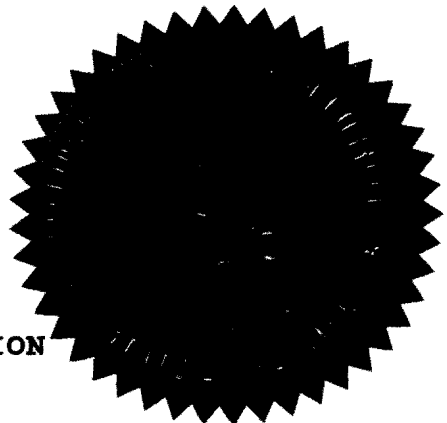


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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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| In the Matter of | : | DOCKET NO. 950387-SU |
| Application for | : | |
| increased Wastewater | : | |
| Rates by Florida Cities | : | |
| Water Company - North | : | |
| Ft. Myers Division in | : | |
| Lee County | : | |



SECOND DAY - MORNING SESSION

VOLUME 5

Pages 467 through 627

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER JULIA L. JOHNSON
 COMMISSIONER DIANE K. KIESLING
 COMMISSIONER JOE GARCIA

DATE: Thursday, April 25, 1996

TIME: Commenced at 8:00 a.m.

PLACE: Sheraton Harbor Place
 Ballroom
 2500 Edwards Drive
 Fort Myers, Florida

REPORTED BY: JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting

APPEARANCES:
 (As heretofore noted.)

FILED
 APR 29 1996
 COMM. 20
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P R O C E E D I N G S

(Transcript continues from Volume 4.)

(Hearing convened at 8 a.m.)

COMMISSIONER JOHNSON: We're going to reconvene this hearing this morning, and Mr. Acosta, you have been sworn?

WITNESS ACOSTA: Yes.

COMMISSIONER JOHNSON: I think we were on redirect?

MR. GATLIN: I believe so

- - - - -

MICHAEL ACOSTA

was recalled as a witness on behalf of Florida Cities Water Company and, having been previously sworn, testified as follows:

REDIRECT EXAMINATION

BY MR. GATLIN:

Q Mr. Acosta, is the Company's collection system the only source of infiltration and inflow?

A No. Customer laterals going into the collection system are also a source of inflow and infiltration.

Q Would it be possible to eliminate all inflow and infiltration?

A From a technical standpoint, it's possible

1 | though it would be extremely expensive to remove all
2 | I&I.

3 | Q Would the customer service lines have to be
4 | rehabilitated, also?

5 | A Yes.

6 | Q Do you think it would be in the customer's
7 | interest to eliminate all of the inflow and
8 | infiltration?

9 | A No.

10 | Q Why is that?

11 | A Because of the prohibitive cost associated
12 | with removing all I&I.

13 | Q Is I&I a constant? That is, you repair 200
14 | feet of pipe, and you expect the inflow and
15 | infiltration to reduce a certain amount?

16 | A Not necessarily, no.

17 | Q Why is that?

18 | A When you repair one spot of a collection
19 | system, you -- theoretically, the water table has
20 | risen by whatever number of inches, or millimeters, or
21 | whatever, and translate -- that would go to a --
22 | potentially go to another weak spot in the collection
23 | system and come in through there so the one individual
24 | repair would not necessarily reduce I&I by any amount.

25 | Q Not a one-to-one ratio in effect?

1 A Certainly not.

2 Q Would you describe the I&I program of
3 Florida Cities Water Company at North Fort Myers?

4 A Yes. Florida Cities has an ongoing program
5 that involves analyzing rainfall data versus pump run
6 times for individual lift stations. In addition to
7 that, the Company has a program for televising TVing,
8 grouting, video taping the collection system on an
9 annual basis, in addition to manhole inspections and
10 manhole rehabilitations as necessary.

11 Q How much is Florida Cities spent on the
12 rehabilitation program for the years 1992 through
13 1993, each year?

14 A In 1992 Florida Cities spent \$20,942; 1993,
15 \$29,985; 1994, \$30,207, and in 1995, \$18,069.

16 Q Does Florida Cities plan to continue its I&I
17 control program?

18 A Yes.

19 Q In your testimony on cross examination, you
20 referred to the -- what has been admitted into the
21 record as Exhibit 6, which is Manual Practice No. 9.
22 Do you have that before you?

23 A No, I don't.

24 Q Let me hand it to you. And would you look
25 and describe or indicate which portion of the manual

1 of Manual 9 where you refer to? (Hands document to
2 witness.) (Pause)

3 A On Page 31 of that document, the second
4 paragraph on that page, the paragraph that begins with
5 "The selection of a capacity allowance," etcetera. In
6 particular it appears to be the second sentence that
7 reads "For a small to medium size sewer is 24 inches
8 in diameter, and smaller it is common to allow 30,000
9 gallons per day per mile for the total length of main,
10 sewers, laterals and house connections without regard
11 to the sewer size."

12 Q Why did you use that paragraph, as opposed
13 to other portions of it?

14 A That is the allowance for an existing
15 system, as opposed to a newly designed system, or an
16 extension to an existing system.

17 Q Is Table 7 on the previous page, I think --
18 or maybe the two previous pages -- is that for
19 extensions of existing systems?

20 A Yes.

21 Q What page is that on, on Exhibit 6?

22 A That's on Page 30.

23 Q And would that be applicable to the North
24 Fort Myers system?

25 A No, not in general. Only to a new extension

1 on to the North Fort Myers system.

2 Q There's been some discussion with you about
3 the construction to increase capacity. Was all the
4 1.6 million that's been spent on plant all for
5 expanding capacity?

6 A No.

7 Q How much was for capacity?

8 A Approximately half that amount, about
9 \$800,000.

10 Q And what was the other \$800,000 for?

11 A The other \$800,000 was for the reuse system
12 that was involved with the capacity, the sludge
13 modifications, in order to meet 503.

14 Q 503 is the DEP standards?

15 A Federal standard.

16 Q EPA rules?

17 A Yes.

18 Q And that was mandated by the rule?

19 A The rule mandates that you stabilize your
20 sludge or you have sludge that is stabilized.

21 Ms. Karleskint is a much better witness in that than
22 I. But in order to do that, we had to lime stabilize
23 our sludge. We had a temporary facility to do that, a
24 small mixing tank to mix lime by hand, and we replaced
25 that with a lime silo and a feed system.

1 Q To comply with that requirement?

2 A That's correct.

3 Q All right.

4 COMMISSIONER GARCIA: One second. Could you
5 go back? You said you had a lime -- you had equipment
6 to stabilize -- what was the difference? I missed
7 that.

8 WITNESS ACOSTA: The equipment that we had
9 was a small polyethylene tank in which we manually put
10 water into it. It had a small mixer in it, a
11 propeller mixer in there. And then the operators
12 would physically take a 40 or 80 pound bag of lime,
13 cut it open and dump it in there manually. That's
14 what we were using.

15 In order to do that, it's very labor
16 intensive to do that, and we put in a full lime silo
17 and lime feed equipment to replace that particular
18 function.

19 COMMISSIONER GARCIA: And what was the cost
20 of that?

21 WITNESS ACOSTA: As I recall, the cost of
22 the lime silo and associated equipment was about
23 \$350,000 to \$400,000.

24 MR. GATLIN: That's all the questions I
25 have. Thank you.

1 COMMISSIONER JOHNSON: Thank you. Exhibits.
2 Oh, I'm sorry, Commissioner Kiesling has a question.

3 COMMISSIONER KIESLING: I'm trying to
4 understand a little bit better the -- your position on
5 margin reserve. I'm looking specifically at Page 3 of
6 your testimony, and then on to the top of Page 4.

7 And I'm trying to understand your position
8 that on Line 16, 17, 18, that the present Commission
9 practice provides disincentives for utilities to
10 expand wastewater facilities beyond the five-year
11 window.

12 And then on lines 22 through 25, if I
13 understand correctly, you're saying that present
14 Commission policy results in perpetual design
15 construction of wastewater treatment facilities and
16 small incremental plant expansions.

17 And I'm trying to apply that to this
18 project. And I guess my problem is that if I
19 understand what has occurred with this utility, three
20 years ago you installed a new wastewater treatment
21 facility at an extremely -- you doubled the rates of
22 the customers; is that correct?

23 WITNESS ACOSTA: It was upgraded from a
24 secondary treatment facility to an advanced treatment
25 facility, that's correct.

1 COMMISSIONER KIESLING: That's the one in
2 1992 that customers have said raised their rates 200%.

3 WITNESS ACOSTA: I don't agree with the
4 200%, but it substantially --

5 COMMISSIONER KIESLING: How about 173%?

6 WITNESS ACOSTA: I think the number was
7 closer to, like, 140%. But, whatever substantially
8 increased the rates.

9 COMMISSIONER KIESLING: Yeah. And then here
10 we are, what, three years later, and you're
11 installing, you know, some other major new equipment,
12 and I'm trying to figure out how that relates to your
13 problem with the five-year window and your position
14 that because of the five-year window in present
15 Commission practice that that's what results in design
16 and construction -- perpetual design and construction.
17 Since it hasn't been five years, you didn't even make
18 it two before you needed to do something. How does
19 our margin reserve practice as it now exists with its
20 five-year window fit into the facts of this case as to
21 perpetual design and construction?

22 WITNESS ACOSTA: Okay. I think it's margin
23 reserve and the imputation of the margin reserve
24 combined that have the disincentive effect.

25 If you apply a used and useful formula to

1 the capacity of the plant, obviously if you have a
2 number that's larger in the denominator, you're going
3 to get a smaller used and useful percentage. The
4 Utility is obviously not going to be earning a return
5 on that additional capacity.

6 When you issue a margin reserve that would
7 cover that entire increment of expansion and then
8 impute it, you have, in essence, not recognized that
9 additional capacity; and the Utility still is not
10 earning a rate of return on that increment. Those two
11 things combined provide not necessarily a
12 disincentive, but a penalty for expanding the plant
13 beyond what would be considered reasonably close to
14 100% used and useful at this point in time.

15 COMMISSIONER KIESLING: So I don't
16 understand your point then on Page 3, about the
17 five-year window and perpetual design and
18 construction.

19 WITNESS ACOSTA: The five-year window, as I
20 used it, goes back to F.A.C. 62600 which is the
21 capacity analysis requirements. If you are under 80%
22 of capacity, you have to do a Capacity Analysis Report
23 and tell them when you are going to be approximating
24 80%. At 80% you have to start designing and
25 submitting permit applications to the DEP in order to

1 expand the plant or tell them that you're at buildout
2 and that you do not need to expand the plant. That's
3 where I use the five years as to the growth factor in
4 there. The five years is in the rule. If you're
5 going to exceed capacity within five years, you start
6 doing all these things.

7 COMMISSIONER KIESLING: So then is your
8 position on margin reserve and the penalty, as you
9 just called it, something totally independent from the
10 five years and your point on perpetual design and
11 construction.

12 WITNESS ACOSTA: They are not completely
13 unrelated. In order to merge the two rules or the
14 present Commission policy and 62600, I believe that
15 you would need at least a five-year margin reserve
16 without imputation.

17 COMMISSIONER KIESLING: Okay. And then -- I
18 just have -- I guess it's one area of confusion for me
19 on your position on reuse, and who should -- what
20 customers should bear the burden of paying for reuse.
21 And it seems to me that you are suggesting that there
22 is only a theoretical benefit to water customers, and
23 that it's tenuous and very fragile, I believe you
24 said, on Page 5. And I'm trying to square that with
25 Section 367.0817, Florida Statutes where the

1 legislature makes a finding that reuse does benefit
2 all three customer classes: reuse, wastewater and
3 water. Are you disputing that legislative finding?

4 WITNESS ACOSTA: I'm not disputing the
5 legislative finding in as much as it's a general
6 policy of the state. What my position is, is that the
7 water customers in North Fort Myers, it has not been
8 established in any scientific way that they are
9 benefiting or that they will benefit from the
10 application of reclaimed water on the Lochmoor Golf
11 Course, i.e., that the water table is not so
12 dramatically increased or increased at all that we
13 would have additional water supply and not require
14 additional expansion to the water treatment plant or
15 no additional water source beyond what we already
16 have.

17 COMMISSIONER KIESLING: And I don't mean
18 this to be a legal question, but I need to understand
19 your understanding. Is it your understanding then
20 that a legislative finding is not really a finding,
21 it's something that still -- that requires proof?

22 WITNESS ACOSTA: In regards to the way that
23 ratemaking has traditionally been made where the cost
24 causer should bear the cost of that particular cost, I
25 think that in this particular case that the wastewater

1 customers are the ones that are creating that cost and
2 should bear that cost. As it relates in the statute,
3 obviously from a water policy point of view, we can
4 divert from that.

5 COMMISSIONER KIESLING: All right. I guess
6 then where my confusion comes in is then that in 1974
7 the legislature passed a statute that, at least it
8 appears, superseded prior ratemaking principles and
9 practices to the extent that proving up the benefit to
10 all three customer classes was no longer required.

11 But you don't read it that way?

12 WITNESS ACOSTA: Well, I'm not an attorney,
13 but if that was a legal interpretation that came down
14 from the appropriate authority, you know, I would not
15 dispute that.

16 COMMISSIONER KIESLING: Okay, thank you.

17 COMMISSIONER JOHNSON: Exhibits.

18 MR. GATLIN: I think it's identified as
19 Exhibit 16, Madam Chairman.

20 COMMISSIONER JOHNSON: Composite Exhibit 16.

21 MR. GATLIN: Yes, I would move that.

22 COMMISSIONER JOHNSON: So admitted. Public
23 Counsel you had a capacity --

24 MR. McLEAN: 17, I'd like to move in.

25 COMMISSIONER JOHNSON: Show it moved without

1 objection. And 18 was a late-filed.

2 (Exhibit Nos. 16 and 17 received in
3 evidence.)

4 MR. GATLIN: Yes.

5 COMMISSIONER JOHNSON: Thank you,
6 Mr. Acosta.

7 MR. McLEAN: Madam Chairman, I discussed
8 with the witness an exhibit which is shown in
9 Ms. Walla's testimony, it's marked CW-1. Rather than
10 have a separate identification for that, I think it
11 would make sense to wait until Ms. Walla comes up and
12 just identify it as part of hers.

13 I have referred to one of her exhibits long
14 before it's been identified for the record, but once
15 she takes the stand we'll identify for the record
16 rather than giving it a separate number. I think that
17 would be the better way to do it.

18 COMMISSIONER JOHNSON: Very well. That
19 concludes the direct case of the Utility?

20 MR. GATLIN: Yes, it does.

21 MR. McLEAN: Madam Chairman, I have had a
22 customer approach me assuring me that her testimony
23 would be brief. She asked for the opportunity to
24 present a bit of customer testimony this morning.

25 COMMISSIONER JOHNSON: Sure. Let me swear

1 her in. I think she was here last night, wasn't she?

2 MR. McLEAN: I think so.

3 - - - - -

4 **ROSEMARIE CATALANO**

5 appeared as a witness on behalf of the Citizens of the
6 Stat of Florida and, having been duly sworn, testified
7 as follows:

8 COMMISSIONER JOHNSON: If you could state
9 your name and address for the record.

10 WITNESS CATALANO: My name is Rosemarie
11 Catalano, C-A-T-A-L-A-N-O. I live at 4294 Harbor Lane
12 in North Fort Myers. And in actuality I'm right
13 across the water from the sewer plant.

14 Now, my complaint is the stench that is
15 emitted from that sewer plant. It isn't all the time,
16 and it certainly isn't all day. But it's sometimes
17 hours on end. The stench has made me terribly sick to
18 my stomach. On occasion my husband has had to drive
19 me away from my home so that I could breathe air that
20 did not, you know, have all this stench in it.

21 Now, we have had -- we try to eat out on our
22 patio, we can't because the smell comes in all the
23 time. We have called -- we have made many calls.
24 We've called air control, we spoke to an Arthur Lyle,
25 and Earl Baker. We've called the sewer plant many,

1 many times. We've called the North Fort Myers water
2 plant. This smell also occurs at night. There's
3 supposed to be a 24 hour service. We've called the 24
4 hour service for the water plant -- the sewer plant,
5 and there's no one there answering the phone. So I
6 don't understand why this is allowed to continue.

7 Now, I'm not the only one that smells this.
8 People that are next door to me are ill and cannot
9 come, but this happens frequently in our neighborhood.
10 And it's terrible. It's not easy to live with.

11 I have written down in my calendars "stench,
12 stench, stench," just to make note of it. This has
13 got to stop; it's terrible. Why did I spend all this
14 money for this beautiful home overlooking the water
15 and have to run inside and sometimes even running
16 inside does not help because it seems to permeate the
17 whole house.

18 Now, another thing I wanted to say is my
19 husband worked for Lee County Utilities for ten years.
20 I had no qualms about moving next door to a sewer
21 plant because my husband informed me that there would
22 be no problem with this, because I heard how he used
23 to work and take care of odors and things like that
24 and the chemicals that they used. Now, it doesn't
25 seem to be the same with Florida Cities.

1 They want more money to build a larger
2 facility or to enhance the facility, they can't even
3 take care of what they've got. Okay. Thank you.

4 COMMISSIONER JOHNSON: Any questions?

5 MR. McLEAN: No questions.

6 MR. GATLIN: No questions.

7 COMMISSIONER JOHNSON: Thank you very much.
8 Ma'am, maybe we can have Staff perhaps sit down and
9 talk with you and see if it's something abnormal that
10 can be taken care of, or perhaps.

11 The Utility should perhaps be looking into?

12 WITNESS CATALANO: Well, why is there an
13 odor?

14 COMMISSIONER JOHNSON: I don't know.

15 WITNESS CATALANO: You know, it shouldn't
16 be. It should not be.

17 COMMISSIONER JOHNSON: And if it is an
18 abnormal situation --

19 WITNESS CATALANO: It's definitely abnormal.
20 My blood pressure went sky high over this. Now, this
21 is not normal for it to make me sick, and it's not
22 only me.

23 COMMISSIONER KIESLING: Ma'am, yesterday we
24 had a witness from DEP. I believe it was
25 Mr. Barienbrock, and he's the person there that is

1 responsible for investigating these kinds of
2 complaints. And he indicated yesterday that they had
3 not received any complaints in a year or two and
4 that -- well, I'm just telling you -- and that he said
5 if there were complaints, call him directly, and they
6 would be out at your place within 15 minutes.

7 WITNESS CATALANO: Yes, we have done that
8 and, they have come. But by the time they get there,
9 the smell is gone.

10 COMMISSIONER KIESLING: I'm just passing on
11 to you that he said he would come within 15 minutes.

12 WITNESS CATALANO: Well, that's true.
13 Sometimes --

14 COMMISSIONER KIESLING: You said who could
15 you call, I'm trying to tell you who he said you could
16 call.

17 WITNESS CATALANO: Give me his name, again,
18 please.

19 COMMISSIONER KIESLING: Barienbrock,
20 B-A-R-I-E-N-B-R-O-C-K.

21 MR. JAEGER: His direct number that I have
22 is 332-6975.

23 COMMISSIONER KIESLING: Since he's so kindly
24 volunteered to be responsible for having someone come
25 in 15 minutes, I thought I'd pass his position on.

1 WITNESS CATALANO: I understand. We have
2 done this, and they have come. Sometimes 15 minutes,
3 sometimes hours later. The smell is not there when
4 they come. And certainly no one is going to come at
5 night.

6 COMMISSIONER KIESLING: Actually, he
7 indicated if the stench was happening at night that he
8 would also make sure that there was someone to come at
9 night.

10 WITNESS CATALANO: I've never seen it. I've
11 never seen it, but thank you.

12 COMMISSIONER KIESLING: Just passing on what
13 he said.

14 COMMISSIONER JOHNSON: Thank you. I believe
15 Ms. Walla.

16 MR. McLEAN: Yes, ma'am. Her direct case is
17 next, and I'll provide whatever assistance I can in
18 helping her present her case for administrative
19 purposes if that's all right.

20 COMMISSIONER JOHNSON: Okay.

21 MR. McLEAN: Ms. Walla, want to take the
22 stand?

23

24

25

CHERYL WALLA

1
2 was called as a witness on behalf of herself and,
3 having been duly sworn, testified as follows:

DIRECT EXAMINATION

4
5 BY MR. McLEAN:

6 Q State your name, please.

7 A Cheryl Walla.

8 Q Have you been sworn, Ms. Walla?

9 A Yes. Yesterday.

10 Q Are you a protester of the proposed agency
11 action?

12 A Yes, I am.

13 Q You prefiled direct testimony in the form of
14 questions and answers?

15 A Yes.

16 Q If I asked you the same questions today,
17 would your answers be the same as they were then?

18 A Yes, they would be.

19 MR. McLEAN: Madam Chairman, move her direct
20 testimony into the record as though read.

21 COMMISSIONER JOHNSON: It will be so
22 inserted.

23 MR. McLEAN: Yes, ma'am.

24 Q (By Mr. McLean) Ms. Walla, you also
25 prefiled supplemental testimony, did you not?

1 A Yes.

2 Q And that was in the form of questions and
3 answers?

4 A Yes.

5 Q Okay. If I ask you the same questions
6 today, would your answers be the same?

7 A I was given by the Utility, after my
8 deposition, a couple of finals that I was missing, so
9 that would be included in my testimony now. Other
10 than that, that's --

11 MR. McLEAN: Madam Chairman, I move the
12 testimony, the prefiled supplemental testimony, into
13 the record as though read.

