

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO.

Application for a rate increase and : 950495-WS

increase in service availability charges:

by SOUTHERN STATES UTILITIES, INC. for :

Orange-Osceola Utilities, Inc. in :

Osceola County, and in Bradford, Brevard:

Charlotte, Citrus, Clay, Collier, Duval, :

Highlands, Lake, Lee, Marion, Martin, :

Nassau, Orange, Osceola, Pasco, Putnam, :

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

and Washington Counties. :

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EIGHTH DAY - EARLY AFTERNOON SESSION

VOLUME 32

Pages 3609 through 3723

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN SUSAN F. CLARK

COMMISSIONER J. TERRY DEASON

COMMISSIONER JULIA L. JOHNSON

COMMISSIONER DIANE K. KIESLING

COMMISSIONER JOE GARCIA

DATE: Wednesday, May 8, 1996

TIME: Reconvened at 1:00 p.m.

PLACE: Betty Easley Conference Center

Room 148

4075 Esplanade Way

Tallahassee, Florida

REPORTED BY: SYDNEY C. SILVA, CSR, RPR

Official Commission Reporter

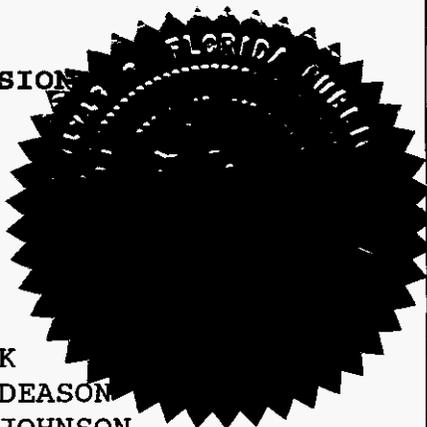
APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION MAY-9 1996

FPSC-RECORDS/REPORTING



## I N D E X

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## EXHIBITS- VOLUME 32

17	NUMBER	ID.	ADMTD.
18	199 (Mann) Marianna Division Rate	3647	3661
19	Schedule RS Residential Service		
	Effective February 17, 1994		

## P R O C E E D I N G S

(Hearing reconvened at 1:05 p.m.)

(Transcript follows in sequence from  
Volume 31.)

CHAIRMAN CLARK: We'll reconvene the  
hearing.

MR. TWOMEY: Do you want to start with Judge  
Mann?

CHAIRMAN CLARK: That would be fine. Should  
we start with Judge Mann? My recollection is all  
we're going to do is hear a summary from him?

MR. TWOMEY: He needs to be sworn, Madam  
Chairman.

MR. ARMSTRONG: Okay, that's right.

Madam Chair, I'm sorry, there are a couple  
of witnesses not sworn.

CHAIRMAN CLARK: Okay. Anyone else not  
sworn who is going to give testimony in this  
proceeding please stand and raise your right hand.

(Witnesses sworn collectively.)

CHAIRMAN CLARK: Are you ready, Judge Mann?

WITNESS MANN: I'm ready.

- - - - -



1 that or?

2 Q Well, let me go ahead first --

3 A Go ahead.

4 Q -- and ask you, if I were to ask you the  
5 questions that were contained in your prefiled direct  
6 testimony today, would your answers be the same as  
7 reflected in the prefiled testimony?

8 A Yes.

9 MR. TWOMEY: Okay, sir. Thank you very  
10 much.

11 With that, Madam Chair, I would ask that  
12 Judge Mann's prefiled direct testimony be inserted  
13 into the record as though read.

14 CHAIRMAN CLARK: The prefiled testimony of  
15 Robert Mann will be inserted in the record as though  
16 read.

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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation Into the )  
 Appropriate Rate Structure for )  
 SOUTHERN STATES UTILITIES, INC. )  
 for all Regulated Systems in )  
 Bradford, Brevard, Citrus, Clay, )  
 Collier, Duval, Hernando, )  
 Highlands, Lake, Lee/Charlotte, )  
 Marion, Martin, Nassau, Orange, )  
 Pasco, Putnam, Seminole, St. )  
 John's, St. Lucie, Volusia, and )  
 Washington Counties. )  
 \_\_\_\_\_ )

DOCKET NO. 950495-WS

FILED: February 12, 1996

DIRECT TESTIMONY OF ROBERT T. MANN  
 ON BEHALF OF SUGARMILL WOODS CIVIC ASSOCIATION, INC.,  
 MARCO ISLAND CIVIC ASSOCIATION, INC., SPRING HILL CIVIC  
 ASSOCIATION, INC. AND THE HARBOUR WOODS CIVIC ASSOCIATION

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

1 Q State your name and address.

2 A Robert T. Mann.

3 Tarpon Springs, Florida

4 Q Describe your educational and occupational  
5 background.

6 A I received the degree of Bachelor of Science in  
7 Business Administration from the University of  
8 Florida in 1946, a Master of Arts in Government  
9 from The George Washington University in 1948, a  
10 Bachelor of Laws from the University of Florida in  
11 1951, which was later converted to a Juris Doctor.  
12 In 1953 I received a Master of Laws degree from  
13 Harvard University and in 1968 a Master of Laws  
14 degree from Yale University. I hold an honorary  
15 Doctor of Laws degree from Stetson University,  
16 awarded in 1979.

17 I was Instructor in Business Organization and  
18 Control at the University of Maryland in 1947-48  
19 and Assistant Professor of Law at Northeastern  
20 University from 1951 to 1953. I engaged in the  
21 private practice of law in Tampa from 1953 to 1968,  
22 when I became judge of the Second District Court of  
23 Appeal in Lakeland. I served as Chief Judge of that  
24 court from January 1973 until I left in September

1 1974 to become Professor of Law at the University  
2 of Florida. I was on leave from that position from  
3 January 1978 to January 1981 to serve on the  
4 Florida Public Service Commission. I served as  
5 Chairman of the Commission from 1979 to 1981.  
6 Following retirement in 1986 I served as the Herff  
7 Visiting Professor of Law at Memphis State  
8 University during the spring terms of 1987 and  
9 1988. I taught a course in Regulated Industries  
10 after I returned to the University of Florida from  
11 government service, and later incorporated into a  
12 seminar on law and public policy the materials I  
13 had previously taught in courses in legislation and  
14 regulated industries. I am at present a certified  
15 mediator and serve as an expert consultant and  
16 witness in legal malpractice and utility cases.

17 Q In what capacity are you appearing in this  
18 proceeding?

19 A As an expert witness on behalf of the Sugarmill  
20 Woods Civic Association, Inc., the Marco Island  
21 Civic Association, Inc., the Spring Hill Civic  
22 Association, Inc. and the Harbour Woods Civic  
23 Association to address the legal, technical, and to  
24 some extent, the rate-making policy issues raised  
25 in this docket.

1 Q Have you ever been recognized in court as an expert  
2 witness?

3 A Yes. I testified briefly in Brevard County in the  
4 case of Otey v. Florida Power & Light, a wrongful  
5 death case on its retrial after the District Court  
6 of Appeal reversed the original judgment. I  
7 testified at length in PCH Corp. v. City of Cooper  
8 City, which involved charges to obtain water and  
9 sewer service. The trial judge in that case entered  
10 judgment consistent with my testimony and the  
11 District Court of Appeal affirmed in the case of  
12 City of Cooper City v. PCH Corp., 496 So.2d 843,  
13 and the Supreme Court denied review at 506 So.2d  
14 1040.

15 Q Are you aware of what type rate structure SSU has  
16 filed for in this case?

17 A Yes, it is my understanding that the utility  
18 has requested a so-called two-tier uniform  
19 rate structure for water service and a single  
20 uniform rate structure for all the wastewater  
21 systems included in this filing. Essentially,  
22 SSU is asking Commission approval to commingle  
23 all the fixed and variable costs of all the

1 wastewater systems it has included in this  
2 case so that it can charge a single wastewater  
3 base facility charge and a single wastewater  
4 gallonage charge for all those systems. On  
5 the water side, SSU asks permission to charge  
6 a single base facility charge and gallonage  
7 rate for all "traditional" water systems,  
8 while it proposes to charge a separate and  
9 distinct base facility charge and gallonage  
10 rate for the two systems that utilize the  
11 reverse osmosis process to produce potable  
12 water.

13 Q Do you have a problem with these uniform rate  
14 proposals?

15 A Yes I do. First, cost of service should be  
16 the primary consideration in setting rates for  
17 each of the separate, non-interconnected water  
18 and wastewater plants included in SSU's  
19 filing. Value of service may also be a  
20 relevant consideration when distinguishing  
21 between classes of customers, such as  
22 residential and commercial. But in general,  
23 cost of service is the guiding factor because  
24 it promotes economic efficiency and is fair  
25 and reasonable to all of the customers.

1 Q Do you feel that SSU's uniform rate structure  
2 adequately addresses cost of service  
3 considerations?

4 A It clearly does not. Setting rates involves a  
5 consideration of many factors, but a primary  
6 consideration should be that the revenue  
7 requirement properly reflect the return on the  
8 utility's investment necessary to serve.  
9 Uniform rates, as proposed here, ignore this  
10 consideration by commingling SSU's investment  
11 to serve all its customers, which has the  
12 effect of ignoring customer investment through  
13 CIAC. SSU's customers did not seek this  
14 conglomeration with the utility, but were,  
15 instead, sought out by the conglomerate. It  
16 is clearly unfair to customers who have done  
17 nothing to justify having to pay for SSU's  
18 investment necessary to serve customers at  
19 other plant sites.

20 SSU's proposal ignores all cost of service  
21 considerations for each and every one of the  
22 water and wastewater systems or locations  
23 involved and is merely a straight mathematical  
24 average of the costs for all these systems.  
25 The only departure is that SSU segregates the

1 reverse osmosis water treatment plants from  
2 the so-called traditional water treatment  
3 plants. Within the reverse osmosis uniform  
4 rate structure there are two plants or systems  
5 that have widely varying costs of service.  
6 Averaging the rates of the two reverse osmosis  
7 plants results in the water customers of the  
8 Marco Island systems having to pay rate  
9 subsidies of over \$300,000 annually over and  
10 above SSU's cost of service to provide the  
11 Marco Islanders with water.

12 Q Do you see any legal, technical or policy  
13 justification for segregating the two reverse  
14 osmosis plants from the other "traditional"  
15 plants in this case?

16 A I do not aside from the fact that the two  
17 utilize the same type of water treatment  
18 process, which, in my opinion, alone is not an  
19 adequate legal, technical or policy basis for  
20 their segregation. From a cost of service  
21 basis both of these plants have costs that are  
22 exceeded by a number of so-called traditional  
23 water treatment plants. Accordingly, there is  
24 no cost of service justification for  
25 segregating these two plants and lumping them

1 together for cost averaging. If you wanted to  
2 isolate or categorize the water treatment  
3 plants by their cost of service, Marco Island  
4 and Burnt Store would logically be included in  
5 separate categories with traditional treatment  
6 plants of comparable costs. Simply averaging  
7 the costs of these two plants solely because  
8 they are reverse osmosis is not rational, let  
9 alone sound for legal, technical or policy  
10 reasons.

11 Q Do you see any legitimate reasons for SSU's  
12 proposed rate structure when considering value  
13 of service factors?

14 A No, I do not. Again, the very fact that SSU's  
15 rate structure is a simple mathematical  
16 averaging of costs precludes its analysis  
17 under any type of traditional rate structure  
18 methodology, whether it be cost of service or  
19 value of service. The goal and the result  
20 here is a simple mathematical averaging of  
21 costs so that there is one price or rate for  
22 water, excepting the two reverse osmosis  
23 plants, and one for wastewater. Furthermore,  
24 value of service is not a concept that has  
25 traditionally been used in Florida to set

1 rates for any regulated company other than  
2 telephone companies. In the case of telephone  
3 companies, while the cost of service for  
4 residential and commercial or business lines  
5 may be very similar, the Commission has  
6 traditionally considered that business  
7 telephone service has a greater value to the  
8 subscriber and, thus, warrants a higher rate.  
9 Value of service pricing recognizes that each  
10 telephone conversation has two ends, so that  
11 both the business and residential lines  
12 benefit. Additionally, business lines have  
13 added value because there are affordable  
14 residential lines in existence to call them  
15 and use their services. A water user, on the  
16 other hand, benefits from his or her service  
17 irrespective of whether a neighbor has  
18 service.

19 Q Both SSU and the Commission and its staff have  
20 been heard to defend the imposition of uniform  
21 rates for SSU with the statement that uniform  
22 rates have traditionally been utilized in  
23 Florida for county and municipal water and  
24 wastewater rates, for electric rates and for

1 telephone service rates. Do you think these  
2 claims are valid?

3 A I do not. Let me address the telephone issue  
4 first. Aside from differentiating between  
5 value of service for residential and business  
6 telephone service, this Commission has  
7 traditionally priced residential service  
8 differently where there was a perceived  
9 difference in the value being received by each  
10 group of customers. For example, Southern  
11 Bell Telephone and Telegraph Company, which is  
12 the state's largest regulated local exchange  
13 company, has a dozen or more separate  
14 residential rate tariffs for basic service.  
15 The rate for telephone service can vary  
16 dramatically among these tariffs, with the  
17 highest rates being charged to large urban  
18 areas where basic local service allows local  
19 calls to many hundreds of thousands of other  
20 subscribers. Areas with dramatically fewer  
21 local subscribers, like in Havana, Florida,  
22 have substantially lower Southern Bell rates.  
23 Again, value is directly associated with the  
24 number of other local subscribers who may be  
25 accessed and higher rates are charged for

1 higher value. In the instant case, no logical  
2 value can be assigned to the different service  
3 areas included in this case. Even if one were  
4 to give any credibility to the concepts of  
5 "avoiding rate shock" and "protecting the  
6 aquifer", there is no rational way that value  
7 can be assigned to the supposed benefits  
8 flowing to each service area to support each  
9 area being charged the same rate. Again,  
10 uniform rates are the simple averaging of all  
11 costs and have no underlying logic to support  
12 them as being either cost of service or value  
13 of service based.

14 Q What about the claim the electric rates are  
15 uniform rates?

16 A If one were to take SSU's uniform rate theory  
17 seriously, the Commission would average the  
18 costs of all Florida's investor-owned electric  
19 utilities since they are all interconnected  
20 and are not only capable of sharing  
21 generation, but do so on a daily basis.  
22 Arguably, one would not stop at the investor-  
23 owned electric utilities, but would include  
24 the municipal and member cooperative systems  
25 as well, since they, too, are interconnected

1 and routinely share generation and  
2 transmission facilities. The reality,  
3 however, is that each of the five investor-  
4 owned electric utilities have separate rates,  
5 rate structures and rate tariffs. Within each  
6 electric utility, cost of service studies are  
7 conducted in order to establish costs from  
8 which cost-based rates may be established.

