that Ms. Dismukes examined every single system for which the Company requested a margin reserve. Consequently, Mr. Hartman's potshots at Ms. Dismukes' analysis should be viewed as nothing more than a smoke screen to hide the failures of the Company's own analysis.

ISSUE 5: What is the appropriate method for calculating used-and-useful plant?

OPC:* The Company's assumption that its distribution and collection systems are 100% used and useful due to its economies of scale should be rejected. The Company has provided no evidence even attempting to substantiate its argument. Moreover, any economy of scale potentially available to existing customers is of no benefit to existing customers until, and if, new customers connect to the system. The Commission should continue with past precedent and use lots served versus lots available for determining the percentage of the Company's distribution and collection system that is used and useful.

Fill - in lots: SSU introduces a theory to enlargen used and useful percentages based upon its notion that the measure of investment used and useful ought to include any investment it makes in providing service to a given neighborhood where the distribution/collection system is sized to serve the area as if built out. Where the area is less than built out, they say, their investment does not lessen, thus neither should their used and useful. Astonishingly enough, this necessarily leads to the conclusion that used and useful will not change even though there may be gross changes in the number of customers served.

ISSUE 6: For those systems where a margin reserve is included in the used and useful calculation, should CIAC be imputed as an offsetting measure?

OPC:* Yes. If the Commission grants the Company a margin reserve, CIAC should be imputed on this margin reserve.

Public Counsel does not agree with allowing a margin reserve in the used and useful calculation because to do so allows the utility to recover a return on non-used and useful investment from current ratepayers. The added incentive of a margin reserve is unnecessary. When a utility applies for and receives a "franchise" to service an area, the utility voluntarily assumes the "duty" of maintaining continuity of service to its customers.

A utility has many other means to recover non-used and useful plant that does not unfairly discriminate against

the current ratepayer like a margin reserve does. Some examples are AFPI, developer agreements, advances for construction, and AFUDC.

An allowance for funds prudently invested (AFPI) allows the utility to properly recover its carrying costs from future ratepayers. Developer agreements are negotiated to ensure that the utility is reimbursed for capacity held for future use. Advances for construction and/or prepaid CIAC can be collected from developers or future customers for the purpose of expanding utility plant to accommodate changing customer demand or for projects that will benefit specific customers. Yet another method of recovery of carrying charges on non-used and useful property while under construction is the allowance for funds used during construction (AFUDC).

Although Public Counsel considers inclusion of a margin reserve improper for ratemaking purposes, if one is allowed by the Commission then, at the very least, the CIAC associated with the margin reserve should be imputed as an offset to the investment included in the margin reserve. This approach still leaves the current customer paying for a portion of non-used and useful plant because revenues that will be generated by the future customers included in the margin reserve are not recognized.

ISSUE 7: What is the appropriate method for allocating general plant, and are any adjustments necessary?

OPC:* General plant should be allocated using a weighted allocation factor consisting of 50% ERCs and 50% direct labor. OPC was unable to develop an adjustment due to discovery difficulties. (Tr. 1880-82.) See Issue 44 for a detailed discussion of this issue.

ISSUE 8: Is an adjustment necessary to allocate a portion of the Company's general plant to its acquisition efforts?

OPC:* Yes. The Company's general plant should be reduced by $241,407. The associated accumulated depreciation should be reduced by $75,922. (Tr.1884.) (See Issue 45 for a detailed discussion of this issue.)

ISSUE 9: Has the Company properly allocated general plant common costs to its gas merchandising and jobbing operations?

OPC:* No, the Company has not properly allocated general plant common costs to its gas merchandizing and jobbing operations.

According to the testimony of Mr. Ludsen, the direct costs related to gas merchandising and jobbing are charged below the line for ratemaking purposes. (Tr. 737.) In contrast, the direct costs related to the LP gas business is charged above the line for ratemaking purposes. Given the different accounting treatment for the LP gas business and gas merchandising and jobbing business one must assume that the Company sees a distinction between the two types of operations.

When asked if the Company allocated any A&G costs to the gas merchandising and jobbing operations, Mr. Ludsen responded:

> In a sense we do, yes, because the gas business is a separate business unit, and the gas merchandising business is an activity within the gas business. We allocate costs based upon number of customer to the gas business. So they are getting allocated a portion of those costs. (Tr. 737.)

Mr. Ludsen's argument is analogous to saying that if a customer takes water and wastewater service from the Company that customer should only be counted as one customer[2]. The Company's merchandising and jobbing business performs a function separate and distinct from the LP gas division. Despite this, the Company failed to allocated any A&G expenses to this effort. OPC believes that A&G expenses should be allocated to this effort.

ISSUE 10: Should the provision for general plant be increased to reflect omission of common plant acquired in the Lehigh acquisition?

OPC:* No. Gas plant should not be allocated to the water and wastewater operations.

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[2] For cost allocation purposes, the Company however, treats water and wastewater customers separately. If one customer receives both services it is counted as two customers for cost allocation purposes.

The Company's cost allocation process is totally flawed and should be rejected by the Commission. Wherever possible, costs that can be directly assigned should be directly charged to the system or operations in question. (Tr. 1885.) The Company's failure to include Lehigh gas common plant in rate base is a direct result of its erroneous allocation methodology. OPC recommends not increasing rate base and depreciation expense for this omission.

ISSUE 11: What is the appropriate method for allocating deferred income taxes related to CIAC, connection fees and CIAC gross-up provisions?

OPC:* Deferred tax debits should be specifically reflected in those systems' rate bases that generated them.

ISSUE 12: Should deferred income taxes related to post-retirement benefits be included in rate base?

OPC: If the Company uses a tax advantaged VEBA there will be no deferred tax impact associated with post-retirement benefits calculated under SFAS 106. If post-retirement costs are calculated using a pay as you go method, then there would be no deferred tax impact. There should be no deferred tax impact relating to OPEBs.

ISSUE 13: If the Commission adopts SFAS 106 for ratemaking purposes, what is the appropriate treatment of the unfunded liability for post-retirement benefits other than pensions?

OPC: SFAS 106 is an inappropriate method for measuring post-retirement benefits for ratemaking purposes. If, however, the Commission adopts this methodology, the amount of the unfunded liability should be reflected in the capital structure as a zero cost source of funds. If it is the intent of the Commission to reduce rate base by the amount of the unfunded liability, then the final order should reflect that intent and outline how the increasing unfunded liability will reduce rate base in the future.

ISSUE 14: What is the appropriate method for calculating working capital?

OPC: The appropriate method for calculating working capital is the balance sheet approach.

ISSUE 15: Should Rosemont and Rolling Green be considered one system for rate making purposes, and if not, how should the rate base improvements at Rosemont be shared between the two systems' customers?

OPC: No position.

ISSUE 16: Was the utility's decision to interconnect Rosemont and Rolling Green prudent, considering the utility could have interconnected with the City of Inverness, and, if not, what adjustments to rate base are appropriate?

OPC: No position.

ISSUE 17: What is the appropriate number of ERCs to use at Sugarmill Woods?

OPC: No position.

ISSUE 18: Did SSU use a higher figure (2,500 GPM) for fire protection than that provided to their engineering consultant by the Citrus County Fire Marshall?

OPC: No position.

ISSUE 19: Is it appropriate for SSU to deduct two 600 GPM wells instead of one when calculating used and useful?

OPC: No position.

ISSUE 20: Should the No. 2 well at Keystone Heights be included in the used-and-useful calculation?

OPC: Agree with Staff.

ISSUE 21: Should the plant in service for Skycrest be reduced by $4,124 to eliminate a double counting error?

OPC: Agree with Staff.

ISSUE 22: Should rate base for the Salt Springs water plant be reduced to reflect abandonment of plant?

OPC: No position.

ISSUE 23: Should those plant improvements at Fox Run not required by Order No. 21408 be included in the rate base?

OPC: Agree with Staff.

ISSUE 24: Should the River Park No. 2 plant be included in the used and useful calculation?

OPC: Agree with Staff.

ISSUE 25: What adjustments to used and useful should be made for the new equipment added to the Silver Lake Oaks system?

OPC: No position.

ISSUE 26: Which systems for which the utility requested a margin reserve should not be allowed a margin reserve in the amount requested?

OPC:* No margin reserve should be granted for any system. However, if the Commission grants a margin reserve the following systems' margin reserves should be changed relative to the Company's request, based upon the methodology discussed in the testimony of Ms. Dismukes. (Tr. 1895-96.)

Water — Amelia Island, Beacon Hills, Beechers Point, Burnt Store, Carlton Village, Deltona, Fountains, Gospel Island, Lake Ajay Estates, Marion Oaks, Palisades, Pine Ridge, Quail Ridge, Rolling Green, Spring Hill, Sunny

ISSUE 29: What are the used-and-useful percentages for the

Hills, University Shores, Venetian Village, and Wooten.

Wastewater — Beacon Hills, Burnt Store, Florida Commerce Park, Fox Run, Marco Shores, Point O' Woods, Salt Springs, Spring Hills, University Shores, and Zephyr Shores. (Tr. 1895-96)

See Exhibit A attached to this brief for the appropriate used and useful percentages.

ISSUE 27: What are the used-and-useful percentages for the water treatment facilities?

OPC: The final used and useful percentages are subject to the resolution of other issues.

ISSUE 28: What are the used-and-useful percentages for the water distribution systems?

OPC: The final used and useful percentages are subject to the resolution of other issues.

ISSUE 29: What are the used-and-useful percentages for the wastewater treatment facilities?

OPC: The final used and useful percentages are subject to the resolution of other issues.

ISSUE 30: What are the used-and-useful percentages for the wastewater collection systems?

OPC: The final used and useful percentages are subject to the resolution of other issues.

ISSUE 31: Should rate base be reduced to designate certain "future use" plant sites as non-used and useful properties?

OPC:* Any "future use" property should be considered non-used and useful for ratemaking purposes.

ISSUE 32: What are the proper allowances for working capital?

OPC: In the absence of an acceptable balance sheet approach to working capital, the Company's working capital should be set at $0.

* Working capital should be calculated using the balance sheet. There is admittedly a measure of administrative efficiency in the Commission rule which permits the 1/8 x O&M calculation of working capital in small utility companies. However, in a company the size of Lehigh, the benefits foregone, ie, limiting return on investment to apply to the funds actually invested, are foregone where the balance sheet method is not used.