14 COMMISSIONER JOHNSON: It will be inserted
15 as though read.

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1 TESTIMONY
2 OF
3 CHERYL WALLA

4 Q. What is your name and address?

5 A. Cheryl Walla, 1750 Dockway Drive, N. Ft. Myers, FL 33903.

6 Q. What is your interest in this case?

7 A. I am a water and wastewater customer of this utility.

8 Q. Have you taken any official action in the docket?

9 A. Yes. Our group, who I represent, filed a protest to Order No. PSC-95-
10 1360-FOF-SU, the Proposed Agency Action order.

11 Q. Did you agree with the proposed findings of that order?

12 A. I did not.

13 Q. Have you had contact with the staff of the Commission?

14 A. Yes I have.

15 Q. With whom have you had contact?

16 A. Mr. Crouch, Mr. Yaeger, Tom Walden, Ed Fuchs.

17 Q. What concerns have prompted this testimony?

18 A. Two general areas: first, we do not believe that the utility or the staff has
19 correctly accounted for the infiltration and inflow (to which I will refer as
20 "infiltration") into the wastewater system. FCWC used the average flow

1 from April 1991 to March 1992, which they were at 99% capacity, as a
2 basis to increase the existing capacity from 1.0 mgd to 1.25 mgd. The
3 FDER mandated the increase based on data reported to them, which
4 unknown to them included excessive infiltration inflating the flows.
5 Second, I am concerned about the quality of service provided by the
6 utility.

7 Q. Ms. Walla, may we begin with your testimony regarding infiltration. You
8 are not trained as a civil engineer, and you have no formal training in
9 waste disposal or other sanitary engineering. Why do you feel qualified
10 to provide the Commission testimony on these subjects?

11 A. The concepts which I feel that the staff and the Commission neglected by
12 their adoption of the PAA order, are neither technical nor complicated by
13 their nature.

14 Q. Please elaborate.

15 A. In a July 26, 1995 customer meeting attended by the staff of the
16 Commission, which our group and many of our neighbors attended, Mr.
17 Crouch responded to a rule of thumb infiltration of 20% used by the
18 Commission with a yes. On August 3, 1995, I called the engineering
19 department of the Commission and spoke with Ed Fuchs. Mr. Fuchs
20 advised that the Commission has strict standards and permitted only 10%

1 infiltration but that the industry allowed up to 20%.

2 Q. What conclusion did you reach as a result?

3 A. The Commission does not use a uniform standard to determine
4 REASONABLE infiltration. Therefore is unable to properly calculate
5 whether the permitted capacity needed to be expanded.

6 Q. What other issue did the staff of the Commission refer to in regards to
7 flows?

8 A. At the customer meeting, Mr. Rendell stated that the Commission' factors
9 the rate based on 80% of the water use returns back to the collection
10 system.

11 Q. Do you believe that the utility has properly accounted for its infiltration
12 in this case?

13 A. No, I do not. Furthermore, Phillip R. Edwards, then Director of District
14 Management for the FDER wrote to the utility of his concerns with the
15 infiltration problem. Exhibit 19 (CW1) Also the engineer who did the
16 FCWC Capacity Analysis Report addressed the infiltration problem at
17 length. Exhibit 19 (CW2)

18 Q. Have you discussed these problems with staff of the Commission in
19 addition to what you have already related?

20 A. Yes. On October 14, 1994 in my telephone conversation with Tom

1 Walden of the Commission staff. Mr. Walden related to me the
2 calculations which staff uses in evaluating wastewater systems. Mr.
3 Walden related that infiltration is taken into consideration in the staff's
4 calculation of used and useful plant. It is apparent by Mr. Walden's
5 workpapers (CW-3) that infiltration was not used in his used and useful
6 calculation.

7 Q. Are you familiar with the term "Margin Reserve"?

8 A. Yes I am. I do not agree with Mr. Walden's inclusion of 3.9 years
9 margin reserve in the used and useful calculation, when standardly 18
10 months is used.

11 Q. Have you read utility witness Dick's testimony on this issue?

12 A. Yes.

13 Q. Do you agree with it?

14 A. No I do not. Mr. Dick's testimony assumes that all water purchased by
15 a wastewater customer is returned to the wastewater system. This is an
16 unreasonable assumption. If Mr. Dick's calculations are utilized with an
17 assumption that 20% of the water sold does not return to the wastewater
18 system, Mr. Dick's own numbers show that this system has extreme
19 infiltration of 45%. It simply does not take engineering expertise to
20 understand these concepts. In the February 1995 issue of Public works,

1 excerpts from which I have included as Exhibit 19 (CW-4) to my
2 testimony, the Miami-Dade water and sewer department clearly regard
3 40% infiltration as a "major problem". Judging by the PAA order in this
4 case, the Commission is apparently prepared to accept a much higher level
5 of infiltration as one for which the customers ought to be charged. I
6 strenuously disagree.

7 Q. Have you prepared a schedule showing your own calculations?

8 A. Yes I have attached it as Exhibit 19 (CW-5).

9 Q. Have you seen testimony similar to Mr. Dick's on a previous occasion?

10 A. Yes. Mr. Dick's testimony is essentially identical to that of Mr. Griggs
11 in Docket No 910756-SU which appears in Commission Order PSC-92-
12 0594-FOF-SU issued on July 1, 1992, at page 13. I believe the
13 Commission should not accept Mr. Dick's testimony when he is simply
14 reiterating the testimony of the FCWC witness in a 4 year old case.

15 Q. What is the effect of the utility's accounting for infiltration as they have?

16 A. If the utility were permitted only the plant and expenses needed to serve
17 the wastewater generated by their customers with no more than a 10%
18 infiltration, it would have several direct consequences. First of all, the
19 new increase in capacity of .250 gpd would not have been needed.
20 Secondly, the existing means of effluent disposal was adequate: the reuse

1 facilities would never have been needed. In addition, there are many
2 variable expenses which would be lessened as well. Among these are 1)
3 purchased sewage treatment 2) sludge removal 3) purchased power and
4 chemicals.

5 Q. Are you suggesting that the infiltration should be permitted to continue and
6 that the company should have to treat it as its own expense?

7 A. No. I am suggesting that the utility ought to do something other than
8 simply increase the capacity to treat infiltration and send the customers the
9 bill for it. For example, the utility brings no evidence before the
10 Commission as to what they intend to do to lessen the infiltration to an
11 acceptable level. They simply offer flawed calculations to suggest that the
12 infiltration is less than it actually is and then urge the Commission to sign
13 off on their plan.

14 Q. What should the utility have done?

15 A. In place of their creative accounting regarding infiltration, they should
16 bring to the Commission a plan which would lessen the infiltration. At
17 that point both the utility and the Commission could make an informed
18 judgement as to whether the utility prudently added capacity. It may well
19 have been cheaper to repair the system, but in the absence of a study
20 designed to determine the cost of an effective infiltration program, neither

1 the utility or the Commission can address that matter at all.

2 Q. You have concerns regarding service matters?

3 A. Yes I do. At the July 26, 1995 customer meeting, Mr. Crouch said that
4 they were there to get our input, as to the type of service provided by
5 FCWC and our opinion as to the rate increase. In the Commission's PAA
6 order, at pages 3 and 4, the word "several", is used to describe the
7 amount of customers with certain concerns. The Commission's choice of
8 "several" is unfortunate because it sadly misrepresents the number of
9 customers involved. A petition presented to the staff at that hearing
10 relating 54 customers' problems with the odor emanating from the sewer
11 treatment plant is not mentioned in the order. The petition is attached to
12 my testimony as Exhibit *19* (CW-6). There were numerous other
13 concerns stated by the customers at that meeting, yet the Commission
14 order makes no mention of these concerns, offers no explanation of the
15 conditions which led to the concerns, and resolves the case as if the
16 concerns were never stated. As a result, many of the customers believe
17 that the meeting was pretextual in nature, and was simply offered by the
18 Commission to placate the customers' concerns rather deal with them.
19 The Commission's neglect of these concerns in the PAA leads to the
20 conclusion that the Commission either did not believe the customers or

1 simply is not concerned about the quality of service.

2 Q. What is your opinion of the recent customer information insert?

3 A. The most recent example of their new billing procedure brought an insert
4 which I provide as Exhibit *A* (CW-7). This insert is false. It represents
5 to customers that the water and wastewater service costs only \$1.85 per
6 day. I have no idea as to whether that may be true for FCWC and its
7 affiliates as an entire company, but it is true neither for me nor my
8 neighbors here in N. Fort Myers, and the company knows it to be untrue.
9 Under this analysis an average customer in this system would use only
10 2597 gallons per month. Since that would theoretically cause only a
11 444,194 gpd to the treatment plant, this utility apparently has quite a bit
12 of unused capacity.

13 Q. Do you have an alternative suggestion?

14 A. Yes. The Commission should compute the flows which result in a \$1.85
15 per day bill to FCWC in the N. Ft. Myers division, and adjust the utility's
16 used and useful analysis accordingly.

17 Q. On page 4 of Mr. Dick's testimony, he says that he values
18 communications with the customers, yet in a recent meeting with a group
19 of customers (the North Fort Myers Water Committee) the utility
20 represented that 12 of the thirteen persons who protested the PAA had

1 withdrawn. Exhibit *A* (CW-8). It was apparent , as no one had
2 withdrawn that FCWC was trying to discredit the merit of our protest.

3 Q. Have you reviewed the Staff Audit report for this utility and if so, do you
4 have any concerns with matters discussed there?

5 A. I have reviewed it and I am concerned. On page 6 of the report the
6 utility plainly sought to have the customers pay their legal expenses of
7 \$210,734 in the lawsuit with the U.S. Dept. of Justice as they had
8 included in this plant expansion docket. Mr. Crouch specifically told the
9 customers in the July meeting that the Commission was told none of the
10 legal fees for this docket were included in this docket. FCWC also
11 claimed this in a fact sheet which was given to the customers at the
12 meeting. FCWC outwardly misrepresented this fact. Exhibits *A* (CW-
13 9) & (CW-10).

14 Q. Does this conclude your testimony?

15 A. No. On February 2, 1996, I presented several questions to the utility in
16 letter form. On February 20, I rewrote my questions as interrogatories
17 with the format provided by OPC. The utility has utilized the
18 formalization of my questions as an opportunity to delay their answers.
19 When I receive my answers, I may wish to file supplemental testimony.
20 I have attached my original questions and the utility's initial response to

1 my interrogatories as Exhibit 19 (CW-11).

2 Q. Did you write this testimony?

3 A. I wrote the testimony in the form of handwritten analysis of the case, but
4 I was advised by members of the Office of Public Counsel that the
5 Commission would not accept testimony--even that of customers--without
6 meeting their standards. So the Office of Public Counsel prepared my
7 testimony in the form which would be accepted by the Commission.

1 SUPPLEMENTAL TESTIMONY

2 OF

3 CHERYL WALLA

4 Q. Please state your name.

5 A. Cheryl Walla

6 Q. Have you prefiled direct testimony in this docket?

7 A. Yes

8 Q. What is the purpose of this supplemental testimony?

9 A. To provide testimony on Florida Cities Water Co. I &
10 I program and their rate case expense.11 Q. Did FCWC provide documents requested on February 20,
12 1996 of their I & I program?

13 A. Yes they did for the years 1994 & 1995.

14 Q. Since the Prehearing Conference when FCWC was in-
15 structed to provide documentation of I & I program
16 for 1992 & 1993 have they complied?17 A. Yes, they did. I picked up the documentation from
18 their Ft. Myers office on Monday April 8, 1996.19 Q. Are all the above documents responsive, conclusive
20 and concise?21 A. No, they are not. There are numerous questions of
22 what work was actually done compared to what the bid
23 was for by these contractors for FCWC.24 Q. Could you explain 1992 work done for I & I per FCWC
25 documentation you received?

- 1 A. A bid was presented to FCWC from B.R.I.A.N., Inc. on
2 10/16/92 for \$27,441.50. This included video inspec-
3 tion of 7160 LF of sections 16 & 20, clean 8475 LF of
4 sections 14, 16, 20 and sealing 52 cracks in joints
5 for the sections. Also included in bid was sealing
6 up 100 LF of longitudinal cracks and 27 gallons of
7 grout for manhole cracks. An agreement was signed be-
8 tween FCWC & B.R.I.A.N. on 11/24/92. A change order
9 was issued on 6/7/93 for a net decrease of \$6500 re-
10 sulting in a contract price of \$20,941.50. (CW-16)
- 11 Q. Was this work ever performed in part or at all?
- 12 A. This is very questionable because FCWC did not
13 provide documents such as a Utility Construction pay
14 request with the final figures and the work done.
15 Also on the repair location map it is only showing a
16 combined LF total of 5095 in sections 9,14 & 20.
- 17 Q. Shouldn't this appear on Schedule B-11 of the MFR
18 as Major Maintenance or Source Contractual Services
19 Other?
- 20 A. Yes, but not having the final on it one has to wonder
21 if it was done, the amount and if it is under Major
22 Maintenance for 1992 or 1993.
- 23 Q. Could you please continue on with FCWC documentation
24 for 1993?
- 25 A. Yes. On 4/1/93 FCWC requested bids on the renovation

- 1 of 20 manholes in N. Ft. Myers. A bid was presented
2 to FCWC from Stevens & Layton, Inc. On 5/4/93 an
3 agreement was signed by FCWC and Stevens & Layton
4 with work described in agreement as renovation of 10
5 manholes for a price of \$10,295. Here again they have
6 no final on this contract only an inspection sheet
7 dated 8/2/93. (CW-17)
- 8 Q. What costs fall under the Major Maintenance for 1993?
- 9 A. This cannot be concluded with no Final Documentation.
- 10 Q. Could you explain any further work documented by
11 FCWC in 1993?
- 12 A. Yes. On 6/29/93 requested bids for TV, inspect, clean
13 and grout 9631 LF located in systems #13,14,16. A bid
14 was received by FCWC from Ridin Pipeline Inc. d/b/a
15 Roto-Rooter Inc. for a total bid price of \$10,979.34.
16 An agreement was signed on 8/3/93. There is a status
17 report 1/19/94 stating work is complete however on the
18 repair maps systems #14 and #16 show a LF of only 5257.
19 From their documentation one can only speculate what
20 the final was and what total work was done. (CW-18)
- 21 Q. Where was this charged and under what year?
- 22 A. This cannot be concluded because there isn't a Final
23 amount nor is it known if included in Major Maintenance
24 1993 or Source/Contractual Services other 1994.
- 25 Q. Was there documented work in 1994?

1 A. Yes. In 1994 there is a Phase I repair to manholes
2 (5) in NFM and Phase II repair to manholes (3) in
3 NFM. Finalized at \$13,154 and \$5,230. The problem
4 here again is that they were final 2/16/95 and 1/1/95.
5 Where were these charged in the MFR Source Contractual
6 other for 1994 or 1995? (CW-19)

7 Q. Was there other work done?

8 A. A bid was received by FCWC 10/20/94 from Williams
9 Testing to TV, inspect and clean 10,105 LF of 8" vcp
10 and 245 LF of 10" vcp for \$9,327.25. Although the con-
11 tract does not have a date it appears to be 11/26/94
12 on the final and with a change order totals the con-
13 tract to \$11823.60 finalized on 2/9/95. The problem
14 with this project is that there is no LF on repair
15 maps A or B. Therefore you cannot see where the work
16 was done. Here again it is not known where this was
17 charged under 1994 or 1995. (CW-20)

18 Q. Was there any work contracted in 1995?

19 A. On 8/15/95 FCWC & Ridin Pipeline Services entered in-
20 to contract to video and clean 9846 LF of 8" vcp with
21 a cost of \$7,872. A change order was issued 12/29/95
22 for grouting 229 joints to a total of \$10,197. Again
23 this project was signed off on 2/23/96, so was this
24 \$17,979 included in test year or will it be in 1996.
25 (CW-21)

1 Q. Could you summarize the conclusions from these doc-
2 uments?

3 A. Yes. Three projects in FCWC I&I program are question-
4 able all together. Also where their final amounts
5 fall in the MFRs and on what schedules is in question
6 as well as to what fiscal year 92, 93, 94, or 95 they
7 are put into. These conclusions have been based upon
8 the information granted by FCWC of their I & I program.

9 Q. Are the following rate case expenses prudent?

10 A. No. The following rate case expenses are not prudent
11 and should not be paid by the customers. The invoices
12 for this list can be found in L. Coel testimony and
13 L. Coel rebuttal testimony.

14 1. Avatar Utilities Inc. management time \$420
15 for July 95 and \$840 for Aug. 95.

16 2. L. Coel logged 23 hours for responses to
17 interrogatories, documents requested and ad-
18 ministration of all responses.

19 3. L. Coels logged 37 hours all under same de-
20 scription of work-Rate case review Paa order
21 tariffs and customer notice, discussions.

22 4. Overnight Express 11/7/95 \$8.50 and 12/8/95
23 \$8.50.

24 5. 12/22/95 photocopy documents 553 @.20¢ for a
25 total of \$110.60 and postage 12/22/95 \$7.93.

- 1 6. Cost advanced court reporter 1/22/96 \$7.50
- 2 Postage Flat Charge 1/25/96 \$49.10
- 3 7. Three videos of news 8/17/95 \$260.
- 4 8. Travel Reimbursement for Schiefelbein \$286
- 5 9. Costs advanced PSC for customer meeting
- 6 7/26/95 transcripts \$31.10
- 7 10. Stenotype reporter 8/16/95 \$10.83
- 8 11. Dinner prior to PSC customer hearing 7/26/95
- 9 \$58.47
- 10 12. Lutheran Church customer meeting 6/22/95
- 11 \$125.00
- 12 13. Film: 3/20/95 \$5.75, 3/21/95 \$28.75, 3/19/95
- 13 \$26.50, 3/16/95 \$55.46, 3/21/95 \$16.69, 3/24/95
- 14 \$6.59, 5/31/95 \$37.97 Microfilm services
- 15 14. L. Coel dinner before Customer meeting \$52.22
- 16 15. P. Bradtmiller Dinner 7/9/95 \$61.77
- 17 16. Lunch 6/26/95 \$26.93
- 18 17. Dinner 6/29/95 \$97.32
- 19 18. Overtime payment 7/17/95 janitor \$70.00
- 20 19. Lunch 7/19/95 \$20.12
- 21 20. Lunch 7/20/95 \$51.09
- 22 21. Dinner 7/19/95 \$35.80
- 23 0. Are these all the rate case expenses that are not pru-
- 24 dent?
- 25 A. No. Hopefully the PSC will sift through the remainder

1 and take out what is not prudent. Again this should
2 not be rendered as an opinion but should be listed
3 what a utility can charge its customers in rate case
4 expense.

5 Q. Does this conclude your testimony?

6 A. Yes.

1 Q (By Mr. McLean) Now, Ms. Walla referring
2 back to your direct testimony, you prepared 11
3 exhibits with that testimony, didn't you?

4 A Yes.

5 MR. McLEAN: Madam Chairman, I'd like those
6 exhibits marked in whichever way suits the Commission.
7 I'd suggest different numbers, but we can live with a
8 composite. They are numbered CW-1 through CW-11, I
9 believe.

10 COMMISSIONER JOHNSON: Are you anticipating
11 objections to the admission of those?

12 MR. McLEAN: Perhaps, but not to the
13 identification at all.

14 COMMISSIONER JOHNSON: That's why I was
15 trying to determine whether to do it as a composite or
16 as separate exhibits.

17 MR. GATLIN: We don't have any objection.

18 COMMISSIONER JOHNSON: I'm going to go ahead
19 and make it a composite exhibit, and it will be
20 identified as 19, and the exhibit will be the Walla
21 exhibit.

22 MR. McLEAN: We better call it Walla direct
23 exhibits because there will be another set of
24 exhibits.

25 COMMISSIONER JOHNSON: Walla direct

1 identified.

2 (Exhibit No. 19 marked for identification.)

3 Q (By Mr. McLean) Then with respect to your
4 supplemental exhibit, there are 21 exhibits affixed to
5 that testimony, that's correct?

6 A Yes.

7 MR. McLEAN: Madam Chairman, same motion on
8 21 exhibits attached to Ms. Walla's last supplemental
9 testimony.

10 COMMISSIONER JOHNSON: Let me go back to the
11 direct, they had how many? And on the supplemental?

12 MR. McLEAN: There are 21.

13 COMMISSIONER JOHNSON: We'll identify that
14 as Walla supplemental.

15 MR. McLEAN: 21.

16 MR. JAEGER: Actually, there's just 9 more
17 that are supplemental, and they will start at CW-12.
18 I may be mistaken, CW-12 through --

19 MR. McLEAN: You may have. That's true,
20 Mr. Jaeger.

21 MR. JAEGER: 9 or 10 more.

22 COMMISSIONER JOHNSON: I'll identify those
23 as Walla supplemental CW-12 through 21 as a composite
24 exhibit.

25 (Exhibit No. 20 marked for identification.)