9 Q Why are cost-based rates considered important  
10 in the electric industry?

11 A The Florida Statutes, state and federal  
12 constitutions, and the case law require that  
13 rates not be "unduly discriminatory."  
14 Historically, this has meant that rates had to  
15 be somewhat in line with costs. Some level of  
16 discrimination was allowed, but it could not  
17 be undue. What was undue discrimination or  
18 not was generally considered on a case-by-case  
19 basis. Electric rates typically would include  
20 separate classifications for residential,  
21 commercial and industrial. Cost of service  
22 considerations might include the demand an  
23 individual customer or class of customers  
24 would place on the generating systems, as well  
25 as the transmission and distribution costs

1 associated with delivering power. Under this  
2 concept, a large industrial customer taking  
3 power directly from a transmission line, would  
4 be charged no costs for "distribution"  
5 facilities, but might incur significant  
6 "demand" charges for the load placed on the  
7 generating system. In any event, significant  
8 differences in the "cost of service" for a  
9 single customer or group of customers would  
10 warrant a separate rate classification to  
11 adequately reflect those costs. If it fails  
12 to recognize significant cost differences, the  
13 Commission would open itself to the charge  
14 that it had approved rates that were unduly  
15 discriminatory.

16 Q Aside from the different rates for distinct  
17 rate classes in electric utilities, are you  
18 aware of any electric utilities that have  
19 different rates within a customer rate  
20 classification?

21 A Yes, two come to mind. First, the Florida  
22 Public Utilities Company has two separate  
23 operating divisions: one in Marianna and one  
24 in Fernandina Beach. The two divisions are  
25 separate, non-generating distribution systems

1 with separate customers, operating facilities,  
2 generating supplies and operating costs.  
3 Notwithstanding that it has common corporate  
4 ownership and many of the other common  
5 attributes claimed by SSU for its separate  
6 systems, Florida Public Utilities Company has  
7 separate residential and other tariffs for  
8 both divisions that are intended to reflect  
9 the separate costs of operating each division.  
10 While there are allocations of common  
11 corporate "parent" costs to each division, I  
12 am not aware that there are any operating  
13 subsidies flowing from the customers of one  
14 division to the customers of the other.  
15 The second situation involves Florida Power  
16 Corporation and its acquisition of the  
17 distribution facilities and customers of the  
18 Sebring Utilities Company. For a number of  
19 reasons, the cost to serve an average customer  
20 on the Sebring system was dramatically higher  
21 than that to serve customers in a comparable  
22 class on Florida Power Corporation's existing  
23 system. To avoid having its existing customer  
24 base subsidize the Sebring customers for the  
25 excessive costs incurred at their system,

1 Florida Power Corporation asked the Commission  
2 to approve a special surcharge on the Sebring  
3 customers which was calculated to recover the  
4 difference in the cost of service between the  
5 previously separate and distinct systems. The  
6 Commission approved the surcharge and the  
7 Florida Supreme Court approved the Commission  
8 action when a group of Sebring customers  
9 challenged the surcharge as being  
10 discriminatory.

11 Q Do you see any similarities between the  
12 Florida Public Utilities Company and Florida  
13 Power Corporation/Sebring cases and the  
14 instant case with SSU?

15 A Yes, I do. Both the FPUC and Florida Power  
16 Corporation/Sebring cases involved the  
17 Commission approving rates that recognized  
18 significant cost differentials between  
19 distinct groups of customers. In both cases,  
20 all customers of FPUC and Florida Power  
21 Corporation can still enjoy economies of scale  
22 obtained by centralized management, while  
23 still being required to support, through their  
24 rates, distinct costs associated with  
25 providing them with service. Even casual

1 observation reveals that SSU's situation is  
2 precisely the same, except that it involves  
3 more distinct units than the electric company  
4 examples.

5 Q Do you think the larger number of units  
6 involved in the SSU case is any basis for  
7 ignoring the separate rates ordered in the two  
8 cited electric cases?

9 A No, of course not. Benefits of joint  
10 ownership and economies of scale, if any,  
11 derived from SSU's large holdings of water and  
12 wastewater systems are available to each  
13 customer through the proper allocation of  
14 general and common costs. These allocations  
15 occur independently of the rate structure  
16 utilized. In short, the savings, if any, flow  
17 to the customers under stand-alone and  
18 modified stand-alone rates and are in no way  
19 dependent upon uniform rates. Logically,  
20 these savings, if they exist, would be wiped  
21 out for those customers forced to pay rate  
22 subsidies under the uniform rate concept. The  
23 fact that there are more systems involved is  
24 no justification for ignoring the distinct  
25 costs of each system. It is my understanding

1 that SSU still keeps separate plant and  
2 expense accounts for each of its operating  
3 plants per the NARUC Uniform System of  
4 Accounts and that SSU has, as evidenced by its  
5 filing in this case, calculated the individual  
6 revenue requirements of each system. Given  
7 that this work is already accomplished, there  
8 is no excuse for not calculating the  
9 individual system, or stand-alone rates for  
10 each operating plant. Again, it is these  
11 rates that accurately and legally, in my  
12 opinion, reflect the return on investment in  
13 the property used and useful in serving each  
14 group of customers as well as the expenses  
15 necessary in providing service to those  
16 customers. I should note that the large  
17 number of systems included in this case can  
18 only serve to complicate the task of the  
19 Commission staff, Public Counsel and customers  
20 in trying to effectively analyze the prudence  
21 of capital expenditures and expenses within  
22 the time allotted by statute. Under the  
23 uniform rate concept, customers served by one  
24 system become responsible for the investment  
25 and expenses used to serve customers at all

1 the other 140 plus plant sites, most of which  
2 are at great distance from each other. It is  
3 virtually impossible for any group of  
4 customers to review plant expenditures and  
5 expenses at any plant but the one serving  
6 them. Making them responsible for every plant  
7 owned by SSU, or that it might own in the  
8 future, and their expenditures, renders the  
9 concept of customer participation in these  
10 cases meaningless.

11 Q What about the claim that municipal, county  
12 and other investor-owned water and wastewater  
13 utilities utilize so-called uniform rates?

14 A The fact that other systems are charging  
15 uniform rates does not make it right in all  
16 cases or, perhaps, in any case. I do not take  
17 the position that uniform rates are per se  
18 wrong. Rather, it is my position that rates  
19 for water and wastewater service should  
20 reflect the cost of service and, therefore,  
21 that uniform rates are only appropriate where  
22 the cost of service is identical or close to  
23 being so, for all the systems or plant sites  
24 receiving service. I am aware of SSU and  
25 staff testimony in Docket No. 930880-WS

1           stating that certain systems in Florida and  
2           other states had approved uniform rates. I  
3           recall that the exhibits to the staff  
4           testimony demonstrated that the costs of  
5           service involved in several of those cases  
6           were identical or so close that the disparity  
7           or discrimination was inconsequential. I do  
8           not recall any evidence being presented that  
9           showed that uniform rates had been approved in  
10          the face of large differences in the cost of  
11          service. However, I must reiterate that the  
12          simple fact that this Commission or any other  
13          body has approved uniform rates in the face of  
14          substantially different costs of service does  
15          not make it right. Charging all customers the  
16          same rates when they have substantially  
17          different costs of service results in unduly  
18          discriminatory rates just as does charging  
19          customers different rates when their costs of  
20          service are the same.

21        Q    What about the argument that is simply unfair  
22              for some customers to have to pay such high  
23              rates as the result of being in an area where  
24              there is poor quality water or no potable  
25              water at all?

1       A    In Florida, water and sewer utilities were  
2            typically built to serve a specific  
3            subdivision and were designed to utilize the  
4            water and disposal resources most readily  
5            available at that specific site. Frequently,  
6            the utilities were designed and built by land  
7            developers as an adjunct to home sales. The  
8            resulting utilities therefore vary widely  
9            according to the location and size of the  
10           development project and the wisdom and  
11           foresight of the developer. The type of  
12           treatment required as a consequence of the  
13           water quality in a specific location can cause  
14           the cost of the treatment facility and the  
15           operating expenses to vary widely. For  
16           example, the simplest water systems may  
17           require only a well to a shallow aquifer, with  
18           the water pumped, chlorinated and distributed.  
19           Another locale might require a much deeper  
20           well and treatment for iron or manganese. In  
21           the coastal areas where salt water intrusion  
22           is a problem, the more expensive reverse  
23           osmosis facilities are required. This type of  
24           information is generally available to a  
25           customer at the time he or she makes a

1 decision to buy a home in a particular place,  
2 and a prudent home buyer will generally check  
3 into local utility rates before buying.  
4 Therefore, to the extent cost of service  
5 varies significantly by treatment type, it  
6 should be a factor in establishing rates.

7 Q What is your opinion as to the proper consideration  
8 of CIAC levels?

9 A First, it should be remembered that historically,  
10 in Florida water and sewer utilities were provided  
11 in conjunction with land development and, in many  
12 if not most instances, financed through customer  
13 "contributions in aid of construction," or "CIAC,"  
14 sometimes referred to as a "service availability  
15 charge." These costs typically were amounts added  
16 to or included in the price of the lot. During the  
17 building boom in Florida during the 1970's, the  
18 Commission began to require treatment of these sums  
19 as the utility's property, but as the customers'  
20 investment since the property was acquired at no  
21 cost to the utility. Accordingly, the utility was  
22 not entitled to a return on investment, since,  
23 essentially, it was an investment by the customers  
24 in the water and sewer systems. CIAC was not  
25 allowed to be included in the utility's rate base.

1           These safeguards were later codified in Ch. 367,  
2           which recognizes, in the definition of CIAC that it  
3           is a "donation or contribution" made to "offset the  
4           acquisition, improvement or construction costs of  
5           utility property."  
6           Since the levels of CIAC tended to vary widely,  
7           from 0% to 100+%, among utilities, the Commission  
8           adopted Rule 25-30.580 which established optimum  
9           levels of CIAC as follows: not less than the  
10          percentage of plant that is represented in  
11          transmission, distribution and collection lines and  
12          no more than 75% of the total original cost net of  
13          accumulated depreciation at build-out.  
14          I note that many of the systems owned by SSU do not  
15          comply with this rule since some have very small  
16          percentages of CIAC and some are more than 100%.  
17          It is not unusual for acquired systems to have a  
18          mix of original financing schemes.  
19          Certainly, the inequities inherent in uniform rates  
20          would have been less if the rule had been complied  
21          with, or if SSU had adopted a statewide service  
22          availability policy and had not acquired systems  
23          which were atypical. Often the Commission wants a  
24          financially strong company to acquire weak systems,

1           although problems of equitable treatment must then  
2           be resolved.

3           In my opinion, CIAC must be considered in a manner  
4           that gives the customer who paid it the benefit of  
5           his contribution.   Anything less is inherently  
6           unfair, and in my opinion represents an  
7           unconstitutional taking under the Fifth and  
8           Fourteenth Amendments to the United States  
9           Constitution and Article I, Section 9 and Article  
10          X, Section 6 of the Florida Constitution.   Two  
11          otherwise identical customers would be paying  
12          identical rates, but one was forced to pay as much  
13          as \$2800 to hook up to the system, while the other  
14          may have paid as little as \$7.

15          The prospect of a civil rights action challenging  
16          uniform rates should not be taken lightly.   Many of  
17          the adversely affected customers purchased their  
18          homes from a predecessor corporation to SSU under  
19          purchase agreements that specified that the cost of  
20          the water system was included in the price of their  
21          lots, or that they were receiving a "vested"  
22          interest in the water system.   These customers  
23          clearly have a property right that cannot be  
24          affected without due process.

1 Q Do you believe that the uniform rate structure will  
2 result in the conservation of water?

3 A No. The customers who are being charged rates  
4 below their actual cost of service are not going to  
5 be appropriately encouraged toward conservation.  
6 The adoption of uniform rates in the SSU case would  
7 probably reduce the water bills of some customers,  
8 thus affording no incentive to hold consumption to  
9 a minimum. So, if the Commission feels it has the  
10 power, and wishes to, encourage conservation,  
11 uniform rates are not an effective way to  
12 accomplish this objective.

13 Although SSU is the largest regulated water utility  
14 in Florida, it still serves only a small fraction  
15 of water users. Most water users are not under  
16 Commission jurisdiction. These users include  
17 municipal water utilities, county regulated  
18 utilities and those who have private wells.

19 Q What do you think of the argument that uniform  
20 rates will eliminate "rate shock".

21 A This is a benefit only for those customers  
22 receiving a subsidy. Those customers who have paid  
23 substantial CIAC up front are experiencing "rate  
24 shock" as a consequence of this proceeding. On the  
25 other hand, rate shock is not necessarily a harmful

1 effect to be avoided. When utility bills reflect a  
2 customer's true cost, the customer is more likely  
3 to monitor his own consumption and to provide a  
4 check against wasteful or uneconomic capital  
5 projects or operations at his local utility.

6 Q What about the alleged decrease in rate case  
7 expense?

8 A There was no saving in rate case expense in Docket  
9 No. 920199 when uniform rates were adopted. Both  
10 the stand-alone and uniform rates were easily  
11 calculable. Stand-alone rate figures will still be  
12 easy to calculate since the financial data must be  
13 maintained for the Allowance for Funds Prudently  
14 Invested account. Relatively minor computer  
15 programming expenses would appear to be all that  
16 will be saved. For example, if I were to receive a  
17 notice from Barnett Bank that their administrative  
18 convenience made it possible to pay a few basis  
19 points more in interest if the bank calculated the  
20 total interest on deposits and divided that by the  
21 number of deposits, I would think that unwise and  
22 unfair, although I may benefit. Certainly the large  
23 accounts would move elsewhere. The utility customer  
24 is not allowed to switch suppliers, and justifiably

1 complains to the Commission when an unfair  
2 imposition of costs is proposed.

3 Whether uniform rates will reduce rate case expense  
4 is not the controlling factor. The Constitutions  
5 and the Commission's collective conscience ought to  
6 prevail.

7 Q Do you believe statewide rates will decrease  
8 administrative and general expense?

9 A Not appreciably. The administrative efficiencies  
10 attributable to consolidating functions have  
11 already been achieved. The common cost allocations  
12 then charged back to each system reflect these  
13 savings. These expenses are exactly the same, with  
14 or without uniform rates. Likewise the differences  
15 in expenses associated with tariff filings and  
16 billing should be minimal, if indeed a multiplicity  
17 of rate cases is necessary. I doubt that it is  
18 impracticable to achieve the Commission's objective  
19 by taking account of the differing cost factors in  
20 a single rate case. Compare the difficulty of  
21 fixing residential and industrial rates fairly in a  
22 single electric utility rate case.

23 Q In your opinion, will uniform rates affect the  
24 ability of local customer groups to have a

1 meaningful impact on utility rate proceedings  
2 before the Commission.

3 A Yes. Many of the issues likely to be raised by a  
4 customer or group of customers are highly  
5 localized, involving familiarity with the specific  
6 operations of the utility. The Sugarmill Woods  
7 Civic Association, Inc., in particular, has a  
8 history of active participation and has found  
9 errors that were missed by the Office of Public  
10 Counsel and the Commission Staff, estimated by the  
11 witness Hansen to be of a significant amount.  
12 Other communities are now recognizing the value of  
13 resisting SSU's rate increases.  
14 Diluting these potential savings across the board  
15 makes it difficult for these civic organizations to  
16 continue to participate on a cost-effective basis.  
17 The Office of Public Counsel's posture in Docket  
18 920199 also demonstrates a lack of effective  
19 advocacy on the rate structure issue. The Public  
20 Counsel is not at liberty to contend for one group  
21 rather than another. Thus two of the most  
22 effective checks and balances on the system have  
23 been removed, leaving only the Commission staff,  
24 since the Public Counsel would have a conflict,

1           assuming the benefitted categories of ratepayers  
2           would favor uniform rates.

