ORIGINAL FILE COPY

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (904) 681-6788
TELECOPIER (904) 681-6515

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

June 10, 1996

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. are the following documents:

1. Original and fifteen copies of SSU's Post Hearing Brief;

2. Original and fifteen copies of SSU's Motion for Modification of Fifty Word Limit for Summaries of Positions in Post-Hearing Briefs; and,

3. A disk in Word Perfect 6.0 containing a copy of the document entitled "Brief."

ACK 2
AFA 1
APP ____
CAF ____
CMU ____
CTR ____
EAG ____
LEG Faber
LIN 5
OPC ____
RCH ~~Trib~~.3
SEC 1
WAS Willis
OTH ____

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

Kenneth A. Hoffman

KAH/rl

cc: All Parties of Record
Brian P. Armstrong, Esq.

Post Hearing Brief Motion

DOCUMENT NUMBER-DATE
06242 JUN 10 96
FPSC-RECORDS/REPORTING

DOCUMENT NUMBER-DATE
06243 JUN 10 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges 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, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia and Washington Counties.	)	Docket No. 950495-WS
	)	Filed: June 10, 1996

POST-HEARING BRIEF OF SOUTHERN STATES UTILITIES, INC.

KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
MATTHEW FEIL, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges 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, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia and Washington Counties.	)	Docket No. 950495-WS Filed: June 10, 1996

POST-HEARING BRIEF OF SOUTHERN STATES UTILITIES, INC.

KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
MATTHEW FEIL, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges 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, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia and Washington Counties.	Docket No. 950495-WS Filed: June 10, 1996

POST-HEARING BRIEF OF
SOUTHERN STATES UTILITIES, INC.

SOUTHERN STATES UTILITIES, INC. (hereinafter referred to as "SSU" or "Company"), pursuant to Rule 25-22.056, Florida Administrative Code, and Order No. PSC-96-0549-PHO-WS issued April 23, 1996, respectfully submits the following Post-Hearing Brief in the above-captioned docket.

I. ISSUES AND POSITIONS

ISSUE 1: Should the Enterprise plant and facilities be removed from this docket?

No.

ARGUMENT: The Enterprise facilities are operated by SSU pursuant to a receivership and the Enterprise customers are SSU's customers (T. 5017).[1] The Enterprise facilities are interconnected with SSU's Deltona Lakes facilities (T. 4119), and are part of

[1]Chapter 367, F.S., does not distinguish between systems that are utility-owned and systems that are operated by a receiver. Section 367.021(12) specifically recognizes systems operated by utilities as a receiver.

SSU's single system. §367.021(11), F.S. If the Enterprise facilities are excluded from this docket, the Enterprise customers will be subjected to tremendous rate shock when the inevitable rehabilitations are made to the facilities (T. 483).[2]

ISSUE 2: Is the value and quality of service provided by SSU at each of its water and wastewater facilities satisfactory?

Yes. The evidence confirms that service complaints of customers on the Beacon Hills facility primarily are the result of poor source water quality indigenous to the Arlington area and copper plumbing facilities installed by builders. SSU has taken and is taking steps to address the complaints in a manner consistent with applicable requirements. Quality of service at all other facilities meets applicable rules and standards or is being addressed in a timely manner consistent with rules and standards. When non-compliance exists, SSU may not be penalized by the Commission if the period provided by regulatory authorities for resolution of the non-compliance item has not yet expired.

ARGUMENT: SSU has provided and continues to provide high quality water and wastewater service to its customers. The record confirms that SSU has improved the quality of service in service areas acquired from other utilities. No utility operating facilities in more than 100 service areas could maintain absolute compliance, every day, with the hundreds, if not thousands, of

---

[2]Also, the common costs which otherwise would be allocated to customers served by the Enterprise facilities should be re-allocated to SSU's remaining customers in this docket. To do otherwise would deprive SSU of the ability to recover such costs.

quality standards and operation and maintenance criteria applied by the Department of Environmental Protection ("DEP") and the other environmental regulators.