ISSUE 33: Should the unamortized portion of the gain on the sale of St. Augustine Shores and University Shores be included as an offset to rate base?

OPC:* Yes. For the St. Augustine Shores gain, the Company's rate base should be reduced by $1,950,477. For the University Shores gain, the rate base attributed to the

University Shores wastewater system should be reduced by $105,537.

This issue is linked with issue 56 and 76 which addresses the basic principal of how the Commission should require the company to account for the Gain on Sale of the two referenced systems.

If, as the Citizens suggest in issue 56, the Commission requires the company to recognize gain on sale above the line, this issue (issue 33) addresses the unamortized piece of the gain which SSU would be carrying.

If the Commission requires the company to recognize the gain above the line, and requires the company to amortize the gain over four years, the company should not earn a return on the unamortized portion.

ISSUE 34: Should negative acquisition adjustment(s) be made to rate base?

OPC: Yes. The Commission can not allow a return on investment which was not actually made in providing utility service to customers.

ISSUE 35: What are the rate bases?

OPC: The final amount is subject to the resolution of other issues.

ISSUE 36: Should the cost of debt capital be adjusted to reflect reduced interest rates for variable-cost debt components?

OPC:* The cost rates for variable rate long-term debt should be based on the appropriate short term interest rates, such as the prime rate, LIBOR, the T-Bill rate, etc., in effect at the time of the hearing.

ISSUE 37: What is the appropriate cost rate for deferred investment tax credits?

OPC:* The cost rate should be weighted so that the unamortized ITCs for each system which fell under the general rule, Internal Revenue Code Section 46(f)(1), before acquisition by SSU are given a cost rate of zero and the unamortized ITCs for the remaining systems receive the weighted cost rate of long term debt, common stock, and preferred stock.

ISSUE 38: What is the appropriate amount of accumulated deferred income taxes to be included in the capital structure?

OPC: No position.

ISSUE 39: Should short-term debt be included in the capital structure?

OPC: No position.

ISSUE 40: Should the cost of debt capital be adjusted to reflect a reduced interest rate for the 15.95% fixed rate on the Company's $22,500,000 of long-term mortgage bonds?

OPC: Yes. This fixed rate is excessive and the Company's inability to refinance the debt was the result of Deltona Utilities, Inc.'s acceptance of a contractual restriction which only allowed refinancing at the option of the bondholders. When SSU purchased the Deltona system it was either aware of this restriction or it should have been aware of this restriction. As such, the purchase price of the Deltona system should have reflected this excessive rate and worked toward the advantage of SSU in reducing the negotiated purchase price. Unless the Commission recognizes a negative acquisition adjustment resulting in part from this excessive cost of debt, the rates set for the Deltona system will be excessive. In addition, since the Company has proposed using one capital structure and overall cost of capital for all of the systems filed, it is unfair and unreasonable to pass this unreasonable cost of debt onto all of the SSU filed FPSC systems. Accordingly, the cost of debt associated with these first mortgage bonds should be reduced to a level that would have been reasonable had the bonds been refinanced by SSU after the purchase of the Deltona system--9.50% to 10.50%. In addition, this debt will be retired in December of 1994 and on a going forward basis the this high cost debt will not be incurred in the future.

* It is important to recognize that it is not specifically the high cost of debt to which the Citizens here object:

it is the failure of SSU to demonstrate (having been afforded opportunity to do so) (TR-1024) that the company took this unfavorable cost of debt into consideration in the purchase price when they negotiated this acquisition.

ISSUE 41: What is the appropriate overall cost of capital including the proper components, amounts, and cost rates?

OPC: The final amount is subject to the resolution of other issues.

NET OPERATING INCOME

GENERIC AND A&G EXPENSE ISSUES

ISSUE 42: Should the Company's revenues be weather normalized, and, if so, what adjustments are appropriate?

OPC: Yes, and an adjustment is necessary.

ISSUE 43: Is the utility's test year provision for employee wages and compensation unreasonable and, if so, what adjustments are appropriate?

OPC: Yes. Bonus or other at-risk compensation should be eliminated from test year expenses.

ISSUE 44: What is the appropriate method for allocating administrative and general expenses?

OPC:* Administrative and general expenses should be allocated using a weighted allocation factor consisting of 50% ERCs and 50% direct labor. OPC was unable to develop an adjustment due to discovery difficulties.

There are several problems with the Company's proposed allocation method. First, in the last rate case SSU argued that direct labor was the appropriate method to allocate such costs, as A&G costs were closely related to direct labor. SSU similarly argued that the direct labor method allocated more costs to the more labor intensive wastewater systems and even more costs to the very labor intensive RO plant. (Tr. 1876-77.) In the instant proceeding, SSU reversed its position and allocated these common costs using the number of customers. Allocating costs based upon the number of customers as opposed to direct labor (or some combination of factors) essentially requires water customers to subsidize wastewater customers. (Tr. 1878.) The record reflects that Ms. Dismukes testimony on this point is unrebutted.

Second, the Company's allocation method is also flawed because it fails to distinguish between different types of customers. This point was succinctly elicited through Commissioner Easley's questions of Mr. Ludsen.

> COMMISSIONER EASELY: Let me try that hypothetical a different way. You've got two apartment buildings in System A with the 20 apartments per building with 20 meters per building.

In System B, you've got two apartment buildings of 20 apartments each, both having master meters. Two different systems.

Under the allocation, do you have two customers in System B and 40 customers in System A? Is that what you're telling me?

WITNESS LUDSEN: Yes.

COMMISSIONER EASLEY: So that the two customers in System B would pay each the same as each of the 40 customers in System A?

WITNESS LUDSEN: That's correct.

COMMISSIONER EASLEY: And that then is collected from their renters how? I mean, you don't care, but they would put it out based on $10, if that's what it is, just for the sake of $10-ing it. So it would be 50 cents per user instead of $10 per user in System A. And that's equitable?

WITNESS LUDSEN: Right. Let's see, System B, was that the one?

COMMISSIONER EASLEY: System B has would [have] master meters, System A has 40 apartments and 40 meters.

WITNESS LUDSEN: We'd have two bills in System B and we'd have 40 --

COMMISSIONER EASLEY: I said if the charge for A&G was $10 per customer, in System A you'd have?

WITNESS LUDSEN: 400.

COMMISSIONER EASLEY: 400 and in System B you had 20?

WITNESS LUDSEN: Right.

COMMISSIONER EASLEY: Even though you had the same number of users?

WITNESS LUDSEN: That's correct. Basically, what we're dealing with is, you know, one customer on that master meter.

COMMISSIONER EASLEY: And you don't care what that customer, whether he's a many-headed hydra or a little amoeba?

WITNESS LUDSEN: Right. For administrative costs, that's correct.

COMMISSIONER EASLEY: Okay. I just wanted to be clear. Thank you. (Tr. 729-31.)

Certainly, an allocation method which allocates 20 times the common costs to individually metered apartment complex compared to a master metered complex of the same size is unfair and unreasonable.

A similar problem exists with the distinction between residential and commercial customers. Twenty 20 residential customers would be counted as 20 customers, but a large commercial customer consuming substantially more water would only be counted as one customer. Using ERCs, as opposed to customers, would help alleviate these problems.

OPC believes that there is merit to using both direct labor and ERCs as the method of allocating common costs. OPC thus recommends an allocation method giving 50% weight to ERCs and 50% to direct labor. (Tr. 1880.) This method overcomes the problems with the Company's customer allocation factor and also has many benefits. For example, weight placed on the ERC allocation factor would help promote conservation--those customer that use more would be charged more. Use of ERCs as a component of the allocation factor also spreads the cost over a large customer base. Using direct labor as a component helps ease the cross-subsidy problem and possibly assigns costs consistent with their incurance on a stand-alone basis--one of the primary goals of cost allocations.

The Company would have the Commission believe that the direct labor allocation factor was rejected by the

Commission in Docket No. 900329. In truth, a reading of the Commission's Order, shows questions concerning the entirety of allocating common costs.

> This not only raised the question of the correctness of the allocation method, but whether such allocations are in the public interest. [Order 24715, p. 6.]

Last but not least, it is worthy to mention that OPC's witness was unable to implement her recommendations due to discovery problems. While Mr. Ludsen made light of this problem (Tr. 732.), discovery difficulties were a recurring problem in this case[3]. As pointed out during cross-examination OPC asked the Company in an interrogatory to "provide the data necessary to reallocate the Company's test year administrative and general expenses using direct labor." (Tr. 733.) The Company's response was essentially to look in the MFRs and that the direct labor information was provided in Book 3, Volume 1 of the MFRs. (Tr. 733-34.) While Mr. Ludsen believed the data in the MFRs was sufficient, a mere review of this information shows that direct labor was provided for only those systems filed in the instant docket. It does not include: systems not filed (i.e. Marco Island and Lehigh), management operations, systems which were sold during the test year, and systems not

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[3] See Issues 47, 68, 78, and the cross-examination of Mr. Lewis concerning SSU's failure to provide floppy diskettes requested by OPC. (Tr. 1694-96.)

regulated by the Commission--all of which would have been necessary to reallocate based in part of direct labor.

Although the Commission is prevented from implementing the recommendations of OPC in this case, due to no fault of OPC, the Commission can order the Company to evaluate and or implement this allocation method in its next rate proceeding. (Tr. 1882.)

ISSUE 45: Is an adjustment necessary to allocate a portion of the Company's administrative and general expenses and general plant depreciation expense to its acquisition efforts?

OPC:* Yes. The Company's administrative and general expenses should be reduced by $106,384 and depreciation expenses should be reduced by $22,185 to reflect an allocation to the Company's acquisition efforts. Any proforma adjustments to the A&G and general plant depreciation should also reflect similar adjustments. (Tr. 1884)

Southern States Utilities Services, Inc. (SSUSI) expends considerable effort on possible acquisitions of new systems as well as sales of old systems. A portion of the common costs of SSUSI should be allocated to this acquisition/sales effort. The A&G costs incurred by SSUSI benefit the acquisition/sales effort as much as they benefit the water and wastewater systems. (Tr. 1882.)

Mr. Ludsen offers three reasons why OPC's recommendation should be rejected: 1) SSU books labor for acquisition and sales efforts below the line; 2) involvement in

acquisition and sales activities is immaterial; and 3) Ms. Dismukes failed to identify any rational relationship between acquisition and sales effort and her proposed adjustment. (Tr. 549.) As will be shown, each of Mr. Ludsen's arguments is without merit.