3       Q     How do you believe the uniform rates will affect  
4           SSU's acquisitions?

5       A     I observe that SSU and the Public Service  
6           Commission suggest that uniform rates will  
7           encourage acquisitions of small troubled utilities  
8           that need capital improvements. That would help  
9           solve some of the persistent regulatory problems,  
10          but it cannot be justified at the expense of those  
11          who contributed substantial amounts to insure that  
12          the utility serving them would be sound and soundly  
13          regulated.

14          Acquisitions under uniform rates create other  
15          potential problems. For example, if SSU acquires a  
16          utility with rates below uniform, does the rate  
17          automatically increase? If above uniform, do the  
18          rates decrease? The fate of troubled systems was  
19          problematic when I was on the Commission, and I  
20          suspect still is. It isn't clear what incentives  
21          and distortions uniform rates would cause, but it  
22          is clear that a taking of customers' property is  
23          not justified even if the positive aspects should  
24          outweigh the negative.

25       Q     Please summarize your testimony.

1       A     The principal objection to the proposed uniform  
2             rate structure is that it is unjust to those  
3             customers whose contributions to the system are  
4             above average and an unjustified subsidy to those  
5             who are below average. There are other problems,  
6             but this is by far the most serious, in my opinion,  
7             and the clearest departure from the requirements of  
8             the law and our state and federal constitutions.  
9             At the same time, many of the advantages of  
10            efficient regulation seem to be reconcilable with  
11            careful accounting for the contributions of the  
12            objecting groups of ratepayers.

13       Q     Does this conclude your testimony?

14       A     Yes.

1 Q (By Mr. Twomey) Okay, sir. That having  
2 been done, do you have a summary of your testimony to  
3 give to the Commission, Judge Mann?

4 A I don't have a prepared summary, but I would  
5 like to sum it up.

6 Q Yes, sir.

7 A Because I have been interested in the issues  
8 which are raised in this proceeding for some time.

9 I have been off the Commission myself for 15  
10 years; but I recall that issues affecting water and  
11 wastewater utilities were a considerable preplexity to  
12 those serving on the Commission at the time. And I  
13 see at least two of the present Commissioners came  
14 into service with the Commission while I was there,  
15 and I am certain that they have some understanding of  
16 the difficulties of regulating water and sewer  
17 utilities, as we called them. The nicer word is  
18 "wastewater," I suppose.

19 But this case presents, in my view, some  
20 overreaction to endemic problems which were confronted  
21 by the Commission, particularly with respect to poorly  
22 financed utilities.

23 This case presents a question -- the primary  
24 question it presents to me is whether it is proper for  
25 the Commission to adopt a uniform rate structure for

1 widely disparate utility systems. And in my opinion,  
2 it is not.

3 And I also believe that it borders on the  
4 sort of Constitutional questions raised as far back as  
5 the Hope Case in the United States Supreme Court and  
6 cases which are taught to every Commissioner when  
7 their service begins.

8 I recall seeing but do not have before me a  
9 document which the Commission itself prepared by  
10 asking various utilities what their opinions were on  
11 the subject of uniform rates. And if I remember  
12 correctly, I could subscribe almost wholeheartedly to  
13 the response of Southern States Utilities on that,  
14 which placed into its response the kind of caveats  
15 which I would urge the Commission to regard, and that  
16 is, that uniform rates are fine under uniform  
17 circumstances. Now I'm paraphrasing, I'm not quoting  
18 Southern States. But uniform rates presuppose  
19 fairness to all of those involved.

20 Now, that raises an additional issue which I  
21 was discouraged from testifying about at Orlando. But  
22 I would like to make this for the record, that my  
23 recollection is that an administrative agency takes  
24 the legislative product as it finds it and is  
25 obligated to treat a statute as constitutional until

1 it is declared unconstitutional. But I think that has  
2 nothing to do with the obligation to conform the  
3 regulatory process to the requirements of both  
4 Constitutions -- which, indeed, is an aspect of the  
5 oath which these five Commissioners have taken and I  
6 took to uphold both the Constitutions of Florida and  
7 the United States.

8           The diverse nature of the utilities which  
9 make up this Utility's Florida holdings is so great  
10 that you have the consequence of what I'm certain is  
11 an excessive rate of return on the Utility's equity as  
12 to those with which I'm most familiar, which would be  
13 Sugarmill Woods, Marco Island and, to a lesser extent,  
14 I looked at the circumstances of Amelia Island.

15           I suppose if I were true to my class as a  
16 native, I would welcome the opportunity to spread the  
17 wealth and provide for the recovery of costs wherever  
18 possible; but it seems to me that, looking at this  
19 record, that the implementation of a uniform rate  
20 structure for separate systems united only  
21 administratively, and in all parts of the state, would  
22 lead to more problems than it would solve.

23           I do recognize the administrative problems  
24 which the Staff of the Commission faces and I have  
25 faced some of those myself.

1 I recall the instance in which a Seminole  
2 County utility went bankrupt, and the bankruptcy judge  
3 in Orlando had proposed to sell a packaged sewer plant  
4 in a state of some concern.

5 I was Chairman at the time. I engaged  
6 special counsel who persuaded the United States  
7 District Judge to couple the sale of that sewer plant  
8 with the obligation to continue to serve. The  
9 prospect of uprooting a sewer plant and selling to it  
10 someone else was a fearsome prospect.

11 Now, there have been many, many devices in  
12 the regulatory scheme to deal with the problem of weak  
13 utilities. And one has to appreciate the problem.  
14 But in the main, I think it fair to say that the gist  
15 of my testimony is that a uniform rate structure which  
16 results in the subsidization of the weak by grossly  
17 overcharging those who have principally by their own  
18 capital contributions formed some of these systems is,  
19 in my opinion, an unconstitutional taking.

20 And it leads, then, to -- it leads to a lot  
21 of unhappiness, certainly on the part of the people  
22 who are put upon in this way. And it certainly would  
23 generate some solutions which are already provided for  
24 by law, such as acquisition of those systems by local  
25 bodies -- which, in turn, raises another problem that

1 I was deeply concerned about, and that was the  
2 overpayment by local governments for utility systems  
3 or the transfer of regulatory jurisdiction from the  
4 Commission to counties, many of which are not nearly  
5 as well adapted to its management as this Commission  
6 is.

7 That's the gist of my testimony.

8 MR. TWOMEY: Thank you very much, Judge  
9 Mann. He's available for cross examination.

10 CHAIRMAN CLARK: Mr. McLean?

11 MR. McLEAN: No questions.

12 CHAIRMAN CLARK: Mr. Jacobs?

13 MR. JACOBS: Yes, Madam Chairman, a few  
14 questions.

15 MR. JACOBS: First if I might, I would like  
16 to hand the judge an exhibit and pass it out to  
17 everyone.

18 CHAIRMAN CLARK: We'll mark that as Exhibit  
19 199.

20 (Exhibit No. 199 marked for identification.)  
21  
22  
23  
24  
25

## 1 CROSS EXAMINATION

2 BY MR. JACOBS:

3 Q Judge Mann, your testimony basically on  
4 Pages 13 and 14 and Page 10, you talk about uniform  
5 rates and in all of your testimony. But you make  
6 specific reference to Florida Public Utilities  
7 Company, which has a division in Marianna, Florida and  
8 a division in Fernandina Beach, Florida. On this  
9 exhibit which has been marked, you see references to  
10 those two divisions, don't you?

11 MR. HOFFMAN: Objection, Madam Chairman. I  
12 think where we are headed here is friendly cross  
13 examination. Mr. Jacobs' clients are similarly  
14 situated with most of Mr. Twomey's clients in this  
15 case in terms of their opposition to uniform rates and  
16 I object to this type of questioning in the guise of  
17 cross examination. It is simply an attempt to  
18 buttress and expand on the prefiled direct testimony  
19 of Judge Mann.

20 CHAIRMAN CLARK: Mr. Jacobs?

21 MR. JACOBS: I would hope that all of my  
22 cross examination has been friendly, I didn't mean it  
23 to be otherwise of other witnesses.

24 I submit to you I do have the right to ask  
25 these questions of Judge Mann and this is my

1 opportunity. I don't understand his opposition here,  
2 we're just getting into his testimony.

3 MR. HOFFMAN: Madam Chairman, Mr. Jacobs'  
4 client has a comity of interest with Sugarmill Woods.

5 Secondly, we had an opportunity to stipulate  
6 the testimony of Judge Mann; nobody had any questions  
7 at that time, including Mr. Jacobs. Mr. Twomey  
8 insisted that Judge Mann come up to give his summary  
9 and he has done that. I just think it's inappropriate  
10 at this point for anyone in this proceeding to get  
11 into the type of friendly cross examination questions  
12 which are simply an attempt to buttress the testimony  
13 that's already been filed.

14 MR. JACOBS: Madam Chairman, I didn't tell  
15 anybody that I stipulated to Judge Mann, I never have  
16 made that statement to anyone.

17 CHAIRMAN CLARK: Perhaps you were out of  
18 room. There was an indication to me there was no  
19 cross examination for Judge Mann and Mr. Twomey  
20 indicated he wanted to have Judge Mann here to provide  
21 his testimony, his summary.

22 MR. TWOMEY: May I add something, please?  
23 Mr. Jacobs was not here, okay? And the fact that  
24 these other parties may have indicated they didn't  
25 have any cross examination has got no bearing on what

1 Mr. Jacobs could do. I would submit to you Judge Mann  
2 is here, I would offer him for cross examination for  
3 any of these parties. He's here, he's subject to  
4 cross.

5 Secondly, Madam Chair, I would suggest to  
6 you there is no such legal objection related to  
7 friendly cross buttressing another party's case. It  
8 doesn't exist.

9 And we would save a lot of time in this  
10 proceeding if counsel for SSU would just sit back, let  
11 Mr. Jacobs ask his questions. Nobody should be afraid  
12 of the answers or the questions, and be done with it.

13 CHAIRMAN CLARK: Are you done, Mr. Twomey?

14 MR. TWOMEY: Yes, ma'am.

15 CHAIRMAN CLARK: I do have an obligation to  
16 make sure that due process is afforded and I am not  
17 going to allow cross examination by parties whose  
18 interests are similar to use it as an opportunity for  
19 supplementing the testimony, because I think the  
20 parties have a right to know what testimony is going  
21 to be put in and prepare for cross examination.

22 Let me ask you this, Mr. Jacobs. Where do  
23 these, where does this come from?

24 MR. JACOBS: It comes from the files, the  
25 tariff sheets, of the Utility, it comes from the files

1 of the Public Service Commission.

2 CHAIRMAN CLARK: Okay. I'm going to allow  
3 very limited cross examination. I would encourage you  
4 not to go beyond what was in his testimony because I  
5 do not look favorable on using this as an opportunity  
6 to supplement testimony. Go ahead, Mr. Jacobs.

7 MR. JACOBS: All right, with those caveats,  
8 I'll proceed.

9 Q (By Mr. Jacobs) Judge Mann, you have the  
10 exhibit before you. Is this not illustrative of your  
11 testimony?

12 A I think so. You're talking about  
13 Exhibit 199?

14 Q Yes, sir.

15 A Yes, I have a personal recollection of the  
16 regulation of that particular utility, which is novel  
17 in the sense of geographic separation between Marianna  
18 and Fernandina as I remember it. And one of the  
19 reasons why those utilities were separately considered  
20 is that the customer base of each -- live in different  
21 parts of the state. And the Commission at that time  
22 thought it was only fair to establish separate rate  
23 bases except, obviously, for the overall  
24 administrative costs of the corporation owning both of  
25 those utilities.

1 I think the same situation is perhaps more  
2 pointedly illustrated where in the circumstance where  
3 one utility acquires another with a higher cost base.  
4 When the Sebring system was acquired, for example, I  
5 think by Florida Power, you had a separate supplement  
6 which, if I'm -- which I remember correctly the  
7 Supreme Court or at least the First District approved,  
8 so that we didn't get into this situation of pitting  
9 groups of customers against the other, which is the --  
10 which is, in my view, the foreseen tragic consequence  
11 of this proceeding if it goes to uniform rate  
12 schedule.

13 Q All right. So as you see, as well -- I know  
14 you have testified about the electric rates where they  
15 made differentials between customers of same  
16 companies. You note in this exhibit as well the  
17 telephone utility differentials are maintained on the  
18 back pages of that. Would you go to Page 5 and 6 and  
19 7 of that exhibit, please.

20 A Well, telephone, telephone regulation has  
21 historically been characterized by value of service  
22 pricing partly on the ground that if you have a  
23 business with a telephone and your customers can't  
24 afford a telephone, you're in bad shape; so the  
25 commercial rates have historically been higher than

1 residential rates. And even residential rates are  
2 categorized by the number of telephones accessible to  
3 the subscriber without a toll. So you have that in  
4 telephone companies. I'm not aware of its application  
5 under the current circumstances.

6 MR. JACOBS: All right, sir. I have no  
7 further questions.

8 WITNESS MANN: Let me add one point to that.

9 CHAIRMAN CLARK: Mr. --

10 WITNESS MANN: It certainly creates no  
11 significant accounting problem. There's no  
12 significant administrative or accounting problem in  
13 treating classes of subscribers or subscribers by  
14 locality differently from others.

15 CHAIRMAN CLARK: Thank you, Mr. Jacobs.  
16 Staff?

17 MS. CAPELESS: Staff has no questions.

18 CHAIRMAN CLARK: Mr. Hoffman or  
19 Mr. Armstrong?

20 MR. HOFFMAN: Just one or two, Madam  
21 Chairman.

22

23

24

25

## 1 CROSS EXAMINATION

2 BY MR. HOFFMAN:

3 Q Judge Mann, is very briefly, the document  
4 marked as Exhibit 199?

5 A Yes, sir.

6 Q Is it fair to say that this is a document  
7 that supports a point that you are trying to make in  
8 your prefiled direct testimony?

9 A I think it does support that.

10 Q Yes, sir. Is there any particular reason  
11 why you did not attach it as an exhibit to your  
12 testimony when your testimony was filed?13 A Well, I didn't have access to these  
14 documents. But I remembered sitting on rate cases for  
15 this particular utility and it seemed pertinent to me  
16 that the Commission -- I don't recall anyone making an  
17 issue of it at that time.18 Q With respect to the Sebring Utilities  
19 Florida Power Corporation case that you discussed in  
20 your testimony, Judge Mann, isn't it true that the  
21 Commission permitted the rate base of Sebring  
22 Utilities and Florida Power Corporation to be  
23 consolidated and spread among the Florida Power  
24 Corporation and the former Sebring Utilities  
25 customers?

1           A     Yes, except that a supplement was provided,  
2 as I remember that case, to amortize the cost of a  
3 plant as to which Sebring had undertaken some debt.  
4 And if I remember correctly, there was a cutoff date  
5 upon the expiration of that amortization.

6           Q     And the separate expenses exclusive of debt  
7 cost also were consolidated and charged to customers  
8 in a uniform rate; is that correct?

9           A     That's correct. That is true of the  
10 utilities which have a compact contiguous service  
11 area.

12          Q     That is true of Florida Power Corporation  
13 and Sebring Utilities in that particular case?  
14 Correct?

15          A     I would think so.

16          Q     And the rider that was at issue in that case  
17 included only -- reflected only the cost of debt; is  
18 that correct?