The exacting scrutiny of the compliance review by these regulators was demonstrated in the testimony of DEP witness Scott Breitenstein (T. 2398-9) where he noted a "deficiency" when a light bulb was burned out at SSU's facility. In light of this exacting scrutiny, the Commission should give considerable weight to the fact that many of the DEP witnesses documented SSU's success in restoring compliance and improving service at SSU facilities. Several were quite complimentary of SSU's service. For instance, former DEP Water Facilities Division Director, Richard A. Harvey, who was responsible for the DEP's domestic wastewater and water program until December 1995 (T. 3438, 3468) confirmed that "SSU's reputation with DEP for overall environmental compliance, responsiveness, communication and cooperation is very good" (T. 3467). DEP witness Gary A. Maier who is responsible for plants in the South District testified that: "Overall, SSU is one of the best utility companies that I have had the pleasure to regulate. In general SSU is very cooperative and tries to do all of the right things" (T. 3078). DEP witness William D. Allen, P.E., also responsible for the South District, had similar things to say: "The SSU/Lehigh management has always been cooperative and has made every effort to comply with Federal, State and Local regulations" (T. 3082). Comments by DEP witness Scott A. Breitenstein, who is responsible for SSU plants in the Central District, that SSU

corrects noted deficiencies within time guidelines were typical of the testimony of DEP's witnesses (T. 2384).

DEP witness Phyllis James, in regard to SSU's Point O'Woods wastewater facility testified that "[t]he plant has [sic] been operating out of compliance for several years prior to SSU taking responsibility over its operation. SSU has brought the facility into compliance without FDEP taking enforcement measures" (T. 2898). With regard to the recently acquired Spring Gardens facility, Ms. James stated:

> This system has been hydraulically overloaded over several years. SSU, as the new owner, has completed repairs on the infiltration problems with the collection system. In the past, the ponds were always discharging effluent. After the recent repairs, the ponds appear to be functioning fine (T. 2901).[3]

DEP witnesses further confirmed that SSU diligently and aggressively pursues waivers, acceptances or other dispensation from compliance with DEP rules or standards to keep costs and customer rates as low as possible (see, e.g., T. 2393, et seq). DEP witness Hoofnagle confirmed that DEP recognizes the high cost of compliance with Federal and State requirements and is working with utilities to reduce some of these costs by granting such waivers (T. 3569, 3584-5).

Moreover, DEP witness David York acknowledged that SSU has been the recipient of a state reuse award (T. 389). In fact, SSU

---

[3]Another example, DEP witness Blanca Rodriguez of the Northeast District testified regarding the Palm Valley facilities that SSU "went and, as requested by the department, they did replace all the old mains by new mains. The Palm Valley was improved tremendously" (T. 4087).

has won the award twice for two different wastewater facilities (T. 2155-6).

Notably absent from the record is any testimony from DEP or water management district witnesses calling for sanctions against SSU or indicating in any way that SSU has been less than cooperative or responsive in maintaining compliance and, where non-compliance might be noted, restoring compliance. This fact is in stark contrast to the attempts by OPC and Intervenors to convince the Commission that SSU's service is substandard and that SSU should be penalized.

The quality of SSU's customer service activities also are beyond reproach. Some customers asserted that they at times were dissatisfied with their treatment. The utility cannot be held to a standard of perfection or else face monetary penalties. No company can satisfy every customer's needs on every occasion. SSU strives to do so. However, the Commission must remember that SSU serves more that 100,000 customers each day. The record contains an analysis of customer complaints to the Commission and a comparison of such complaints to those against Florida Power, both of which analyses refute any suggestion of poor service by SSU (T. 4987-5000). Finally, please note the discussion of the Osceola County customer service hearing in Issue 97 as further confirmation of SSU's high quality service.[4]

[4]SSU also offers its customers historic usage information on bills, customer advisory committees, electronic fund transfer payments, newsletters, etc. How many other investor-owned water utilities do so? SSU's service should be measured in light of such facts.