First, the fact that the direct costs associated with the acquisition and sales efforts are booked below the line speak more for adopting Ms. Dismukes recommendation than against it. Apparently, the Company believes that such costs should not be passed onto ratepayers. But, without allocating A&G costs to this effort, ratepayers will be paying for the centralized support necessary to carry out these activities. In fact, Mr. Ludsen conceded that there were A&G expenses associated with this effort. (Tr. 786.)

Second, Mr. Ludsen claimed that SSU's involvement in acquisition and sales activities is immaterial. Mr. Ludsen's knowledge on this subject was similarly immaterial. When asked how many systems the Company attempted to acquire in 1989, 1990, and 1991, he did not know. (Tr. 778-79.) OPC finds it peculiar that Mr. Ludsen did not know how many companies SSU tried to acquire, but somehow knew the Company's effort are immaterial. In contrast to Mr. Ludsen's knowledge on this subject, Ms. Dismukes offered substantial testimony concerning the efforts expended by the Company on acquisition and sales efforts. (Tr. 1968-70.) For example, during the test year, the Company engaged more than 15 employees to assist with the acquisition and sales efforts. (Tr. 1968-69.) The Company attempted, albeit unsuccessfully, to

acquire some 28 water and wastewater systems. The majority of the systems acquired by the Company were under $1.0 million--thus, handled by SSU. During the test year the utility/Topeka acquired three systems and sold one system. In addition, there were other acquisition efforts undertaken by the Company during the test year but only the Company knows their specifics due to their confidential nature. (Tr. 1969-71.) All of these efforts require support staff and support facilities. To ignore this fact would be an injustice to ratepayers.

Finally, as explained by Ms. Dismukes, her proposed adjustment was based upon a ratio of the direct wages and salaries of SSU and Lehigh, relative to the expenses booked during the test year to account 166.100 Possible Acquisitions-Miscellaneous and account 166.200 Possible Sale-Gas Division. This ratio produced an allocation factor of 2.28%. A ratio of 2.28% was an attempt by Ms. Dismukes to estimate the percentage of time and effort expended by the Company on acquisition efforts. There is other labor expended by the Company on this effort that is not quantified in this ratio, potentially understating the true impact of the Company's acquisition/sales effort. (Tr. 1966-67 and 1970.)

Accordingly, the Commission should adopt the recommendation of OPC witness Dismukes and allocate a portion of the common A&G and general plant costs to SSUSI's acquisition/sales efforts.

ISSUE 46: Has the Company properly allocated administrative and general expenses to its gas merchandising and jobbing operations?

OPC:* No. See discussion under Issue 9.

ISSUE 47: Are adjustments necessary for expenses charged to the Company by the Topeka Group, Inc. and Minnesota Power and Light Company?

OPC:* (1) An adjustment is necessary to remove the Topeka Group's credit support fee charged to SSU. These fees resulted from management failures and should not be paid for by ratepayers.

(2) An adjustment is also necessary to remove the travel costs charged to the Company associated with Topeka's and MPL's employees traveling between Southern States and Topeka/MPL. These costs represent a significant portion of the costs charged to SSU and do not benefit ratepayers. If SSU's parent were located in Florida these costs would not be incurred.

(3) An adjustment is also necessary to remove excess liability/property damage insurance and director's and officer's liability insurance costs that have been allocated to SSU from MPL in the amount of $109,050 (total company). SSU failed to provide information concerning these charges to OPC. Accordingly, unless the Commission assess a

penalty on the Company's return on equity, OPC begs the Commission to disallows these costs.

(1) The credit support fees charged by Topeka to SSU are "Fees paid to Topeka [for] compensation for guarantee of Letter of Credit...." [Late Filed Exhibit 79.] Mr. Vierima described the credit support fee as:

> If an individual borrower does not exhibit the credit capacity to borrow funds or execute another financial transaction on its own financial strength, it can rely on such instruments as a guarantee or indemnification, et cetera. (Tr. 965-66.)

Essentially, the Company requires this credit support fee because of its alleged weakened financial condition. However, Mr. Vierima conceded, that at least in part, this fee is the result of the Commission's denial of SSU last rate request. (Tr. 976.) The Commission's denial of the Company's last rate request was due to the failures of management--not ratepayers. Consequently, it would be unfair, unjust, and unreasonable for the Commission to request SSU's ratepayers to absorb the extra cost of financing caused by management's own failures. Therefore, the Commission must remove from test year expenses charges in the amount of

$54,237 (total company), $34,549 (filed FPSC systems). (Late Filed Exhibit 79.)

(2) The Commission must also disallow at least $17,508 of travel cost between MPL/Topeka and SSU. As Mr. Vierima acknowledged, if MPL were headquartered in Apopka, there would probably be no related travel expenses charged to SSU. (Tr. 992.)

Moreover, as Mr. Viermia admitted, if MPL's headquarters were in Apopka, then the travel associated with business in Minnesota (for MPL's benefits) would be charged to MPL's ratepayers not the ratepayers of SSU.

It is unreasonable for these costs to be charged to ratepayers. The Company has provided no proof that these travel costs benefit customers over and above the services that could be rendered in Florida, if MPL was not located in Minnesota. The Commission must disallow $27,485 (total company), $17,508 (filed FPSC systems) of travel expenses to and from MPL's/Topeka's headquarters.

(3) Finally, the Commission must disallow $109,050 (total company), $69,465 (filed FPSC systems) of charges to SSU from Topeka/MPL due to the Company's failure to provide timely and responsive discovery answers to OPC. (Exhibit 76.)

The record demonstrates that OPC asked, on more than one occasion, for documents showing how costs were allocated from the parent company (MPL and/or Topeka) to SSU. (Exhibits 76 and 82.) The Company's continued claim was: "[t]here are no allocated charges from Minnesota Power & Light or Topeka Group to the Company." (Exhibit 76.) In response to OPC's interrogatory 125, the Company responded to a very detailed request for all workpapers associated with any allocations as: "There are no allocations from parent companies to the Company." (Exhibit 82.)

Exhibit 81 clearly demonstrates that there were at least two occasions when MPL/Topeka allocated charges to SSU--one for Directors and Officers Liability Insurance and the other for Excess Liability/Property Damage Insurance.

The Company failed to produce any evidence on the reasonableness of the allocations to SSU. More importantly, SSU failed to produce documents showing how the dollars were allocated, as repeatedly requested by OPC. The Company's recalcitrance should not be overlooked. OPC implores the Commission to implement one or two alternatives:

A. Either reduce the Company's requested return on equity by .50% as a means of penalizing SSU for repeatedly failing to

respond to OPC's discovery in a forthright manner; or

B. Disallow the related expenses for the same purpose.

SSU's witness Vierima responded that workpapers supporting these allocations should have been provided by the Company and that he believed they were the subject of an interrogatory. (Tr. 1006.) While OPC agrees with Mr. Vierima, the facts show that no such workpapers were ever produced despite OPC's repeated attempts to obtain them.

SSU's failure to produce the information requested by OPC can only be due to one of two legitimate reasons: the Company did not closely scrutinize the bills sent by Topeka, hence it did not know that these costs were allocated, or it did not seriously investigate OPC's request and just responded that no costs were allocated. Either of these excuses requires the Commission to disallow these costs. Ratepayers should not be charged for costs which the Company has not closely scrutinized for reasonableness. Likewise, ratepayers should not be charged for costs which OPC could not scrutinize due to the Company's failures.

ISSUE 48: What is the appropriate allowance for rate case expense?

OPC: Late filed exhibit no. 69 reflects explanations provided by the Company for various rate case expense questions brought up at the hearing. Among the items questioned were expenses for monitoring a telephone rate case at an agenda conference relating to a motion requesting that the full Commission hear the case (t.869-870). Citizens believe this expense should not be shouldered by the ratepayers. The intent of this expense was to educate the Company on how to articulate arguments before the Commission. Consequently, rate case expense should be reduced by $330.

* The expense for correspondence related to the Lehigh rate case seems to be a billing error and is stated as such in late filed exhibit no. 69. Rate case expense should be reduced by $56 for this error.

Although Southern States may not have purposely filed deficient MFRs, the expense for correcting the deficiencies should not be passed on to the ratepayers. The ratepayers are already expected to pay the entire expense for the Company to present a rate case. They should not also be expected to pay for the Company's mistakes. Rate case expense should be reduced by $1,914 to account for MFR deficiencies.

A utility does not file a rate case to benefit its ratepayers. A utility files a rate case to ensure that it is reimbursed for its cost of providing service and to ensure that its investors are granted the opportunity to earn a fair rate of return. Although the ratepayer has

no say in what course of action the utility will take to raise rates, he/she bears the entire burden of an expense that should at least be shared with stockholders.

ISSUE 49: Should the utility's proposed pro forma adjustments to customer accounting and administrative charges due to acquisition of Lehigh Utilities be approved?

OPC: No position.

ISSUE 50: Should the Commission allow the utility's $1,435,469 proforma adjustment for post-retirement benefits, and, if not, what adjustments are appropriate?

OPC: No.

ISSUE 51: Does FASB 106 require SSU to incur any expense which it would other wise (i.e., in the absence of FASB 106) not incur?

OPC: No. FASB 106 requires only that where a particular kind of expense (OPEB) is incurred, it must be reported in accordance with FASB 106.

ISSUE 52: Are SSU's alleged OPEB obligations certain enough to justify recovery of expenses related thereto?

OPC: No. The Commission has a statutory obligation to determine whether an identified expense will actually be incurred. Contingent obligations to employees (which the company seeks through the operation of SFAS 106) are

subject to change within the period during the rates approved in this case will be charged to customers.

ISSUE 53: Is the transition adjustment a request to recover expenses incurred in prior periods?

OPC: Yes.

ISSUE 54: If the Commission approves the accrual method for post-retirement benefits, should that portion of benefits related to construction be removed?

OPC: No position.

ISSUE 55: If the Commission approves the accrual method for post-retirement benefits, should pay-as-you-go expenses be removed?

OPC: Agree with Staff.

ISSUE 56: Should the Commission allow the utility's 3.63% escalation factor for operating and maintenance expenses other than payroll and rate case expense, and, if not, what adjustments are appropriate?