19          A     That's my recollection.

20                MR. HOFFMAN: Yes, sir. Thank you, Judge  
21 Mann, that's all I have.

22                CHAIRMAN CLARK: Redirect?

23                MR. TWOMEY: Yes, ma'am.

24

25

## REDIRECT EXAMINATION

1  
2 BY MR. TWOMEY:

3 Q Judge Mann, with respect to the last line of  
4 questions Mr. Hoffman just asked you, isn't it true,  
5 if you know -- do you know whether or not the  
6 surcharge Mr. Hoffman refers to, the Sebring surcharge  
7 on the otherwise extant Florida Power Corporation  
8 rates, was designed to reflect the extraordinary costs  
9 imposed by the Sebring system?

10 A That's, that's my recollection of the  
11 Sebring case. I used it as illustrative; and I  
12 haven't made any study in depth of that, but the  
13 Southern States case, I, if I remember correctly, I  
14 didn't hear Dr. Beecher's testimony but that seemed to  
15 me to recognize that commissions around the country  
16 have dealt in disparate ways with this problem.

17 But all of them have taken some account, I  
18 think, that the Florida Commission has inquired of its  
19 regulated industries what their view was. And if I  
20 remember correctly, the response of Southern States to  
21 that was carefully and properly -- if I had it with me  
22 I could adopt that -- carefully and properly limited  
23 to those in which the utilities are alike or similar.

24 All throughout regulation, we have a process  
25 of ignoring insignificant differences. And you will

1 find customers that use their telephones constantly,  
2 customers who do not, paying the same rate. But you  
3 will find no instance to my knowledge in which  
4 customers who have paid 100% the cost of their utility  
5 system charged a uniform rate to the customers who  
6 have paid 0% of that cost, and that's a vastly wider  
7 disparity which we have to reckon with in Florida. In  
8 that situation, in my, as far as I know, does not  
9 obtain to that degree elsewhere.

10 And my opinion is it would be a very poor  
11 regulatory precedent if the Commission homogenized all  
12 of these water and sewer customers into one group.

13 Q Okay, sir. So do you have an opinion then  
14 on whether differences in -- marked differences in  
15 cost of service should necessarily result in different  
16 rates? That is --

17 MR. HOFFMAN: Objection, leading.

18 Q (By Mr. Twomey) Should costs be reflected  
19 in rates, Judge Mann?

20 A To the extent possible.

21 Ratemaking is the science of recovering the  
22 cost of rendering a utility's service plus a  
23 reasonable return on invested capital. And allocating  
24 those costs fairly among the customers on a variety  
25 bases -- usage, purpose, interruptible rates in the

1 electric utilities, for example, and there are many  
2 bases on which regulation may discriminate but they  
3 all have to be rational. And in my opinion this one  
4 is not.

5 MR. TWOMEY: Thank you very much. That's  
6 all I have.

7 CHAIRMAN CLARK: Exhibits?

8 MR. JACOBS: I move that exhibit.

9 CHAIRMAN CLARK: Without objection?

10 MR. HOFFMAN: Madam Chairman, we object to  
11 the admission of Exhibit 199. Judge Mann has admitted  
12 on the record that this document supports points he is  
13 trying to make in his prefiled direct testimony, gave  
14 no explanation as to why it was not attached as it  
15 should have been in the first place when his testimony  
16 was filed. It is simply an attempt to supplement his  
17 testimony and it ought not to be allowed into the  
18 record.

19 MR. TWOMEY: Nothing new -- I'm sorry, it is  
20 your document, go ahead.

21 COMMISSIONER GARCIA: You're on.

22 MR. JACOBS: I submit to you, Madam  
23 Chairman, that this is a point certainly that's  
24 illustrative of his testimony, but it bespeaks about  
25 my particular utility company because some of the

1 arguments that are made, the uniform rate system is a  
2 Robin Hood system. It was brought up by this week --  
3 it was brought up this week as I have been here  
4 listening to testimony that I have heard.

5 CHAIRMAN CLARK: Mr. Jacobs --

6 MR. JACOBS: The telephone companies --

7 CHAIRMAN CLARK: Could you respond?

8 MR. JACOBS: I'm speaking to it.

9 CHAIRMAN CLARK: Thank you.

10 MR. JACOBS: Telephone costs, electric  
11 costs, all these uniform rates. The purpose of my  
12 cross examination of him is to bring out the point  
13 that there are distinctions made in those particular  
14 types of rates. And this document is illustrative of  
15 that particular thing.

16 It is not cumulative of his testimony, it is  
17 a different point I wanted to make in my cross  
18 examination. There are distinctions made in these  
19 particular rate groups and I think it is certainly  
20 proper to have it introduced.

21 CHAIRMAN CLARK: And you don't view it as  
22 supplemental of his testimony?

23 MR. JACOBS: He talks about it, about these,  
24 some of these issues in his testimony on various  
25 pages, and so certainly it's within the scope of that.

1           But I would submit to you that it is not  
2 supplemental to that, it's a point I wanted to make to  
3 the Commission. Because it has been almost a given  
4 here throughout the week that electrical rates are all  
5 uniform, that telephone rates are all uniform, and I  
6 think this talks about the regulatory aspects of those  
7 utilities as not being uniform; there are distinctions  
8 made.

9           That Florida Power and Light, as large a  
10 company as it is, can reach down and make a  
11 distinction about Sebring because in that particular  
12 case there was a burdensome amount of money spent so  
13 they amortized that over the years. I think that's an  
14 important distinction to make and I'm certainly  
15 properly within my bounds to do so.

16           CHAIRMAN CLARK: I'm going to allow the  
17 exhibit to be entered in the record but I would  
18 caution you that I think it's coming close to being  
19 improper supplemental direct testimony and I would  
20 caution you that it should not be done, it is not in  
21 my opinion good due process. But I will allow it in  
22 this instance.

23           MR. JACOBS: Thank you very much.

24           MR. HOFFMAN: Madam Chairman, if I may? And  
25 I accept your ruling. But just for the record, I do

1 want to place on the record a passage from Erhardt on  
2 evidence, where it says that, "Although there is some  
3 authority for the view that a party has the right to  
4 cross examine witnesses who are called by any other  
5 party to the lawsuit, the better view is that cross  
6 examination is a matter of right only when a witness  
7 is called by a party whose interests in the litigation  
8 are adverse to the party seeking to cross examine."  
9 That's where the quote ends.

10 We've made our argument and it is our  
11 position, of course, that Exhibit 199 and the  
12 questions in connection therewith were not at all  
13 adverse to the testimony of Judge Mann, but we accept  
14 your ruling.

15 MR. McLEAN: If I may respond to that, I  
16 believe --

17 CHAIRMAN CLARK: No, Mr. McLean, I have made  
18 my ruling. No further necessity to respond to that.  
19 It's argument that I'm -- I'm ready to move on and  
20 that's it.

21 MR. McLEAN: Yes, ma'am.

22 (Exhibit No. 199 received in evidence.)

23 MR. TWOMEY: May I ask a question?

24 CHAIRMAN CLARK: No. I have made my  
25 ruling --

1 MR. TWOMEY: I want to ask a question  
2 totally unrelated to the exhibit.

3 CHAIRMAN CLARK: No, you may after the  
4 witness is excused.

5 COMMISSIONER JOHNSON: While the witness is  
6 still on the stand, may I ask a question? I would  
7 like to follow up on something.

8 Yesterday, one of the Staff witnesses,  
9 Mr. Shafer, testified. And he went over -- if this is  
10 too broad a question, this is something I thought I  
11 would like a little insight on your perspective on.

12 He had testified as to the reasonable goals  
13 and objectives of the Commission on the water and  
14 wastewater industry. And as a part of his passage I'm  
15 going to read you the question and the answer and see  
16 if there is anything else you might add. It is  
17 something we are considering and I note through your  
18 background and experience there may be other factors  
19 you think we should consider.

20 The question was to Mr. Shafer, and it read:

21 "Would you generally discuss what you  
22 believe the goals and objectives of the Commission  
23 should be relating to the regulation of water and  
24 wastewater utilities?"

25 He replied, "There are many specific goals

1 and objectives that the Commission may strive to  
2 achieve and they may vary according to circumstances.  
3 However, I believe they could be broadly described  
4 under four categories." The categories he listed,  
5 "Safe, efficient service at an affordable price,  
6 resource protection, a financially healthy and  
7 independent utility, and regulatory efficiency."

8 Is there anything else you would add to that  
9 list?

10 WITNESS MANN: What is the first, is it  
11 "space"?

12 COMMISSIONER JOHNSON: Safe and efficient  
13 service at an affordable price.

14 WITNESS MANN: An affordable price, resource  
15 protection, and what else?

16 COMMISSIONER JOHNSON: A financially healthy  
17 and independent utility, and regulatory efficiency.

18 WITNESS MANN: And regulatory efficiency?

19 COMMISSIONER JOHNSON: Efficiency, uh-huh.

20 WITNESS MANN: I think this problem appears  
21 differently to the Staff. During the time I spent on  
22 the Commission, I think the Staff suffered from the  
23 relative obscurity of the water and sewer utilities.  
24 They are not in the Miami Herald every day. Their  
25 problems are widely variant, much more widely variant

1 than the telephone and electric utility, particularly  
2 the small, poorly financed water and sewer utilities  
3 which came out of real estate developments. And that  
4 is where a lot of our problems in water regulation  
5 originated.

6           And that led to financial problems, which  
7 lead -- or which, when I served on the Commission, led  
8 members of the Staff to think more highly than after  
9 reflection I believe they ought to have thought about  
10 about solutions to their problems as regulators, which  
11 involved some fundamental unfairness which I perceive  
12 to be present in this case where you are taking a  
13 geographically separated, widely differing utilities  
14 and paying for the poorer utilities' shortcomings with  
15 what is perceived to be the rich utilities' surplus.

16           What I'm saying is that the rich utilities  
17 are entitled -- are understandably protective of their  
18 surplus, which, in sum, amounts to very substantial  
19 sums of CIAC contributed by the better-financed  
20 utilities involved in this case.

21           Now if these customers had sought to  
22 associate themselves under the umbrella of Southern  
23 States or any other -- or American Waterworks or any  
24 other conglomerate utility, I would have less sympathy  
25 for their position. But I don't think that's true.



1                                   **BRUCE ADAMS**

2 was called as a rebuttal witness on behalf of Southern  
3 States Utilities, Inc. and, having been duly sworn,  
4 testified as follows:

5                                   **DIRECT EXAMINATION**

6 **BY MR. ARMSTRONG:**

7           Q     Do you have before you seven pages of  
8 prefiled rebuttal testimony which you prefiled in this  
9 case?

10          A     Yes, I do.

11          Q     Do you have any changes you would like to  
12 make to that rebuttal testimony?

13          A     I have one typo on Page 6, Line 6. The  
14 figure should be 325,000, not 350,000.

15          Q     Okay. With that one change, if I asked you  
16 the questions contained in those seven pages, would  
17 your answers be the same?

18          A     They would be.

19                **MR. ARMSTRONG:** Madam Chair, I request that  
20 the seven pages of the prefiled rebuttal testimony of  
21 Mr. Adams be incorporated into the record as though  
22 read?

23                **CHAIRMAN CLARK:** The prefiled rebuttal  
24 testimony of Mr. Adams will be inserted into the  
25 records on though read.

1 MR. ARMSTRONG: Thank you, Madam Chair.

2 Q (By Mr. Armstrong) Mr. Adams, you are not  
3 sponsoring any exhibits?

4 A Correct.

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1 Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

2 A. My name is Bruce Adams. My Business address is 301  
3 Gun Club Road, West Palm Beach, Florida, 33406.

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

6 A. I am the Conservation Coordinator for the South  
7 Florida Water Management District ("SFWMD").

8 Q. COULD YOU PLEASE DESCRIBE YOUR BACKGROUND AND  
9 EXPERIENCE?

10 A. I received both my Bachelor's and Master's degrees  
11 in Communications from the Florida State  
12 University, specializing in government,  
13 organizational communications and conflict  
14 resolution. For the past eighteen years I have  
15 been responsible for the creation, development and  
16 management of the District's water conservation  
17 program. I am on the adjunct faculty of Florida  
18 Atlantic University where I developed and teach the  
19 University's Water Conservation/ Xeriscape  
20 curriculum. I am Past President of both the  
21 Florida Water Wise Council, Inc. and the National  
22 Xeriscape Council, Inc. I am a founding member of  
23 the American Water Works Association's Water  
24 Conservation Committee, and have served on the  
25 AWWA's Reuse and Leak Detection committees, as well

1 as having served as a Director of the Florida  
2 Section/AWWA.

3 I have testified before the Florida  
4 Legislature and the United States Senate on water  
5 conservation matters.

6 **Q. WOULD YOU PLEASE DESCRIBE YOUR PRESENT DUTIES AS**  
7 **CONSERVATION COORDINATOR.**

8 A. I serve as the District's Program Manager for both  
9 water conservation and water shortage management.  
10 In this position I report to both Executive  
11 management and the Governing Board on matters of  
12 water conservation and water shortage management.  
13 I am responsible for the District's Mobile  
14 Irrigation Evaluation Laboratory contract with the  
15 USDA/NRCS, the Florida Rural Water Assoc., Leak  
16 Detection contract, and the District's Memorandum  
17 of Understanding on water conservation with the  
18 Florida Public Service Commission. Additionally, I  
19 manage the Water Conservation Campaign contract  
20 between the State's Water Management Districts.  
21 This project includes all of the WMD's efforts at  
22 water conservation education, advertising, and  
23 public opinion research.

24 I coordinate water conservation program  
25 development with local governments, water

1 utilities, and water users.

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A. The purpose of my testimony is to add, what I  
4 believe is pertinent information, in the matter of  
5 conservation programming and Southern States  
6 Utilities, which is before this Commission. I  
7 recommend that the PSC consider allowing investor  
8 owned water utilities to recover full costs for  
9 their conservation programs. Also, I wish to  
10 respond to certain portions of the Testimony of Kim  
11 Dismukes filed on behalf of the Office of Public  
12 Counsel regarding components of SSU's proposed  
13 water conservation program.

14 **Q. ARE THERE ANY SPECIFIC SFWMD RULES THAT REQUIRE**  
15 **UTILITIES TO IMPLEMENT CONSERVATION MEASURES?**

16 A. Yes, in SFWMD's "Basis of Review for Water Use  
17 Permit Applications", page A-26, public water  
18 suppliers are required to implement a water  
19 conservation program, which includes, at a minimum:

20 A daytime irrigation restriction, (10:00 A.M.-  
21 4:00 P.M.)

22 A water conservation based rate structure

23 An Ultra-Low Flow Plumbing Code

24 A Xeriscape landscape ordinance

25 A leak detection program

1           A water conservation public education program  
2           A rain switch ordinance  
3           A reclaimed water reuse feasibility analysis  
4           for the service area

5           Since SSU is not a local government utility,  
6           it is recognized that they are unable to enact the  
7           ordinance elements of the permit requirements.  
8           Therefore, the intent of the permit requirements  
9           for investor owned utilities is to design a program  
10          for their service area which would best assist the  
11          local government in implementing water  
12          conservation.