1 COMMISSIONER KIESLING: I'm going to need a
2 little bit of clarification because it may have just
3 been what happened in our offices when it came in, but
4 my supplemental direct is stapled to Ms. Victor's
5 direct. I'm trying to figure out which is --

6 WITNESS WALLA: There are a couple of
7 exhibits sponsored by the two of us, but they were put
8 under my name. And then her name is underneath, but
9 we did file this all in the same day and send it all
10 together, so I don't know if they did staple it all
11 together or not.

12 COMMISSIONER KIESLING: My problem is that
13 what I have is Pages 1 through 7 of the supplemental
14 direct; followed by a page with three photographs on
15 it; followed by Ms. Victor's testimony, Pages 1
16 through 6; followed by an exhibit that says JB-1;
17 followed by a Page 6 of some testimony that I don't
18 know where it came from. I don't even know whose it
19 is, it doesn't match either of your Page 6s.

20 WITNESS WALLA: That's actually submitted as
21 an exhibit.

22 MR. JAEGER: That would be Jerilyn Victor's
23 Exhibit 2, JV-2, I believe. It's also the testimony
24 of -- just a second, I'll get that.

25 MS. WALLA: Mr. Cummings?

1 MR. JAEGER: I'm sorry, that's JV-3 and it's
2 Page 6 of Cummings rebuttal testimony. And it was
3 designated in the Prehearing Order as JV-3, and
4 somehow it didn't get with a number on it.

5 COMMISSIONER KIESLING: What is JV-2 then?

6 MR. JAEGER: JV-2 is the Lochmoor and El Rio
7 Golf Courses, about the capacity.

8 COMMISSIONER KIESLING: I don't have that.
9 You know, I mean, I really want to be able to follow
10 the testimony, so if I just can't figure it out, it's
11 going to make it difficult. Where would I find JV-2?
12 Can anybody help?

13 WITNESS WALLA: Yeah, excuse me for a
14 minute. (Pause) (Shows Commissioner documents.)

15 COMMISSIONER KIESLING: Okay. I imagine
16 we're together.

17 COMMISSIONER JOHNSON: We're ready.

18 MR. McLEAN: Commissioners, you can see now
19 my assistance promotes administrative simplicity. I'm
20 thinking about consulting out. (Laughter)

21 So we have the exhibits identified on both
22 counts, both direct and supplemental, and you all have
23 straightened out the order of the pages?

24 Q (By Mr. McLean) Ms. Walla, I heard you
25 mention in some of my earlier questions to you that

1 the Utility had furnished you something at the
2 deposition. Will you describe to the Commission what
3 you're talking about.

4 A It was actually after the deposition. And I
5 haven't read my deposition yet to know that I actually
6 did request these. I thought I had just stated to Mr.
7 Gatlin that I felt the interrogatories were inconcise
8 and irresponsible to my document requests. And the
9 next day I was Fed Ex'd, I think it was three finals,
10 but still no repair maps for what I asked for.

11 Q Now, does that result in a change or
12 addition to your testimony?

13 A Yes, it does.

14 Q Will you tell the Commission what the change
15 or addition is, please?

16 MR. GATLIN: Madam Chairman, this is the
17 first we're hearing of this additional testimony, and
18 I object to it.

19 MR. MCLEAN: Well, perhaps when I know what
20 is, so we can have some sort of ruling on whether it
21 is objectionable.

22 MR. GATLIN: I object to it as being given.
23 We had no notice of this testimony, additional
24 testimony.

25 COMMISSIONER GARCIA: Ms. Walla, is this

1 additional testimony, or is this simply a refinement
2 of some of the things you said before because you did
3 not have the information?

4 MS. WALLA: Because I was not provided from
5 the Utility the information, I said that three to four
6 actually of their I&I programs that they have supplied
7 me were inconclusive, and right away I was supplied
8 with the finals on a couple of them. And I thought it
9 would have been to the benefit of the Utility to see
10 that the finals were in the exhibits, but if we don't
11 want to put them in, that's fine.

12 MR. GATLIN: Madam Chairman, I have the
13 transcript of the deposition, and I'll be glad to get
14 it out. But my recollection is Ms. Walla still has
15 some concern about having not been provided all of the
16 information she thought she ought to have. We thought
17 we had provided everything.

18 I asked her a question to the effect, is
19 there absolutely anything else you need, and she said
20 this one thing. And I said if we give you that, will
21 that be all you want. She said yes, so I got it as
22 soon as I could. That was several days ago.

23 COMMISSIONER GARCIA: I fail to see where
24 the argument comes in. If she says that the last time
25 you met with her she asked for some additional

1 information, and the next day, if I'm not mistaken,
2 Ms. Walla, they Fed Ex'd it to you. And that was it,
3 you had what you needed. And the only change that you
4 would make is based on that information?

5 MS. WALLA: Yes. But my supplemental
6 testimony can stand the way it is. We don't need to
7 put the finals in there. That's fine.

8 MR. GATLIN: We're satisfied with the record
9 as it is.

10 COMMISSIONER JOHNSON: Fine, then we won't
11 add the additional report.

12 MR. McLEAN: Tender the witness for cross.

13 MR. GATLIN: No questions.

14 COMMISSIONER JOHNSON: Staff.

15 MR. JAEGER: No questions.

16 COMMISSIONER JOHNSON: Commissioners. No
17 questions? She wasn't going to summarize, I guess she
18 did the opening earlier.

19 MR. McLEAN: She did offer an opening
20 statement, but I did not discuss the notion
21 summarizing with her. If the Commission would like to
22 hear a summary on her position on which she has worked
23 for months on end, I'd be more than pleased to have
24 her present.

25 COMMISSIONER JOHNSON: Ms. Walla, did you

1 want to summarize your testimony?

2 WITNESS WALLA: I did not prepare a summary.
3 I thought I would be crossed.

4 COMMISSIONER JOHNSON: We did too, but we've
5 all read it, so thank you very much.

6 (Witness Walla excused.)

7 - - - - -

8 MS. WALLA: Okay.

9 COMMISSIONER JOHNSON: Now, there were
10 exhibits?

11 MR. McLEAN: Yes, ma'am. I'd like to move
12 all of the exhibits -- both exhibits, rather, into the
13 record.

14 COMMISSIONER JOHNSON: Any objections.

15 MR. GATLIN: No objections.

16 COMMISSIONER JOHNSON: Seeing none, show
17 them admitted without objection.

18 (Exhibit Nos. 19 through 20 received in
19 evidence.)

20 MR. McLEAN: And on behalf of Ms. Walla,
21 I'll call Ms. Victor.

22 - - - - -

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JERILYN VICTOR

1
2 was called as a witness on behalf of herself and,
3 having been duly sworn, testified as follows:

DIRECT EXAMINATION

4
5 BY MR. McLEAN:

6 Q Would you state your name please, ma'am?

7 A Jerilyn Victor.

8 Q And have you been sworn, Ms. Victor?

9 A Yes, I have.

10 Q Ms. Victor, you are one of the people who
11 protested the proposed agency action, aren't you?

12 A Yes.

13 Q And you filed your testimony in the form of
14 written questions and answers; is that correct?

15 A That's correct.

16 Q If I ask you the same questions today, would
17 your answers be the same?

18 A Yes, sir.

19 Q Do you have any additions or deletions to
20 that testimony which you filed?

21 A No, sir.

22 MR. McLEAN: All right. Madam Chairman, I'd
23 like to move Ms. Victor's testimony into the record as
24 though read.

25 COMMISSIONER JOHNSON: It will be inserted

1 as though read.

2 Q (By Mr. McLean) I find you have three
3 exhibits attached to your testimony; is that correct?

4 A Yes, sir.

5 Q Three exhibits that are lettered and
6 numbered JV-1 through 3?

7 A That's correct.

8 MR. McLEAN: Madam Chairman, may we have
9 these marked for identification?

10 COMMISSIONER JOHNSON: Let me ask you a
11 question, are those the same that we just admitted
12 with Ms. Walla?

13 WITNESS VICTOR: (Nods head.)

14 COMMISSIONER JOHNSON: Then do we still want
15 to identify them, or do we want to refer back to
16 Ms. Walla's composite exhibits?

17 MR. McLEAN: I think you all are more up to
18 date than I am.

19 MR. JAEGER: Commissioner Johnson, I think
20 JV-2 is the duplicate, but I think JV-1 and JV-3 are
21 not, so that JV-2 is the duplicate one.

22 COMMISSIONER JOHNSON: The other two are not
23 duplicated?

24 MR. JAEGER: I don't think so.

25 COMMISSIONER JOHNSON: Let's go ahead and

1 identify JV-1 and JV-3 as Composite Exhibit 21, and it
2 will be the Victor direct exhibits.

3 (Exhibit No. 21 marked for identification.)

4 MR. McLEAN: Thank you very much.

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1 TESTIMONY

2 OF

3 JERILYN VICTOR

4 Q. Please state your name.

5 A. Jerilyn Victor.

6 Q. Have you filed testimony previously in this docket?

7 A. No, I have not.

8 Q. What is the purpose of this testimony?

9 A. The purpose of this testimony is the questionable
10 Reuse site design. Specifically the inadequate study
11 (poor research) by the design engineering firm Black
12 & Veatch to evaluate the reuse needs of Lochmoor Golf
13 Course.

14 Q. How did you conclude this?

15 A. I have spent considerable time researching the his-
16 tory of FCWC upgrade from a secondary WW facility to
17 a advanced WWTP.

18 Q. What resources did you use?

19 A. FCWC own documents and the files of the governing
20 agencies DEP, SFWMD and DNR.

21 Q. Did you find thorough documentation in these files?

22 A. The DEP had an impressive amount of files going back
23 20 years although the same cannot be said of the DNR
24 or the SFWMD.

25 Q. What did you find in the files?

- 1 A. Several things, the EPA, SFWMD and DNR indicated the
2 facility should include future effluent reuse consid-
3 erations.
- 4 Q. Did FCWC respond?
- 5 A. Yes, they complied with a study dated 1990 that found
6 reuse not economically feasible. Exhibit CW-14
- 7 Q. Did reuse come up again for the plant improvement,
8 in 4/91 & 3/92?
- 9 A. They stated that the .300 mgd expansion also matches
10 the reuse demand at adjacent golf course. Exhibit (JV-1)
- 11 Q. Were reuse sites selected and discussed?
- 12 A. Yes Lochmoor Golf Course and El Rio Golf Course stat-
13 ing the two courses together have a capacity establish
14 ed @ 383561 gpd on annual basis. Exhibit (JV-2)
- 15 Q. Are these the sites you wish to address and why?
- 16 A. Lochmoor was selected and the established gpd are .300
17 therefore the adjusted gpd for El Rio was only .083.
- 18 Q. Why did you find this interesting?
- 19 A. Lochmoor, though larger, has many irrigation ponds
20 and has historically had better overall turf. Whereas
21 El Rio has had difficulty maintaining turf. A result
22 of less irrigation water. Therefore it is known they
23 would have required a much larger gpd.
- 24 Q. Do you think the amount stated .300 mgd annual average
25 for Lochmoor is to be questioned?

- 1 A. Yes, Lochmoor as stated, has many ponds and a fine
2 irrigation system that provides adequate water.
- 3 Q. Do you have a technical understanding of the engin-
4 eering design of Lochmoor Golf Course?
- 5 A. No, although not educated in the field of Hydrology
6 Engineering , I have a basic understanding of the
7 golf course layout, as a resident of the area and
8 a golfer.
- 9 Q. Have you an opinion as to the reuse design?
- 10 A. Yes, it is common knowledge to residents and golfers
11 alike that Lochmoor Golf Course has drainage problems.
12 It was designed over 20 years ago before the technol-
13 ogy for golf course design drainage advances were
14 made. Therefore it is common for Lochmoor to be
15 closed for play as it was in 1995 over 60 days. I have
16 observed very little play for many weeks, although the
17 course is open, it has ground water on surface, making
18 golf a water sport.
- 19 Q. Have you observed the measures taken by Lochmoor to
20 remedy this situation of flooding?
- 21 A. Many occasions they have resorted to bringing remedial
22 pumps with huge generators that have run for days to
23 relieve the flooding on the golf course.
- 24 Q. Why do you find this unusual, this past year was a
25 exceptional rain event?

- 1 A. Yes, true, however please observe the photos that
2 illustrate the reuse pond #5. Exhibit CW-12 #1
- 3 1. The level of the pond, quite low illustrates
4 the gravity system in adjacent ponds. The stan-
5 dard flow from pond #3 was being drawn down, re-
6 lieving the adjacent areas, (ponds 3 & 4) of
7 deep water.
- 8 2. The use of pumps illustrates that the control
9 structure is not functioning properly. Exhibit
10 CW-12 #2 & 3
- 11 3. The control structure at C1 canal that returns
12 the water to the river was open all the way.
- 13 4. The generators were pumping the water thru the
14 system, back to WWTP. Further, I believe the
15 original design of the golf course was for water
16 to flow to pond #5 thru the concrete control struc-
17 ture to the C1 canal. Relieving the south end of
18 the course of surface water. Therefore the design
19 for reuse is **flawed**. Even if the existing pumping
20 station in #3 could accommodate the gallonage and
21 and disburse it by spraying, how could the water
22 get to pond #7 and then to the 2nd pumping station
23 in #8 at the north end of Lochmoor.
- 24 Q. Is it not part of the reuse design that additional
25 pumps would be required to make this System work?

- 1 A. I could find no mention in the documents or per-
2 mitting.
- 3 Q. Surely the answer must be in design documents?
- 4 A. There is nothing I have found in any agency includ-
5 ing the DEP.
- 6 Q. Did you ask DEP about the approved design?
- 7 A. Yes, I spoke to Jim Grob in July and was told DEP
8 approved the design.
- 9 Q. Did you ask him if he thought the golf course was
10 designed with gravity fed ponds, and that they were
11 capable of changing direction of flow?
- 12 A. Yes I did . He stated the best engineers designed
13 the reuse. He seemed to think that if we looked in
14 the many files we would find supporting data.
- 15 Q. Did you in fact find the data?
- 16 A. No however we took 2 maps of Lochmoor golf course
17 that had been submitted, one for this case and one
18 for 1992 feasibility study. Exhibit CW-15
- 19 Q. Do they differ?
- 20 A. Yes , they have been altered to indicate the change
21 of pond flows, shown by the direction of arrows.
22 Further the top of the page key has been changed
23 from "Standard" to " Irrigation" which changes the
24 definition . Notice also to the lower right, "Very
25 high water only" has been erased.

1 Q. What do you conclude from this?

2 A. That the reuse design did not get questioned or stud-
3 ied by any of the agencies, even though these obvious
4 discrepancies exist. Further, Black & Veatch's Mr.
5 Cummings after the PAA order has testified that the
6 actual irrigation rate was less than originally est-
7 imated, to account for usage during wet weather
8 periods. Exhibit JV-3 This reaffirms my opening stat-
9 ed purpose for this testimony that the inadequate
10 study of Black & Veatch to evaluate the reuse needs
11 of Lochmoor Golf Course.

12 Q. Does this conclude your testimony?

13 A. Yes.

1 Q (By Mr. McLean) Ms. Victor, do you have a
2 summary of your testimony?

3 A Yes, I do; however, when I grabbed my
4 papers, I did not pick up my exhibits, so may I have
5 the rest of them --

6 Q (By Mr. McLean) Would you please present
7 your summary to the Commission, please, ma'am?

8 A I'm sorry, did you ask if I had a summary?

9 Q Yes, ma'am.

10 A No, I'm sorry, I do not have a summary.

11 Q What was it that you thought I asked so you
12 can give that, too? My rates are going up by the
13 minute.

14 What was the paper you just went to get from
15 Ms. Walla?

16 A If you were going to ask me questions, I
17 wanted to be able to understand which of the documents
18 you were discussing, how they might be used.

19 Q I think we've cleared that up. So you do
20 not have a summary of you have testimony; is that
21 correct?

22 A No, sir.

23 MR. McLEAN: Okay. Thank you very much,
24 ma'am. Tender the witness for cross.

25 COMMISSIONER JOHNSON: Mr. Gatlin.

1 MR. GATLIN: No questions.

2 COMMISSIONER JOHNSON: Staff.

3 CROSS EXAMINATION

4 BY MR. JAEGER:

5 Q Ms. Victor, I have just a few questions.

6 You have your testimony right there in front of you?

7 A Yes, sir.

8 Q Could you turn to the top of Page 2, and you
9 state there that the EPA and South Florida Water
10 Management District and DNR indicated these facilities
11 should include future effluent reuse considerations?

12 A Yes, sir.

13 Q By "these facilities," you mean the -- is
14 that the Waterway Estate's treatment plant?

15 A Yes, sir.

16 Q And do you know when these agencies began
17 encouraging reuse?

18 A It was first found in documents in 1989.
19 That was South Florida Water Management District.

20 Q Now, are you familiar with Ms. Victor's
21 CW-14? Do you have that -- no, Ms. Walla's?

22 A From Tom Roth?

23 Q This is the study by James Elder dated
24 November 29, 1989.

25 A Is that Page 1 or Page 2?

1 COMMISSIONER GARCIA: Tell me, CW-14 dash
2 what?

3 MR. JAEGER: CW-14-3.

4 WITNESS VICTOR: Pardon me. Yes.

5 COMMISSIONER GARCIA: Which is a letter that
6 begins Mr. Tom Roth and then goes on?

7 MR. JAEGER: No, that's the technical and
8 economic evaluation.

9 COMMISSIONER GARCIA: Oh, I'm sorry.

10 MR. JAEGER: 14-3 by James A. Elder.

11 COMMISSIONER GARCIA: And you're referring
12 to?

13 Q (By Mr. Jaeger) Just -- I was wanting to
14 know do you know why reuse was found to be not
15 economically feasible at that time?

16 A Are we looking at Page No. 14, Page 4.

17 Q All right turn to Page 6; CW-14, Page 6.

18 A All right. Thank you.

19 Q Paragraph 3, I believe.

20 A Yes, sir.

21 Q And why was it found to be not feasible?

22 A At the time they had done a study and that
23 study was predicated on both of the golf courses, both
24 El Rio and Lochmoor. And that was 383 gallons per
25 day. They said at the time the study had included

1 some charges that are not there today and that was
2 factored back as to how much it would cost each
3 customer \$4.33 a month. Those figures are not
4 presented here that way, but they found that it was
5 not economically feasible at that time to consider
6 reuse.

7 COMMISSIONER KIESLING: When you say "they,"
8 are you talking about the Southwest Florida Water
9 Management District?

10 WITNESS VICTOR: Yes. That's on exhibit --
11 if you look at the cover letter.

12 COMMISSIONER KIESLING: Okay.

13 Q (By Mr. Jaeger) And what was the total
14 amount of reuse being considered at that time?

15 A 383,561 gallons per day, that was between
16 the two golf courses.

17 Q Okay. And I think the Utility is saying
18 that they started out that 300,000 was going to
19 Lochmoor, and is it your testimony that Lochmoor
20 cannot accept 300,000?

21 A Yes. Mine and also the testimony that
22 Mr. Cummings had altered and ask that it be dropped
23 down to 275,000 gallon per day.

24 Q And 275 or 250?

25 A I believe 250. Pardon me.

1 Q And so is it also your testimony that El Rio
2 can accept more reuse than --

3 A No, less. The surface of land is less.

4 Q Do you have a split between the golf
5 courses, what you think --

6 A As to surface area, no, sir. But the
7 statistics are in the document as to the amount of
8 acreage and the water land mass. There's less ponds
9 on El Rio so, therefore, there is more land mass, but
10 there isn't any storage area on Lochmoor. The problem
11 being is perhaps that they only would take a smaller
12 amount. But my question is would it be only the
13 difference between 83,000 gallons that would have
14 begun to El Rio and all of the 300,000 gallons that
15 were proposed to go to Lochmoor, that didn't seem to
16 be, you know, a good figure.

17 Q I think you said Lochmoor had no storage.
18 You meant El Rio?

19 A I'm sorry. El Rio had few ponds for
20 storage.

21 Q Could you turn to Page 4, Line 13, of your
22 testimony?

23 A Yes, sir.

24 Q First of all, what happens to the waters in
25 the pond during periods of rainfall when irrigation is

1 not needed, when there's -- I'm sorry. The next
2 question would be on Page 4, but this is just a
3 general question. Do you know what happens to the
4 water in the ponds at Lochmoor during periods of
5 rainfall when irrigation is not needed, if it
6 overflows, where does it go?

7 A Where would it go to?

8 Q Yes.

9 A The maps that illustrate the weirs, it's
10 like a little canal system around the golf course and
11 that is for water management. And they will, in fact,
12 spill over and go down that C1 canal that's
13 illustrated and go right past the water plant.