Customer testimony did not deviate from the usual concern of taste and intermittent concerns regarding odor which are endemic to Florida's water sources.[5] In the Jacksonville area, many customers complained about the corrosivity and potential hazard to public health of SSU's water. The exceedance of the maximum contaminant level for lead was the basis for these complaints. However, several facts demonstrate that SSU should not and cannot be held culpable for rendering poor quality service based on the lead exceedance. These facts include: (1) the lead MCL is of recent vintage; (2) the lead rule provides utilities until January 1, 1997 to establish corrective plans for achieving compliance with the MCL; (3) the lead rule then provides additional time for the utility to implement the corrective plan; (4) since becoming effective, 1,333 utility facilities have exceeded the lead MCL and, of these, 256 were required to perform the public education service indicated in the rule; (5) in the Jacksonville area alone, 7 facilities including Jacksonville Suburban exceeded the lead MCL; (6) the lead exceedance does not result from the water source or the treatment of the water by SSU -- rather exceedance is measured at the customer's tap and results from plumbing materials which

[5]Some customers were concerned by instances of dirty or discolored water. The customers who made these complaints lived predominantly in service areas where part-time residences predominate - i.e., winter residents only. As with any pipe system, lines which are under-utilized for lengthy periods of time must be flushed when customers re-appear to use them. SSU's procedure is to flush these lines when customers begin to arrive in Florida, however, even with this flushing some customers may experience discolored water when they first use their water upon returning. Discoloration also may appear temporarily after line breaks. These periods are unavoidable.

exist in the customers' homes (T. 472); (7) the City of Jacksonville delayed amendments to its building code which would have prevented builders from using materials which contributed to the lead exceedance (Jacksonville CSH (9/20/95), (T. 121,124); and (8) there is no immediate threat to public health when the lead MCL is exceeded - the MCL is set at a level where a person must consume two liters of water every day for 70 years from the same supply source and, if after such consumption, the risk of adverse impact to health rises by 1 in 10,000, the EPA requires the water to be treated to reduce the lead levels -- this is a stringent standard by any measure (see T. 538-44).

SSU should not be held accountable through reduced rates by exaggerated protestations by Intervenors' counsel regarding lead exceedances or any other perceived quality problem where the environmental laws and the enforcers of those laws have not imposed substantive penalties (as opposed to administrative costs) upon SSU for such violations.

To conclude, the record confirms (1) SSU's commendable compliance record; (2) SSU's efforts to reduce costs when possible by obtaining DEP waivers, etc.; (3) SSU's history of bringing facilities into compliance after acquiring them; and (4) that complaints lodged against SSU were not of a type or number which would justify any finding other than that SSU continues to provide safe, efficient and sufficient service to its customers.

Issue 3: What adjustments should be made and what corrective action should the Commission require for any facilities that are not currently meeting Department of Environmental Protection standards or

have unsatisfactory quality of service?

No adjustments are appropriate.

ARGUMENT: SSU is providing high quality service to its customers. The DEP witnesses, particularly those who appeared for cross-examination, revealed instance after instance where SSU has made the necessary investment to achieve and/or maintain compliance with applicable standards.[6] There is no evidence which suggests that SSU ever has acted imprudently or in an untimely fashion to address non-compliance issues. The Deltona Lakes effluent disposal difficulties resulted from a period of inordinate rainfall in the area. SSU is addressing this wet weather storage situation.[7]

Issue 4: Based on the findings as to the value and quality of SSU's service, should the Commission reduce SSU's return on equity? If so, by how much?

No. No adjustment to return on equity is appropriate based on the record in this proceeding.

ARGUMENT: The imposition of a reduced equity return based on

---

[6]At Beacon Hills, SSU has implemented measures to address the lead exceedance well in advance of the period required in the lead rule (T. 4684-5). Moreover, the record reveals that if the lead test results for Beacon Hills and Cobblestone are combined -- as is practical since the water facilities are interconnected - SSU would be in compliance with the lead rule and the customer education process would not even be required (T. 472-4). Despite this fact, SSU has performed the education process for its customers (T. 4084).

[7]This wet weather situation also focused attention on the effluent disposal problem in the Enterprise service area (T. 4701-4). An economical way to resolve this disposal problem does not exist if the recovery of the required investment is limited to the customers in the Enterprise area. Certainly, if the Commission accepts Staff's proposal to remove the Enterprise area from this case, SSU cannot be penalized for the Company's attempt to operate this receivership in a manner which maintains affordable rates for the customers (T. 4700-01).

the record in this case would be without precedent and unconscionable. The injustice of penalizing SSU for lead exceedance is demonstrated by the discussion of the lead situation in Issue 2.

Issue 5: Has there been misconduct or mismanagement on the part of SSU, and, if so, what is the appropriate sanction or remedy?