OPC:* No. The Commission should not allow any attrition adjustment. The Company has failed to provide any evidence that such an allowance is necessary.

The Company's price indexing mechanism is described as an attrition allowance. (Tr. 1677.) In addition to this, the

Company has also requested proforma adjustments. Yet, the Company has provided no evidence that it will experience attrition in the future, or that its attrition/price indexing request will match any attrition that it might experience in the future. Given the potential growth in Florida the Company could actually achieve accretion (the opposite of attrition).

Chapter 367, Section 4, defines the price indexing mechanism as an entirely separate process from the rate case procedure. Price indexing and rate cases are two separate rights accorded to utilities through Chapter 367 and there is no provision for combining the two processes.

This Commission has disallowed such requests in past proceedings. Concerning a Marco Island Utilities request the Commission ruled:

> Review of the utility's request shows that it requested a price index in lieu of proforma adjustments. Pro forma adjustments are usually allowed to negate the effects of attrition. In this case, the utility has not demonstrated that attrition is present. Therefore, we do not believe the utility has shown that proforma adjustments are appropriate and we decline to use the price index mechanism in lieu of pro forma adjustments. [Order No. 17600, p. 12.]

There is little difference between the cited case and the instant case. The Company produced no evidence what so ever to show that attrition is or will be present. Accordingly, OPC implores the Commission to reject SSU attrition/price indexing request.

ISSUE 57: Should the Commission allow the utility's 5.00% increase to payroll expense, and, if not, what adjustments are appropriate?

OPC:* No. The Commission should not allow any attrition adjustment. The Company has failed to provide any evidence that such an allowance is necessary. Please see discussin under Issue 56.

ISSUE 58: Should the gain realized upon sale of the St. Augustine utility system be considered in determining operating revenues for the systems in this proceeding?

OPC:* Yes. Test year NOI should be increased by $650,159. This reflects a four year amortization of the gain on the sale applicable to the filed SSU systems.
In the alternative, the funds from the gain on the sale should be removed from the equity portion of the Company's requested capital structure. In addition all expenses relating to condemnation efforts should be removed from test year results.

The Citizens urge the Commission to find that the gain on sale of the St. Augustine Shores and the University Shores system should be apportioned between utility

investors and customers. Citizen's Witness Dismukes testified extensively on the point:

Q. Why do you believe that the gain on the sale of St. Augustine Shores should benefit Southern States customers?

A. In my opinion, there are several reasons why this gain should be shared with ratepayers. First, the Company has continually argued over the years that the acquisition of small water and wastewater systems throughout Florida is beneficial to all customers because of alleged economies of scale. [Southern States Utilities, Inc., Exhibit FLL-3.] Continuing with the Company's logic indicates that the associated benefits (gains) of the sales of regulated water and wastewater systems should be shared with customers.

Second, as I explained above, unless adjustments are made to SSUSI's A&G, general plant, and customer costs, SSU's customers will incur a higher level of A&G, general plant, and customer costs as a result of the sale.

Third, in past proceedings this Commission has required utilities to share with ratepayers the gain on the sale of utility property. For

example, in Docket No. 82007-EU the Commission stated:

> In Docket Nos. 81002-EU (FPL) and 810136 (Gulf Power), we determined that gains or losses on the disposition of property devoted to, or formerly devoted to, public service should be recognized above-the-line. We consider it appropriate to treat this gain in the same manner .... [Florida Public Service Commission, Docket No. 820007-EU, Order No. 11307, p. 26.]

The Commission should continue with it past precedent and attribute the gain on the sale of this system to ratepayers.

For these reasons, I believe the Commission should impute to the benefit of Southern States customers a portion of the gain on the sale of St. Augustine Shores.

Q. Have you developed a recommendation concerning the amount of the gain that should be attributed to Southern States' customers?

A. Yes. Using the number of customers as a basis to distribute the gain between the various systems, I determined that Southern States

filed FPSC systems' share of the gain is $1,932,332 for water and $668,304 for wastewater. I recommend that the gain be amortized over four years, so the adjustments to increase test year net operating income would be $483,083 for water and $167,076 for wastewater.

Q. Have you attributed any of this gain to stockholders?

A. Yes, I have. I essentially attributed the portion of the gain that would have been allocated to St. Augustine Shores had it still been a part of the SSU family. The portion of the gain that I attributed to the Company's stockholders was $118,162.

Q. The Company had a gain on the sale of University Shores property. Should this also be moved above the line for ratemaking purposes?

A. Yes. During the test year the Company received a pre-tax gain of $229,703 associated with condemned property at the University Shores system. In response to OPC's Interrogatory 113, the Company stated that this property was previously included in rate base as 100% used and useful. For the reasons addressed above, I

believe that this gain should also be shared with ratepayers.

Specifically, I believe that 98% of this gain should be moved above the line. The remainder should be given to SSU's stockholders. The percentage given to stockholders is based upon the percentage of SSU's efforts devoted to the acquisition and sale of various water, wastewater, and gas systems.

I have estimated the after tax gain to be $144,000. Of this amount $141,120 should be moved above the line and attributed to the Company's University Shores wastewater customers. Using a four year amortization this produces an adjustment to test year Net Operating Income of $35,280.

(TR-1885)

Ms. Dismuke's testimony was essentially unchallenged on cross examination. SSU witness Sandbulte addressed the issue. He believes that unless customers have a proprietary interest in the assets, they should not share in gain or loss occasioned by sale. However, Mr. Sandbulte demonstrated familiarity with the basic precepts of utility regulation on cross examination by Mr. McLean:

Q. ....Would you agree with me that utilities in the state of Florida, water and sewer utilities, are generally regulated, if they are investor-owned?

A Yes.

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

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

A Yes, exclusive right and the obligation.

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

A Right, and the obligation to serve.

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

A I think for good reason, yes.

Q Yes. Nearly forbidden. And our focus, of course, is what the customers get in exchange for that. Would you agree with me that what the customers get in exchange for that is the representation of both the Utility and of the State, that the Utility will not be able to exercise its monopoly market position to extract more than reasonable prices for the services rendered?

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

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

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

(TR-214)

It follows from this discussion that a utility is restricted by the basic principals of regulation to earn only a fair return on its utility assets, irrespective of whether the return is earned from utility operations or by the buying and selling of utility assets. It is unfair, and a departure from the basic rationale which supports regulation to cut gain on sale of utility assets

out of regulatory scrutiny. The gain on these sales--St. Augustine Shores and University Shores--should be as everymuch a part of regulated revenues as the proceeds generated by normal utility operations are.

ISSUE 59: Should the costs associated with the merger of the SSU companies be removed from test year results?

OPC:* Yes. The Company's administrative and general expenses should be reduced by $7,247 (FPSC filed systems). (Tr. 1899.)

The Company's test year expenses included costs of at least $11,640 associated with the merger of SSU, UFU, VGU, and DUI into SSU. (Tr. 1896.) Yet any benefits of this merger, which was not effectuated until 1992, would not be reflected in booked expenses until after the end of the Company's test year. In addition, the Company did not propose any adjustment to test year expenses to reflect the savings anticipated from the merger. Furthermore, the costs associated with the merger should be considered non-recurring and as such should not be built into current rates. (Tr. 1898-994.) For these reasons OPC urges the Commission to adopt the recommendation of OPC witness Dismukes and remove $7,247 from test year expenses.

ISSUE 60: Should common expenses be reduced to reflect projected savings due to consolidation or closing of customer service offices?

OPC:* Yes. Test year expenses should be reduced by $47,955 (FPSC filed systems). (Exhibit 127, Schedule 8.)

The Company consolidated several of its customer services in early 1992. As a result, certain expenses incurred during the test year will not arise in the future. Accordingly, adjustments should be made to reflect these cost savings.

As Ms. Dismukes testified, her adjustment was conservative, it did not include the Company's estimate of labor savings associated with the office consolidations. (Tr. 1927.) The record also reflects that Ms. Dismukes testified that the estimates produced by SSU were reliable and not subject to a great deal of variability. (Tr. 1926-27.)

Consequently, the Commission should not be persuaded by the Company's attempts to diminish its own estimates because they are not known in the historic sense.

Finally, the Commission should reject the Company's last minute attempts to add proforma adjustments to its test year expenses via its rebuttal case. Mr. Ludsen suggests that other cost increases may occur to offset these cost savings. (Tr. 537.) But he could only identify one: increased postage costs due to a change in billing practices. (Tr. 537-38.) Such cost increases should be covered by the Company's attrition request. The Commission should not grant pro forma adjustments to increase expenses in addition to the Company's attrition

request. If however, the Commission rejects the Company's indexing/attrition request, then some adjustment might be necessary. Unfortunately, the Company proposed this adjustment in its rebuttal case. As such OPC and the other parties to case did not have the opportunity to test the reasonableness of the calculated amount.

ISSUE 61: Should the Commission reduce the expense allowed for remittance processing to reflect anticipated savings, on a going-forward basis, as a result of in-house processing?

OPC:* Administrative expenses should be reduced by $70,798.

ISSUE 62: Should the Commission reduce postage costs to reflect savings to perform postage services in-house?

OPC:* Customer accounting expenses should be reduced by $12,125.

ISSUE 63: What is an acceptable level of unaccounted-for water?

OPC: The acceptable level of unaccounted-for water is 10% or less.

ISSUE 64: Should interest income earned on utility deposits made by Southern States be moved above the line for ratemaking purposes?

OPC:* Yes. Unless the Commission utilizes the balance sheet approach to working capital and excludes these deposits

from current assets, the interest income in the amount of $7,045 (total company) should be moved above the line for ratemaking purposes. (Exhibit 86.)

Mr. Vierima acknowledged:

> If the customers are providing a return to the Utility on that investment, yes, then the interest should be booked above the line. (Tr. 1029-30.)

The Company will likely defend Mr. Viermia's concession by claiming that such an adjustment is not necessary because customers are not providing a return to the Utility on the investment. However, the Commission should recognize that the formula approach to working capital, is typically more generous than the balance sheet approach, and implicitly includes this investment. Accordingly, this interest belongs to the customers, not stockholders. The Company is asking ratepayers to provide a return on $1.8 million of working capital. Fairness requires that the Commission more the interest on utility deposits above the line.

ISSUE 65: Should an adjustment be made to remove chamber of commerce dues and other public relations expenses from the test year?