14 Q In the river?

15 A Yes, the canal that flows to the river. But
16 I might also add that the pictures that we used for
17 illustration, the area that those pictures indicate,
18 there's something wrong with the design, because they
19 have to put pumps there to get the water into what is
20 called a storm sewer. Now, that changes because I
21 don't believe that goes to the river. It may be
22 interconnected. We don't know that.

23 So in other words, it isn't just directly
24 going over the weir, it's also being put into some
25 collection system there. And I do not know, I did go

1 to the DOT to find out where the water went, and no
2 one could answer that question for me.

3 Q That was my next question. I was going to
4 ask what you mean by the statement on Page 4, Line 13.
5 You say the "Generators were pumping the water through
6 the system back to the wastewater treatment plant."

7 A Right, because I asked them if, in fact,
8 they could have been connected. And he said, yes.
9 That's DOT.

10 Q But you don't know that, in fact --

11 A I do not know that for absolute. No, I do
12 not.

13 Q Okay. On Page 4, Lines 18 and 19, you say
14 the design for reuse is flawed. I think you were
15 touching on that. Are you referring to the change in
16 flow direction between the lakes, specifically lakes
17 3, 4 and 5?

18 A Yes. Uh-huh. Not just specifically those,
19 but there were questions that were left unanswered as
20 to whether any supplemental pumping facilities were
21 put on the golf course to be able to transfer water
22 from one pond to the other. And we've never had an
23 answer. That's also in my testimony, sir.

24 Q The water is being pumped into which pond?

25 A Pond No. 5.

1 Q And you're saying that there's no way to get
2 the water from pond 5 to 7 and 8?

3 A That's correct.

4 Q It's at the tail end of the --

5 A 8, right.

6 MR. JAEGER: Okay. Thank you. That's all
7 the questions I have.

8 WITNESS VICTOR: All right.

9 COMMISSIONER JOHNSON: Any other questions?
10 Commissioners? Seeing none, we have Exhibit 21.

11 MR. McLEAN: Yes, ma'am. Move Exhibit 21.

12 COMMISSIONER JOHNSON: Show it admitted
13 without objection. Thank you very much, Mrs. Victor.

14 (Exhibit No. 21 received in evidence.)

15 (Witness Victor excused.)

16 - - - - -

17 COMMISSIONER JOHNSON: That concludes
18 Ms. Walla's direct case?

19 MR. McLEAN: Yes, ma'am. I wonder if we
20 could have 5 minutes before we put Ms. Dismukes on?

21 COMMISSIONER JOHNSON: Sure.

22 MR. McLEAN: Thank you, Madam Chairman.

23 (Brief recess.)

24 - - - - -

25 COMMISSIONER JOHNSON: Public Counsel, I

1 think we're ready to go back to the record.

2 MR. McLEAN: Thank you, ma'am.

3 MR. JAEGER: Commissioner Johnson, a
4 preliminary matter, I believe we're going to Kim
5 Dismukes now?

6 COMMISSIONER JOHNSON: Right.

7 MR. JAEGER: Staff -- okay, we'll wait until
8 after Ms. Dismukes. I'm sorry.

9 COMMISSIONER JOHNSON: That's fine.

10 MR. McLEAN: The Citizens call Kimberly
11 Dismukes.

12

- - - - -

13

KIMBERLY H. DISMUKES

14 was called as a witness on behalf of the Citizens of
15 the State of Florida and, having been duly sworn,
16 testified as follows:

17

DIRECT EXAMINATION

18 BY MR. McLEAN:

19 Q Would you state your name please, ma'am?

20 A Kimberly H. Dismukes.

21 Q By whom and in what capacity are you
22 employed?

23 A I'm self-employed.

24 Q Are you under contract with the office of
25 Public Counsel?

1 A Yes, I am.

2 Q Have you prepared direct testimony in this
3 case in the form of questions and answers?

4 A Yes, I have.

5 Q If I ask you those questions today, would
6 your answers be the same today?

7 A Yes, they would.

8 Q Do you have any additions, deletions,
9 corrections to offer to your testimony?

10 A No, I do not.

11 MR. McLEAN: Madam Chairman, move
12 Ms. Dismukes' testimony into the record as though
13 read.

14 COMMISSIONER JOHNSON: It will be so
15 inserted.

16 MR. McLEAN: Thank you, ma'am.

17 Q (By Ms. McLean) You've prepared an exhibit
18 to go with your testimony?

19 A Yes, I have.

20 Q And it has how many schedules, Ms. Dismukes?

21 A 16.

22 Q Thank you, ma'am.

23 MR. McLEAN: Madam Chairman, move the
24 exhibit with 16 schedules -- I don't move it. I would
25 like it marked for identification.

1 COMMISSIONER JOHNSON: Let met make sure I
2 have -- it starts with her qualifications?

3 MR. McLEAN: I believe that's correct.

4 COMMISSIONER JOHNSON: KHD-1. Okay we'll
5 identify that that as Exhibit 22.

6 COMMISSIONER KIESLING: I'm confused. I'm
7 sorry, I don't like to be confused. Is there one
8 exhibit which is KHD-1 consisting of however many
9 schedules it was, or are there two exhibits.

10 MR. McLEAN: There's an appendix and an
11 exhibit, as best I can tell. And the first is the
12 qualifications of Ms. Dismukes, and the second are her
13 technical schedules which regard case. And I assume
14 that you're marking both of them as a composite
15 exhibit.

16 COMMISSIONER JOHNSON: Yes.

17 (Exhibit No. 22 marked for identification.)

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TESTIMONY
OF
KIMBERLY H. DISMUKES

On Behalf of the
Florida Office of the Public Counsel

Before the
FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 950387-SU

- 13 Q. What is your name and address?
- 14 A. Kimberly H. Dismukes, 5688 Forsythia Avenue, Baton Rouge, Louisiana 70808.
- 15 Q. By whom and in what capacity are you employed.
- 16 A. I am a self-employed consultant in the field of public utility regulation. I have been
17 retained by the Office of the Public Counsel (OPC), on behalf of the Citizens of the
18 State of Florida, to analyze Florida Cities Water Company North Fort Myers
19 Division's rate filing in the instant docket.
- 20 Q. Do you have an appendix that describes your qualifications in regulation?
- 21 A. Yes. Appendix I, attached to my testimony, was prepared for this purpose.
- 22 Q. Do you have an exhibit in support of your testimony?
- 23 A. Yes. Exhibit __ (KHD-1) contains 16 Schedules that support my testimony.
- 24 Q. What is the purpose of your testimony?
- 25 A. The purpose of my testimony is to respond to Florida Cities Water Company North
26 Fort Myers Division's (the Company or North Fort Myers) request to increase

1 wastewater rates by \$480,078, or 22.73%.

2

3 My testimony is organized into five sections. In the first section of my testimony, I
4 summarize my recommendations. In the second section, I address two adjustments
5 to the Company's proposed cost of capital. In the third section of my testimony, I
6 address adjustments to test year revenue. In the fourth section of my testimony, I
7 discuss certain expense adjustments. In the fifth section, I address adjustments to the
8 Company's proposed rate base.

9 Q. Before you summarize your testimony do you have any initial comments?

10 A. This case was originally processed as a proposed agency action that resulted in the
11 Commission issuing PAA Order No. PSC-95-1360-FOF-SU. The customers have
12 protested the Commission's PAA Order, which requires that the case be set for
13 hearing and that the Commission's PAA Order be vacated. Nevertheless, with two
14 exceptions, rate case expense and the imputation of CIAC on margin reserve, the
15 Company has indicated that it agreed with the adjustments ordered by the
16 Commission in the PAA Order. Accordingly, I have used as a starting point for my
17 recommendations, the adjustments ordered by the Commission in the PAA Order. For
18 reference, I have included this Order in my exhibit, as Schedule 1. I agree with most
19 of the adjustments made by the Commission and have reflected those adjustments in
20 my summary Schedules 1, 2, and 3. I disagree with some adjustments made by the
21 Commission, and I propose several adjustments that were not addressed in the PAA

1 Order. My testimony will address those areas of difference between the Commission's
2 PAA Order and my recommendations.

3 **I. Summary of Recommendations**

4 Q. Would you please summarize your recommendations?

5 A. Yes. My recommendations are summarized on Schedules 2 through 4. Schedule 2
6 presents my recommended net operating income statement for the Company's
7 wastewater operations. This schedule also shows the revenue requirement resulting
8 from my proposed adjustments. As shown on Schedule 2, the adjustments that I
9 propose produce a revenue decrease of \$256,700. This compares to the Company's
10 requested rate increase of \$480,078 and the Commission's PAA Ordered rate
11 increase of \$377,772.

12
13 Schedule 3 shows the rate base that I propose for the Company's wastewater
14 operations. The Company requested a rate base of \$8,404,278. I am recommending
15 a rate base of \$4,466,842.

16
17 Schedule 4 depicts the overall cost of capital that I recommend. As shown, I
18 recommend an overall cost of capital of 8.64%. The Company requested an overall
19 cost of capital of 9.08%. In its PAA Order, the Commission approved an overall cost
20 of capital of 9.23%

21

1 **II. Cost of Capital**

2 Q. What adjustments do you recommend concerning the Company's capital structure and
3 overall cost of capital?

4 A. I have proposed two adjustments to the Company's cost of capital. The first
5 adjustment, shown on Schedule 5, reduces the Company's embedded cost of debt.
6 Apparently, when the Company originally prepared its MFRs using the projected test
7 year ending December 31, 1995, it anticipated issuing new long-term debt at an
8 interest rate of 9.50%. This is reflected as Series L debt on my Schedule 5. However,
9 according to the Company's more recent filing in the Barefoot Bay rate case, Docket
10 No. 951258-WS, the Company's MFRs indicated that the Series L bonds had been
11 issued at a coupon rate of 7.27% as opposed to 9.50%. This application also showed
12 that instead of \$5.0 million of new debt, the Company anticipated issuing \$18.0
13 million. In addition, the Company's more recent Barefoot Bay MFRs also show that
14 the Company anticipates retiring some high cost debt, specifically the Series D, F, and
15 H, which have coupon rates of 9.50%, 9.25%, and 11.55%, respectively. Since the
16 Company's Barefoot Bay MFRs reflect more accurate and recent estimates of Florida
17 Cities Water Company, I have incorporated them into the Company's overall cost of
18 capital. To be consistent with the increase in the amount of Series L bonds, I reduced
19 the Company's \$10,000,000 line of credit. I have essentially assumed that the
20 Company would pay off this line of credit with the lower cost L Series debt. As
21 shown on Schedule 5, these charges reduce the Company's embedded cost of long-

1 term debt from 9.55% to 8.34%. I recommend that the Commission make these
2 adjustments to the Company's capital structure and reduce the embedded cost of debt
3 accordingly.

4 Q. Have you made any other adjustments to the capital structure or the associated cost
5 rates?

6 A. Yes. Consistent with Commission policy, and the Commission's PAA Order, I revised
7 the Company's cost of Investment Tax Credits (ITCs). The Company included ITCs
8 in the capital structure using cost of capital that included customer deposits, as
9 opposed to the cost of capital associated with investor supplied funds. I have also
10 updated the cost of debt to be consistent with the above recommendation. My
11 recommendation decreases the cost of ITCs from 9.96% to 9.53%. (By itself, this
12 recommendation would increase the cost of ITCs, however, because I have reduced
13 the cost of debt, and altered the capital structure ratios, the overall cost applied to
14 ITCs is reduced.)

15 Q. What is the impact of your adjustments?

16 A. As depicted on Schedule 5, my recommendations reduce the Company's overall cost
17 of capital from 9.08% to 8.64%. This compares to the overall rate of return approved
18 by the Commission in the PAA Order of 9.23%.

19 **III. Revenue Adjustments**

20 Q. What adjustments do you propose to the Company's revenue?

21 A. I am proposing one adjustment to test year revenue, that was previously approved by

1 the Commission in their PAA Order. Specifically, as shown on Schedule 6, I
2 recommend that the Commission increase the rate charged to the Loochmoore golf
3 course for reuse water from the proposed rate of \$.13 to \$.21 for the reasons
4 discussed in the Commission's PAA Order. As shown on Schedule 6, this adjustment
5 increases test year revenue by \$8,760.

6 **IV. Expense Adjustments**

7 Q. What adjustments to the Company's expenses are you proposing?

8 A. The adjustments that I recommend are presented on Schedules 7 through 9. Schedule
9 7 summarizes the adjustments that I recommend concerning the Company's
10 wastewater operations that are supposedly affected by customer growth and the PSC
11 Index. For purposes of developing its projected test year the Company increased its
12 expenses for the historical year ended December 31, 1994 by a factor that reflected
13 one year's customer growth and the PSC's 1995 price index, where applicable. The
14 Company essentially assumed that regardless of the circumstances or the account, its
15 expenses would increase in 1995 equal to the increase in customers and inflation. I do
16 not believe that it is realistic to assume that expenses will automatically increase. In
17 fact, a comparison of the expenses from the Company's prior rate case to the historic
18 test year ending December 31, 1994 shows that some expenses have actually
19 declined. As such, I evaluated each of the expense adjustments proposed by the
20 Company, and removed the proposed adjustments where it is not evident that the
21 expense will necessarily increase in 1995. The Company should be striving to reduce

1 expenses, not be put in a position where increasing expenses is endorsed, as would
2 be the case if the Commission automatically accepted the Company's proposed level
3 of 1995 expenses.

4
5 As shown on Schedule 7, the Company proposes to increase material and supplies
6 expenses by \$227. I have removed this adjustment because these expenses actually
7 decreased from June 30, 1993 to December 31, 1995 by 48.18%. Rather than assume
8 that this expense will increase, I have assumed that it will remain constant.

9
10 The next adjustment is reflected in the expense category Contract-Other. The
11 Company proposes to increase this expense for two items. They include an increase
12 of \$2,800 for increased postage/billing charges and an increase of \$679 for increased
13 customers and the PSC price index. I have reduced this expense by \$2,800 to remove
14 the adjustment for increased postage/billing.

15
16 The increase in postage relates to the Company's change from billing customers via
17 a post card to billing customers with an envelope. Mr. Dick explained in his testimony
18 that the Company has switched from a postage card style of billing to a laser printed
19 stuffed bill with return envelope. The Company did not explain why this would
20 necessitate an increase in postage/billing charges. Nevertheless, while some increased
21 postage costs would be expected, Mr. Dick also explained that this change had two

1 benefits. First, the 5x7 cards were frequently misplaced by the postal service or mixed
2 with other fourth class mail and discarded. Elimination of these problems should
3 increase the Company's cash flow and reduce its working capital requirements.
4 Second, the Company will be able to send messages to customers about rates, services
5 and similar matters without the need to mail separate notices. This factor alone should
6 reduce postage costs, not increase them. Since the proposed cost increase is merely
7 the difference between the cost of sending a post card versus an envelope, the
8 Company's estimate is overstated. The Company has not reflected the reduction in
9 expense that will result from not sending separate notices for other matters. Since I
10 did not have the information to calculate the reduction in expense associated with
11 fewer mailings, I removed the proposed cost increase from test year expenses.

12
13 The next adjustment that I propose relates to transportation expenses. The Company
14 proposed to increase this expense by \$1,269. As shown on Schedule 7, this expense
15 account decreased from 1993 to 1994. Accordingly, I have removed the adjustment
16 proposed by the Company.

17
18 The last adjustment relates to miscellaneous expenses. For this account, the Company
19 assumed that expenses would increase by \$4465--\$3,198 associated with customer
20 growth and inflation, and \$1,267 associated with increased costs for additional bank
21 charges. I have allowed the later adjustment, but removed the one for increased

1 customer growth and inflation. As shown on Schedule 7, in a period of one and one-
2 half years, this expense account more than doubled. It increased from \$41,751 for the
3 year ending June 30, 1993 to \$89,586 for the year ending December 31, 1994. I do
4 not believe that the Company's explanation for this cost increase is sufficient.
5 Furthermore, miscellaneous expenses are certainly controllable by the Company. In
6 my opinion, the Commission should not further exacerbate the problem of
7 uncontrolled rising expenses, by allowing the adjustment proposed by the Company.
8 Accordingly, I have reduced test year expenses by \$3,198. The total of all of the
9 adjustments that I propose is \$7,494.

10 Q. What is the next adjustment that you propose?

11 A. The next adjustment that I propose relates to the Company's transactions with its
12 affiliates. I will first present an overview of the relationship between the Company and
13 its affiliates and then explain my adjustment. The Company is a division of Florida
14 Cities Water Company, which is owned by FCWC Holdings, Inc. FCWC Holdings,
15 Inc. is in turn owned by Consolidated Water Company. Consolidated Water Company
16 owns three other companies that are involved in the water/wastewater business.
17 Consolidated Water Company is owned by Avatar Utilities, Inc., which is owned by
18 Avatar Holdings, Inc.

19
20 Avatar Holdings, Inc. is a diversified company that owns both real estate and utility
21 operations. In addition to the nonregulated operations of the parent company, Avatar

1 Unities, Inc., also owns two nonregulated companies--Barefoot Bay Propane Gas
2 Company and Avatar Utility Services, Inc.

3 Q. Do any of the affiliates of Florida Cities Water Company charge or allocate costs to
4 the Company?

5 A. Yes, several do. Beginning at the top of the organizational chart, Avatar Holdings,
6 Inc., charges Avatar Utilities, Inc. for certain management fees. Avatar Utilities, Inc.
7 also charges the Company for management services. Next, Avatar Utility Services,
8 Inc., provides data processing services to the Company. These costs are directly
9 charged to the Company. Finally, Florida Cities Water Company allocates to each of
10 its operating divisions administrative and general expenses and customer billing and
11 customer accounting expenses.

12 Q. Should the Commission be concerned about the Company's relationship with its
13 affiliates?

14 A. Yes. In a situation involving the provision of services between affiliated companies
15 the associated costs and transactions do not represent arms-length dealings. Cost
16 allocation techniques and methods of charging affiliates should be closely scrutinized
17 to ensure that the Company's regulated operations are not burdened by the
18 nonregulated operations.

19

20 Because of the affiliation between FCWC and the firms that indirectly or directly
21 contribute to expenses included in the Company's cost of service, the arms-length

1 bargaining of a normal competitive environment is not present in their transactions.
2 Although each affiliated company is supposedly separate, relationships among the
3 various companies are still close. All are part of one corporate family with the same
4 owners. Because of the regulated and nonregulated ventures of the parent companies,
5 the Commission should be concerned about the inherent incentive for the parent
6 company to overcharge its regulated operations and undercharge its nonregulated
7 operations. By doing this, the parent companies will be able to maximize the charges
8 passed onto captive customers and maximize profits.

9 Q. Do you have any specific concerns that you would like to bring to the Commission's
10 attention concerning the charges between affiliates?

11 A. Yes, I have several. First, the Company has presented no evidence concerning the
12 reasonableness or necessity of the charges from its parent and affiliated companies.

13
14 Second, the Company may be charged for duplicative services. For example, Avatar
15 Holdings, Inc., Avatar Utilities, Inc., and Florida Cities Water Company all provide
16 similar services to the utility. There is no assurance that the costs allocated by the
17 parent companies are not duplicated by each other or Florida Cities Water Company.

18
19 Third, I am not convinced that the allocation method used to distribute costs between
20 Florida Cities Water Company and its division and the unregulated operations of
21 Avatar Utilities, Inc. -- specifically the propane gas operations and the Avatar Utility

1 Services, Inc., is equitable. For example, with respect to the allocation of costs from
2 Avatar Utility, Inc. to FCWC and Avatar Utility Services, Inc. the Company uses a
3 composite factor based upon payroll and plant in service. The latter over allocates
4 costs to the water and wastewater operations because they are very capital intensive,
5 and under allocates costs to Avatar Utility Services, Inc. that is a service company
6 with little capital investment.

7
8 Fourth, FCWC also allocates costs to its divisions and to the unregulated operations
9 of Avatar Utilities, Inc. The allocation method employed, which appears to be a
10 combined factor consisting of employees, plant, and customers, inherently under
11 allocates costs to Avatar Utility Services, Inc. Since the Company did not provide as
12 part of its MFRs the workpapers used to make these allocations, it was not possible
13 for me to change the allocation method and properly redistribute the costs. This under
14 allocation of costs to Avatar Utility Services, Inc. may be what has contributed to that
15 company's overearnings in the past. In a 1993 rate case concerning the South Fort
16 Myers division of FCWC, I testified that for the years 1990, 1991, and 1992 this
17 subsidiary earned a return on equity in excess of any normal return. For 1990, the
18 return on year-end equity was 73%; for 1991, the return on average equity was 92%;
19 and for 1992, the return on average equity was 113%. Clearly, with these returns on
20 equity, the Commission should be concerned that the Company is being over charged
21 for the services rendered, or the allocation of costs to Avatar Utility Services, Inc. is

1 understated.

2

3 Fifth, there appears to be a discrepancy between the method of allocation described
4 in the MFRs compared to how some allocations actually occur. For example, the
5 MFRs indicate that "the administrative staff in the general office in Sarasota provides
6 service to affiliated companies and divisions. These costs are apportioned to all
7 companies on the average of net plant, customers and payroll." However, in the Staff's
8 Audit workpapers, the salaries of some of the general office personnel do not appear
9 to be allocated on this basis, but on what appears to be a judgement of how much
10 time is devoted to the various operations.