13       **Q.   HAVE YOU REVIEWED SSU'S WATER CONSERVATION PROGRAM**  
14       **ENHANCEMENTS AS PROPOSED IN THIS RATE CASE?**

15       A.   Yes.

16       **Q.   DOES SFWMD SUPPORT SSU'S PROPOSED CONSERVATION**  
17       **PROGRAM ENHANCEMENTS?**

18       A.   Yes. I believe that the water conservation program  
19       elements are in the best interests of the customers  
20       of SSU and represent a mix of water conservation  
21       program techniques which have the potential for  
22       meeting the goals of the SFWMD. Successful water  
23       conservation programs include a broad mix of  
24       techniques which include public relations,  
25       advertising, marketing, auditing and conservation

1 hardware. In my opinion, programs based solely on  
2 public relations are not effective. Conversely,  
3 conservation programs that do not include public  
4 relations are often equally as ineffective.

5 **Q. DO YOU HAVE ANY INFORMATION REGARDING THE BENEFITS**  
6 **OR THE EFFECTIVENESS OF SIMILAR CONSERVATION**  
7 **PROGRAMS?**

8 A. My review of SSU's proposed water conservation  
9 program elements indicates that the techniques are  
10 consistent with program efforts of both the SFWMD  
11 and of water utilities throughout the state and  
12 Nation. The anticipated results of SSU's program  
13 are consistent with the anticipated and actual  
14 results of many programs throughout the Nation. In  
15 my opinion, each utility must design a water  
16 conservation program which is unique to the factors  
17 and needs of its service area. Comparison of  
18 techniques and goals with other programs can, at  
19 best, set the stage for a utility's proper program  
20 design.

21 **Q. WHAT IS YOUR OPINION REGARDING KIM DISMUKES**  
22 **TESTIMONY THAT SSU'S CONSERVATION COST OF \$20,000**  
23 **FOR THE MARCO ISLAND WATER AUDITS SHOULD NOT BE**  
24 **ALLOWED?**

25 A. The SFWMD supports and encourages water suppliers

1 to join in cooperative partnerships with water  
2 users, local, state and Federal agencies on  
3 conservation projects such as water audits. The  
4 SFWMD participates in these water audits as part of  
5 our water conservation program. For FY 1996, the  
6 SFWMD has allocated over \$ <sup>325,000</sup> ~~350,000~~ for water  
7 auditing. I believe that a water audit project for  
8 Marco Island, because of the nature of high water  
9 demands and scarce resources, is indicated and  
10 proper.

11 **Q. WHAT IS YOUR OPINION REGARDING KIM DISMUKES**  
12 **SUGGESTION THAT IRRIGATION SHUT-OFF DEVICES ARE NOT**  
13 **EFFECTIVE?**

14 A. I am one of the State's leading proponents of the  
15 use of rain switches for the control of automatic  
16 landscape irrigation systems. I assisted the  
17 Florida Legislature by requesting that the rain  
18 switch requirement be added to the Xeriscape  
19 Landscaping Law in 1991. It is my opinion, based  
20 upon personal use and knowledge, and by  
21 overwhelming and unsolicited anecdotal evidence,  
22 that when properly installed, maintained and  
23 operated- rain switches are an effective technique  
24 for demand management.

25 **Q. DOES THAT CONCLUDE YOUR PRE-FILED TESTIMONY?**

1 A. Yes, it does.

1 Q (By Mr. Armstrong) Do you have a summary  
2 you would like to present?

3 A Yes.

4 Q Please present that now.

5 A My name is Bruce Adams; I am the  
6 Conservation Coordinator for the South Florida Water  
7 Management District. I have worked for the district  
8 for the past 18 years in various capacities; but all  
9 through those 18 years been responsible for  
10 administrating and coordinating all of the district's  
11 water conservation endeavors, including assisting  
12 utilities in developing their conservation programs in  
13 compliance with the requirements of the Water  
14 Management District.

15 I'm also on the adjunct faculty at Florida  
16 Atlantic University, where I develop the water  
17 conservation curriculum and teach courses to industry  
18 professionals.

19 I'm one of the founding members of the AWWA  
20 Water Conservation Committee. I have testified before  
21 both the Florida Legislature and the United States  
22 Senate regarding water conservation issues.

23 I have reviewed SSU's water conservation  
24 proposal submitted to the Public Service Commission in  
25 this case; and I believe it is in the best interests

1 of the customers of SSU and, furthermore, it is  
2 consistent with the goals of the South Florida Water  
3 Management District.

4           Through the course of my 18-year career in  
5 this field, I have reviewed numerous conservation  
6 programs. Based on my experience, SSU's proposal is  
7 consistent with the successful programs undertaken by  
8 other utilities in Florida and across the nation, both  
9 in terms of the targets that they have established and  
10 the predicted water savings.

11           Successful water conservation programs  
12 include a broad mix of techniques, which include  
13 public education, advertising, marketing, auditing and  
14 conservation hardware. In my opinion, programs based  
15 solely on public relations are not effective.  
16 Conversely, conservation programs that do not include  
17 public relations are also -- are often also as  
18 ineffective.

19           Next, the cost of conservation should be  
20 paid through rates and in the manner in which those  
21 who violate the reasonable use doctrine of state water  
22 law and wastewater should be given the opportunity to  
23 pay for the cost of a utility's water conservation  
24 program.

25           I also believe that all water utilities,

1 both publicly owned and privately owned, be equitably  
2 treated in regard to the requirements for water  
3 conservation; that the necessary costs associated with  
4 required conservation programs be equitably assessed  
5 amongst the citizens of the state of Florida.

6           The South Florida Water Management District  
7 requires publicly owned utilities to charge their  
8 customers for water conservation, and so should it be  
9 for the customers of privately owned utilities.

10           I would also like to respond to some of the  
11 recommendations of the Office of Public Counsel  
12 provided by Ms. Dismukes. First of all, water audits  
13 are an important part of SSU's Marco Island water  
14 conservation program. The South Florida Water  
15 Management District strongly encourages utilities to  
16 undertake water audits and supports this concept  
17 through its financial support of about \$325,000 in  
18 cooperative funding this year for customer water audit  
19 programs.

20           Secondly, I would like to state my support  
21 for utility programs providing rebates for rain  
22 switches for the control of automatic sprinkler  
23 systems. My experience indicates that rain switches  
24 are an effective technique for demand management.

25           I would be happy to answer any questions

1 regarding the South Florida Water Management District  
2 policies regarding water conservation and the program  
3 components we consider effective.

4 MR. ARMSTRONG: Thank you, Mr. Adams. The  
5 witness is available for cross.

6 CHAIRMAN CLARK: Mr. McLean?

7 **CROSS EXAMINATION**

8 BY MR. McLEAN:

9 Q Good afternoon, sir.

10 A Good afternoon.

11 Q Mr. Adams, in both your summary and in your  
12 testimony itself you mentioned this phrase, "In my  
13 opinion, programs based solely on public relations are  
14 not effective." Then you say, "Conversely,  
15 conservations that do not include public relations  
16 programs are equally as ineffective."

17 That's your testimony, isn't it?

18 A That's true.

19 Q Now, I'm wondering if you would draw any  
20 contrast between the terms "public relations" and  
21 "public education." Do you regard those as one and  
22 the same thing?

23 A I regard the commonly used terms to be  
24 pretty much interchangeable with regard to what people  
25 call them around the country -- public relations,

1 public education. The specific requirements of Water  
2 Management District are for water conservation  
3 education, which include public information programs.

4 Q Sure. And obviously, any effective  
5 conservation program, you have to tell the public  
6 about it, at least to some extent, correct?

7 A I couldn't hear you?

8 Q You obviously have to tell the public about  
9 those programs to some extent.

10 In other words, public education means to me  
11 something you educate the public as to the  
12 conservation program that you have in mind; is that  
13 right?

14 A That is part of the process.

15 Q Now, in this process we sometimes refer to  
16 public relations with a slightly different  
17 connotation, and I want to see if that's part of your  
18 testimony as well.

19 Public relations is, as you say at the top  
20 of Page 5, "In my opinion, programs based solely upon  
21 public relations is not effective." To some people  
22 in this process, perhaps, including myself, that might  
23 mean programs which are designed solely to enhance the  
24 image of a company -- enhance the image of a  
25 company -- are not to be allowed; is that correct?

1           A       The reason why I responded to this  
2 particular issue was because of the prefiled testimony  
3 of Ms. Dismukes with regard to suggesting not allowing  
4 recovery through rates of the conservation education  
5 program because it appeared to be image-enhancing  
6 public relations.

7                       This is nothing new with regard to an issue  
8 that has come before not only this Commission but  
9 before my own Water Management District Board of  
10 Governors, also appointed by the Governor.

11                      In the case of the Water Management  
12 District, in making the case for image enhancement, we  
13 subscribe to the theory that there are three parts to  
14 water conservation education and public education with  
15 regard to water conservation techniques; and the three  
16 aspects of that program are awareness, education and  
17 action.

18                      The first step that we have found to be  
19 extremely necessary is to gain the trust of the public  
20 that we are trying to educate and have take action on  
21 water conservation.

22                      If in fact the entity that is producing the  
23 information, the hardware, the programs -- such as, in  
24 this case, the utility -- is not trusted or even known  
25 by the customers, then the message that is sent out

1 cannot be received or accepted. So first of all, we  
2 have to start with -- and this is a subject that was  
3 actually discussed before our Board on a number of  
4 occasions in an effort to spend several million  
5 dollars over several years to do public service  
6 advertising and paid advertising to the general public  
7 on, first of all, who was the Water Management  
8 District?

9 I think that a utility needs to let its  
10 customers know who it is so that the rest of the  
11 information that they try to give out, the education  
12 that they try to do, and the products and the services  
13 that they try to provide are accepted by the public.

14 So I think that one in the same image  
15 enhancing is part of the public education process.

16 Q Is it an incidental part or do you regard it  
17 as necessary?

18 A It's the primary part. It's the first part.

19 Q So you believe that before customers will  
20 take water-conserving action, they have to, if you  
21 will permit the term, feel good about the utility?

22 A They have to trust the utility. They have  
23 to first know who the utility is.

24 Most customers -- and we've done public  
25 opinion research on this with all our programs. A lot

1 of customers or rate taxpayers, in our case, don't  
2 even know who the Water Management District is, let  
3 alone where their bills come from. In fact, a lot of  
4 times we get calls from utility customers wanting to  
5 talk about their bills; and they don't know the  
6 difference between the utility that serves them and  
7 the Water Management District or any other agency of  
8 the state.

9           So my testimony here is to present the fact  
10 that it is important as a first step for the customer  
11 of the utility to know who the utility is and to have  
12 a good feeling about that utility.

13           Q     Okay. So the extent to which you -- you  
14 believe Ms. Dismukes' view is incorrect because it  
15 disallows image-enhancing expenses incurred by the  
16 utility?

17           A     Because it disallows the, quote, "public  
18 relations or public education costs" that could result  
19 in image enhancing.

20           Q     All right, sir. Is there any image  
21 enhancing with respect does your district take a  
22 position on inclining block rates?

23           A     On what?

24           Q     Inclining block rates.

25           A     Yeah. We believe they are not

1 conservation-based.

2 Q Do you understand that I mean by inclining  
3 is that the second block --

4 A Excuse me, I thought you said declining.

5 We have in the past through our rules set  
6 forth several of the types of rate structures that we  
7 say are in essence water conservation-based rate  
8 structures, and inclining block rate structures are  
9 water conservation-based rate structures.

10 Q Can you place those in any measure of  
11 prioritization? Do you regard them as a  
12 particularly -- referring to inclining block rates?

13 A No. We would not place them in any measure  
14 or set of prioritization for the type of rate that is  
15 best for an individual utility. What we are looking  
16 for is the effect of the rate structure on demand; and  
17 if that in fact is a uniform rate as opposed to a  
18 declining rate, then that certainly, if shown in  
19 effect that it does reduce demand, that would be  
20 desirable. But we don't make any differentiation as  
21 to the type of rate over another rate for a utility.

22 Q Do customers have to trust the utility in  
23 order to take conservation or to amend their behavior  
24 in a conserving fashion for inclining block rates? Do  
25 you understand the question?

1           A     Rephrase it.

2           Q     Sure. With respect to inclining block  
3 rates, think of that as a conservation measure, if  
4 indeed it is. Do you believe that customers need to  
5 trust the utility to any particular extent to engage  
6 in the behavior that inclining block rates encourages  
7 them to do?

8           A     I think that -- yes, I think that they need  
9 to have trust in the utility that the utility is  
10 working in their best interests in placing an  
11 inclining block rate.

12                     Because the experience that we have seen  
13 when there is a change by a utility from a flat or  
14 declining rate, that you see an uprising sometimes in  
15 an uninformed community about why those costs are  
16 changing for individual water users. Especially those  
17 that are using water in the blocks that are punitive.

18           Q     Okay. With respect to those punitive  
19 blocks, customers can't avoid incurring the charges  
20 implied by the punitive blocks simply because they  
21 don't trust the utility, do they? I mean, they have  
22 to pay the bill, do they not?

23           A     That's true.

24           Q     Okay. And they have to pay the bill  
25 irrespective of whether they trust the utility?

1 A Right.

2 Q And you have testified that inclining block  
3 is an effective conservation measure, haven't you?

4 A Yes, I have.

5 Q I want to look at your colleagues who have  
6 not yet testified, Mr. Yingling -- I'm not sure of the  
7 pronunciation -- and Mr. Farrell. Both of those  
8 gentlemen will quote rules from their respective water  
9 management districts which suggest that utilities must  
10 adopt a water conserving program, a water conservation  
11 program, but must do so unless it be shown that they  
12 are economically not, they are not feasible in an  
13 economic sense.

14 Does your district have a similar rule?

15 A We have the rule that they have to adopt a  
16 package of minimum water conservation programs and  
17 techniques, which you will find starting on Page 3 in  
18 the answer at Line 16.

19 Q Yes, sir. I noticed that. But I didn't  
20 see -- and I don't mean to use the term pejoratively  
21 or anything, but the term "escape clause." In the  
22 other districts, if a utility comes to you and says,  
23 "We don't believe that's economically feasible"?

24 A If they are not economically or  
25 environmentally feasible.

1 Q Okay. And your district has a similar  
2 notion --

3 A The same. The same language.

4 Q And I'm interested to know about how high  
5 that threshold is. What need they show you before you  
6 will be willing to determine or agree with them that  
7 it is not economically feasible for them to do so?

8 A For the purpose of meeting the requirements  
9 or the basis of review for their water supply permit,  
10 they have to show us that they have gone through --  
11 and in the majority of these cases, of course, they're  
12 publicly-owned utilities -- that they have gone  
13 through the public hearing process and that they have  
14 no substantial problems in their service area in  
15 impressing these conservation elements, of which rates  
16 is only one of them.

17 Q I see.

18 A And I think it is -- at this point it would  
19 be extremely important to interject that it is my  
20 feeling that rates, water conservation-based rates, as  
21 one of the requirements of our Water Management  
22 District's conservation program, are both a water  
23 conservation technique in and of itself because of  
24 price sensitivity. But also they need to adjust for  
25 the reduced demand of a successful program the sum

1 total of all the other techniques that are within the  
2 program.

3 Q Let me ask you this. If a utility believes  
4 that a program is not economically feasible, is there  
5 a -- is there a procedure in place at the Water  
6 Management District where they can bring that to your  
7 attention? And I refer to an investor-owned utility  
8 in this case, since I believe you have answered that  
9 question with respect to publicly.