No. There has been no evidence of SSU mismanagement or misconduct.

ARGUMENT: The record is devoid of evidence of misconduct or mismanagement by SSU. The letters at issue were not ex parte communications. Even if so construed, the sole remedy provided by statute is the withdrawal of a commissioner(s).

Section 350.042(1), F.S., states that a commissioner "shall neither initiate nor consider ex parte communications concerning the merits ... in any (s. 120.57) proceeding ...." (Emphasis supplied). The letters from Lieutenant Governor McKay and Secretary Dusseau contain **no information relevant to the merits of this proceeding.** The letters state no position in support of or against any substantive issue or Commission action; the letters simply requested information concerning SSU and the rationale behind an order of the Commission issued in a different docket. In sum, the letters do not address the merits of this proceeding and are not ex parte communications as contemplated by Section 350.042(1), F. S. Nonetheless, in order to avoid any potential prejudice arising from the letters, Chairman Clark treated the letters as ex parte communications providing copies to all parties

and the opportunity to respond (Ex. 66). See § 350.042(4), F.S.

Under section 350.042(4), F.S., the only remedy available to a party concerning an ex parte communication which is determined to be sufficiently prejudicial in terms of its impact on a commissioner is withdrawal of the commissioner.

That remedy has been pursued and denied.[8] Moreover, no party has alleged that they were prejudiced as a result of the letters. To the contrary, the Office of Public Counsel ("OPC") and counsel for Intervenors have openly acknowledged that no prejudice was being claimed.[9] Further, the measures taken by Chairman Clark in placing the letters in the record and allowing all parties an opportunity to respond provides due process protection for any party who might have claimed prejudice (although none have) as a result of the letters.

Thwarted in their attempt to make something insidious from nothing, OPC and Intervenors wish the Commission to penalize SSU for allegedly "soliciting" letters which do not constitute ex parte communications. The issuance of such a penalty, as a matter of law, would exceed the Commission's statutory authority granted under section 350.042(4), F.S. Proceedings in this docket reveal that it was only through the insistence of OPC and Intervenors that these letters even were read, if they ever have been read, by the

---

[8]See Order No. PSC-96-0500-FOF-WS Denying Motion for Reassignment of all Southern States Utilities' Dockets to the Division of Administrative Hearings.

[9]See excerpts from Transcript from March 19, 1996 Agenda Conference attached as Exhibit "C" to SSU's April 29 Motion for Attorneys' Fees and Costs.

majority of the Commissioners. It should be clear to the Commission that this issue amounts to nothing more than another non-substantive, headline grabbing means of attacking SSU's application -- an allegation of "soliciting" ex parte communications.[10] The record contains no evidence substantiating this unfounded allegation.[11] Further, even if there was evidence of such an allegation, there has been no allegation, and certainly no record evidence, of prejudice.[12] Finally, plain and simple, the Commission lacks the statutory authority under Section 350.042(4), F.S., to dismiss this case or impose a mismanagement/misconduct penalty for alleged solicitations of ex parte communications.[13]

Issue 6: Are any adjustments to rate base necessary to reduce Lehigh land for Parcel 4, Tract D, as Plant

---

[10]OPC truly stumbled in its desparation to draw the Commission away from the merits of this case by introducing a letter drafted by an SSU employee at the request of a legislator indicating the legislator's displeasure with the Commission's decision to discard uniform rates in another docket. The letter was never sent to the Commission and is relevant only to the extent it confirms OPC's "unofficial" opposition to uniform rates.

[11]OPC and Intervenors also allege that SSU improperly interfered with its customers' right to counsel and the Commission's notice. These allegations were refuted by SSU witness Roberts (T. 4287-94) and are worthy of no further comment.

[12]Jennings v. Dade County, 589 So.2d 1337 (Fla. 3d DCA 1991), relied on by OPC and Intervenors in the March 12, 1996 Motion to Dismiss, requires an allegation of prejudice resulting from an ex parte communication as a predicate to requesting a new hearing.

[13]Compare Gulf Power Company v. Wilson, 597 So.2d 270 (Fla. 1992) which did not involve alleged solicitations of ex parte communications but rather a pattern of corrupt practices by senior utility management, to the detriment of the utility's ratepayers, over an extended period of years.