11

12 Sixth, Florida Cities Water Company charges its various divisions for services
13 rendered for administrative and general and customer expenses. The Company did not
14 provide as part of its MFRs the workpapers supporting these allocations. As such, it
15 is not possible to even verify if the allocation methodology described in the MFRs is
16 applied correctly, or to ensure that there is no double counting of allocated expenses.

17 Q. You indicated on several occasions that the Company did not provide as part of its
18 MFRs the workpapers supporting some of its allocations. Is it your opinion that this
19 information should have been provided as part of the Company's MFRs?

20 A. Yes. The Commission's Rule, 25-30.436 (h), F.A.C., specifically states that the
21 following should be provided as part of a utility's application when it files for a rate

1 increase:

2
3 (h) Any system that has costs allocated or charged to
4 it from a parent, affiliate or related party, in addition to
5 those costs reported on Schedule B-12 of Commission
6 Form PSC/WAW 19 for a Class A utility or
7 PSC/WAW 20 for a Class B utility, (incorporated by
8 reference in Rule 25-30.437) shall file three copies of
9 additional schedules that show the following
10 information:

11 1. The total costs being allocated or charged prior to
12 any allocation or charging as well as the name of the
13 entity from which the costs are being allocated or
14 charged and its relationship to the utility.

15 2. For costs allocated or charged to the utility in
16 excess of one percent of test year revenues:

17 a. A detailed description and itemization;

18 b. the amount of each itemized cost.

19 3. The allocation or direct charging method
20 used and the bases for using that method.

21 4. The workpapers used to develop the

1 allocation method, including but not limited to
2 the numerator and denominator of each
3 allocation factor.

4 5. The workpapers used to develop, where
5 applicable, the basis for the direct charging
6 method.

7 6. An organizational chart of the relationship
8 between the utility and its parent and affiliated
9 companies and the relationship of any related
10 parties.

11 7. A copy of any contracts or agreements
12 between the utility and its parent or affiliated
13 companies for services rendered between or
14 among them.

15 The Company provided the information required of parts 6 and 7 for all affiliates.
16 With respect to allocations from Avatar Utility, Inc., the Company provided the
17 information required in parts 1, 2, 3, 4, and 5. However, with respect to costs
18 allocated from Avatar Holdings, Inc. the Company did not provide any of the
19 information required in parts 1, 2, 3, 4, and 5. With respect to the allocations from
20 FCWC, the Company likewise did not provide the information required in parts 1, 2,
21 3, 5, and part of 4. In fact, in the Company's MFRs, with respect to the FCWC

1 allocations, the Company stated: "Due to the voluminous number of allocations
2 made, schedules showing the computation of allocation percentages for all expenses
3 allocated are available for inspection at the Utility's office in Sarasota Florida."

4
5 I participated in the rule making proceeding which adopted these rules on affiliate
6 transactions. The reason the Commission limited the number of copies of this
7 information that needed to be provided to 3 was because the utilities complained
8 about the voluminous nature of such documentation. Furthermore, the Office of the
9 Public Counsel specifically requested that this information to be part of a utility's
10 application for a rate increase (and part of the Commission's rules) so that it would
11 not have to obtain the information through discovery. However, in the instant
12 proceeding, the Company failed to follow the Commission's rules and has prevented
13 the Office of the Public Counsel from analyzing costs charged between and among
14 affiliates.

15 Q. You have identified several problems with the Company's relationships with its
16 affiliated companies and you have shown that the Company did not provide
17 information required by Commission rule. Do you have a recommendation for
18 purposes of this rate proceeding?

19 A. Yes. I am recommending that 10% of the Company's administrative and general and
20 customer accounting expenses be disallowed because of the Company's failure to
21 properly follow the Commission's rule. The Company has the burden of proof to

1 demonstrate the reasonableness of charges from its affiliates. Since the Company, in
2 my opinion, has failed to justify the reasonableness of these charges, I believe that the
3 Commission could disallow 100% of these expenses since they are unsupported. I
4 have nevertheless taken a more conservative approach, and recommend disallowance
5 of 10% of these charges. As shown on Schedule 8, my recommendation reduces test
6 year wastewater expenses by \$36,795.

7 Q. What is the next adjustment that you propose?

8 A. As shown on Schedule 9, the next adjustment relates to the Company's request to
9 include \$13,949 in rate case expense from Florida Cities Water Company. I have
10 removed this from the Company's requested rate case expense because the Company
11 has not demonstrated that these charges are not already included in the Company's
12 1994 test year expenses. Florida Cities Water Company prepares MFRs and testimony
13 with in-house staff. As such these costs would be included in the Company's test year
14 operating expenses. If they are included in the 1994/95 test year operating expenses
15 then inclusion in rate case expense would double count the expense. Ratepayers
16 would be charged for this service twice. As depicted on this schedule, with the four-
17 year amortization, my adjustment reduces test year expense by \$3,487.

18 **V. Rate Base Adjustments**

19 Q. What rate base adjustments do you recommend?

20 A. I am recommending several adjustments. The first adjustment, depicted on Schedule
21 10, relates to working capital. To develop its working capital request the Company

1 included Other Deferred Debits, but failed to also include cost-free Other Deferred
2 Credits. Accordingly, I have adjusted the Company's working capital request to allow
3 for the cost-free Other Deferred Credits. As shown on this schedule, this reduces the
4 Company's request by \$539,071 on a 13-month average basis and by \$538,664 on a
5 year-end basis. After application of the North Fort Myers allocation factor, the
6 Company's working capital requirement is reduced to \$48,138 on a 13-month average
7 basis and to \$89,222 on a year-end basis. For purposes of developing my
8 recommended rate base, I have used the 13-month average working capital
9 requirement. As shown on Schedule 10, my recommendation reduces the Company's
10 working capital requirement by \$76,636. After considering the adjustment for a
11 portion of these cost free deferred credits included in the Commission's PAA Order,
12 my recommendation reduces test year working capital by \$67,139. I recommend use
13 of the 13-month average working capital requirement because it is more
14 representative of the Company's working capital needs than the year-end approach.

15 Q. The Company recently increased the capacity of its wastewater plant. Has the
16 Company requested that the entire cost of the plant be included in rate base as 100%
17 used and useful?

18 A. Yes, it has. As shown on Schedule 11, the Company calculated the used and useful
19 percentage to be 98.61% including a 3-year margin reserve. According to the
20 Company, although the calculated non-used and useful percentage is 1.4%, the
21 increment of capacity added was the most economical and therefore the plant should

1 be considered 100% used and useful.

2 Q. Do you agree with the Company?

3 A. No. As shown on Schedule 11, I have determined that the Company's wastewater
4 treatment plant should be considered 49.34% used and useful. I have also shown an
5 alternative recommendation which shows that the plant is 59.21% used and useful. In
6 addition, I have shown what the used and useful percentage of the plant would be
7 under two different capacities, i.e., 1.25 MGD and 1.5 MGD, using the methodology
8 adopted by the Commission in its last rate case for this Company, and including a
9 margin reserve of 18 months. As shown, using a plant capacity of 1.25 MGD, the
10 plant is 72.51% used and useful, at a plant capacity of 1.5 MGD it is 60.42% used and
11 useful.

12 Q. Why did you use a plant capacity of 1.50 MGD, when the Company claims that the
13 plant's capacity is only 1.25 MGD?

14 A. According to the Company's construction and operating permit, the plant was
15 expanded to 1.5 MGD, limited to 1.3 MGD disposal capacity. In essence, the
16 hydraulic rated capacity of the plant is 1.5 MGD, but the plant is limited to disposing
17 of only 1.3 MGD of effluent. Thus, according to the construction and operating
18 permit, the cost to increase the plant's capacity is based upon a plant that has the
19 capacity to meet a demand of 1.5 MGD. In its PAA Order the Commission touched
20 on this issue, stating that the treatment plant has a hydraulic capacity of 1.5MGD, but
21 is limited in effluent disposal due to the river discharge and golf course irrigation.

1 Despite the Commission recognition that the plant's rated capacity was 1.5 MGD, it
2 used a capacity of only 1.25 MGD when calculating the used and useful percent for
3 this plant.

4 Q. Do you agree with the PAA Order concerning use of 1.25 MGD as opposed to the
5 rated capacity of the plant of 1.5 MGD?

6 A. No. The cost of the plant is partly determined by its size. Bigger plants cost more than
7 smaller plants. Consequently, by using the lower 1.25 MGD as the denominator in the
8 used and useful calculation, the Commission and the Company, have overstated the
9 used and useful percentage for the plant. The Commission's and the Company's
10 calculation fails to recognize that there is an increment of capacity of the plant,
11 specifically, .25 MGD, that will and can be used to meet the needs of future
12 customers. It is unfair to require current customers to pay for plant than can and will
13 be used by future customers.

14 Q. The Company used a peak month average daily flow of 1.1753, why did you use a
15 peak month flow of .7283?

16 A. My peak month flow differs from the Company's because I adjusted the peak month
17 flow for excessive infiltration and inflow. As shown on Schedule 12, during the
18 historic test year peak month, the Company experienced infiltration and inflow of
19 50.90%. Customers should not be required to pay for extra plant due to excessive
20 infiltration and inflow problems. Furthermore, the Company expended money during
21 the test year and in the past to alleviate some of its infiltration and inflow problems.

1 The problem, however, tends to recur. The Company has produced no cost/benefit
2 study to show that it is more cost effective to expand the treatment plant to process
3 excessive infiltration and inflow, than to cure it by other means. Without such an
4 analysis, the Commission should not automatically include as used and useful the
5 added increment of capacity needed to treat excessive infiltration and inflow.

6 Q. How did you develop the amount of inflow and infiltration that should be allowed for
7 this system?

8 A. Schedule 13, shows the calculations I developed to determine an appropriate level of
9 inflow and infiltration for this system. Using the criteria set forth in the Water
10 Pollution Control Federation, Manual of Practice No. 9 and the Recommended
11 Standards for Wastewater Facilities, I developed the amount of infiltration and inflow
12 that should be permitted for this Company. As shown on this schedule, the former
13 manual shows a high allowance for inflow and infiltration of 5,000 gpd/per mile for
14 pipe that is 8 inches or less, 6,000 gpd/per mile for pipe that is 9 to 12 inches, and
15 12,000 gpd/per mile for pipe that is 13 to 24 inches. Using the pipe parameters of
16 North Fort Myers and the criteria set forth in this manual, the permitted amount of
17 infiltration and inflow for this system for the peak month is 4,538,494 gallons. This
18 compares to the actual infiltration and inflow of 17,947,289 or an excessive amount
19 of 13,408,794. Subtracting the excessive amount of inflow and infiltration from the
20 actual flow, shows that the peak month flow adjusted for excessive infiltration and
21 inflow is .728 MGD, as opposed to the actual flow of 1.1753 MGD.

1

2 Similar calculations using the low estimate provided by Water Pollution Control
3 Federation, Manual of Practice No. 9, which I have labeled as my medium
4 recommendation because it is higher than that recommended by the Recommended
5 Standards for Wastewater Facilities, shows that during the peak month, the Company
6 had 14,741,738 gallons of excessive infiltration and inflow. Removing this from the
7 actual flow, shows that .684 MGD should be used to calculate used and useful
8 percentage of this plant.

9

10 The low recommendation shown on this schedule uses the criteria set forth by the
11 Recommended Standards for Wastewater Facilities, and it provides for an allowance
12 of 200 gallons per inch of pipe diameter per mile per day. As shown, if this criterion
13 is used, during the peak month the Company experienced 16,506,293 of excessive
14 infiltration and inflow. Removing this from actual flows, shows that .625 MGD should
15 be used to calculate the used and useful percentage for this plant.

16

17 This schedule also depicts the amount of excessive infiltration and inflow based upon
18 the Staff's recommended default formulas in the engineering rulemaking proceeding.
19 As shown, using their criterion, the Company's system has excessive infiltration and
20 inflow of 11,876,670 gallons. Removing this from actual flows, shows that .779 MGD
21 should be used to calculate the used and useful percentage of this plant.

1 This schedule also depicts the amount of excessive infiltration and inflow using the
2 criteria allowed by the Commission in its Order No. PSC-92-0594-FOF-SU. In that
3 case, the Commission found that 10,000 gpd per mile of pipe was a reasonable
4 standard to use to test for excessive infiltration and inflow. Using that standard for the
5 peak month shows that the amount of excessive infiltration and inflow associated with
6 this system is 9,127,289. This would result in a peak month MGD of .871 to be used
7 for proposes of calculating the used and useful percentage of the plant.

8
9 Excluding the column concerning the Commission's order in the last rate case, I used
10 the most conservative number, i.e., allowing for the most infiltration and inflow, to
11 develop my recommended used and useful calculations. Using an average daily flow
12 for the max month of .728 MGD, I have determined that the plant is 49.34% used and
13 useful. For comparative purposes, if the low end of infiltration and inflow allowance
14 were used, the plant would only be 42.34% used and useful.

15 Q. Based upon your calculations, what increment of capacity is associated with excessive
16 infiltration and inflow?

17 A. Based upon the calculations depicted on Schedule 13, the excessive infiltration and
18 inflow experienced by the Company during the peak month amounts to .447 MGD.
19 This is more than the capacity, i.e., .25 MGD, the Company claims it needed to add
20 to meet near term increased customer flow. As such, the capacity added by the
21 Company would not have been necessary if it were not for the excessive infiltration

1 and inflow experienced at this plant.

2 Q. The Company claims that there is no excessive infiltration and inflow associated with
3 its collection system. Would you care to comment?

4 A. Yes. Mr. Dick states that the infiltration and inflow for the wastewater system is 25%
5 based upon a comparison between the average annual daily flow of wastewater
6 treated versus the average wastewater flow. These calculations differ from mine in
7 several respects. First, while Mr. Dick adjusted the water sold for the number of
8 wastewater customers, he did not adjust for the fact that not all water that is sold to
9 the wastewater customers in is returned to the wastewater system. As shown on
10 Schedule 12 to account for this fact, I multiplied the amount of water sold by 70.89%.
11 (This figures takes into consideration that only a portion of the a water customers use
12 the wastewater system and that of those customers, not all of the water used is
13 returned to the wastewater system.) This is the percentage of water returned to the
14 wastewater system by wastewater only customers. Mr. Dick accounted for the fact
15 that not all water customers use the Company's sewer system, but he failed to account
16 for the fact that some of this water is used for purposes that do not require it to be
17 returned to the wastewater system--for example, irrigation and car washing. If his
18 figures were adjusted correctly, it would show an average annual amount of
19 infiltration and inflow of 35% as opposed to 25%. The former figure is about the
20 same as depicted on my Schedule 12.

21

1 Second, the evaluation that I performed was based upon the peak month, not the
2 average flow of the system. The Company must design its plant to meet peak
3 requirements. Accordingly, it must also consider the capacity required during the peak
4 period to treat infiltration and inflow. By examining the issue on an average annual
5 basis, as opposed to a peak basis, the Company has not recognized that the peak
6 month was largely driven excessive infiltration and inflow, and that the capacity
7 additions were required in order to treat this infiltration and inflow.

8
9 Third, in selecting the standard by which to compare the Company's infiltration and
10 inflow, the Company chose a liberal standard. The Water Pollution Control Manual
11 presents several allowances that can be used to plan for infiltration and inflow--most
12 of which are less than the one selected by the Company. In addition, as noted above,
13 the standard selected by the Company is much greater than the standard selected by
14 the Commission's Staff when designing the default formulas for the used and useful
15 rulemaking proceeding. Moreover, the standard selected by the Company is greater
16 than the one used by the Company in its last rate case and the one adopted by the
17 Commission that case.

18 Q. Did you include a margin reserve in your used and useful calculations?

19 A. No, I did not. In my opinion, it is not appropriate to include margin reserve in the
20 used and useful calculations. Margin reserve represents capacity required to serve
21 future customers, not current customers. I have, however, included an increment of

1 demand associated with use of a projected test year. As shown on Schedule 11, this
2 increased the demand placed on the system by .0118 MGD.

3
4 The inclusion of a margin reserve to account for future customers above and beyond
5 the future test year level represents investment that will not be used and useful in
6 serving current customers. If the Commission includes margin reserve in the used and
7 useful calculations this will result in current ratepayers paying for plant that will be
8 used to serve future customers. This causes an intergenerational inequity between
9 ratepayers. If no margin reserve is allowed, the Company will still be compensated for
10 the prudent cost of its plant with Allowance for Prudently Invested Funds (AFPI).

11 The wastewater rates proposed by this Company are extremely high--they will be one
12 of the highest in the state. To include in current rates to customers the cost of plant
13 designed to serve future customers would add insult to injury.

14 Q. If the Commission agrees with you, will North Fort Myers be harmed?

15 A. Not if the plant was prudently constructed. The Company is permitted to accrue
16 AFPI on prudently invested plant that is not used and useful. The Commission
17 established AFPI for the very purpose of protecting utilities from under recovering
18 the cost of plant that is not used and useful, but was prudently constructed.
19 Consequently, if the Commission does not grant the Company's request to include
20 margin reserve in the used and useful calculations, North Fort Myers will still recover
21 the carrying costs associated with the assets that are currently considered non-used

1 and useful through the AFPI charges at some point in the future. These costs would
2 be collected from the customers who actually benefit from the capacity, not from
3 current customers who do not need the capacity.

4 Q. If the Commission decides that margin reserve should be included in the used and
5 useful calculations, should a corresponding adjustment be made to CIAC?

6 A. Yes. If margin reserve is included in the used-and-useful calculations, then, to
7 achieve a proper matching, an amount of CIAC equivalent to the number of
8 equivalent residential connections (ERCs) represented by the margin reserve should
9 be reflected in rate base. This is especially important in this case because the
10 Company is adding the cost of additional capacity to serve future customers. Because
11 of this addition, the Company is proposing to increase its plant capacity charges. In
12 calculating the imputation of CIAC, the Commission should use the proposed,
13 interim, or final new capacity charges. The CIAC that will be collected from these
14 future customers would at least serve to mitigate the impact on the existing customers
15 resulting from requiring them to pay for plant that will be utilized to serve future
16 customers.

17 Q. Would you care to comment on Mr. Acosta's concerns about the imputation of CIAC
18 on margin reserve?

19 A. Yes. Mr. Acosta makes two arguments against the Commission's policy of imputing
20 CIAC on margin reserve. First, he claims that the imputation of CIAC prevents the
21 utility from earning a return on its investment--in this case the imputation of margin

1 reserve completely offsets the increment of plant allowed by the margin reserve. What
2 Mr. Acosta fails to consider is that if the Commission did not impute CIAC on margin
3 reserve, then the Company would be permitted to over earn on the increment of plant
4 added by margin reserve. As the Company collects CIAC from customers, if this
5 CIAC is not reflected in the rate base used to set rates, then the Company will earn
6 more on its investment than allowed by the Commission. If the Company's projections
7 of future customers does not materialize, then the Company bears the risk that it will
8 not collect the CIAC imputed during the test year. This is precisely where the risk
9 should lie. Current customers should not bear the risk that the Company has not
10 accurately forecasted future connections, this is a risk that should be borne by the
11 Company.

12
13 Furthermore, there is an additional mismatch the Commission should consider. While
14 the Commission usually imputes CIAC associated with margin reserve, it does not
15 likewise recognize the additional revenue that will also be generated by these future
16 customers. In other words, the Company is allowed an additional increment of plant
17 in rate base, but it is not required to recognize the revenue that will be generated as
18 these future customers connect. As such, even with the imputation of CIAC on
19 margin reserve, the Company is still given the opportunity to earn in excess of the
20 return allowed by the Commission, because the future revenue is not recognized for
21 ratemaking purposes.

1 Mr. Acosta's second argument is that the Commission's present practice of offsetting
2 margin reserve by imputing CIAC combined with the limited time frame allowed for
3 margin reserve provides disincentives for utilities to expand wastewater facilities
4 beyond the five year window identified in Section 62-600, F.A.C. This, Mr. Acosta
5 claims, leads utilities to make small incremental expansions to avoid economic loss.
6 As I mentioned above, there is no economic loss to the utility, unless, its plant was not
7 prudently constructed or the utility's projections are not realized. It would appear
8 from these comments that the Company does not make economical decisions because
9 of the Commission's regulatory policy. It is not the Commission's responsibility to
10 provide incentives for the Company to make economical decisions. If the Company
11 fails to make the most economical decision for its ratepayers then the Commission
12 should disallow all costs associated with any uneconomical decision. Furthermore, the
13 Company has provided no support for its suggestion that ratepayers are better off
14 with a larger plant today rather than smaller plants built over time.

15
16 Although I do not support an allowance for margin reserve, if the Commission does
17 allow one, it should reject the Company's request, and impute CIAC on the margin
18 reserve.

19 Q. What is the result of your used and useful calculations?

20 A. The amount of plant in service, accumulated depreciation, and depreciation expense
21 that should be removed from the test year are depicted on Schedules 14, 15, and 16.