10 A Right. It would be in their response to the  
11 letters written by our regulatory staff that says, you  
12 know, "You have submitted this technique, that  
13 technique, and you have indicated that it is not  
14 economically or environmentally feasible to be able to  
15 function one of these parts of the program," then that  
16 would go back into the process and they could contest  
17 at the permit issuance before the governing board.

18 Q Now if the utility does not bring that issue  
19 to your attention -- in other words, if they don't say  
20 to you, "Hey, wait a minute, this is not economically  
21 feasible," if they don't bring that to your attention,  
22 you would not know about it, obviously? You would not  
23 know about it?

24 A That's true.

25 Q Okay. Do you accept this process as the

1 appropriate one for affected parties to raise that  
2 issue for the first time?

3 A For the privately-owned utilities?

4 Q Yes, sir.

5 A I would hope that it would not have gone  
6 this far. Would I hope that that type of process  
7 would have been discussed with the PSC Staff prior to  
8 bringing it to a hearing basis. Especially under the  
9 concept that we do have the Memorandum of  
10 Understanding with the Public Service Commission, the  
11 water management districts, to discuss conservation  
12 subject matters with regard to the utilities that are  
13 under the PSC's jurisdiction.

14 Q So if I follow your answer, you are  
15 suggesting that there should be some scrutiny or at  
16 least attention to the notion of cost-effectiveness  
17 somewhere in this process perhaps short of hearing?

18 A That's true.

19 Q And if there be no agreement at that staff  
20 level, don't you think it is appropriate we should  
21 address it here at this hearing?

22 A That would be the next step, I would  
23 suppose.

24 Q Okay. And if the utility is only required  
25 to bring it to your attention when they think it is

1 not cost-effective, if an affected party thinks it is  
2 not cost-effective, this process is really the first  
3 opportunity, isn't it?

4 A No. The public has the process within the  
5 permit process.

6 Q So they could come in at the permitting  
7 process and say that an identified conservation  
8 measure suggested by the utility is not  
9 cost-effective?

10 A That's true.

11 Q Has that been done?

12 A It has been done in cases where the  
13 components -- now not specifically for rates, but in  
14 cases where the components related to ordinance.

15 We've had a number of utilities that have  
16 either been unable to or ineffectively able to pass  
17 certain of the required ordinances of the conservation  
18 package. And these are brought to the staff by the  
19 affected parties, by the utility, to the extent that  
20 then my office gets involved in trying to mediate and  
21 bring the parties together and solve the problems  
22 prior to going before any, any board such as this or  
23 our governing board.

24 Q I see -- I think that I see in your  
25 testimony you believe that a cost-effective inquiry

1 should be made somewhere in the process; is that  
2 correct?

3 A Yes.

4 Q Okay.

5 A In my verbal testimony. I don't think I  
6 covered that in the prefiled.

7 MR. McLEAN: All right, sir. I have no  
8 further questions. Thank you, Mr. Adams.

9 CHAIRMAN CLARK: Mr. Jacobs?

10 MR. JACOBS: Thank you, Madam.

11 **CROSS EXAMINATION**

12 BY MR. JACOBS:

13 Q Mr. Adams, in your testimony you stated that  
14 the cost should be borne by rates paid by the  
15 customers; is that correct?

16 A That's correct.

17 Q For the conservation measures?

18 A That is right.

19 Q You also stated that the ones using the  
20 water ought to pay? In other words, that's your  
21 theory is basically the ones that are using the water  
22 for conservation measures, they should be the ones  
23 that pay for those measures?

24 A My statement was that the cost of the  
25 conservation program should be borne by the people who

1 are using the water from that system according to the  
2 level of use within their user class with regard to  
3 the reasonable beneficial use doctrine.

4 Q So you say, "within the system." When you  
5 talk about municipal utilities companies, you're  
6 talking about, say, a municipal one would be within  
7 that municipality, then; is that correct?

8 In other words, the conservation measure  
9 should be spread upon the folks in that utility system  
10 that are using the water?

11 A It depends on the system. Like with Miami  
12 Dade Water and Sewer Authority, it is over somewhere,  
13 I believe, 19 or 20 municipalities.

14 Q But it is the same system, though; is that  
15 not correct?

16 A It has become the same system by  
17 acquisition. Even though in parts of that system they  
18 are not connected, they are independent utilities that  
19 are working or have been acquired by Miami Dade Water  
20 and Sewer Authority, because of the proximity within  
21 the county there is the ability over a long period of  
22 time to do interconnections between these utility  
23 operations and the counties they serve.

24 Q So then --

25 A And it also goes outside the county because

1 there are interconnects with even cities,  
2 municipalities, in Broward County.

3 Q But there is the proximity and the  
4 opportunity for connection or interconnection that  
5 makes it all a system; is that not correct?

6 A At some point in time at some level of  
7 expenditure, yes, they could be interconnected.

8 Q And the thought about -- in conservation  
9 measures about making people who are using the water  
10 pay for it, there might be some hesitancy on their  
11 part to use the water if they have to pay more money  
12 for it; is that not correct?

13 A That's the theory behind the conservation  
14 rate structure.

15 Q So should a utility company, say, located in  
16 the St. Johns River Water Management District, should  
17 they be required to pay for the conservation measures  
18 that are being utilized in the SWFWMD district?

19 A I would not comment on that based on I think  
20 that it is outside the area that I was specifically  
21 talking about. And if you are alluding to the uniform  
22 rate structure for SSU, that's a subject that I had  
23 not prefiled testimony on.

24 Q All right sir. My point is I guess wouldn't  
25 that go against your theory that if someone in Nassau

1 County were to pay money to subsidize someone in Dade  
2 County, wouldn't that go -- that the users would not  
3 be then paying for the water they were using; is that  
4 not correct?

5 MR. ARMSTRONG: Objection, Madam Chairman.  
6 I think the witness has indicated this is beyond the  
7 scope of his testimony. He's not here to talk about  
8 uniform rates, he's here to talk about the  
9 conservation program proposed by Southern States in  
10 this proceeding.

11 CHAIRMAN CLARK: Mr. Jacobs?

12 MR. JACOBS: Madam Chairman, I guess my  
13 point is that he's made the statement that users ought  
14 to pay. My point is just asking the question then he  
15 would consider it to be unfair if someone in Nassau  
16 County then is paying to subsidize someone, say, in  
17 another county in South Florida for their conservation  
18 matters?

19 MR. ARMSTRONG: Madam Chair, I think the  
20 question of subsidy goes beyond the scope of this  
21 witness's testimony.

22 CHAIRMAN CLARK: Mr. Jacobs, I think the  
23 first question you asked was closer to something that  
24 was allowable. Would you like to try it again?

25 MR. JACOBS: Yes, ma'am, I'm always glad to

1 have the opportunity to try again. I'll try again.

2 Q (By Mr. Jacobs) I guess my point is, is  
3 that whenever you talk about a utility and a system,  
4 you're talking about something that is interdependent,  
5 interrelated in proximity geographically as well as  
6 business-wise; is that not correct?

7 MR. ARMSTRONG: Objection. Madam Chair, I  
8 just want to question to be clear we're looking at  
9 this from the Water Management District's point view.  
10 We all know there's a legal issue in this case  
11 irrespective of what the Water Management District's  
12 point of view is.

13 With that clarity, I will remove my  
14 objection.

15 CHAIRMAN CLARK: Is that acceptable?

16 MR. JACOBS: I don't understand his  
17 objection.

18 MR. ARMSTRONG: Madam Chairman, my objection  
19 is that I wouldn't expect that we would have briefs  
20 written saying that the Water Management District  
21 people and the DEP people admit this is not one  
22 system. I think that that would be inappropriate  
23 because that would not be their testimony.

24 MR. JACOBS: I think the question speaks for  
25 itself. In other words, his idea of a system, I'm

1 just trying to get into what he is talking about as a  
2 system. I want to be sure as to his definition of a  
3 system; I think that's certainly within his province  
4 and his scope of knowledge.

5 MR. ARMSTRONG: And that is the purpose of  
6 my clarification. His definition from the Water  
7 Management District point of view certainly would not  
8 give him any cognizance of the fact that the word  
9 "system" is specifically defined in Chapter 367, and  
10 that is where I think it would be inappropriate to  
11 have a brief indicating that these witnesses are  
12 saying that Southern States is not one system as it  
13 relates to Chapter 367 and the definition thereof.

14 MR. JACOBS: Madam Chairman, we all know  
15 Mr. Adams is here as a representative of the Water  
16 Management Board. We all know what his scope of  
17 knowledge is, and he's talking about conservation  
18 measures.

19 He's made the point that people who use the  
20 water ought to pay for that usage and that you deter  
21 people from having excess usage by charging them more  
22 money for that usage. So he's talking about things  
23 within the system; I think it's fair for him to give  
24 testimony about the fact that folks that are in other  
25 systems ought not to be taking care of people who are

1 in a different system.

2 CHAIRMAN CLARK: Are you asking him if his  
3 view of conservation rates is equally applicable to  
4 customers who are not physically connected to the same  
5 system?

6 MR. JACOBS: Yes, ma'am.

7 A I would be glad to answer that. Because as  
8 an employee of the Water Management District, we have  
9 people in all areas of the 17,000 mile, square mile,  
10 jurisdiction who constantly raise this point with us.  
11 And our Board has constantly said that it is within  
12 the public interest and the interest of the resource  
13 to allocate funds to parts of the district that are  
14 completely segregated systemwide, if you want to use  
15 that term, from other parts of the system.

16 You know, we operate the Central and  
17 Southern Florida Flood Control Project, which benefits  
18 primarily the Kissimmee River, Lake Okeechobee, lower  
19 East Coast areas and completely separated from the  
20 lower West Coast and the Florida Keys areas by  
21 physical continuity.

22 We have constant attacks on operating the  
23 systems this way; and it is our position that our  
24 conservation program allocate monies of our ad valorem  
25 taxes to places that are totally disconnected.

1                   So from my point of view, from the  
2 District's point of view, the answer is no to your  
3 question.

4                   MR. JACOBS: May I proceed?

5           Q        (By Mr. Jacobs) Do you have programs in  
6 SWFWMD that are utilized to supplement the folks in  
7 the St. Johns River Water Management Board?

8           A        I'm in South Florida.

9           Q        I know that.

10          A        Do I have programs in SWFWMD?

11          Q        Yeah, in SWFWMD -- I'm sorry, in your  
12 management district, do you have programs that  
13 subsidize or assist the people -- in other words, you  
14 charge your folks a certain tax. Does that money flow  
15 and enure to the benefit of the people in the St.  
16 Johns River Water Management District?

17          A        Yes.

18          Q        In what way?

19          A        We have cooperative programs and water  
20 conservation education throughout the State of  
21 Florida. Unfortunately, the Suwannee River Water  
22 Management District and the Northwest Florida Water  
23 Management District cannot raise enough funds to  
24 participate in these programs, but they average  
25 between \$300,000 and \$400,000 a year of ad valorem tax

1 monies. Programs that are integrated with common  
2 artistic and productive products that are used without  
3 regard to the boundaries of the districts.

4 Q Do your restrictions you place on the usage  
5 of water within your management district, does that in  
6 any way assist or cause the people in the St. Johns  
7 River Water Management District to stop using their  
8 water as well?

9 A No, we have collocated efforts -- to give  
10 you an example, we have an Orlando Service Center that  
11 is approximately ten miles from the St. Johns River  
12 Water Management District's Orlando Service Center,  
13 and we work on cooperative programs in which the  
14 effects of conservation programs, like I say, don't  
15 know the boundaries, the jurisdictional boundaries.  
16 So there is an effect across those district  
17 boundaries. And the same thing with the Southwest  
18 Florida Water Management District in the lower West  
19 Coast area.

20 Q But are you restricting, though, say you  
21 restricted use of the water in your district because  
22 you have authority over those people. Do you think  
23 that deters people in another district from using the  
24 water as well?

25 A Yes. In fact, during water shortages when

1 utilities or the resource runs out of water, we have  
2 gone to our respective boards and, even though there  
3 isn't a problem in one district, we have deferred to  
4 the problem in the other district and signed an  
5 agreement with them, a Letter of Understanding, that  
6 we would enforce their rules and regulations in our  
7 district in order to have a uniformity.

8 Q Have you ever done that to the extent of the  
9 St. Johns River Water Management District and your  
10 district?

11 A No. Not because of the difference in the  
12 actual source. We haven't restricted our source but  
13 we have cooperated with them within the corporate  
14 limits of Orlando on restrictions that they declared  
15 and we didn't.

16 Q My point is, though, that the sources are  
17 different, that was your statement. Is that not  
18 correct?

19 A The sources are different.

20 Q All right. And so anything that you do to  
21 restrict the use of your source does not really stop  
22 the use of the source in, say, Nassau County?

23 A Other than through the public relations or  
24 public education aspects.

25 Q But that's all. You're not doing anything

1 at all to restrict the use to people in Nassau County  
2 by any actions you take?

3 A Where is Nassau County? That's in St.  
4 Johns, right?

5 Q No, it's in St. Johns River Water Management  
6 District.

7 A Right.

8 Q It is the northeast most -- may I answer his  
9 question since he asked me a question?

10 A Excuse me, I'm conversational.

11 Q Its the northeast most county, it is the  
12 northeast county in the state of Florida. It is the  
13 jewel in the crown of the state of Florida, if that  
14 would help you.

15 A What does that make Key West? (Laughter)

16 Q I'm going to report you to the Chamber of  
17 Commerce down there. (Laughter)

18 I tell you, now you know where it is, it is  
19 the most northeast part of the state of Florida.

20 A Right.

21 Q All right, sir. And that water source is  
22 different from the water source in your district; is  
23 that not correct?

24 A I believe -- and I'm not a hydrogeologist --  
25 but there are similar water sources that are available

1 to both water management districts.

2 Q But how about the one located in Nassau --  
3 if you don't know where Nassau is, you couldn't answer  
4 that anyway.

5 A Well, you just told me where it was.

6 Q Yeah, but now that you know where it is?

7 A Now that I know where it is, if it is  
8 available for use out of the Floridan Aquifer, we do  
9 have the Floridan Aquifer in South Florida and we're  
10 starting to use quite a bit of it.

11 Q But you don't know whether it is part of the  
12 Floridan Aquifer or not?

13 A No.

14 MR. JACOBS: No further questions.

15 CHAIRMAN CLARK: Mr. Twomey.

16 MR. TWOMEY: Just very briefly.

17 **CROSS EXAMINATION**

18 BY MR. TWOMEY:

19 Q Good afternoon, sir.

20 A Good afternoon.

21 Q Would you agree with me that a water rate  
22 that is below the cost of providing the water service  
23 cannot be considered a water conservation rate  
24 structure?

25 MR. ARMSTRONG: Madam Chairman, object.

1 Again, we're getting to the rate structure question.  
2 This witness is here on the conservation program being  
3 offered by Southern States.

4 MR. TWOMEY: Okay.

5 Q (By Mr. Twomey) Would you agree that for  
6 any program to be approved by this Commission and  
7 revenues to be allowed through rates, including a  
8 conservation program, that it must be cost-effective?

9 A We believe that any conservation program  
10 should be cost-effective.

11 Q And is it your purpose here today, sir, to  
12 testify that it is your opinion or that of your agency  
13 that the conservation program of SSU is  
14 cost-effective?