OPC: Yes. At a minimum test year expenses should be reduced by $1,882. In the testimony at page 381, the Commissioners, Mr. McLean, Mr. Hoffman, and SSU witness Phillips engaged

in an extended discussion on this issue. SSU concedes that the Commission routinely disallows chamber dues for ratemaking purposes, but SSU maintains that they were to be a leader in the field for being the first utility to present evidence on the point. (TR-374) Yet the exhibits offered by the Citizens clearly show that other utilities attempted to present evidence on the point and that the Commission has, upon consideration in the record, and upon many occasions, disallowed chamber dues.

In addition, it may be noted that the evidence itself on this point showed the activities to be very similar to, if not identical with activities normally known as lobbying. (TR-383--385) In each instance, the chamber is before a state for federal agency advocating a position. There is no showing that the positions are favorable to or meet with the approval of the customers in general; moreover, even if there were such a showing, no evidence before the Commission suggests that the customers would elect SSU to see to their interests anyway.

ISSUE 66: Should an adjustment be made to the Company's membership dues?

OPC:* An adjustment should also be made to reflect the memberships dues savings resulting from the consolidation of the SSU family in the amount of $3,137.

ISSUE 67: Should an adjustment be made to reduce the Company's test year bad debt expense?

OPC:* Test year bad debt expense should reduced by $71,405 (total company), $43,859 (FPSC filed systems). (Tr. 1906-07 and Exhibit 139.)

Four adjustments are required to put the Company's bad debt expense at a more normal and reasonable level.

First, bad debt expense should be reduced by $30,000 which is related to M&M Utilities, a system that was sold by SSU. There is no reason to charge SSU's customers for bad debt of a utility which is no longer a part of the SSU family. The Company has removed M&M Utilities' customers from its allocation base, thus requiring SSU's remaining customers to absorb the related administrative and general expenses. There is no reason to add to this burden by also requiring them to pay for the bad debt of a utility the Company no longer operates. (Tr. 1906.) Exhibit 139 also shows that during the test year accounts receivable over 60 days included $31,283 related to M&M utilities. If this amount was removed from the accounts receivable analysis, the Company's test year bad debt expense would be reduced by more than Ms. Dismukes recommendation.

Apparently, SSU agrees with OPC's proposed adjustment. (Tr. 1757.) However, there is disagreement about the amount. Ms. Kimball's assertion that bad debt should only be reduced by $17,719 is flawed. The Company now wants to only remove the amount of bad debt directly recorded on this plant's books during 1991. (Tr. 1757.) However, as Exhibit 139 shows, bad debt expense was increased by

$31,283 as a result of the aging analysis specifically related to M&M utilities.

Second, the Company's increase in bad debt expense also included $15,000 associated with the Deltona Gas operations that were sold. There is no legitimate reason for requiring SSU's water and sewer customers to pay for anticipated bad debt of a gas operation that was sold. (Tr. 1906-07.)

Ms. Kimball believes however, that because the gas operations were allocated some $14,411 of bad debt, that allocating $15,000 of bad debt, related to the Deltona system that was sold, to the water and sewer customers is somehow okay. What Ms. Kimball fails to see is that the Company's filed FPSC water and sewer customers are being asked to pay for 62% of this $15,000 expense.

Third, $16,950 of the Company's increased bad debt expense is attributable to Citrus Sun Club Condo Association, Inc. During the test year, the Company filed suit against this customer for the $20,000 the customer owed. The lawsuit was settled and the customer agreed to make payments to the Company for the amount owed. Accordingly, this amount should be removed from the test year bad debt expense. (Exhibit 139, Tr. 1907.)

Fourth, Exhibit 139, page 4 shows that the Company's adjustment to increase bad debt expense is biased. The Company increased bad debt expense when the allowance was less than the accounts receivable over 60 days old.

However, the Company did not reduce bad debt expense when the allowance was more than account receivable over 60 days. OPC believes that fairness requires that increases and decreases both be considered. Accordingly, bad debt expense needs to be reduced by an additional $9,554 (total company), $5,860 (filed FPSC systems.)

ISSUE 68: Should an adjustment be made to reduce the Company's test year legal expenses?

OPC:* (1) Test year expenses should be reduced by $10,355 for legal costs associated with DER/EPA violations. (Tr. 1908)

(2) Test year expenses should also be reduced by $5,734 for legal fees associated with developer agreements. (MFRs, Volume 1, Book 3 of 4, p. 10.)

(3) Test year expenses should also be reduced by $7,014 for legal fees associated with researching the acquisition adjustment policies of other state commissions.

(4) Test year legal expenses of $5,499 should be removed because the Company will not incur this expense in the future. The Company has agreed to sell this system to the Shadowbrook Homeowner's Association. (Exhibit 46, p. 26 and Exhibit 53.)

(1) Expenses associated with defense of DER fines are not appropriate for recovery from ratepayers. The

Commission does not require ratepayers to pay for the fines and consistency would require that associated legal fees should also be recorded below the line.

Any benefit associated with this effort directly accrue to the Company's stockholders who are the recipients of the fine. If the utility is successful in reducing or eliminating the fine, it is the stockholders that benefit, not ratepayers.

(2) As pointed out by Public Counsel on several occasions throughout the hearing, the Company was less than forthright is responding to OPC's discovery requests. One prime example was OPC's request to obtain the developer agreements[4] associated with legal fees incurred during the test year.

OPC' initial exploration of this issue began in discovery wherein Interrogatory 272 was propounded on the Company to "... explain why it is appropriate to include in test year expenses, legal expenses related to developer agreement[s]." The

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[4] When used here, developer agreements include effluent reuse agreements and any other related agreements that would fall under the labelling in the Company's MFRs, Volume 1, Book 3 of 4, pages 10 and 11. Any confusion concerning the labeling of developer agreements and effluent disposal agreements was that of the Company's. OPC clearly asked for, but did not receive, the developer agreements associated with the $5,734 of legal expenses described on pages 10 and 11 of the referenced MFRs.

introduction to this interrogatory asked the Company to refer to pages 10 and 11 of Volume 1, Book 3 of 4 of the MFRs. (Exhibit 53) In response to this interrogatory, part (d), the Company provided an explanation of the appropriateness of such expenses. (See page 6 of Exhibit 53.)

OPC followed-up on its initial request during the deposition of Mr. Ludsen. Asking specifically for the developer agreements for which legal expenses were incurred during the test year as a late filed exhibit. (Exhibit 38.)

In response, the Company produced a late filed exhibit stating: "No legal expenses were included in the test year relating to developer agreements." (Exhibit 55.)

The record clearly reflects that: OPC diligently attempted to examine the reasonableness of legal fees related to developer agreements; the Company's MFRs alleged that such expenses were incurred; SSU's response to OPC's Interrogatory 272 alleges that such expenses are reasonable (Exhibit 53); and SSU's response to OPC's Interrogatory 85 alleged that such expenses were incurred (Exhibit 46, p. 26.). Despite these facts, the Company stated in no uncertain terms that there were no legal fees associated with developer agreements. (Exhibit 55.) Thus, the Company did not produce the documents requested by OPC.

The Company will more than likely offer one of two excuses for its failure. The first being that the developer agreements were actually produced[5]. In fact, Commissioners Easley and Beard asked Mr. Ludsen to produce the date the effluent agreements were produced. And Mr. Ludsen indicated that he would. (Tr. 701.) However, the record is completely devoid of any sworn testimony on when those developer agreements were provided or in response to what interrogatory or document request they were produced. In fact, the developer/effluent disposal agreements were never provided to OPC.

The second being that there was just some confusion between developer agreements and effluent disposal agreements. OPC believes that if this is the excuse, it is an unfounded one. A thorough reading of the Company's MFRs, Book 1 Volume III, pages 10 and 11 and Exhibits 53, 54 and 55 clearly depict that OPC was asking about developer agreements associated with the $5,734 of legal expenses incurred during the test year. OPC believes that any confusion was created for the benefit of the Commissioners when the Company was caught in a clear violation of discovery.

OPC recommends one of two remedies to the Company's failures: disallow the legal fees, or assess a .50% penalty to the Company's allowed return on equity.

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[5] See Mr. Ludsen's suggestion at Tr. 696 and 701.

(3) Test year expenses should also be reduced by $7,014 for legal fees associated with researching the acquisition adjustment policies of other state commissions. The Company's research efforts in this regard were designed solely for the benefit of enhancing the return to stockholders. As such the associated expenses should be charged to stockholders.

(4) Test year legal expenses of $5,499 should be removed because the Company will not incur this expense in the future. The Company has agreed to sell the Shadowbrook system to the Shadowbrook Homeowner's Association. (Exhibit 46, p. 26 and Exhibit 53.)

ISSUE 69: Should an adjustment be made to reduce the Company's test year aircraft expenses?

OPC: Yes. Test year expenses should be reduced $3,200. This expense should be considered an expense related to lobbying activities and are not appropriate for ratemaking purposes.

The sum in question was incurred by SSU in flying certain senior members of the SSU staff to Tallahassee to appear at the Internal Affairs meeting of the Commission.

The appearance was at the request of SSU (TR-705) Although not specifically identified as an issue, there were other expenses associated with this trip (TR-709)

and SSU conceded that these expenses (e.g. hotel rooms [TR-709]):

> Q (By Mr. McLean) Okay. Now, whether any of those expenses, travel, meals and the transportation itself ought to be covered, that is, paid by the ratepayers, should turn on whether that trip was a -- if you will, a permissible purpose; in other words, was it related to the provision of water and sewer? And on that point we disagree, correct? Whether it is related --
>
> A (SSU witness Ludsen) That's correct. I think the prehearing statement referenced lobbying.
>
> Q Yes, sir.
>
> A And we don't consider this lobbying.

(TR-709)

The point is, SSU specifically agrees that the price of the hotel rooms and meals ought to be allowed or disallowed based on whether the purpose of the appearance was allowable.

With respect to the lobbying question: it is clear from the record that the purpose had little to do with the provision of water and wastewater to the public: it had much more to do with meeting with the Commission and

staff. Utility witness Ludsen was questioned by the Citizens as to the purpose of the appearance:

> Q Okay. Well, let's look a bit at the purpose of the meeting and then move on. State it as simply as you can, what was the business purpose of the meeting for which you incurred at least $3,200.
>
> A It was an informational meeting to the Commission, and to the general public also, about Minnesota Power, who we were; to respond to any questions that the Commission might have of the Company. The Commission does regulate us, and it was an opportunity to respond to any questions they might have of the Company.
>
> Q Did you have reason to believe that they had questions?
>
> A Not necessarily but --

It is abundantly apparent that the purpose of the appearance at Internal Affairs was to establish a rapport with the Commission and its staff. As laudable goal as this might be, it is in its essence a lobbying activity which the Commission routinely disallows. The $3,200 and the cost of the lodging and meals should be disallowed for ratemaking purposes.