1 As shown on Schedule 14, my used and useful adjustment reduces plant in service by
2 \$4,429,591. Accumulated depreciation should also be reduced by \$761,162, as shown
3 on Schedule 15. Depreciation expense should be reduced by \$232,848, as shown on
4 Schedule 16. In addition, I have also reduced property taxes by \$34,553 to account
5 for the adjustments that I recommend concerning the Company's plant in service. This
6 adjustment is depicted on Schedule 2.

7 Q. Does this complete your direct testimony, prefiled on March 13, 1996?

8 A. Yes, it does.

9

10

1 MR. McLEAN: Thank you, ma'am. Tender
2 Ms. Dismukes for cross.

3 COMMISSIONER JOHNSON: Mr. Gatlin.

4 MR. GATLIN: No questions.

5 MR. JAEGER: No questions.

6 COMMISSIONER JOHNSON: Ms. Walla -- I'm
7 sorry. Any questions for Ms. Dismukes?

8 MS. WALLA: No questions.

9 COMMISSIONER JOHNSON: Staff.

10 MR. JAEGER: No questions.

11 COMMISSIONER JOHNSON: Commissioners? You
12 got off easy today.

13 COMMISSIONER GARCIA: Why didn't we
14 stipulate this in?

15 MR. GATLIN: I don't know the answer.

16 COMMISSIONER JOHNSON: That's fine, I'll
17 take it as we get it.

18 MR. McLEAN: Citizens rest. More than they
19 expected to.

20 COMMISSIONER JOHNSON: Exhibit 22 then.

21 MR. McLEAN: Move it into evidence, please.

22 COMMISSIONER JOHNSON: Show it admitted
23 without objection. Did we give that exhibit a title?

24 Appendix 1 and Dismukes exhibits.

25 (Exhibit No. 22 received in evidence.)

1 COMMISSIONER JOHNSON: Now, Staff, you have
2 an issue you'd like to bring to the Commission?

3 MR. JAEGER: Staff took two of its witnesses
4 out of turn, and James A. McPherson was stipulated in.
5 At this time we would like to insert the auditor's
6 testimony, James A. McPherson, into the record as
7 though read pursuant to the stipulation.

8 COMMISSIONER JOHNSON: So it so inserted
9 without objection.

10 MR. JAEGER: Also he had an Exhibit JAM-1
11 which was the audit report, we'd like to have that
12 identified and also entered into the record.

13 COMMISSIONER JOHNSON: We will identify
14 JHM-1 audit report, Exhibit 23, and show it admitted
15 without objection.

16 (Exhibit No. 23 marked for identification
17 and received in evidence.)

18

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25

1 DIRECT TESTIMONY OF JAMES A. MCPHERSON

2 Q. Please state your name and business address.

3 A. My name is James A. McPherson and my business address is 9950 Princess
4 Palm Avenue, Suite 310, Tampa, Florida, 33619.

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

6 A. I am employed by the Florida Public Service Commission as a Regulatory
7 Analyst III in the Division of Auditing and Financial Analysis.

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

9 A. I have been employed by the Florida Public Service Commission for
10 approximately three years and six months.

11 Q. Briefly review your educational and professional background.

12 A. In 1975, I received a Degree in Forestry from the University of Florida
13 and in 1978 I received an Accounting Degree from the University of South
14 Florida. I worked as a staff accountant for a CPA firm for three years.
15 Before joining the Commission Staff I was employed at Lykes Brothers, Inc.
16 for nine years, the last three years as the Manager of Internal Audit17 I am a Certified Public Accountant licensed in the State of Florida.
18 I also am a member of the Florida Institute of Certified Public Accountants
19 and the American Institute of Certified Public Accountants.

20 Q. Please describe your current responsibilities.

21 A. Currently, I am a Regulatory Analyst III with the responsibilities of
22 planning and directing audits of regulated companies, and assisting in audits
23 of affiliated transactions. I also am responsible for creating audit work
24 programs to meet a specific audit purpose and I direct and control assigned
25 staff work as well as participate as a staff auditor and audit manager.

1 Q. What is the purpose of your testimony today?

2 A. The purpose of my testimony is to sponsor the staff audit report of
3 Florida Cities Water Company - Lee County Division, Docket No. 950387-SU. The
4 audit report is filed with my testimony and is identified as JAM-1.

5 Q. Was this audit report prepared by you?

6 A. Yes, I was the audit manager in charge of this audit.

7 Q. Please review the audit disclosures in the audit report.

8 A. Audit Disclosure No. 1 states that \$7,987 in 1994 water guaranteed
9 revenues were posted to the Sewer division. Therefore, for ratemaking
10 purposes, the 1994 sewer revenues should be reduced by \$7,987 with a resulting
11 \$359 reduction to Taxes Other Than Income.

12 Audit Disclosure No. 2 states that Utility Plant in Service should be
13 reduced by \$223,175. This includes \$210,734 for legal fees relating to the
14 utility's lawsuit with the Department of Justice and \$12,441 for engineering
15 fees that should have been charged to the water system.

16 Audit Disclosure No. 3 discusses several adjustments to utility plant
17 in service (UPIS) and accumulated depreciation (A.D.). These adjustments are
18 as follows: 1) adjust the cost of removal for work order 4214 and 4197 (reduce
19 UPIS and A.D. by \$9,057); 2) record prior Commission order adjustments (reduce
20 UPIS by \$35,357 and A.D. by \$37,754); 3) adjust depreciation recorded on power
21 operated equipment (increase A.D by \$9,127); 4) correct double posting of
22 retirement (increase A.D by \$118); 5) capitalize laboratory equipment
23 (increase UPIS by \$1,352); and 6) reduce A.D. by \$16,912 for reduction in
24 Disclosure No. 2.

25 Audit Disclosure No. 4 discusses an adjustment to increase Accumulated

1 | Amortization of CIAC by \$1,659 in order to reflect the prior Commission order.

2 | Audit Disclosure No. 5 discusses my calculation of the Working Capital
3 | Allowance. I recommend that the \$2,000,000 intercompany note should be
4 | removed from the current liabilities. The utility also adjusted the working
5 | capital allowance for the base year for accrued preferred stock dividends
6 | payable. However, the utility amount the utility adjusted included an amount
7 | of \$221,791 for "income tax refund receivable from parent". Therefore I
8 | recommend a correction to the adjustment for this amount.

9 | Audit Disclosure No. 6 discusses the utility's method for reporting
10 | customer deposits in the rate case. In this case, the utility allocates a
11 | portion of the total company customer deposits to the North Ft. Myers division
12 | using the same allocation factor used to allocate corporate debt and equity.

13 | Audit Disclosure No. 7 discusses the utility's projection to issue new
14 | bonds in June 1995. As of July 19, 1995, no bonds had been issued.

15 | Audit Disclosure No. 8 lists several deferred assets and liabilities
16 | that were not included in the utility's MFR schedules for capital structure.
17 | These items are mostly for CIAC gross-up but also include Deferred Pension
18 | Liability, Deferred Gross Receipts Tax, and Accrued Post Retirement Benefits.

19 | Q. Does this conclude your testimony?

20 | A. Yes, it does.

21 |

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1 MR. JAEGER: Okay. And one last thing. We,
2 by two separate letters, to all of the parties, we
3 asked that the Commission -- or we advised the parties
4 that we would ask the Commission to take judicial
5 notice of some orders, and those orders are
6 PSC-92-0594 --

7 COMMISSIONER JOHNSON: Excuse me, are they
8 stated in the Prehearing Order, or is this --

9 MR. JAEGER: They are not in the Prehearing
10 Order.

11 COMMISSIONER JOHNSON: Let me write those
12 down then, slow down a bit.

13 COMMISSIONER KIESLING: Do you have
14 something that has them written down?

15 MR. JAEGER: I have the two cover letters
16 which has all of the orders, and it was served on the
17 parties on the 17th and 19th.

18 COMMISSIONER JOHNSON: Could I have a copy
19 of it?

20 MR. JAEGER: Yes, I'll give you a copy of
21 the two letters. I've got extra.

22 COMMISSIONER JOHNSON: That's fine.

23 MR. JAEGER: Do you want me to read it into
24 the record?

25 COMMISSIONER JOHNSON: Go ahead, please do.

1 MR. McLEAN: As far as the citizens are
2 concerned, we'll accept the authenticity of any order
3 that is filed in the clerk's office.

4 MR. JAEGER: Mr. Gatlin?

5 MR. GATLIN: I have no problem with the
6 orders.

7 COMMISSIONER JOHNSON: The Commission will
8 take judicial notice of its own orders.

9 MR. JAEGER: Okay. That's all we have then.

10 COMMISSIONER JOHNSON: Thank you.

11 I think we're then ready for our rebuttal
12 case.

13 MR. GATLIN: Yes. I Call Mr. Cummings.

14 COMMISSIONER JOHNSON: Were you sworn?

15 WITNESS CUMMINGS: Yes, yesterday

16 - - - - -

17 **THOMAS A. CUMMINGS**

18 was called as a rebuttal witness on behalf of Florida
19 Cities Water Company and, having been duly sworn,
20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. GATLIN:

23 Q Would you please state your name and
24 address?

25 A Thomas A. Cummings. Business address, 2701

1 North Rocky Point Road, Tampa, Florida.

2 Q And have you prepared rebuttal testimony in
3 this proceeding for presentation today in the form of
4 questions and answers?

5 A Yes.

6 Q If I were to ask you those same questions
7 today, would your answers be the same?

8 A Yes.

9 MR. GATLIN: Madam Chairman, we would
10 request this be inserted into the record as though
11 read.

12 COMMISSIONER JOHNSON: Show it so inserted
13 without objection.

14 Q (By Mr. Gatlin) And attached to your
15 testimony is Exhibit TAC-1, which is a Notification of
16 Completion of Construction. Is that your exhibit,
17 also?

18 A Yes.

19 MR. GATLIN: May we have this identified,
20 Madam Chairman?

21 COMMISSIONER JOHNSON: TAC-1, Notification
22 of Completion of Construction will be identified as
23 Exhibit 24.

24 (Exhibit No. 24 marked for identification.)

25

1 FLORIDA CITIES WATER COMPANY

2 NORTH FORT MYERS DIVISION

3 REBUTTAL TESTIMONY OF THOMAS A. CUMMINGS

4 TO DIRECT TESTIMONY OF KIMBERLY DISMUKES

5 AND BENNIE T. SHOEMAKER

6 Docket No. 950387-SU

7 Q. Please state your name and business address.

8 A. My name is Thomas A. Cummings. My business address is
9 Black & Veatch, 2701 North Rocky Point Drive, Suite
10 960, Tampa, Florida 33607.11 Q. Could you briefly describe your educational background
12 and your professional qualifications?13 A. I received my Bachelor of Science degree in Civil
14 Engineering from Purdue University in 1979, and have
15 completed Master of Science degree course work in
16 Environmental Engineering and Science from the
17 University of Missouri through 1985. I am a
18 registered professional engineer in the States of
19 Florida and Kansas. I was originally registered in
20 Kansas, in March, 1984, after passing the examination
21 in sanitary engineering, and registered in Florida in
22 August, 1990.23 Q. Please describe your professional engineering
24 experience concerning water and wastewater utilities?

25 A. I have over 12 years continuous experience as a

1 registered professional engineer specializing in
2 studying, planning, designing, permitting and managing
3 the construction of water and wastewater facilities
4 for public and private investor-owned utilities in the
5 State of Florida. I have been engineer-of-record for
6 the design and permitting of five wastewater and/or
7 water treatment plants, and assisted with the design,
8 permitting and construction management of numerous
9 others. I have studied and designed water treatment
10 facilities utilizing biological and chemical
11 treatments. I have been involved in the hydraulic
12 model analysis and mechanical review of over fifteen
13 water and wastewater systems and the preparation of
14 over 25 water and/or wastewater treatment plant
15 facility designs. My design and permitting experience
16 also includes over 30 miles of raw water mains,
17 potable water mains and force mains ranging in size
18 from 4 inches to 60 inches.

19 Q. By whom are you presently employed?

20 A. I am currently employed by Black & Veatch.

21 Q. Can you briefly describe the services that Black &
22 Veatch provides?

23 A. Yes. Black & Veatch is a professional engineering and
24 consulting firm that has 80 offices and over 6,000
25 employees. The services that Black & Veatch can

1 provide are capabilities in the environmental, civil,
2 electric, power, building, process, and management
3 consulting fields as well as procurement and
4 construction.

5 Q. Has Florida Cities Water Company (FCWC) ever utilized
6 the expertise of a Black & Veatch employee as an
7 expert witness before the PSC at a rate case hearing?

8 A. Yes, in FCWC's South Ft. Myers wastewater rate case,
9 PSC Order No. PSC-93-1288-FOF-SU, Docket No. 920808-SU
10 (9/7/93).

11 Q. Specifically, what did Black & Veatch attest to in
12 that rate case?

13 A. Black & Veatch's witness testified to the used and
14 useful treatment plant components in that proceeding.

15 Q. Did the PSC accept Black & Veatch's testimony related
16 to used and useful components?

17 A. Yes.

18 Q. What is your position with that firm?

19 A. I am a project manager/project engineer.

20 Q. How long have you held that position?

21 A. I have held the position since 1985.

22 Q. What are your normal duties for the firm?

23 A. The majority of my time I am responsible for
24 engineering duties for numerous projects and clients
25 for which my role is either the project manager, or

1 project engineer, depending upon the nature and scope
2 of our services.

3 Q. What is the purpose of your testimony?

4 A. The purpose of my testimony is to establish the
5 capacity of the Waterway Estates Advanced Wastewater
6 Treatment Plant (WWTP) in response to the direct
7 testimony of Office of Public Counsel witness Kimberly
8 Dismukes and PSC staff witness Bennie Shoemaker.

9 Q. Are you the Black & Veatch project manager for the
10 Waterway Estates WWTP expansion to provide advanced
11 wastewater treatment?

12 A. Yes, I am.

13 Q. Did you prepare the preliminary design report and the
14 Florida Department of Environmental Protection (FDEP)
15 permit application for the Waterway Estates WWTP
16 expansion to provide advanced wastewater treatment?

17 A. Yes, I did.

18 Q. Aren't you also the engineer of record for this
19 facility?

20 A. Yes, I am.

21 Q. Did Black & Veatch provide the final design and
22 construction management services for the Waterway
23 Estates WWTP expansion?

24 A. Yes, they did.

25 Q. Were you also the project manager of these portions of

1 the project for Black & Veatch?

2 A. Yes, I was.

3 Q. Do you agree with witness Dismukes' use of a plant
4 capacity of 1.5 MGD?

5 A. No.

6 Q. What was the design capacity of the plant contained in
7 the preliminary design report and FDEP permit
8 application?

9 A. 1.30 million gallons per day (MGD) expandable to 1.5
10 MGD.

11 Q. On what basis was the plant capacity expansion
12 designed and rated?

13 A. The plant expansion was originally designed to treat
14 1.30 MGD on an average annual daily flow basis.

15 Q. Did FCWC direct you to change the design after the
16 preliminary design report was prepared and the FDEP
17 permit application was filed?

18 A. Yes. FCWC directed us to change the design capacity
19 to a maximum of 1.25 MGD based on the annual average
20 daily flow and the design waste concentration
21 associated with this flow.

22 Q. Why was this change made?

23 A. The plant capacity of the original plant was
24 determined based upon providing reclaimed water at an
25 annual rate of 0.30 MGD to the Lochmoor Country Club

1 Golf Course for irrigation. After the design was
2 completed, it became apparent that the actual
3 irrigation rate was less than originally estimated.

4 Q. What was the original irrigation rate use in the
5 design?

6 A. The original irrigation rate used in the design was
7 0.96 inches per week over 81 acres. This was reduced
8 to account for reduced usage during wet weather
9 periods.

10 Q. Did you make the design change?

11 A. Yes.

12 Q. In your professional opinion, was this change prudent?

13 A. Yes.

14 Q. What is the capacity of the facility that was actually
15 constructed by FCWC?

16 A. The plant capacity will be equal to 1.25 MGD based
17 upon the average annual daily flow and the waste
18 concentration associated with this flow.

19 Q. Is this capacity change reflected in the construction
20 permit?

21 A. No. In discussions with FDEP staff, it was decided
22 that it would be best to reflect this change in design
23 capacity on the operating permit application, rather
24 than submitting an application for modification of the
25 construction permit.

- 1 Q. Does the notification of completion of construction
2 for the Waterway Estates WWTP reflect the design
3 changes associated with reducing the capacity to 1.25
4 MGD?
- 5 A. Yes, it does. Please see Exhibit 24 (TAC-1) for a
6 copy of the notification.
- 7 Q. Did you assist FCWC with the preparation of the
8 operating permit application for this facility?
- 9 A. Yes.
- 10 Q. When will you submit the operating permit application
11 to FDEP for approval?
- 12 A. The application will be submitted in early May, 1996.
- 13 Q. What design capacity is shown on the operating permit
14 application?
- 15 A. 1.25 MGD.
- 16 Q. What basis of design flow is shown on the operating
17 permit application?
- 18 A. The basis of design flow is the annual average daily
19 flow.
- 20 Q. Could the plant, as constructed, be permitted to treat
21 a flow greater than 1.25 MGD?
- 22 A. No.
- 23 Q. Please explain how plant capacity is determined?
- 24 A. Wastewater treatment plants are normally designed to
25 remove solids and dissolved pollutants contained in

1 the raw wastewater received by the plant. The plants
2 are normally permitted by the regulatory agency to
3 meet effluent requirements on an annual average basis.
4 Of course, the flow received by a wastewater treatment
5 plant is not constant, but varies during the day in
6 relationship to the activities of the customers
7 connected to the plant. The flows also vary daily and
8 seasonally throughout any given year in response to
9 weather conditions, the influx of seasonal and tourist
10 population, changes in the number of wastewater
11 customers, etc. Therefore, these variations must be
12 considered when designing the plant and are normally
13 calculated from historical or industry literature data
14 as a multiple of the annual average daily design flow.

15 The peak hour flow results when customers are most
16 active during the daytime hours and the plant design
17 must be able to hydraulically allow this flow to pass
18 through the plant to prevent the treatment units from
19 overflowing and at the same time, provide full
20 treatment.

21 Each individual unit process must be analyzed in
22 relationship to accepted design standards to determine
23 its ability to meet effluent quality limits under
24 varying flow conditions associated with the annual
25 average daily design flow. Even though these unit

1 processes may provide acceptable effluent quality in
2 response to short-term variations in influent flow,
3 the plant generally will not be able to meet these
4 limits on a continuous basis.

5 The plant capacity is not only based upon the
6 hydraulic capacity received by the facility, it is
7 also based upon the load or quantity of pollutants
8 carried by the flow which require treatment or removal
9 in order to meet the effluent limitations. The
10 pollutant load is normally determined based upon the
11 average annual daily design flow and the associated
12 design pollutant concentrations. Therefore, the plant
13 capacity determination must also take into account the
14 ability of the unit processes to remove the influent
15 pollutant load down to levels that meet the effluent
16 limitations.

17 The final determination of plant capacity is based
18 upon the ability to respond to variations in raw
19 wastewater flow and pollutant load, and whichever of
20 these variables is the most limiting upon plant
21 capacity is usually the final determining factor.

22 Q. Is the limiting plant capacity factor at Waterway
23 Estates WWTP the disposal capacity as stated in the
24 direct testimony of Witness Shoemaker?

25 A. No.

1 Q. What is the limiting factor regarding plant capacity?

2 A. The treatment process.

3 Q. What qualifications and experience are required to
4 determine capacity of a wastewater treatment facility?

5 A. A person would need to thoroughly understand all
6 technical aspects of the operations and functions of
7 the various components of the wastewater facility,
8 have knowledge of the variations of raw wastewater
9 quality and quantity, have knowledge of the applicable
10 rules, regulations, industry standards and reference
11 documents that govern its design, and possess the
12 experience and training required to analyze and
13 evaluate each of these to make a determination of the
14 capacity of a facility. These qualifications and
15 experience would normally be possessed by a
16 professional engineer practicing in the areas of
17 sanitary or environmental engineering with specific
18 training and experience in the design and operation of
19 wastewater treatment facilities.

20 Q. Could a person not possessing these qualifications
21 determine the capacity of a wastewater treatment
22 facility such as Waterway Estates?

23 A. No.

24 Q. What qualifications and experience are required to
25 obtain an FDEP permit for a wastewater treatment

1 plant?

- 2 A. At a minimum, a person must be a registered
3 professional engineer in the State of Florida in order
4 to sign and seal the application form and certify the
5 completion of construction as required by the FDEP in
6 accordance with the provisions of s. 403.0877, Florida
7 Statutes. Moreover, Rule 62-600.715, Florida
8 Administrative Code, requires that a preliminary
9 design report signed and sealed by the engineer of
10 record accompany the application. Additionally, the
11 rules of practice for professional engineers prohibit
12 them from performing assignments when they are not
13 qualified by training or experience in the field or
14 discipline of engineering involved. Rule 61G15-
15 19.001(6)(c), Florida Administrative Code, Rules Of
16 The State Board of Professional Engineers. In
17 essence, this means that the engineer, besides being
18 registered, should practice in the areas of sanitary
19 or environmental engineering and have specific
20 educational background or experience in the design and
21 operation of wastewater treatment facilities, as well
22 as knowledge of applicable rules, regulations, and
23 guidance documents.
- 24 Q. In your professional opinion, what capacity should be
25 utilized to determine the used and useful percentage

1 for the Waterway Estates WWTP?