15 A It is my purpose to appear today to say that  
16 the submitted conservation program submitted by SSU  
17 should be allowed to recover -- be recovered through  
18 its rates so that it can assist in our territory, our  
19 jurisdiction, the citizens of Marco Island to achieve  
20 a demand reduction, an independence of water supply,  
21 and cost-effectiveness not only to the Utility but  
22 also to the Citizens of Marco Island.

23 That's another thing I think is extremely  
24 important with regard to water conservation is that  
25 there are benefits that accrue not only to the Utility

1 in terms of long-range capital and then therefore to  
2 the customers because of the reduction in long-range  
3 capital, but also to the individuals because of energy  
4 and water costs in their own budgets.

5           So the types of things that they are talking  
6 about, the audits and the retrofits, are generally  
7 accepted procedures for water conservation throughout  
8 the water conservation community. And as a member for  
9 the last 15 years of the Water Conservation Committee  
10 of the American Waterworks Association, I associate  
11 with approximately -- on a twice-a-year basis  
12 physically and through e-mail and letters and the  
13 like -- with 150 professionals throughout this country  
14 that share information on what are effective water  
15 conservation programs. That's not to say that there  
16 is any --

17           MR. TWOMEY: Madam Chairman, I would like to  
18 ask you to instruct the witness to, to attempt to give  
19 me a yes or no answer and to then go on with a short  
20 explanation and leave the lengthy explanations to  
21 redirect.

22           MR. ARMSTRONG: Madam Chair?

23           MR. TWOMEY: He did not ask my question yes  
24 or no.

25           MR. ARMSTRONG: I think you ask questions at

1 your peril. And if the witness is informing -- and  
2 he's here to inform the Commission of his knowledge  
3 and obviously he has a vast wealth of it, but I think  
4 he was trying to be responsive to the question.

5 CHAIRMAN CLARK: Mr. Adams, quite frankly, I  
6 don't remember if you said yes or no at the begin or  
7 not?

8 WITNESS ADAMS: I can't even remember the  
9 question now. (Laughter) He interrupted my train of  
10 thought.

11 CHAIRMAN CLARK: What I would like to ask  
12 you to do is listen to the question, answer yes or no,  
13 and give us succinct answers. We have a lot of  
14 witnesses to get through in a very short time; and if  
15 you would do that, I would appreciate it.

16 Likewise, I think all the attorneys need to  
17 make sure that they ask succinct questions that call  
18 for a yes or no answer.

19 Go ahead.

20 MR. TWOMEY: Yes, ma'am. Thank you very  
21 much.

22 Q (By Mr. Twomey) This is a question. Is it  
23 your testimony that SSU's conservation program at  
24 Marco Island is in fact cost-effective?

25 A Yes.

1 Q And what studies or what calculations have  
2 you conducted to base that answer on?

3 Let me ask you first, have you conducted any  
4 studies or cost/benefit analyses that demonstrate that  
5 program is in fact cost-effective?

6 A We did not conduct an analysis --

7 Q Let me try again --

8 A No.

9 Q -- yes or no?

10 A Now may I explain?

11 Q Yes.

12 A We did not conduct an analysis, nor do we  
13 have the taxpayer money to conduct an analysis on  
14 every single conservation program that every one of  
15 the 140 major utilities within our jurisdiction submit  
16 to the Water Management District as a condition for  
17 their permit.

18 What we do say to the utilities is that  
19 water concentration programming is an iterative  
20 process. And if in fact the techniques that are used  
21 by a utility -- and in this case with specific respect  
22 to Marco Island, we have a real problem. Collier  
23 County is recalcitrant in passing the necessary  
24 ordinances that are required under this program. SSU  
25 cannot pass these ordinances because it's

1 investor-owned. Therefore, they are left to their own  
2 devices and know their system best to decide which  
3 types of techniques should be used to benefit the  
4 people and the water users of Marco Island.

5 Q Okay, sir. Isn't it true that you are not  
6 here to testify regarding some whatever 140 other  
7 utilities that you have responsibility over; isn't  
8 that correct?

9 A I am here to testify on behalf of the  
10 ability for private-owned utilities to have the same  
11 equitable treatment with regard to recovering water  
12 conservation costs in the rate structure as do public  
13 utilities.

14 Q I thought you were here to testify  
15 specifically on SSU's conservation program in Marco  
16 Island; isn't that correct?

17 A No.

18 Q The --

19 A May I explain, please?

20 A Page 3, answer: "What is the purpose of  
21 your testimony?" Starting on Line 3, "The purpose of  
22 my testimony is to add what I believe is pertinent  
23 information in the matter of conservation programming  
24 in Southern States Utilities which is before the  
25 Commission. I recommend that the PSC consider

1 allowing investor-owned water utilities to recover  
2 full costs for their conservation programs."

3 Not specifically for SSU but inclusive of  
4 SSU. My purpose here under my Memorandum of  
5 Understanding is to appear before hearings of the PSC  
6 in support of water conservation programming and State  
7 water policy, and I consider that this is an avenue in  
8 which I can make that statement on behalf of all  
9 investor-owned utilities, so that we don't have to go  
10 through this more than once.

11 Q If you were a regulator, sir, wouldn't you  
12 want to know that before you allowed the full costs of  
13 a conservation program to be recovered through the  
14 customer rates you approve that the program in fact  
15 was cost-effective?

16 A And I would hope -- yes. And I would hope  
17 that that would happen through our Memorandum of  
18 Understanding with the Public Service Commission and  
19 the PSC with regard to investor-owned utilities.

20 Q Okay. Lastly and we can conclude: Isn't it  
21 true that you cannot tell the five members of this  
22 Public Service Commission that any conservation  
23 program -- that the full cost of any conservation  
24 program of SSU in this case is in fact cost-effective  
25 based upon your analysis of any cost-effectiveness

1 test?

2 MR. ARMSTRONG: Objection. The witness --

3 Q Isn't that true?

4 MR. ARMSTRONG: The witness has already  
5 responded. He has testified that he believes that the  
6 program proposed by SSU is cost-effective. He just  
7 responded to that five minutes ago.

8 CHAIRMAN CLARK: I think Mr. Twomey is  
9 asking him what analysis he has done. Mr. Twomey, if  
10 you would ask your question again?

11 MR. TWOMEY: Yes, ma'am, I will be happy to.

12 Q (By Mr. Twomey) Isn't it true that you have  
13 not reviewed any study or conducted any study of your  
14 own that demonstrates conclusively that the cost of  
15 the conservation programs SSU has in this case are in  
16 fact cost-effective?

17 A It is true, and I answered that before.

18 Q Okay, thank you.

19 A I said that the conservation program is  
20 iterative.

21 MR. TWOMEY: Thank you very much.

22 WITNESS ADAMS: Thank you.

23 CHAIRMAN CLARK: Staff?

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## CROSS EXAMINATION

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BY MS. CAPELESS:

Q Good afternoon, Mr. Adams.

A Good afternoon.

Q Staff has some questions for you. They really are yes or no questions, so we shouldn't keep you very long.

Are you aware that the water management districts are not charged with the statutory authority to set water rates?

A I am.

Q Are you aware that the statutes provide the Public Service Commission with exclusive jurisdiction over each utility it regulates with respect to its authority, service and rates?

A I am.

Q Would you agree that an important aspect of setting rates is to ensure that utility customers do not pay for unnecessary or imprudently incurred expenses?

A I agree.

Q Does your review of SSU's proposed water conservation program enhancements consist of a review of the elements of those programs?

A Yes.

1 Q Your review didn't include a review of the  
2 itemized expenses that SSU attributed to its  
3 conservation programs, did it?

4 A Could you be more clear on that?

5 Q Did your review include a review of itemized  
6 expenses such as line-by-line expenses such as copying  
7 cost, contract services, advertising costs?

8 A No.

9 Q Thank you. So with respect to the specifics  
10 of SSU's conservation program expenses, you can't tell  
11 us whether SSU paid too much for any specific itemized  
12 expense, can you?

13 A No, I can't.

14 Q You testified that SSU's programs themselves  
15 are valid and needed but you are unable to say how  
16 much the programs should cost then; is that correct?

17 A What was that again? How much they should  
18 cost?

19 Q Correct.

20 A What I said was that I was willing to  
21 believe that the proposal that they submitted and  
22 approved by our governing board in issuing them a  
23 20-year permit -- the first 20-year permit that we've  
24 issued -- was based on a very aggressive conservation  
25 program of which these components were accepted.

1 Q Thank you. Referring to Pages 5 and 6 of  
2 your rebuttal testimony with regard to the Marco  
3 Island water audit projects, again here you reviewed  
4 the elements of the project; is that right?

5 A Correct.

6 Q Your review didn't include a review of the  
7 itemized expenses of that particular project?

8 A No, I didn't have those.

9 Q So with respect to the specifics of the  
10 expenses associated with the water audit project, you  
11 can't tell us whether SSU paid too much for any  
12 specific itemized expense?

13 A I don't have that information.

14 Q Referring to Page 7 of your rebuttal  
15 testimony concerning irrigation shut-off devices,  
16 isn't it true that an irrigation shut-off device must  
17 be installed properly in order to be effective?

18 A Page 6, you mean?

19 Q Yes, sir, excuse me, Page 6.

20 A Okay. Yes, in the Water Management District  
21 rules where we require local governments, we furthered  
22 the specific requirements of the state legislation  
23 saying that the irrigation -- the rain switches needed  
24 to be installed, maintained and operated in a proper  
25 manner.

1 Q Isn't it also true that even if the device  
2 is installed properly that it must also be properly  
3 maintained in order to remain effective?

4 A Yes. And that's where we think that the  
5 public education program is extremely important to not  
6 only teach people that they need to be putting these  
7 in according to state law but also to operate them  
8 correctly.

9 MS. CAPELESS: Thank you, sir, that's all I  
10 have.

11 CHAIRMAN CLARK: Commissioners?

12 Mr. Adams, I just want to be clear. What  
13 you have -- what I have gleaned from your testimony is  
14 you have reviewed the program and what they proposed  
15 to do as part of their conservation program and  
16 believe it to be in line with what your Board has  
17 approved for aggressive conservation programs in order  
18 to get consumptive use permits?

19 WITNESS ADAMS: That's correct.

20 CHAIRMAN CLARK: But you would not be in a  
21 position to say whether or not how they -- the money  
22 they spend to accomplish that is an appropriate level  
23 to accomplish that?

24 WITNESS ADAMS: Not at the breakout level.

25 CHAIRMAN CLARK: Okay. All right.

1 Redirect?

2 MR. ARMSTRONG: Thank you, Madam Chair.

3 REDIRECT EXAMINATION

4 BY MR. ARMSTRONG:

5 Q Mr. Adams, you just referred to the 20-year  
6 consumptive use permit Southern States obtained for  
7 Marco Island, correct?

8 A Yes.

9 Q Are you familiar with the conditions of that  
10 permit?

11 A Only generally.

12 Q And generally do those conditions relate or  
13 set forth any obligations of Southern States regarding  
14 a conservation program?

15 A They require an active conservation program;  
16 they require a 100% reuse program.

17 Q Is it your testimony that the South Florida  
18 Water Management District reviewed Southern States'  
19 entire conservation program being proposed in this  
20 case before it approved that 20-year consumptive use  
21 permit?

22 A Yes.

23 MR. JACOBS: I'm not trying to be  
24 argumentative but I believe that counsel is leading  
25 the witness. And it is redirect and he ought to

1 restrict him to direct questions rather than he's  
2 trying to treat it like cross. He needs to be a  
3 little bit closer about that.

4 MR. ARMSTRONG: I believe he testified  
5 already that was the fact.

6 Q (By Mr. Armstrong) But did the South  
7 Florida Water Management District review Southern  
8 States' conservation program being proposed in this  
9 case before it issued the consumptive use permit you  
10 referred to?

11 A Yes, it did.

12 Q Are you familiar with the -- did you review  
13 the testimony of Ms. Kowalsky and specifically the  
14 conservation programs set forth in Exhibit CHK-3 of  
15 Ms. Kowalsky's testimony?

16 A To the best of my recollection, yes, I  
17 reviewed that. It was fine.

18 Q And contained in that exhibit are the  
19 proposed costs of each element of Southern States'  
20 conservation program? Are you familiar with that?

21 A I don't recall reviewing to the extent of  
22 copying costs and things like that. Just the main  
23 components.

24 Q Right. Do you recall that the main  
25 components were broken down by component in that

1 exhibit?

2 A Right.

3 Q Okay. So in response to Staff, you had  
4 indicated that you did not look down at every  
5 line-by-line item in that component, correct?

6 A Correct.

7 Q Do you know of any other utilities that have  
8 performed cost/benefit analyses for their conservation  
9 programs?

10 MR. McLEAN: Objection, could Mr. Brian --

11 CHAIRMAN CLARK: Mr. Armstrong.

12 MR. McLEAN: Yeah. "The utility" does  
13 include -- it is a rather broad spectrum. We have  
14 proceedings up here on electrics from time to time.  
15 Maybe we could restrict the question just a bit?

16 MR. ARMSTRONG: Yes. Sure.

17 Q (By Mr. Armstrong) Mr. Adams, as a  
18 representative of South Florida Water Management  
19 District in charge of conservation programs, are you  
20 aware of the existence of cost/benefit studies  
21 presented by other utilities?

22 MR. McLEAN: Other what sort of utilities?

23 Q (By Mr. Armstrong) Other water utilities  
24 concerning conservation programs?

25 A On a national level, yes.

1 Q Okay. Now when you were reviewing CHK-3 and  
2 the costs associated with the different elements of  
3 Southern States' program, did those costs strike you  
4 as being out of line with the costs of similar  
5 programs conducted by the other utilities?

6 A No.

7 Q Do you believe it would be reasonable, given  
8 the existence of other programs and other cost/benefit  
9 analyses available to Southern States, that it would  
10 be reasonable to require Southern States to perform a  
11 cost/benefit analysis for each component of its  
12 proposed program before the Commission should accept  
13 the program as being cost-effective?

14 MR. TWOMEY: I believe -- I object. I  
15 believe that calls for speculation on the part of the  
16 witness and it appears to be clearly beyond the scope  
17 of his expertise on what this Commission should  
18 require in terms of approving their recovery of  
19 expenses.

20 MR. ARMSTRONG: I'll restate the question.

21 Q (By Mr. Armstrong) Does the South Florida  
22 Water Management District require every utility that  
23 comes in with a conservation program, and specifically  
24 programs that have been used by other utilities in the  
25 past with which the district is familiar, does it

1 require the next applicant to come in and perform  
2 another cost/benefit analysis to establish that the  
3 program is effective?

4 A No, we don't. And may I explain?

5 Q Yes, please do.

6 A As I said before, conservation programming  
7 in the water industry is quite different than the DSM  
8 programming in the power industry and the electrical  
9 industry where we're in our infancy. Each utility has  
10 very specific water use characteristics. The design  
11 of the program for utilities in one state might be  
12 different than the other.

13 We try to approach water conservation  
14 programming, as I said, on an iterative basis. So we  
15 would hope to see over the course of the 20 years --  
16 and in fact I believe it is in the requirements of the  
17 permit -- a number of programs and attempts be tried  
18 both on a pilot level and then on a full operational  
19 level, as we do with other utilities that are  
20 conforming with these requirements.