Held for Future Use (Staff Audit Disclosure No. 2)?

No adjustment is appropriate.

ARGUMENT: SSU purchased Parcel 4, Tract D from Lehigh Corporation pursuant to an arms length transaction, paying fair market value for the property only after prudent steps were taken by SSU to ensure that the price for the property was competitive (T. 4410). The purchase meets the test for recovery of costs incurred in affiliate transactions stated in GTE Florida Inc. v. Deason, 642 So.2d 545, 547-548 (Fla. 1994). Based on the GTE Florida standard and the uncontroverted facts in the record, OPC's proposed adjustment to the purchase price paid by SSU to Lehigh Corporation for the Parcel 4, Tract D property must be rejected.

Issue 7: Are any adjustments to water rate base appropriate to reflect the original cost of the Collier property acquired for Marco Island?

No.

ARGUMENT: The purchase of the Collier property was prudent and necessary to maintain sufficient water supplies for Marco customers (Hartman: T. 747-50, Ex. 91; Terrero: T. 4635-9, 4716-9, 4751-2; 4755-6). The purchase price was reasonable and represented the least cost alternative source of water (Dilg: T. 4492, et seq.; Vierima: T. 4423-7, Ex. 212; Teasley: T. 4974-87). No evidence was presented by any witness competent to testify in this area which disputes these facts. Therefore, the Commission should include the $10,263,100 cost of this project in rate base (T. 5093-4).[14]

[14]Parties may argue that overheads should be removed from this project since it is a land purchase. As SSU witness Bencini testified, removal of overheads would not reduce SSU's revenue

Issue 8: Should an adjustment be made to reclassify a portion of the Collier Property for Marco Island from rate base to non-utility property (Staff Audit Exception No. 2)?

No.

ARGUMENT: No reclassification of any portion of the Collier property to non-utility property is justified. SSU presented evidence from engineering and legal experts which confirmed that: (1) SSU paid a reasonable price for the property; (2) SSU purchased no more property than required to acquire and protect its water source; (3) had SSU purchased less property, the cost to SSU and its customers of future litigation with the adjoining landowner under adverse possession and other claims would have exceeded the cost to purchase the Collier property; (4) the property is the site of the aquifer storage and recovery ("ASR") project, its wells (which will be located throughout the property), pipes and other appurtenances; (5) the property includes SSU's pumping facilities, pipes and other appurtenances; (6) the acquisition saved money since the property and SSU's pipes and pumping equipment thereon are strategically located so that such equipment can be used to move water from the 160 acre supply site the remainder of the way to Marco customers, and (7) it would not be possible to use, and SSU does not intend to use, the property for commercial or residential development. Please see record citations of SSU

---

requirements since the approximately $1.8 million of overhead allocated to this project would flow back to the overhead pool and be re-allocated to the remaining projects (T. 5092-3). This re-allocation would be required since there is no evidence or even an allegation that the overhead pool is excessive or unreasonable.

evidence identified in the discussion of Issue No. 7; see also Exs. 222, 228, 232.

In contrast, the Staff auditor who proposed the "non-utility" property classification for the majority of the property: (1) is not an engineer, (2) has no knowledge of property valuation, (3) has no experience in condemnation matters, (4) was unaware of SSU's use of the property for the ASR project and essential wells, (5) was unaware of water source protection requirements, (6) was unaware that it would cost SSU and customers more if less property was purchased, (7) was unaware of the strategic location of the property and the ASR project, and (8) failed to present any competent evidence in support of his uninformed supposition that the identification in appraisals of portions of the 212 acres classified as "uplands," which makes such portion more valuable for condemnation valuation purposes, renders such acreage non-utility property which could be used by SSU for commercial or residential development (T. 3211-6).[15]

In short, there is no credible evidence which supports the designation of any portion of the property as non-utility property. There is an abundance of evidence confirming that (1) the purchase was the least cost alternative available, (2) the purchase of any less of the property would have cost more, (3) the entire property

[15]The site is in a prime location at the junction of two traffic arteries, yet the prior owners never developed the land for residential or commercial purposes. The prior owner refused to renew the 30 year water lease. These two facts go together. The prior owner could not develop the property while it was being used for a water supply source, thus their refusal to renew the lease.

was required to ensure that the supply source was protected, (4) the property is strategically located as a water source, (5) the ASR project will be located there, and (6) the site is strategically located in conjunction with supplies from the 160 acre site. For these reasons, the proposed designation of any portion of the property as non-utility property must be rejected.