2 A. The average annual daily flow capacity of 1.25 MGD
3 should be used.

4 Q. Does this conclude your testimony?

5 A. Yes.

6

1 MR. GATLIN: Madam Chairman, I have some
2 additional questions pursuant to the Prehearing Order
3 that allowed us to present oral testimony in response
4 to the testimony of Ms. Walla and Ms. Victor. I have
5 some additional questions.

6 COMMISSIONER JOHNSON: Okay.

7 Q (By Mr. Gatlin) What is the source of
8 irrigation water of the Lochmoor Golf Course?

9 A It's been reported by Lochmoor that the
10 source of water for irrigation is a combination of
11 storm water and groundwater.

12 Q How does the Lochmoor irrigation system
13 work?

14 A The Lochmoor irrigation system is a series
15 of ponds on the site that collects storm water during
16 the rainy season, those ponds then transmit water to
17 two separate ponds which house or contain the
18 irrigation pumps that pump water then into the
19 sprinkler system during the rainy season.

20 During the dry season, Lochmoor operates
21 groundwater wells that supply water into the pond
22 system, and then that being the source of supply, the
23 pumps for irrigation, and pump water into the
24 sprinkler system.

25 Q Sprinkler system you said?

1 A Sprinkler system.

2 Q Are these groundwater wells permitted by the
3 State of Florida?

4 A Yes, they are. They are permitted by the
5 State of Florida under consumptive use permits, and
6 their pumpage rates are reported monthly to the state.

7 Q What is the rate of the well pumping or
8 groundwater withdrawal?

9 A Approximately 250,000 gallons per day annual
10 average.

11 Q Is the 250,000 gallons per day average the
12 correct capacity for the reuse of reclaimed water?

13 A Yes, it is.

14 Q What's the SWFWMD position on renewing
15 consumption use permits?

16 A Over the recent history, SWFWMD's position
17 or South Florida Water Management District's position
18 has been to try to dissuade or eliminate consumptive
19 use permits in order to save and conserve the
20 groundwater. And the position they have taken with
21 Lochmoor Golf Course is a stand of: If reclaimed water
22 is available, then they will review the consumptive
23 use permits in place. And when their renewal comes up
24 possibly not renew them or renew them at a lesser rate
25 and expect the groundwater to be replaced with

1 reclaimed water.

2 Q Is the reclaimed water from Florida Cities
3 able to replace the use of groundwater at Lochmoor?

4 A Yes, it is.

5 Q Will the placement of reclaimed water in the
6 Lochmoor irrigation system increase the total volume
7 of water already in the system?

8 A No, it will not.

9 Q What will it replace?

10 A It will replace the groundwater that's
11 pumped by Lochmoor Golf Course from their groundwater
12 wells.

13 Q Will reclaimed water be pumped to Lochmoor
14 during the rainy season or during times similar to the
15 60 days mentioned by Ms. Victor in 1995 when the
16 course is flooded?

17 A No, it will not. There are controls on the
18 reclaimed water system that will not allow water to
19 enter the pond system if the ponds are at a high
20 level.

21 Q Where will the reclaimed water go in that
22 instance?

23 A To the Caloosahatchee River.

24 Q Is that pursuant to a permit?

25 A Yes. There is a permit in place with the

1 wastewater plant that allows wet weather discharge
2 into the Caloosahatchee for their effluent.

3 Q Will Pond No. 5, with reuse water, provide
4 the irrigation pumps with water?

5 A Yes. Pond No. 5 is centrally located
6 between the two ponds that contain the irrigation or
7 sprinkler system wells, those being ponds 3 and 8.
8 Pond 5 is connected to pond 8 via pipelines through
9 pond 6 to 9 and then to 8. And also pond 5 is
10 connected to pond 3, the pipes connecting pond 5 to 4,
11 and 4 to 3.

12 MR. GATLIN: Madam Chairman, that completes
13 our supplemental rebuttal testimony, and the witness
14 is available for questions.

15 COMMISSIONER JOHNSON: Public Counsel.

16 MR. McLEAN: Yes, ma'am.

17 **CROSS EXAMINATION**

18 BY MR. McLEAN:

19 Q Mr. Cummings, did you review any testimony
20 from a case which was recently heard over in Barefoot
21 Bay? Did you review the testimony of a
22 Mr. Christopher in that case?

23 A Yes, I did.

24 Q My observation is that your testimony is
25 astonishingly similar to that Mr. Christopher's. Is

1 that a fair observation?

2 A Some parts of it are similar.

3 Q Did you author your testimony?

4 A Yes, I did.

5 Q Are there parts that you took from
6 Mr. Christopher's testimony?

7 A My testimony has questions in it that were
8 similar to the testimony previously submitted, so the
9 answers are somewhat the same.

10 Q But the testimony that you filed in this
11 case you stand for its truth, we don't have to look to
12 Mr. Christopher for that; is that correct?

13 A That's correct.

14 Q I'm going to hand out an exhibit here,
15 Mr. Cummings.

16 COMMISSIONER JOHNSON: Do you want this
17 identified?

18 MR. McLEAN: Yes, ma'am, please.

19 COMMISSIONER JOHNSON: We will identify
20 Construction Permit excerpt as Exhibit 25.

21 (Exhibit No. 25 marked for identification.)

22 Q (By Mr. McLean) Mr. Cummings, are you aware
23 of a general area of disagreement between our office
24 and your company which is directed to plant capacity
25 and whether treatment capacity is limited by disposal

1 capacity and so forth. You're familiar with that
2 general area of dispute?

3 A Not between my office and your company.

4 Q Good point. Our office and the Florida
5 Cities Water?

6 A Yes.

7 Q You're familiar with that dispute, I'm
8 sorry.

9 And one notion that you addressed in your
10 testimony is whether the disposal capacity in any way
11 limits the capacity of the system. Is that correct?

12 A Could you restate the question?

13 Q Well, in a general sense, we think that the
14 capacity is 1.5 million gallons a day, and you believe
15 it is less; is that right?

16 A That's correct, I believe it is less. I
17 believe the treatment capacity is less.

18 Q Right. And the focus of our disagreement is
19 whether the capacity is set by the treatment capacity
20 or by the disposal capacity; is that correct?

21 A The dispute?

22 Q Yes, sir.

23 A I believe that to be the question in
24 dispute.

25 Q Okay. You have an exhibit before you which

1 I just passed out.

2 A Yes.

3 Q Do you recognize it, can you tell the
4 Commission what it is?

5 A It's a letter from the Florida Department of
6 Environmental Protection, the first page titled,
7 "Notice of Permit". And apparently there's a
8 second -- and that's two pages. And there's a second
9 single Page 1 of 15 pages, which is a permit
10 certification.

11 Q All right, Mr. Cummings. I think we have
12 included a page in there which has absolutely nothing
13 to do with your testimony. Let me see if I can
14 identify it for you so I can ask you a couple fair
15 questions about the exhibit.

16 There is a Page No. 1, which is a letter
17 from the Environmental Protection, and then
18 immediately following that is a schedule which I ask
19 you to disregard. Okay? And then the third page is
20 Page 2 of 2 which is the second page of the letter.
21 And then that's followed by Page 1 of 15.

22 A Yes.

23 Q Okay. Are you with me?

24 A Yes.

25 Q Is yours like mine?

1 A Yes.

2 Q Great. Let's turn to Page 1 of 15 which is
3 the very last page of the exhibit.

4 A Yes.

5 Q Now, I'm interested in the language which is
6 set forth at the top of that second paragraph "To
7 construct a modification to the existing 1. million
8 gallon a day, MGD, annual average advanced wastewater
9 treatment facility by expanding a 1.5 limited to
10 1.3 million gallon a day disposal capacity."

11 Now, my reading of that sentence leads me to
12 believe that the capacity is, in fact, limited by the
13 disposal capacity. Do you disagree with that?

14 A According to this, this is a permit to
15 construct a treatment plant to expand the treatment
16 capacity to 1.5 and limit the discharge to 1.3, two
17 separate issues: treatment capacity and discharge
18 limits.

19 Q Okay. And this construction permit was
20 issued, was it not, at the instance of Florida Cities
21 applying for it; is that correct?

22 A That's correct.

23 Q And it is based upon information which was
24 furnished to the DEP by Florida Cities?

25 MR. GATLIN: If you don't know the answer

1 you don't have to say.

2 A It is based on information that was
3 submitted by Florida Cities to DEP, prepared by
4 myself. It is based on a preparation of a report and
5 subsequent designs that incorporated a two-staged
6 expansion program which was discussed, reviewed and
7 agreed upon by DEP, those stages being a current
8 expansion to 1.3, with ultimate expansion to 1.5.
9 This permit certification then took the single number
10 of 1.5 and inserted it in the application report. It
11 does not appear to include the 1.3 which was the
12 actual expansion that was -- which was part of the
13 first step of the application.

14 Q Well, in the sentence to which I referred
15 you, where it says 1.5 limited to 1.3 disposal
16 capacity, there's no discussion there of stages, is
17 there?

18 A I agree, there's not.

19 Q So at some point the DEP received the word
20 from Florida Cities that it intended to build a
21 wastewater treatment plant that had a treatment
22 capacity of 1.5 and disposal capacity of 1.3. That is
23 correct, isn't it?

24 A To my knowledge, what was submitted was an
25 application to expand the plant to 1.3, with the idea

1 and the planning in place to expand that plant
2 ultimately to 1.5. That was what was reported to FDEP
3 and is something they agreed to. Discussions were
4 held with FDEP that it would be more prudent to, in
5 the planning stages and the initial design, to
6 incorporate the extra .2 MGD as opposed to go through
7 the redesign and resubmittal process at a later date
8 shortly after this to get to the 1.5. That is what
9 was submitted to FDEP.

10 Q You had authority on the date, or shortly
11 after this permit was issued, to build a wastewater
12 treatment plant with 1.5 MGD treatment capacity, did
13 you not?

14 A Yes.

15 Q Okay. What did you build? What did they
16 build?

17 A They build a treatment plant with treatment
18 capacity of 1.25 million gallons a day annual average.

19 Q And the components of that plant -- I take
20 it that such a plant has a number of components,
21 doesn't it?

22 A Yes, it does.

23 Q A relatively complex device. Would you turn
24 to your testimony, Page 6 -- I'm sorry, Page 5 of your
25 exhibit. It says at the top, Attachment A. Do you

1 have that page, sir?

2 A Which page?

3 Q Page 5. Looks like a fax flag up at the
4 top. It says Page 5.

5 A On the fax Page 5.

6 Q Yes, sir. At the top of the page, it says
7 "April 3, '96, Wednesday, 13:51, Attachment A". It's
8 an exhibit to your testimony.

9 COMMISSIONER GARCIA: So it's 5 after the
10 testimony?

11 MR. McLEAN: I believe so. It is the
12 Exhibit affixed to Mr. Cummings' testimony.

13 MR. GATLIN: Yes, it is Exhibit 24,
14 Exhibit TAC-1. Is that what you're referring to?

15 MR. McLEAN: Yes, Page 5 of your exhibit.
16 It's the exhibit to your testimony.

17 WITNESS CUMMINGS: I'm not sure I have that
18 in front of me.

19 COMMISSIONER GARCIA: So only with the fax
20 number 5 on the top?

21 MR. McLEAN: That's correct, sir.

22 A All right, I'm ready.

23 Q (By Mr. McLean) You have Attachment A now.
24 Just to make sure we're all on the same page, it's a
25 fax flag at the top, "April 3, '96, Wednesday, 13:51,

1 Page 05, Attachment A," and then there's a list of
2 plant components?

3 A Yes.

4 Q You have the page?

5 A Yes.

6 Q Now, I'm not sure I know what list is. I
7 have the impression that it is a description of a
8 plant which you say has treatment capacity of 1.25
9 MGD; is that correct?

10 A That's correct.

11 Q All right. I want to look at each one of
12 those -- I want you to tell me what it would take to
13 increase the -- first, strike that.

14 It's your testimony that this plant is
15 expandable to 1.5 MGD; is that correct?

16 A That's correct.

17 Q Okay. Let's look at these components here
18 and see what it would take. Would you have to make
19 any change to the rotating drum screen to increase the
20 capacity?

21 A No.

22 Q How about the mechanical mixer for
23 equalization tank?

24 A No.

25 Q How about the chlorine feed system?

1 A Yes.

2 Q What the changes would need to be made?

3 A The size of the chlorine injectors, the
4 rotor meters and storage would need to be increased.

5 Q The injector itself would have to be
6 increased. Does the existing equipment have to be
7 replaced, or will it tolerate a modification of the
8 existing equipment?

9 A It would be a modification.

10 Q Okay. And what was the second item you
11 mentioned?

12 A The rotor meters and the storage. The rotor
13 meters control the flow of water into the injectors,
14 would have to be replaced, and possibly may be a need
15 for additional storage.

16 Q Okay. You're not sure about whether you
17 need additional storage?

18 A No.

19 Q Storage is where you store extra chlorine?

20 A That's correct.

21 Q Okay. What's the approximate cost of those
22 three things that you just mentioned, ballpark figure?

23 A I don't know.

24 Q Okay. Is it in thousands, hundreds,
25 millions?

1 A It's not in millions.

2 Q Okay. But it might be in thousands?

3 Looking for a rough ballpark figure. I don't think
4 any of us know whether we're talking ten grand or a
5 hundred. Do you have any idea?

6 A It would be under \$100,000.

7 Q Compressed air system for automatic pinch
8 valves, any changes?

9 A No.

10 Q Mixed liquor suspended solids recycle
11 pumping system, any changes?

12 A No.

13 Q How about lime storage feed silo for sludge
14 stabilization?

15 A No.

16 Q Blower addition rehabilitation for increased
17 aeration?

18 A No.

19 Q What about additional diffusers in
20 biological treatment Unit No. 1?

21 A Yes.

22 Q Okay. Now, there are additional diffusers
23 as a result of building the 1.25. That's the reason
24 for the word "additional" there, isn't it?

25 A I couldn't hear you with the noise in the

1 background.

2 Q I'm sorry. It says additional diffusers.
3 Now, additional as compared to what? What's the
4 baseline? Do you understand the question?

5 A Baseline were the existing diffusers in the
6 basins prior to any expansion.

7 Q Okay. Now there has been some additional
8 diffusers to get it to 1.25, correct?

9 A Correct.

10 Q And you're suggesting at this point you may
11 have to construct more diffusers to get to 1.5?

12 A Yes.

13 Q Can you give the Commission a financial
14 dimension for that change?

15 A No, I cannot.

16 Q Can you give us a ballpark figure?

17 A (Pause) It would be in the hundreds of
18 thousands, six figures.

19 Q Six figures for the additional diffusers?

20 A Diffusers and drop pipes and diffuser
21 headers, all stainless steel pipe.

22 Q I may have to deal with that in a little bit
23 more detail then. What is a diffuser? Can you tell
24 us in layman's terms what a diffuser is?

25 A A diffuser is a device that diffuses air

1 into a water tank. It is connected to a pipe that
2 transfers -- an air pipe that transfers air into the
3 tank. There are approximately, I believe, 12
4 diffusers per drop pipe, and there may be -- I'm
5 taking a rough guess, on a typical tank there may be
6 25 drop pipes at Waterway Estates.

7 Q Okay. The increment of expansion that we're
8 talking about here to get to 1.25, the additional
9 diffusers, can you give the Commission some dimension
10 for how many diffusers existed when you were at 1.0,
11 and how many diffusers are required to get to 1.25?
12 Mr. Cummings, if it's more convenient to talk about
13 drop pipes, I'll accept that.

14 A No, no, that's fine. There were in the
15 order of 6 to 800 different diffusers.

16 Q That's at the 1.0 level?

17 A Yes. And we may have added 200 diffusers to
18 get to 1.25. Those are rough ballpark numbers.

19 Q Of course. Now, what would it take to get
20 to 1.5?

21 A Possibly another 200.

22 Q All right, sir. And there would be an
23 attending change in -- drop pipes and diffusers move
24 in tandem, I take it?

25 A Yes.

1 Q Reclaimed water pumping system, would you
2 have to make any changes to get to 1.5?

3 A Yes.

4 Q What changes would be necessary?

5 A An additional pump.

6 Q How many pumps are there now?

7 A One.

8 Q And it would take another pump of the same
9 capacity?

10 A Yes.

11 Q What is the capacity of the existing pump?

12 A I don't remember.

13 Q Can you do a ballpark on that one, or is
14 that too risky when you're talking about capacity?

15 A It's probably in the range of 500 to 700
16 gallons per minute.

17 Q And can you give it a financial dimension --
18 oh, let me ask you, the second pump would be the same
19 capacity as the first?

20 A Yes.

21 Q Can you give that notion a financial
22 dimension for the Commission?

23 A No.

24 Q Can you give it a ballpark?

25 A The pump, the electrical gear, the valves

1 and piping that go along with it would be again in the
2 six-figure range.

3 Q Okay. Now, with respect to miscellaneous
4 structural, mechanical and instrumentation
5 improvements, what changes, if any?

6 A There would be some miscellaneous electrical
7 improvements for any equipment that is added.

8 Q Let me stop you there, if you will. There
9 would be obviously electrical additions for the pump
10 that you mentioned?

11 A Right.

12 Q But there would not be any for the --

13 A For the diffusers.

14 Q Diffusers, yes?

15 A That's correct.

16 Q That's essentially a mechanical -- the
17 diffusers are essentially a mechanical device?

18 A Correct.

19 Q Okay.

20 A There are other items that would be
21 necessary to take the plant to 1.5 that aren't
22 included on this list.

23 Q Okay. What are those?

24 A During the course of our design to get to
25 the 1.3, or our first phase of the two-step expansion

1 program, we ran tests to try to establish the actual
2 capacity of some of the internal components to the
3 plant, such as pumping between basins, and also the
4 effluent filters and nitrogen removal system. At the
5 time those tests identified that those systems were
6 capable of providing treatment capacity at 1.3, but
7 may not indeed be at 1.5. In particular the transfer
8 pumps may need to be exchanged or replaced.

9 Q I didn't hear the verb you used when you
10 said the notion is -- I'm sorry, I just didn't hear
11 the word you used. Would you repeat it, please?

12 A Replaced.

13 Q No, sir. When you talked about -- you
14 mentioned the 1.3. I take it that it is contemplated
15 that you'll expand the existing 1.25 capacity, that's
16 the first expansion you speak of. And then you
17 mention the word "1.3," and I don't have an idea, what
18 does 1.3 represent?

19 A 1.3 is the current capacity of the plant as
20 constructed.

21 Q We discussed 1.25, what's its significance?

22 A The current capacity of the plant as
23 constructed is 1.25 million gallons a day, annual
24 average.

25 Q And that discusses treatment capacity?

1 A That's correct.

2 Q What is the significance of the 1.3 number?

3 A The 1.3 number was the target plant capacity
4 that we started with back in 1993 and '94 when this
5 process started based on a combination of issues, one
6 being flow coming into the plant and be able to treat
7 what the plant was seeing at the time based on
8 projections. Also, what was believed to be required
9 at the Lochmoor Golf Course.

10 Q The construction permit discusses 1.5,
11 correct?

12 A Yes.

13 Q Okay. What is the significance of the 1.5
14 number?

15 A As the initial discussion and meetings with
16 Mr. Shoemaker and others at DEP were held, the
17 discussions there were always considering a two-step
18 or two-phased expansion of the plant. The first being
19 1.3, and then ultimate 1.25 -- 1.3 and ultimate 1.5
20 based on what the ultimate capacity of the plant would
21 be.

22 It is prudent engineering design to not
23 focus on just the immediate need, but also allow for
24 economical expansion to what the ultimate plant
25 capacity may be. And whatever we can do to try to

1 accommodate that in the future, without expending
2 additional funds now, we would do that.

3 So in our first discussions and all
4 discussions with FDEP, it was known to them that the
5 application was for an expansion now of 1.3 with
6 ultimate expansion to 1.5. It was under their
7 direction that we submit all data that would show both
8 the first and the second phase in order for them to
9 get the full picture of what was going on and what was
10 planned at that treatment plant.

11 As was reported earlier, FDEP keeps track of
12 flows that come into the plant. And if you're
13 influent approaches the actual capacity of the plant,
14 then you are required to submit additional information
15 such as preliminary designs, final designs,
16 construction applications if you reach that capacity.
17 So by working with them and them knowing our plans for
18 both current and ultimate construction, they were
19 better able to understand where the Utility was going
20 with the expansion of this plant.

21 Why the current permit states 1.5 I don't
22 know. It was a document that they produced.

23 Q I see. I have the impression -- well,
24 Page 5, as we've discussed, Attachment A, this list
25 describes a plant with a capacity of 1.25?