ISSUE 70: Should an adjustment be made to advertising expenses?

OPC:* Yes. Gas promotional advertising expenses which have been allocated to the Company's water and wastewater operations should be removed.

Despite the Company's original position that such costs should be charged to ratepayers, Mr. Ludsen represented under cross-examination that the Company would agree to the removal of $5,421 (total company) of advertising expenses.(Tr. 626 and Exhibit 51.)

The subject of the Company's inclusion of these advertising expenses raised considerable concern by the Commissioners at the hearing as to the overall credibility of the Company's filing.

> COMMISSIONER CLARK: Let me back up and ask that again, because it's incredulous to me.
>
> COMMISSIONER EASLEY: I know.
>
> COMMISSIONER CLARK: That you have -- for purposes of rate, advertising expense that you included in the rate case. Your total advertising expenses, you threw into the rate case; you made no adjustment for those advertising that you even felt was inappropriate to be recovered from the rates? Have I misunderstood you?

WITNESS LUDSEN: No. I think -- I'm not aware that this has ever been an issue in our case, prior to this time.

COMMISSIONER CLARK: Well, but when you file a case, it would seem to me you ask for a recovery of expenses you legitimately believe are recoverable from the ratepayers. And by your own statement, you don't believe promotional advertising for LP gas should be recoverable from these ratepayers, yet, it's in your filing.

WITNESS LUDSEN: That's correct. We've --

...

COMMISSIONER EASLEY: Well, let me ask the next question from there: What else is included in here besides advertising expenses that don't have anything to do with this rate case? And how in the world are we going to find them?

WITNESS LUDSEN: Well, I think, you know, the auditors have spent five months --

COMMISSIONER EASLEY: No, Mr. Ludsen, I'm not asking about the auditors, because you just got through telling me that this is in the rate case, this is the way it got filed. I'm

asking you how else or where else am I going to find the same kind of thing going on? Don't tell me about the auditors now, because they didn't file the case, you did. (Pause)

WITNESS LUDSEN: We make our best attempt when we file a case to put in what we consider to be recoverable costs. The auditors come in and review the case to determine if what we have included in the rate case are, or should be, allowed in the rate case. And as a result of the audits, we have reports like this, which are provided to the Commission as proposed adjustments by either Staff or OPC. That's pretty much a normal process within the case. I mean -- (Tr. 631-34.)

....

COMMISSIONER CLARK: Let me be clear as to where I am coming from anyway. I don't hold the idea that you knowingly concealed anything at this point. But I tell you what I am concerned about is the process that was gone through in order to arrive at these numbers. And it would seem to me that advertising expense would be something that you could go through and look at and know just by looking at it that that ought to be excluded. It's that sort of concern with regard to the care with which all these expenses were reviewed. That's my viewpoint on it.

...

COMMISSIONER EASLEY: Well, and further, I agree with Commissioner Clark. However, even having said that these may not have occurred knowingly, willfully, maliciously or any of those other bad words, if we've identified 5,000, my concern is, is there anything else that got there the same way? Still not accusing the Company of anything, but I think there needs to be some assurance, before this is over with, that the 5,000 is all we're talking about. And I would hope that there would be -- and I'm not sure how to do it, how you prove a negative is very difficult, and I understand that. But I would hope that there would be a way to find some reassurance that we're not talking about in excess of the 5,000 and certainly not anything significant.

...

CHAIRMAN BEARD: .... I'm not impugning anybody's integrity. I might be impugning work product, okay, and the scrutiny and care that went into looking at getting stuff out. Okay? I'm not concerned about anybody's integrity in any sense of the imagination. But I see numbers in here that ought not be there; somebody didn't look close enough; it's just that simple. (Tr. 641-46.)

OPC has several observations to make with resect to this discussion. First, if the Company really believed such expenses should not be recovered from ratepayers, why wasn't this issue the subject of a stipulation? Second, if these expenses had been directly charged (as they are done for in-house accounting purposes and as advocated by OPC) this problem would not have arisen to begin with. Third, with the exception of unsworn assurances of Mr. Armstrong and Mr. Hoffman no additional evidence was ever offered by the Company concerning the exclusion of all unacceptable expenses in the test year. Fourth, identifying expenses of this nature is not easy. OPC believes that there are additional gas promotional-type expenses that have not been removed from test year expenses. For example, the salary associated with individuals involved in gas promotion efforts has not been removed from test year expenses prior to allocation.

The Commissioners' concerns about the credibility of the Company's filing should not go unnoticed. At a minimum, the Commission should issue a strong warning that such careless will not be tolerated in the future.

ISSUE 71: Should an adjustment be made to remove expenses associated with professional studies and contractual services?

OPC:* Yes. Test year expenses should be reduced by $8,141 for non-recurring actuarial studies. (Tr. 1941-42.; $15,758 for MPL Organizational Development charges (Exhibit 147);

and $18,156 for the survey by Cambridge Reports of Massachusetts. (Exhibit 148.)

As OPC witness Dismukes testified, the Company provided a discovery response to OPC indicating that of the professional studies undertaken during the test year, $8,141 (total company) of the total charges was non-recurring. (Tr. 1941-42.) Accordingly, these expenses should not be included in the test year.

Total MPL Organizational Development charges included in the test year were $19,698 (total company). (Exhibit 147.) These expenses should be amortized over a five-year period, resulting in a reduction to test year expenses of $15,758 (total company). The expenses incurred by the Company for this effort should not continue at the level incurred during the test year. (Tr. 1940.)

During the test year the Company incurred $18,156 (total company) of expenses associated with a customer survey. (Exhibit 148.) While the Company claims that it will incur this expense again in 1993, the Company witness did not know if a contract had been let for the study. (Tr. 2208) In the absence of proof that such expenses will be incurred again in the future, OPC recommends that these charges be removed from the test year.

ISSUE 72: Should an adjustment be made to remove expenses associated with the Price Waterhouse audit of the employee savings plan?

OPC:* Yes. Test year expenses should be reduced by $3,800 (total company) for the nonrecurring cost of this audit. (Tr. 1914-15.)

OPC witness Dismukes presented a conservative estimate of what portion of the Price Waterhouse audit fees should be removed from the test year. The Price Waterhouse bill for these services even indicated that the "recurring fee should be substantially less." (Tr. 1914-15.) The Commission should adopt OPC's recommendation as being the only credible evidence on this subject.

ISSUE 73: Should an adjustment be made to remove test year relocation expenses?

OPC:* Yes. Test year relocation expenses are excessive and should be reduced by at least $13,697 (FPSC filed systems.) (Exhibit 127, Schedule 8.)

The Company claims that test year relocation expenses are the lowest since 1988. The Company also attempted to bolster its case on this issue through the cross-examination of the Staff's witness, Mr. Todd. (Tr. 2150-56.) The Company suggests to the Commission that because expenses incurred during prior years were higher, the full amount of test year expenses are normal and recurring. (Tr. 545.)

However, what the Company fails to provide to the Commission is an explanation for why the expenses in prior years were so high. As Ms. Dismukes explained,

during the last three years the Company has been undergoing a fairly significant reorganization, which would have caused expenses in 1989, 1990, and 1991 to be higher than the norm. (Tr. 1916.) It is common knowledge that the Company purchased the Deltona system (including United Florida) in mid-1989 and that it subsequently closed Deltona's Miami office and relocated to Apopka. The relocation efforts and associated expenses would certainly be considered abnormal and extraordinary. Accordingly, the Commission should not be convinced by the Company's attempts to show that test year relocation expenses are reasonable because the two previous years were higher, absent a legitimate reason for expenses being so high.

Ms. Dismukes presented the only credible evidence concerning the on-going level of relocation expenses. The Commission should adopt OPC's recommendation and reduce test year expenses by $13,697.

ISSUE 74: Should an adjustment be made to reduce property taxes at Sugar Mill Woods?

OPC: Yes. In addition, the Commission should order the Company to set a sum of money subject to refund to Sugar Mill Woods customers pending a resolution of issues relating to the ad valorem taxation of the Sugar Mill Woods system by Citrus County.

ISSUE 75: Is an adjustment necessary to the purchased water expense of Beacon Hills.

OPC:* Yes. Purchased water expenses for the Beacon Hill's system should be reduced by $14,925 for a 3-year out-of-period billing that occurred during the test year. (Tr. 1912-13.)

ISSUE 76: Is an adjustment necessary to reduce property taxes associated with Marion Oaks property held for future use.

OPC:* OPC believes that this issue was stipulated and that the Company agreed to OPC's recommended adjustment. Accordingly, test year expenses for Marion Oaks should be reduced by $4,477.

ISSUE 77: Should the cost of the reuse feasibility study for Leilani Heights be amortized over five years instead of being expensed in the test year?

OPC:* OPC believes that this issue was stipulated and that the Company and OPC agreed to amortize the expense for the Leilani Heights reuse study four years. Test year expenses for this system should be reduced by $7,963.

ISSUE 78: Should test year NOI be increased for the gain on the sale of University Shores properties?

OPC:* Yes. Test year NOI for the University Shores system should be increased by $35,179. This reflects a four year amortization of the gain. (Tr. 1890-91; Exhibit 127, Schedule 8.)

In the alternative, the funds from the gain on the sale should be removed from the equity portion of the Company's requested capital structure. (Tr. 1891.)

In part, the Company claims that the gain on the University Shores sale should not be passed onto ratepayers because it was not included in rate base. (Tr. 189-90.) However, a close examination of Exhibit 52 indicates that the Company did not properly respond to OPC's interrogatory, which asked the Company to provide the following concerning any sales of property:

> describe the property sold; state whether, when and in what manner it had been included in rate base;.... (Exhibit 52.)

The Company's response was:

> ...the condemnation of property in Orange County at the University Shores plant. This particular transaction occurred in two different years, 1987 and 1991. Both of these transactions were involving plant which was 100% used and useful and the resulting gain was booked below the line for rate making purposes. (Exhibit 52.)