21 So it is an iterative basis, we're touch and  
22 go as we go. We see what works and what doesn't work.  
23 The one program that we've seen district-wide work  
24 quite well is our Xeriscape program; because the  
25 majority of water use is for outside irrigation, for

1 irrigational landscaping. We have put a lot of money,  
2 taxpayers' money, into that program.

3           We would hope the utilities would pick up on  
4 that through the water audits and through what I call  
5 the mechanical aspects of water conservation. There  
6 are two aspects: There is behavioral and mechanical.  
7 Leaving someone with a rain switch also requires the  
8 education for that rain switch, as we were talking  
9 about a minute ago. And we would hope that as we go  
10 the utilities would progress in that program.

11           Q     Do you know whether the South Florida Water  
12 Management District has actually provided funding to  
13 SSU for its water conservation program or approved  
14 funding of SSU's conservation program?

15           A     I'm not aware of the specifics of a funding  
16 for that program. I do know that there was an  
17 application last or approximately two years ago before  
18 the legislature changed the rules on cooperative  
19 program funding. We could not give a private utility  
20 at that time under the statutes, we could now, and  
21 we're about to open those bids on May 10.

22           Q     Mr. Adams, do you know whether the South  
23 Florida Water Management District has authorized  
24 funding of other conservation programs by other  
25 utilities in the district?

1           A     We have.

2           Q     And in the course of that funding, the South  
3 Florida Water Management District, would they have  
4 analyzed the cost-effectiveness of the components of  
5 those programs?

6           MR. TWOMEY: Madam Chairman, I object. I  
7 think this is completely beyond the scope of cross  
8 examination about the water districts funding  
9 conservation programs for other utilities, and whether  
10 they did cost/benefit analyses of funding of grants,  
11 funding to other utilities and so forth. It's  
12 consuming a lot of time.

13          CHAIRMAN CLARK: Mr. Armstrong?

14          MR. ARMSTRONG: This isn't cross  
15 examination, I heard that to begin with. This is  
16 redirect examination. It is certainly within the  
17 scope of the cross.

18                 I think what we have is I'm trying to  
19 clarify for the record and for the Commissioners that  
20 we have -- through this witness we have a situation  
21 where adequate information has been provided, he has  
22 reviewed the testimony, as he said, of Southern  
23 States' witnesses which shows we did not perform  
24 cost/benefit analyses for each component but we relied  
25 upon the cost/benefit analyses performed by other

1 utilities throughout the state. And we didn't feel it  
2 was cost-effective to do that for each individual  
3 component again. And I was just trying to elicit from  
4 this witness the fact that --

5 CHAIRMAN CLARK: What is your question  
6 again?

7 MR. ARMSTRONG: For those utilities which  
8 receive funding from the South Florida Water  
9 Management District, I asked him if he knows whether  
10 the Water Management District has reviewed the  
11 components of those programs and considered it as to  
12 cost-effectiveness before it funds those programs it  
13 has implemented?

14 CHAIRMAN CLARK: I'll allow the question.

15 A The sole responsibility of the applicant for  
16 cost sharing is that they match at least 50% of the  
17 funding and that they are proposing a doable project  
18 that -- you know, I don't want to get into this  
19 morning's testimony -- that is designed according to  
20 the procedures of design and engineering for other  
21 projects of their type in other localities throughout  
22 the district and the nation.

23 MR. McLEAN: Madam Chairman, I didn't  
24 understand the witness to say a yes or a no.

25 A No, we don't require a specific cost/benefit

1 analysis of each of the specific proposals other than  
2 that the submitting party provide at least 50% of the  
3 funding to the match of the grant program.

4 Q (By Mr. Armstrong) So in your experience  
5 would you know whether the management district would  
6 deny funding to a program on the basis that a specific  
7 cost/benefit analysis hasn't been performed for that  
8 program?

9 MR. TWOMEY: I think that's beyond the --  
10 and I think I said it correctly last time, Madam  
11 Chair. My objection is based on my belief that the  
12 questions Mr. Armstrong is asking goes beyond the  
13 scope of what was covered in cross examination.

14 CHAIRMAN CLARK: Mr. Armstrong?

15 MR. ARMSTRONG: I don't see how. The cross  
16 examination explored this witness's knowledge and  
17 explored his knowledge of the conservation programs  
18 with the utilities regulated by the South Florida  
19 Water Management District. And in his responses he  
20 related his experience and knowledge regarding those  
21 programs performed by other utilities and what the  
22 management district's role is on those programs.  
23 That's what I'm exploring.

24 CHAIRMAN CLARK: I think the issue is  
25 whether or not he had done a cost-effectiveness

1 analysis with regard to the one that was proposed by  
2 Southern States.

3 MR. ARMSTRONG: But the area I'm  
4 investigating, Madam Chair, is the question of should  
5 this Commission be looking at the cost-effectiveness  
6 of each component of the program in terms of dollars  
7 versus each component?

8 I'm simply asking this witness if he knows  
9 whether the South Florida Water Management District  
10 would deny funding to a program simply because there  
11 was not another iterative cost/benefit analysis for  
12 each component of the program for each utility.

13 CHAIRMAN CLARK: Okay. I'll allow the  
14 question.

15 A No, we wouldn't.

16 Q (By Mr. Armstrong) Do you believe Southern  
17 States should be denied any portion of its  
18 conservation program related to the rebates on rain  
19 sensor devices simply because they may be improperly  
20 installed by a person who purchases devices?

21 A No, I don't. I think if you have a rebate  
22 program, an installation program and a public  
23 education program, that together that package will  
24 help to install a capability within the citizens  
25 within the water users of Marco Island to greatly

1 reduce the water use since most of the water on Marco  
2 Island does go for landscape irrigation.

3 MR. ARMSTRONG: Thank you, Mr. Adams, I  
4 don't have anything further. Thank you.

5 CHAIRMAN CLARK: Thank you, Mr. Adams. You  
6 did not have any exhibits, is that correct?

7 WITNESS ADAMS: That's correct.

8 CHAIRMAN CLARK: Thank you for coming to  
9 Tallahassee. The next witness is Mr. Farrell.

10 We'll go ahead and take ten minutes.

11 Witness Adams excused.)

12 (Brief recess.)

13 - - - - -

14 (Transcript continues in sequence in  
15 Volume 33.)

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199 **DOCKET** 950415-100  
**EXHIBIT NO.** 199  
**CASE NO.** 96-04227  
Florida Public Utilities Company  
Electric Tariff  
First Revised Volume No. I

Twelfth Revised Sheet No. 25  
Cancels Eleventh Revised Sheet No. 25

MARIANNA DIVISION  
RATE SCHEDULE RS  
RESIDENTIAL SERVICE

Availability

Available within the territory served by the Company in Jackson, Calhoun and Liberty Counties.

Applicability

Applicable for service to a single family dwelling unit occupied by one family or household and for energy used in commonly-owned facilities in condominium and cooperative apartment buildings.

Character of Service

Single phase service at nominal secondary voltage of 115/230 volts; three phase service if available.

Limitations of Service

The maximum size of any individual single phase motor hereunder shall not exceed 5 horsepower.

The Company shall not be required to construct any additional facilities for the purpose of supplying three phase service unless the revenue to be derived therefrom shall be sufficient to yield the Company a fair return on the value of such additional facilities.

Monthly Rate

Customer Facilities Charge:  
\$8.30 per customer per month

Base Energy Charge:  
All KWH 1.2130¢/KWH

Purchased Power Charges

Purchased power charges are adjusted by the Florida Public Service Commission, normally each six months, April and October. As of October 1, 1993, the amount was 4.948¢/KWH. For current purchased power costs included in the tariff, see Sheet No. 41.

Minimum Bill

The minimum monthly bill shall consist of the above Customer Facilities Charge.

Terms of Payment

Bills are rendered net and are due and payable within twenty (20) days from date of bill.

Continued on Sheet No. 26

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET  
NO. \_\_\_\_\_ EXHIBIT NO. 199  
COMPANY/ \_\_\_\_\_  
WITNESS: \_\_\_\_\_  
DATE: \_\_\_\_\_

Issued by: F. C. Cressman, President

Effective: February 17, 1994

①

FERNANDINA BEACH DIVISION  
RATE SCHEDULE RS  
RESIDENTIAL SERVICE

Availability

Available within the territory served by the Company on Amelia Island.

Applicability

Applicable for service to a single family dwelling unit occupied by one family or household and for energy used in commonly-owned facilities in condominium and cooperative apartment buildings.

Character of Service

Single phase service at nominal secondary voltage of 115/230 volts; three phase service if available.

Limitations of Service

The maximum size of any individual single phase motor hereunder shall not exceed 5 horsepower.

The Company shall not be required to construct any additional facilities for the purpose of supplying three phase service unless the revenue to be derived therefrom shall be sufficient to yield the Company a fair return on the value of such additional facilities.

Monthly Rate

Customer Facilities Charge:  
\$7.00 per customer per month

Base Energy Charge:  
All KWH 1.220¢/KWH

Purchased Power Charges

Purchased power charges are adjusted by the Florida Public Service Commission, normally each six months, April and October. As of October 1, 1989, the amount was 6.331¢/KWH. For current purchased power costs included in the tariff, see Sheet No. 54.

Minimum Bill

The minimum monthly bill shall consist of the above Customer Facilities Charge.

Terms of Payment

Bills are rendered net and are due and payable within twenty (20) days from date of bill.

Purchased Power Costs

See Sheet No. 54

Conservation Costs

See Sheet No. 54

Continued on Sheet No. 44.2

Issued by: F. C. Cressman, President

Effective: NOV 15 1989

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**RATE SCHEDULE SR-1  
 SEBRING RIDER**

**Availability:**

To any customer located within:

- a) all retail electric service locations of the former Sebring Utilities Commission (SUC) retail electric service territory and the Florida Power retail electric service territory in and near the City of Sebring, Florida as described on Map I of Exhibit A of the Territorial Agreement that are served by SUC meters as of March 31, 1993.
- b) all retail electric service meters at new locations within the former SUC territory at any time on or after April 1, 1993, except for retail electric service meters in the "separate SEBRING UTILITIES retail service area in and around the Sebring Airport", within the meaning of such quoted phrase in the Territorial Agreement.

**Applicable:**

To all customers located within the service territory described under "Availability".

**Rate Per Month:**

In addition to the charges under the applicable rate schedule for electric service, the following rate shall be assessed:

Sebring Rider: 1.577¢ per kWh

Gross Receipts Tax Factor: See Sheet No. 6.106

Right-of-Way Utilization Fee: Sebring Rider is exempt from the Right-of-Way Utilization Fee.

Municipal Tax: Sebring Rider is exempt from the Municipal Tax.

Sales Tax: See Sheet No. 6.106

Term of Service: Service under this rate shall not be required after March 31, 2008.

ISSUED BY: S. F. Nixon, Jr., Director, Pricing & Utility Partnerships

EFFECTIVE: MAR 7 1995

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FLORIDA PUBLIC SERVICE COMMISSION  
**Comparative Cost Statistics**

**Regulated  
Telephone Utilities**

As of January 1, 1996

**ALLTEL TELEPHONE COMPANY  
BASIC LOCAL SERVICE FLAT RATES**

RATE GROUP	LOCAL CALLING SCOPE ACCESS LINES	RESIDENCE RATES 1 PTY	BUSINESS RATES 1 PTY	PBX	SEMI PUB
I	0 - 5,000	\$9 10	\$22.75	\$43.25	\$26.05
II	5,001 - 10,000	9.35	23.40	44.55	26.75
III	10,001 - 20,000	9.60	24.10	45.85	27.50
IV	20,001 - 40,000	9.75	24.40	46.50	27.85
V	40,001 - 200,000	9.95	24.70	47.20	28.20
VI	200,001 - 320,000	10.40	26.00	49.40	29.64
VII	320,001 - UP	11.00	27.50	52.25	31.35

RATE GROUP	EXCHANGE
I	NONE
II	HILLIARD, JASPER & JENNINGS
III	CRESCENT CITY, DOWLING PARK, FLORIDA SHERIFF'S BOYS RANCH, LIVE OAK, LURAVILLE, MAYO & RAIFORD
IV	BRANFORD, FT. WHITE, FLORAHOME (659), FLORAHOME (661), INTERLACHEN, WELLBORN & WHITE SPRINGS
V	ALACHUA, BROOKER, CITRA, HASTINGS, HIGH SPRINGS, LAKE BUTLER, McINTOSH, MELROSE, ORANGE SPRINGS & WALDO
VI	NONE
VII	CALLAHAN

LOCAL EXCHANGE EXCEPTION: WELLBORN, BRANFORD

**BELLSOUTH TELECOMMUNICATIONS, INC.  
BASIC LOCAL SERVICE FLAT RATES**

<b>RATE GROUP</b>	<b>LOCAL CALLING SCOPE ACCESS LINES</b>	<b>RESIDENCE RATES 1 PTY</b>	<b>BUSINESS RATES 1 PTY</b>	<b>PBX</b>	<b>SEMI PUB</b>
I	1 - 2,000	\$7.30	\$19.80	\$33.66	\$12.21
II	2,001 - 7,000	7.70	20.80	35.36	12.81
III	7,001 - 22,000	8.10	21.90	37.23	13.47
IV	22,001 - 55,000	8.40	22.90	38.93	14.07
V	55,001 - 120,000	8.80	23.85	40.55	14.64
VI	120,001 - 195,000	9.15	24.90	42.33	15.27
VII	195,001 - 280,000	9.50	25.75	43.78	15.78
VIII	280,001 - 375,000	9.80	26.60	45.22	16.29
IX	375,001 - 450,000	10.05	27.40	46.58	16.77
X	450,001 - 550,000	10.30	28.00	47.60	17.13
XI	550,001 - 700,000	10.45	28.60	48.62	17.49
XII	700,001 - UP	10.65	29.10	49.47	17.79

**CENTRAL TELEPHONE COMPANY  
BASIC LOCAL SERVICE FLAT RATES**

RATE GROUP	LOCAL CALLING SCOPE ACCESS LINES	RESIDENCE RATES 1 PTY.	BUSINESS RATES 1 PTY.	PBX	SEMI PUB
I	1 - 8,000	\$7.40	\$18.85	\$33.30	\$18.65
II	8,001 - 16,000	7.85	17.65	35.30	17.65
III	16,001 - 32,000	8.25	18.55	37.10	18.55
IV	32,001 - 64,000	8.70	19.80	39.20	19.60
V	64,001 - 128,000	9.15	20.60	41.20	20.80
VI	128,001 - UP	9.65	21.75	43.50	21.75

**MESSAGE SERVICE RATES**

RATE GROUP	LOCAL CALLING SCOPE ACCESS LINES	RESIDENCE MONTHLY MSG.		BUSINESS MONTHLY MSG.		ADD'L. MSG. CHARGES
		ALLOWANCE	CHARGE	ALLOWANCE	CHARGE	
I	1 - 8,000	30	\$4.45	NA	NA	\$0.10
II	8,001 - 16,000	30	4.70	NA	NA	.10
III	16,001 - 32,000	30	4.95	NA	NA	.10
IV	32,001 - 64,000	30	5.20	NA	NA	.10
V	64,001 - 128,000	30	5.50	NA	NA	.10
VI	128,001 - UP	30	5.80	NA	NA	.10