1 A Correct.

2 Q That was the first aim to construct the
3 plant to expand the plant to treat 1.25?

4 A No. Originally, the application was to
5 expand the plant to 1.3. During construction the
6 capacity and the design and construction was revised
7 to 1.25.

8 Q Got it. I think I finally have it. Now,
9 returning to the issue of what you would have to do to
10 expand this plant 1.25 to 1.5, you said there were
11 some things which were not on the list, and the
12 problem, as I understand what you said, was certain
13 plant components may perform well with 1.3 capacity,
14 but you would need to review and make some
15 modifications with respect to the 1.5. Did I
16 understand you correctly?

17 A Yes.

18 Q Now, with respect to those, I also had the
19 impression that there had not been -- you have not
20 rendered an opinion or anything of that sort on what
21 actually would need to be changed, but you have
22 reached the point where you suspect that those changes
23 would have to be made. Now, I want to get a dimension
24 on the extent to which you are sure that any of these
25 components would have to be changed, and if changes

1 need to be made, what is the extent of the changes?

2 A We have already discussed the changes to
3 Attachment A.

4 Q Yes.

5 A And there is no question about those; is
6 that correct?

7 Q No, that's not the question. Let me
8 rephrase. That was kind of a lengthy question.

9 You said that some of the internal plant
10 components may need to be changed.

11 A Yes.

12 Q Now, what I want to do is put some kind of a
13 dimension on that "may." I want to know how sure you
14 are, what you have done thus far to determine whether
15 they would have to be changed, whether it is intuition
16 that tells you they need to be changed or whether it's
17 empirical observation and looking at meters and such
18 as that. I'm just trying to get a dimension on that.

19 A Theoretical calculations were run on the
20 hydraulics of the plant, and those calculations
21 indicated that the transfer pumps between tanks were
22 of an inadequate size to allow treatment at the
23 original current design capacity at that time, which
24 was 1.3. Subsequent to those calculations in a effort
25 to reduce costs, the Utility ran hydraulic tests on

1 those pumps, finding out what the actual capacity was.
2 That capacity was found to be such that it would
3 support treatment at 1.3 at a peak condition. When
4 that was found, then those pieces of equipment were
5 not revised or replaced during this construction
6 activity. But those would need to be replaced in
7 order to get a plant capacity of 1.5. There's another
8 item then which would be effluent filters, was the
9 other item I mentioned.

10 Q Can we just stay on the pumps for just for
11 the moment?

12 A All right.

13 Q Then we'll go to the filters. With respect
14 to the pumps, you said they had to be replaced or
15 exchanged did you say?

16 A Replaced.

17 Q Earlier did you not say exchanged? Or a
18 word to that effect?

19 A Yes, but I used that in the same context as
20 replaced.

21 Q I see.

22 A There is no exchange value.

23 Q So that's essentially of pulling the old
24 pumps out of the floor and put new ones in; is that
25 right?

1 A Yes.

2 Q Now, with respect to the filters that you
3 made brief mention of, tell the Commission more about
4 that issue.

5 A All right. The effluent filters provide two
6 functions: They filter the effluent to get rid of any
7 suspended solids; they also have a biological activity
8 and purpose, which is to remove nitrogen.

9 During the preliminary design -- during the
10 very first stages of preliminary design is was thought
11 than an additional filter would have to be added which
12 is in the range again of six figures, if we run the
13 ballpark costs, which I assume you're going to ask me
14 for.

15 As we proceeded into final design, again it
16 was identified that that would not be necessary to
17 achieve the current treatment capacity. That would
18 have to be revisited again at a treatment capacity of
19 1.5, and I believe that there is a likely chance that
20 an additional filter would need to be placed.

21 This is also borne out in the original plant
22 design which allows for not only one but two
23 additional filters to be placed to get to the ultimate
24 capacity of the plant.

25 Q And there was no filter change -- are we

1 dealing with a number of filters, or how many filters
2 are there currently?

3 A The original plant -- the original plant
4 design expansion that was done around 1990 included
5 space for two more filter banks, two more filters.

6 Q Okay. What I don't quite understand, let's
7 take the 1.0 capacity. How many filters are in place
8 at that point?

9 A Three.

10 Q And there's some provision made for the
11 addition of future filters; is that right?

12 A Yes.

13 Q But none was required to expand to 1.3 or to
14 1.25?

15 A Correct.

16 Q Now you suspect that there may be an
17 additional need for filters at this point?

18 A If the plant capacity is to go to 1.5.

19 Q Yes, sir, that's what I meant to say.

20 A That's correct.

21 Q And that would occasion the need for two
22 more filters; is that correct?

23 A At least one more filter.

24 Q Okay. And provision has been made at least
25 to place those filters if not to place them in

1 service; is that right?

2 A No. Space has been left on site. It was
3 also discussed that while construction was going on
4 under this phase, that it would be of economic good
5 sense, if you will, to place the foundations for
6 another filter since that activity was going on for
7 other construction on site. But again, it was decided
8 that it probably would not be cost effective to do at
9 the time, and so that was eliminated from the package,
10 too, to keep costs down.

11 Q When you're talking about space then, you're
12 talking about physical space without any fasteners or
13 anything like that in place, foundation?

14 A So what remains now to allow the filters to
15 be placed is just a gravel space on the plant site
16 saved for the purpose of filters.

17 Q I see. Now, with respect to the other
18 modifications which you say would need to be made to
19 the 1.25 plant, have there been any other provisions
20 such as leaving space in -- let me ask my question a
21 little differently.

22 For example, you said there's more need for
23 chlorine storage. Is there now space for more
24 chlorine storage?

25 A There is space on-site for more chlorine

1 storage.

2 Q Okay. With respect to all of the changes, I
3 would like to know if there are any asset, structures
4 or space left to accommodate those. Do you understand
5 the question?

6 A No, I don't.

7 Q Okay. If you need additional diffusers, are
8 the diffusers on site? Are there any diffusers on
9 site which are not currently in use which can be used
10 for that purpose?

11 A There are not diffusers on site for that
12 purpose, but there is space within the existing
13 tankage to place those diffusers.

14 Q And your testimony about the economic
15 consequence of putting those or the economic -- the
16 amount those would cost is unaffected by that space;
17 is that correct?

18 A Did you say unaffected?

19 Q Let me tell you what my question is. I
20 don't mean to ask it so ambiguously. It looks like
21 you're going to need a new pump, for example, for the
22 transfer between the tanks, right?

23 A Yes.

24 Q I want to know if that pump is sitting there
25 already.

1 MR. GATLIN: What was the question?

2 MR. McLEAN: I want to know if that pump is
3 sitting there already.

4 Q (By Mr. McLean) Is the new pump there? Are
5 there pumps in the Utility's possession now which will
6 serve that function?

7 A No.

8 Q Now, I want to ask that question with
9 respect to each of the modifications. We don't need
10 to go through each one of them.

11 A No.

12 Q We're dealing with a new investment which
13 would have to be made to get to 1.5; is that correct?

14 A Right, no. And they have not purchased any
15 of the equipment that has been discussed.

16 Q Okay. And we're at something of a
17 disadvantage here because you've discussed at least
18 three things which you say could run six figures.
19 Now, that could range from \$3,000 to a million or just
20 short of a million, correct?

21 So what I'd like to do is to arrange to give
22 the Commission a better economic picture of what the
23 economic consequences would be. And what I'd like you
24 to tell me anyway is what sort of endeavor are we
25 talking about for you to develop an economic picture

1 of that change?

2 A I would have to do a preliminary design of
3 the changes and put a cost to those in order to give
4 the Commission a picture of what that cost may be.

5 Q Do you think it's reasonable -- we're
6 dealing with the changes which are described there in
7 Attachment A, ran into the vicinity of \$800,000; is
8 that right? You tell me.

9 A I don't recall offhand what the approximate
10 construction -- I don't recall offhand what the
11 construction cost was. That's something we can get
12 from the Utility.

13 Q Okay. Here's my question: Do you think
14 it's reasonable that the Commission should be
15 concerned? Our dispute, we say that it is a 1.5
16 treatment capacity and that it would take a very small
17 change to get there. And you say that the change
18 would be significant. Is that pretty well the
19 dimensions of our disagreement?

20 A To get from 1.25 to 1.5.

21 Q Yes, sir. Our position is that it's already
22 1.5, and it would take a very small modification to
23 get there if it's not there.

24 A Right.

25 Q And your position is that it's 1.25?

1 A Right. It is not 1.5. The plant cannot
2 treat 1.5 million gallons a day on an annual average.

3 Q And we have been discussing what it would
4 take to get it there, right?

5 A Yes.

6 Q Now, do you think it's reasonable that the
7 Commission should be concerned about the materiality
8 of the expenditure or investment, if you will, it
9 would take to get it there?

10 A I can't answer that for the Commission.

11 (Pause)

12 COMMISSIONER GARCIA: Just so I have it
13 straight, perhaps I've confused myself. Did you say
14 that the maximum capacity is 1.3 of the plant, not
15 1.25.

16 WITNESS CUMMINGS: Right now the treatment
17 capacity of the plant on an annual average --

18 COMMISSIONER GARCIA: I know you're
19 permitted, I think, to 1.3, right?

20 WITNESS CUMMINGS: We were given a permit to
21 construct up to 1.5 according to this exhibit.

22 COMMISSIONER GARCIA: Right.

23 WITNESS CUMMINGS: We were given a permit to
24 discharge up to 1.3. We have constructed a plant that
25 has a capacity of 1.25.

1 COMMISSIONER GARCIA: Did you say that you
2 can peak out at 1.3, it's possible for you with the
3 existing plant to go to 1.3? I might have
4 misunderstood.

5 WITNESS CUMMINGS: No. We're talking now
6 about biological treatment processes, not about
7 hydraulics.

8 Q (By Mr. McLean) Mr. Cummings, if you did
9 make the changes to 1.5, you'd still be limited by the
10 disposal capacity of the plant, wouldn't you?

11 A Yes.

12 Q And that was essentially the testimony of
13 the Mr. Shoemaker, was it not, that irrespective of
14 what size the plant was you would still be limited to
15 1.3?

16 A We are limited to 1.3 in disposal, yes.

17 Q Irrespective of what your treatment capacity
18 is, correct?

19 A Correct.

20 Q So if the plant were larger than 1.3, if the
21 treatment capacity of the plant were larger than 1.3,
22 that treatment capacity could be of no use unless you
23 could expand the disposal capacity; is that correct?

24 A I wouldn't say it would be of no use. Any
25 operator likes to have as much capacity as he can, but

1 we cannot dispose of any more than 1.3.

2 MR. McLEAN: Thank you, sir. No further
3 questions.

4 COMMISSIONER JOHNSON: Ms. Walla.

5 MS. WALLA: Yes.

6 **CROSS EXAMINATION**

7 BY MS. WALLA:

8 Q Mr. Cummings, as the plant sits right now,
9 what are they being allowed to treat? 1 million
10 gallons a day or 1.5?

11 A Right now they're allowed to treat
12 approximately 1 million gallons per day on an annual
13 average.

14 Q Okay. So the plant was still rated and
15 using a 1 million gallon a day as treatment capacity
16 in July of 1995?

17 A To my knowledge, yes.

18 Q Okay. Could you please refer to your
19 testimony. Page 9, Lines 1 through 4. Could you
20 please tell me what is considered a short-term
21 variation? Is it hours, days, weeks, months? What is
22 the short-term variation? (Pause)

23 A One of the parameters we look at for
24 biological treatment design is max day flow, so that
25 might be a peak day in your year.

1 Q So you're saying the short-term variation
2 would be one day?

3 A Yes.

4 Q Okay. Would you please tell me --

5 MS. WALLA: And, Commissioners, I wasn't
6 sure if I was going to be using this or not. Is it
7 possible to put this in, once I get all of the copies
8 of it? It is a monthly operating report from Florida
9 Cities Waters to the DEP for July of 1995.

10 COMMISSIONER JOHNSON: You said you don't
11 have any copies of it?

12 MS. WALLA: I wasn't sure that I was going
13 to use it or not.

14 COMMISSIONER JOHNSON: We generally need
15 copies of it in order to identify it and so that the
16 other parties can look at it. I don't know if he's
17 got a copy. How can he --

18 MS. WALLA: I can give this to him.

19 MR. GATLIN: I guess it needs to be
20 identified, Madam Chairman. I'd like to look at it
21 before it gets too far along.

22 COMMISSIONER JOHNSON: Let's try to do this,
23 let's go ahead and identify whatever it is, and then
24 maybe if you could show it to Mr. Gatlin and to the
25 attorney. It may take us a few minutes this way,

1 but --

2 And what is it, what would you give it as a
3 short title?

4 MS. WALLA: It's Florida Cities Water
5 Company MOR for the DEP.

6 MR. JAEGER: Is that July of '95?

7 COMMISSIONER JOHNSON: July '95.

8 Okay, the Utility MFR for DEP for July of
9 '95 will be identified as Exhibit 26.

10 (Exhibit No. 26 marked for identification.)

11 MR. GATLIN: I need to see. (Hands document
12 to Mr. Gatlin.)

13 Madam Chairman, I cannot see anything on the
14 exhibit that identifies it as anything that Florida
15 Cities -- I'll be glad to let the witness look at it
16 to see if he can identify it.

17 COMMISSIONER JOHNSON: Okay. (Hands
18 document to witness.)

19 Mr. McLean, do you want to help her through
20 this one? Mr. Gatlin stated he didn't see anything on
21 there that identifies that as the Utility's MFR --
22 MOR.

23 MS. WALLA: Would not a name of an operator
24 with his certificate number on here recognize it, that
25 it is a Florida Cities Water Company employee, and it

1 does say on top the facility ID number and, you know,
2 the plant staffing.

3 COMMISSIONER JOHNSON: You may want to ask
4 him. He may recognize it, but you just need to ask
5 the questions.

6 MS. WALLA: Okay.

7 Q (By Ms. Walla) Do you recognize this
8 monthly operating report as being Florida Cities to
9 the DEP?

10 A No.

11 Q Do you recognize this as a monthly operating
12 report?

13 A It appears to be a monthly operating report.

14 Q Okay. Do you know the name Michael Hussing?
15 George Edwards? Or Gregor St. John?

16 A No.

17 Q Do you ever have the occasion to go to the
18 wastewater treatment plant?

19 A I have been to the plant.

20 Q So you are not aware of who the operators
21 are there?

22 A Not by their full names.

23 Q Do you have any reason to doubt that this is
24 their monthly operating report for July 1995?

25 MR. GATLIN: I don't think that's -- I

1 object to that question, not an identification of an
2 exhibit.

3 MS. WALLA: What is the objection to this?

4 MR. GATLIN: I don't think the witness can
5 identify the exhibit.

6 MS. WALLA: This is the original. I mean,
7 it's a copy --

8 COMMISSIONER GARCIA: Mr. McLean, I think
9 Ms. Johnson is allowing you as much latitude as you
10 need to try to help out.

11 MR. McLEAN: Well, we asked the witness if
12 he had any reason to doubt that it's authentic. The
13 witness recognized what it is, he knows that it's a
14 monthly operating whatever it was, and Ms. Walla asked
15 him if he has any reason to doubt it. I think that's
16 a fair question. Whether it authenticates the
17 document is probably subject to a motion with respect
18 to authentication, but I don't think it's an
19 objectionable question. If it was, Mr. Gatlin did not
20 identify what was objectionable about the question.
21 If the witness says he doesn't have any reason to
22 doubt it, that may or may not authenticate it.

23 MR. GATLIN: No, I don't think it does
24 authenticate it.

25 MR. McLEAN: We can argue that when he

1 answers the question. He may say he has lots of
2 reason to doubt it.

3 MR. GATLIN: Now, it's a hypothetical
4 question.

5 MR. McLEAN: No, it's not at all.

6 COMMISSIONER JOHNSON: What's the pending
7 question?

8 MR. McLEAN: I'll put the question to the
9 gentleman.

10 **CONTINUED CROSS EXAMINATION**

11 BY MR. McLEAN:

12 Q Do you have any reason to believe that this
13 is not the authentic monthly operating report of this
14 Utility?

15 COMMISSIONER JOHNSON: You can answer it.

16 A I don't have any more reason to believe that
17 it's not than I do that it is.

18 Q Let's ask about that. Up at the top it
19 lists a number of flows -- you don't have a copy of
20 it, do you? That makes it a little bit tough.

21 MR. GATLIN: I don't have a copy either.

22 MR. McLEAN: No one has a copy. Would you
23 refer to the earlier exhibit about which you were
24 asked, TAC-1, the one we handed out. It's Exhibit
25 No. 24.

1 COMMISSIONER KIESLING: 25, I think.

2 MR. McLEAN: 25, is it?

3 WITNESS CUMMINGS: 24.

4 COMMISSIONER KIESLING: 24. No, 25.

5 COMMISSIONER JOHNSON: The Construction
6 Permit excerpt.

7 MR. McLEAN: Yes, ma'am.

8 COMMISSIONER JOHNSON: It's 25.

9 MR. McLEAN: It's a letter from the
10 Department of Environmental Protection.

11 COMMISSIONER JOHNSON: That's 25.

12 MR. McLEAN: Okay. That's 25.

13 Q (By Mr. McLean) Do you have it, sir?

14 A Yes.

15 Q On the first page of letter, down at the
16 bottom, it's signed by Ronald D. Blackburn?

17 A Yes.

18 Q Look up to the reference where it says DEP
19 File No. 5236 P 01630.

20 A Yes.

21 Q Would you look to the upper left-hand corner
22 of the document which I've just handed to you --

23 MR. GATLIN: Madam Chairman, I don't have
24 any idea what's being looked at now, and I object to
25 this proceeding unless I'm furnished with a copy of

1 this proposed exhibit.

2 MR. McLEAN: We're doing this trying to
3 authenticate a docket which a layperson has brought
4 into the proceeding not knowing that she would need a
5 number of copies. We can postpone this authentication
6 procedure until we have enough copies if that would
7 make Mr. Gatlin more happy.

8 MR. GATLIN: It's not necessary to make me
9 happy, I just don't think this is the proper procedure
10 to do this. And I object to it.

11 COMMISSIONER JOHNSON: This is probably not
12 the proper procedure to do this, but in order to
13 expedite it, we could either give her the opportunity
14 to make some copies, or, Mr. Gatlin, if you don't mind
15 standing over by your witness --

16 MR. GATLIN: I'll be glad to.

17 COMMISSIONER JOHNSON: -- and looking at it
18 so we can just walk through as quickly as possible.

19 Q (By Mr. McLean) Do you have the exhibit,
20 sir? Do you have the contested exhibit?

21 MR. GATLIN: Yes, he has it. What's the
22 question?

23 Q (By Mr. McLean) The question is up in the
24 upper left-hand corner of the exhibit which I just
25 handed you, the one about which there is a dispute, is

1 there not an alpha numeric number there?

2 A Yes.

3 Q Would you read the number please, sir?

4 A 5236 P 01630.

5 Q Mr. Cummings, I'll put it to you that's the
6 same number that you read off the TAC-1, Exhibit
7 No. 25; is that correct?

8 A Yes, it is.

9 Q Now, what's the significance of that number,
10 Mr. Cummings?

11 A According to Exhibit 25, that is a number
12 identified as DEP file number.

13 Q I see. Is the file number correlated with
14 the plant, or do you know?

15 A It's the file number on the letter addressed
16 to Florida Cities for the Waterway Estates plant.

17 Q Now awhile ago you answered me that you
18 didn't have any more reason to think that it was
19 authentic, that it wasn't authentic. Do you now begin
20 to suspect that it is the authentic operating report
21 of the Utility?

22 A Yes.

23 Q Thank you, sir.

24 COMMISSIONER JOHNSON: Mr. Gatlin, is there
25 still an objection pending?

1 MR. GATLIN: It has the same number on the
2 letter as on the -- what appears to be the report, and
3 I assume it would be authentic.

4 MR. McLEAN: Madam Chairman, I think it's
5 going to be very cumbersome to deal with this. And I
6 am sensitive to Mr. Gatlin's claim that he can't
7 follow his witness without standing over there with
8 him. Let's take a few and allow Ms. Walla to run down
9 and see if she can get copies of it. I believe that
10 would take less time than the discussion which is
11 likely to ensue over it.

12 COMMISSIONER JOHNSON: Now, were you just
13 saying that you were not objecting to the document?

14 MR. GATLIN: Authenticity.

15 MR. McLEAN: Authenticity.

16 MR. GATLIN: Right.

17 MR. McLEAN: Authenticity perhaps. Now,
18 Ms. Walla's questions on it are going to be very
19 cumbersome unless everybody has a copy.

20 COMMISSIONER JOHNSON: Got you.

21 MR. GATLIN: And if it eases the program
22 here, I don't mind standing over there.

23 COMMISSIONER JOHNSON: No, that's fine. I
24 guess we'll all need copies because she's going to ask
25 a lot of questions. We'll take our ten-minute break

1 now, and we'll reconvene at 10:15.

2 (Brief recess.)

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4 (Transcript continues in sequence in Volume 6.)

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