Two things are clear for this response. First, there is absolutely no discussion of whether or not the property was included in rate base, as asked by Public Counsel. Second, the Company indicated that the plant in question

was 100% used and useful. Plant can not be determined to be 100% used and useful without a rate base determination by the Commission.

OPC submits that, if the Commission determines that it is not appropriate to pass this gain along because the property was not included in rate base, the Commission should take into serious consideration the Company's failure to properly respond to OPC's Interrogatory. Since the Company failed to divulge this information to OPC, it should be held to its response to OPC's discovery which convincingly implied that the plant was included in rate base.

Moreover, this Commission has treated the gain on the sale of property above the line even though the property was not included in rate base. (Order No. 11028, p. 10.)

For these reasons, as well as those address under Issue 58, the Commission must reject the Company's proposal and include the gain for this sale above the line for ratemaking purposes.

ISSUE 79: Should the $14,326 test year expense in the Jungle Den system to televise and repair wastewater collection lines be amortized?

OPC:* These costs, $14,327, should be considered nonrecurring and excluded from the test year operating expenses of the Jungle Den system (Tr. 1915.)

The Company conceded that these services will not be performed again on these specific manholes and lift stations. But, each year work of this nature is performed on some manholes and lift stations. (Tr. 1761.) If Ms. Kimball's claims are true, one would expect to find several instances of this effort to appear in Appendix M, of the MFRs. However, pages 19-24 of Appendix M show this service being performed only once for all 30 sewer systems operated by the Company. Thus, if the Commission is persuaded by the Company's claims that the costs should be amortized as opposed to removed as recommended by OPC, the amortization period should be 30 years, not 3 years.

ISSUE 80: Which systems have excessive unaccounted-for water and what adjustments are appropriate as a result?

OPC: OPC has no position at this time concerning the systems that have excessive unaccounted-for water. However, for those systems which do have excessive unaccounted-for water, an adjustment should be made to the used and useful calculations such that customers do not pay a return on facilities which are not used for providing service to the end user. Further, for those systems which have excessive unaccounted-for water, an adjustment should be made to reduce the associated purchased power and chemical expense.

ISSUE 81: Which systems have excessive infiltration and what adjustments are appropriate as a result?

OPC: OPC has no position at this time concerning the systems that have excessive infiltration. However, for those systems which do have excessive infiltration, an adjustment should be made to the used and useful calculations such that customers do not pay a return on facilities which are used to treat infiltration which is excessive. Further, for those systems which have excessive infiltration, an adjustment should be made to reduce test year expenses associated with the excessive infiltration.

ISSUE 82: Should property taxes be reduced in relation to corresponding used and useful adjustments to plant?

OPC:* Yes. There is no logical reason to require current ratepayers to pay property taxes on plant which is considered non-used and useful. Test year property taxes should be reduced by $283,653. (Tr. 1912.)

The removal of property taxes associated with non-used and useful plant has been a traditional adjustment in the water and wastewater business for years. The Company now suggests to the Commission that this is not appropriate primarily due to an absurd economies of scale argument.

Mr. Ludsen's economies of scale argument is as follows: if the plant were sized smaller (i.e. to the point of the used and useful capacity) it would cost more to build; thus creating higher taxes. (Tr. 542.) OPC does not necessarily take issue with the Company's contention that there are economies of scale associated with building a

bigger plant. However, there is a serious flaw in the Company's logic when attempting to apply it to nonused and useful plant and property taxes. The Company wants to give all of the benefits of the economies of scale to future customers, not current customers. (i.e. charge the higher taxes today and collect less taxes through the AFPI charge.)

The Company's proposal is unfair and wrong for two reasons. First, both groups of customers contribute to the economies of scale--not just the future group of customers. The Company's proposal if adopted would attribute all of the economies of scale to future customers--an unfair proposition. Second, reversing the Company's argument illustrates it absurdity. Future customers should really be assessed a much higher tax, because the Company would only need to build a .25 mgd plant[6]. The Company essentially maintains that future customers should pay no taxes because of the incremental cost of the plant necessary to serve these customers is zero. However, if we assume stand alone treatment for both current and future customers (not just current customers as proposed by SSU) then the taxes assessed future customers would be significantly greater than 25% of the total cost of a 1 mgd plant.

---

[6] As opposed to a 1 mgd plant needed to serve both current and future customers. Mr. Ludsen's example assumes .75 mgd is required to serve current customers and .25 mgd is required to serve future customers.

To further show the inanity of the Company's proposal Mr. Ludsen agreed that his economies of scale argument for property taxes could easily apply to non-used and useful plant. (Tr. 574.) Thus, taking the Company's reasoning to its full extension would mean that the Commission might as well included all non-used and useful plant in rate base because of economies of scale.

The Commission should not be persuaded by the Company's deceptive attempts to saddle current customers with a higher rate increase no matter how ridiculous the logic. The Company's proposal should be rejected. The Commission should adopt the recommendation of OPC witness Dismukes.

ISSUE 83: Should test year expenses for property taxes be reduced due to appraisals of Deltona Utilities and United Florida properties?

OPC:* Yes. To the extent that the devaluation will reduce the Company's property taxes an adjustment should be made.

ISSUE 84: What is the appropriate provision for test year income taxes?

OPC: The final amount is subject to the resolution of other issues.

ISSUE 85: Should ITC amortization be above-the-line and in what amount?

OPC:* ITC amortization should be above the line. The amount of amortization should be calculated by subtracting the amortization related to the ITCs receiving a cost rate of zero from the total amount to be amortized.

ISSUE 86: Is a parent-debt adjustment appropriate, and, if so, what is the proper amount?

OPC:* Yes. The parent debt adjustment is appropriate and should be applied to the test year adjusted rate base, not the unadjusted rate base as erroneously proposed by the Company.

ISSUE 87: Is an ITC interest synchronization adjustment appropriate, and, if so, what is the proper amount?

OPC:* Yes, since the ITCs are included in the capital structure at a net positive cost rate.

ISSUE 88: Has the Company properly included reuse revenue in the test year revenue?

OPC: No. A proforma adjustment is required for the annualized effluent sales at the Deltona Lakes system of $9,308.

In addition, the Commission should establish appropriate reuse charges for the following systems which are delivering effluent and include the associated revenues in the test year: Point O' Woods for the Point O' Woods Golf Club; Amelia Island for the Amelia Island Golf & Country Club; Florida Central Commerce for Florida

Central Commerce Park; Deltona Lakes for Deltona Lakes Golf & Country Club and for the Glen Abbey Golf & Country Club; and University Shores for the Chapel Hill Cemetery.

* The Commission should carefully examine the agreements that are signed between users of reclaimed water and the utilities generating the reclaimed water. In some instances it seems that the ratepayers may be footing a bill for improvements to golf courses, cemeteries and other common areas that benefit the recipients of reclaimed water more so than the utility ratepayers. For example, the Chapel Hill Cemetery that receives reclaimed water from the University Shores system has an agreement with the Utility that requires the Utility to install an underground sprinkler system with pop-up heads as is revealed in the following cross of Company Witness Sweat:

> Q (By Mr. McLean) Okay. You also had to provide pop-up or below-ground sprinkler heads, didn't you?
>
> A (Mr. Sweat) There was some maintenance agreements that we had agreed upon. Yeah, all of the irrigation system is below ground, because it is a cemetery and you have people traveling around there and you don't want them above ground.
>
> Q But you had to install that, didn't you?
>
> A We installed some of those, yes.

This seems to go far beyond the so-called avoided cost argument for setting reclaimed water rates that is commonly used by the utilities and golf courses. Here is a situation where the utility is making improvements to the Cemetery property that would been made whether the utility existed or not. The Cemetery is being opportunistic at the expense of the utility ratepayers. In addition to the underground sprinkler system, the utility is also providing free fire protection (t 1297) and land clearing and grading (t 1299) at the expense of the Utility ratepayer. Further, the Cemetery can terminate parts of the agreement with one years notice which raises questions about the permanency of this means of disposal.

The Chapel Hill Cemetery may be the best alternative for effluent disposal that University Shores has. However, when the demands placed on the Utility by the reclaimed water user go beyond the point of reasonableness, the Commission should question whether the agreement to provide reclaimed water was negotiated in good faith and with the ratepayers interest in mind.

ISSUE 89: Should revenues be imputed for water estimated as attributable to unmetered and stuck meters?

OPC:* The Company is including estimated water usage associated with stuck or slow meters in its calculation of used and useful. Further, the Company has not reduced expenses

associated with this estimated usage. Consequently, there would be a mismatch of revenues and expenses if revenues associated with the estimated water usage for the stuck or slow meters were not imputed.

Company Witness Sweat stated that a new program just being put into effect will detect these type of occurrences as is revealed in the following cross examination:

> Q (By COMMISSIONER CLARK): Mr. Sweat, I think what he's asking is for you to substantiate the claim that you have water being used that's not being metered and not being sold. On what do you base your observation that there are slow meters causing this?
>
> A (By Mr. Sweat): Well, one, it's experience. And the other is that we test the meters. Now, we have a comprehensive meter program that is just now going into effect -- it should go into effect by the end of this month -- that covers everything. Meter testing of residential meters, the types and specs of meters that we're going to --
>
> [TR-1339]

On a going forward basis, apparently stuck or slow meters will be detected on a more timely basis therefore

increasing the likelihood that the Company will collect all or most revenue associated with these meters. Therefore, revenue should be imputed for the water usage estimated by the Company relating to stuck or slow meters.

ISSUE 90: What is the adjusted operating income amount before any revenue increase?

OPC: The final amount is subject to the resolution of other issues.

ISSUE 91: What are the systems' revenue requirements?

OPC: The final amount is subject to the resolution of other issues.

ISSUE 92: Should SSU's final rates be uniform within counties, regions, or statewide?

OPC: No position.

ISSUE 93: Should systems with advanced water or wastewater treatment have a surcharge added to their rates if uniform rates are approved?

OPC: No position.

ISSUE 94: Should SSU's proposal that customer bills be capped at $52 for water and $65 for wastewater for 10,000 gallons for water usage be approved?

OPC: No position.

ISSUE 95: How should the revenue deficiencies caused by the utility's proposed cap on bills at 10,000 gallons be recovered?

OPC: No position.

ISSUE 96: Should the Commission adopt the utility's proposed rate structure, and, if not, what is the appropriate rate structure?

OPC: No position.

ISSUE 97: Should conservation rates be implemented for systems in critical use areas with excessive water consumption and if so, how should the conservation rates be structured?

OPC: No position.

ISSUE 98: Should private fire protection rates be calculated by dividing the approved base facility charges for each comparable meter size by 1/3?

OPC: No position.

ISSUE 99: Should a private fire protection rate be approved for lines less than 4" in diameter?

OPC: No position.

ISSUE 100: Should the residential wastewater base facility charge be increased by the American Waterworks Association factors?

OPC: No position.

ISSUE 101: Is a wastewater gallonage cap of 10,000 gallons appropriate for all systems, and, if not, what is (are) the appropriate cap(s)?

OPC: No position.

ISSUE 102: Should the wastewater gallonage charges be calculated assuming 80% of water sold to residential customers and 96% of water sold to general service customers is returned to the wastewater systems?

OPC: No position.

ISSUE 103: Should SSU be required to file a service availability case for all its systems?

OPC: No position.

ISSUE 104: What are the appropriate rates for reuse of reclaimed water for each of SSU's systems?

OPC: All systems which deliver effluent to golf courses, cemeteries, and other common areas for irrigation purposes should have associated charges.

* Charges should be established that are representative of the costs to the Utility for processing and sending reclaimed water to the ultimate user. This includes but is not limited to the necessary capital improvements and additional chemical and purchased power expense related to processing reclaimed water. These charges should be calculated irrespective of charges negotiated between the Utility and reclaimed water users.

As potable water becomes more of a valuable and scarce resource in Florida, potential users of reclaimed water such as golf courses, cemeteries, and common areas will be turning to wastewater treatment plants as their primary source of water for irrigation needs. This is already happening in some areas that have been designated as critical water supply areas by the Water Management Districts. Company Witness Sweat admits in the following cross that consumptive use permits are not being renewed as readily as in the past:

> Q (By Mr. McLean) Now, saltwater intrusion is one of the many reasons why the Water Managements Districts are being a little less permissive with their consumptive use permits, isn't that true?
>
> A (By Mr. Sweat) This is true.
>
> [TR-1302]

In further questioning of Mr. Sweat it is revealed that current contract negotiations includes language that recognizes that the Public Service Commission may assess a fee for reclaimed water.

> Q (By Mr. McLean) Right. Now, when you negotiate these deals, are you taking into account the lessening opportunities that the golf courses, the cemeteries and commercial parks might have to irrigate?
>
> A (By Mr. Sweat) In our later agreements, no matter what we can agree to, whether it's avoided costs or something higher or something less, or whether it's free, our agreements that we are writing today has provisions that basically says that if the Florida Public Service Commission imputes rates on these agreements, then they will have to be honored.

[TR-1304]

In conclusion, for those systems capable of processing reclaimed water, the Utility should have a reclaimed water fee in place which is representative of the true cost of delivering reclaimed water to end users. The Utility's cost to produce reclaimed water should be the starting point of negotiations, not the reclaimed water

user's avoided cost of one expense item such as electricity. This is especially true in cases where the Utility is required to install and maintain capital improvements dictated by the reclaimed water user.

ISSUE 105: What adjustments, if any, to the Bills and Gallons identified in Schedules Nos. E-2A of the MFRs are appropriate?

OPC:* Test year consumption should be weather normalized.

Exhibit 125 shows that the State of Florida had a greater rainfall during the test year than is typical. Because customers tend to irrigate their lawns less during times of plentiful rain, they buy less water from SSU. Consequently SSU's revenue is lower during the test year than it otherwise would be, all else equal. In arriving at an anticipated revenue for SSU, the Commission should adjust the test year to reflect typical rainfall.

ISSUE 106: What are the appropriate final rates?

OPC: Fall-out number.

ISSUE 107: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

OPC: Fall-out number.

ISSUE 108: In determining whether any portion of the interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

OPC: No position.

ISSUE 109: Should the Commission adjust the utility's proposed allowance for funds prudently invested (AFPI) charges?

OPC: No position.

ISSUE 110: Should the Commission adjust the utility's proposed allowance for funds used during construction (AFUDC) calculation?

OPC: No position.

ISSUE 111: Do the pronouncements of the Financial Accounting Standards Board legally compel the Commission to any specific accounting methodology for rate making procedures under Florida Statutes?

OPC: No. Pronouncements of the Financial Accounting Standards Board are intended for purposes other than the economic regulation of utilities in the State of Florida and are merely advisory.

ISSUE 112: May the Commission substitute SFAS 106 as the standard by which it judges whether Company expenses are incurred, and if incurred, whether reasonably incurred?

OPC: No. The Commission is required to critically examine all expenses incurred by the company, irrespective of whether they are addressed in SFAS 106, to determine whether they are reasonably incurred. The Commission cannot delegate any part of its jurisdiction to the Financial Accounting Standards Board.

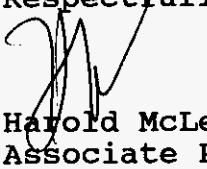
ISSUE 113: Does SSU's requested recovery of the transition adjustment violate the prohibition against retroactive ratemaking?

OPC:* Yes. That the Commission cannot engage in retroactive ratemaking is a matter beyond debate. The matter is put succinctly in this record by Chairman Beard:

> I want to go back to one comment you made, (referring to the statement of a customer witness)and I'm not sure I understood. You said that they're asking for rates, retroactively back to when they purchased the utility. I'm not familiar with that request and I don't think that we ever have granted retroactive rates. One, we're precluded from doing that by law, either up or down, we can't take money away retroactively and we can't give it retroactively. (TR-280)

The transition adjustment is nothing more than an attempt by the utility to collect money to honor an obligation which in incurred in years past, for which it did not seek recompensation.

Respectfully submitted,



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Attorney for the Citizens of the State of Florida

	WATER	Amelia Island	Beacon Hill	Beecher's Point	Burnt Store	Carlton Village	Citrus Springs	Fountains
1	Average Number of Test Year ERC's	1,733	2,612	80	560	96	1,825	4
2	Number of ERC's Associated With Margin Reserve	8	241	6	68	8	66	4
3	Projected Number of ERC's	1,741	2,853	86	628	104	1,891	8
4	Test Year Usage Per ERC @ MDD	769	837	780	456	1,277	1,000	1,584
5	MDD Through Margin Reserve	1,338,960	2,388,825	67,069	286,092	132,859	1,891,000	12,672
6	Used and Useful With Margin Reserve:							
7	Supply Wells	66%	64%	56%	90%			
8	High Service Pumps	86%	100%	75%	49%			27%
9	Distribution System				14%	30%	21%	10%
10	Finished Water Storage							

	WATER	Gospel Island	Lake Ajay Estates	Marion Oaks	Palisades	Pine Ridge	Quail Ridge	Rolling Green
1	Average Number of Test Year ERC's	7	38	2,312	3	946	6	73
2	Number of ERC's Associated With Margin Reserve	1	7	141	3	143	6	5
3	Projected Number of ERC's	8	45	2,453	6	1,089	12	78
4	Test Year Usage Per ERC @ MDD	3,733	987	815	42,182	---	---	---
5	MDD Through Margin Reserve	29,867	43,907	2,000,392	253,091	---	---	---
6	Used and Useful With Margin Reserve:							
7	Supply Wells				100%			
8	High Service Pumps		38%					
9	Distribution System	32%	45%	33%	6%	21%	11%	86%
10	Finished Water Storage		100%					

	WATER	Spring Hill	Sunny Hills	University Shores	Venetain Village	Wooten
1	Average Number of Test Year ERC's	24,903	603	2,934	130	17
2	Number of ERC's Associated With Margin Reserve	1,997	18	79	5	3
3	Projected Number of ERC's	26,900	621	3,012	135	20
4	Test Year Usage Per ERC @ MDD	639	725	588	309	882
5	MDD Through Margin Reserve	17,178,107	450,231	1,772,187	41,746	17,647
6	Used and Useful With Margin Reserve:					
7	Supply Wells		67%	100%	58%	98%
8	High Service Pumps					
9	Distribution System	84%	11%			33%
10	Finished Water Storage					

	WASTEWATER	Beacon Hills	FI Central Commerce Pk	Fox Run	Marco Shores	Point O' Woods
1	Average Number of Test Year ERC's	2,461	122	90	292	123
2	Number of ERC's Associated With Margin Reserve	214	8	6	7	4
3	Projected Number of ERC's	2,675	130	96	299	127
4	Test Year Usage Per ERC for Max Month	395	263	241	195	111
5	ADF Through Margin Reserve Period	1,056,736	34,132	23,113	58,320	14,081
6	Flows Associated With Margin Reserve	84,736	2,035	1,565	1,463	444
7	Used and Useful With Margin Reserve:					
8	Plant Used and Useful Percentage (Accounts 354,364,380,381,389.3 and 389.4)	59%	36%	58%	65%	24%
9	Effluent Disposal Used and Useful Percentage (Accounts 382.4 and part of 353.4)	59%	36%	58%	65%	24%
10	Collection System Used and Useful (Accounts 353.2,354.2,360, 361,363,365.2,366.2,370.3 and 389.2)	89%	38%	88%	50%	100%

	WASTEWATER	Salt Springs	Spring Hill	University Shores	Zephyr Shores
1	Average Number of Test Year ERC's	168	5,494	2,855	504
2	Number of ERC's Associated With Margin Reserve	(13)	238	137	43
3	Projected Number of ERC's	155	5,732	2,992	547
4	Test Year Usage Per ERC for Max Month	251	171	333	120
5	ADF Through Margin Reserve Period	38,896	980,878	996,911	65,468
6	Flows Associated With Margin Reserve	(3,137)	40,685	45,814	5,146
7	Used and Useful With Margin Reserve:				
8	Plant Used and Useful Percentage (Accounts 354,364,380,381,389.3 and 389.4)	46%	49%	87%	82%
9	Effluent Disposal Used and Useful Percentage (Accounts 382.4 and part of 353.4)	100%	49%	87%	100%
10	Collection System Used and Useful (Accounts 353.2,354.2,360, 361,363,365.2,366.2,370.3 and 389.2)	84%	96%	70%	85%

CERTIFICATE OF SERVICE
DOCKET NO. 920199-WS

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 9th day of December, 1992.

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