Issue 9: Should the transfer of the Section 35 (160 Acres) property from plant held for future use to land be allowed for Marco Island?

Yes. Permits have been obtained. Easements are in progress. If this land had not been secured already by SSU's predecessor, it would have cost SSU and customers significantly more to acquire an alternative site, if one could be found.

ARGUMENT: Regardless of whether the property is characterized as plant held for future use ("PHFU") or plant in service, excluding it from rate base is contrary to common sense and contrary to law.

The record confirms the following: (1) additional water supply is currently needed for SSU's Marco customers; (2) issuance of the water management district's consumptive use permit is pending only SSU's acquisition of easements necessary for a pipeline transporting the water to the Collier Lakes site; (3) the process of acquiring the necessary easements/rights-of-way is underway; (4) SSU has constructd test wells at the site which confirm the availability of the proper quality and quantity of water; (5) water will be available from the site sometime in 1997; (6) no other suitable site is available at a commensurate cost; (7) the

reasonableness of the site cost is unquestioned; and (8) if this property is excluded from rate base, SSU could be forced to sell the property only to have to buy it back shortly thereafter for a higher price and with increased, redundant permitting costs (Terrero: T. 455, 463-6, 530, 4650-2; Hartman: T. 740-1; Harvey: T. 3459). In consideration of the foregoing, it defies common sense for the Commission to exclude this property from rate base and thereby penalize SSU for prudent planning necessary to avert a capacity crisis.

Moreover, the above considerations of prudent planning, cost minimization, and property availability are considerations identical to those which have persuaded this Commission to consistently include land held for future use in rate base for other utilities.[16] SSU maintains that it would be improper for the Commission to interpret the term "used and useful" to exclude the 160 acres at issue here and yet consistently interpret the same

---

[16]See, e.g., 80 F.P.S.C. 11: (Gulf Power Company rate case where Commission allowed in rate base land held for potential future use as a generating station some fifteen years after the test year); 81 F.P.S.C. 9: 240, 250 (Florida Power & Light rate case where Commission allowed in rate base land necessary for facilities planned for some twenty years into the future); 92 F.P.S.C. 10: 408, 427 (Florida Power Corporation rate case where Commission allowed over $9 million in PHFU in rate base, expressly recognizing the importance of retaining properties for the future to meet growth and the expense of reacquiring and repermitting for such properties if excluded from rate base); 93 F.P.S.C. 2: 77-78 (Tampa Electric Company rate case where Commission allowed land for future use for generating and substation sites and rejecting OPC proposal for a ten year planning horizon as too short); see also 92 F.P.S.C. 7: 555, 565 (United Telephone Company).

term to include prudently acquired PHFU for other utilities.[17] SSU's prospective use of the 160 acres is significantly more imminent than the prospective uses described for future use land allowed in rate base for Florida's electric utilities. In consideration of the foregoing, there is no lawful basis for the Commission to deny SSU recovery in rate base of the costs of the 160 acre project. To do otherwise would constitute unconstitional discrimination against a water utility.[18]

Issue 10: Should an adjustment be made to disallow the company's proposed transfer of a Deltona site and Marco Island's site from property held for future use?

No.

ARGUMENT: Refer to Issue 9 above concerning the 160 acre site for Marco Island and concerning the proper regulatory treatment of land held for future use generally. The use of the Citrus Springs,

---

[17]See Goldstein v. Acme, 103 So.2d 202 (Fla. 1958) (exact words or phases used in different statutes which deal with the same subject should be read to mean the same thing); Singleton v. Larson, 46 So.2d 186 (Fla. 1950) (statutes which relate to the same class of persons or things or to the same or closely allied subject or object or which have the same or common purpose or which are part of the same general scheme or plan should be read to achieve consistency).

[18]The Florida Supreme Court has already ruled that construction work in progress ("CWIP"), PHFU, and abandoned project costs constitute used and useful property. Shevin v. Yarborough, 274 So.2d 505 (Fla. 1973); Citizens v. Public Service Commission, 425 So.2d 534 (Fla. 1982); Gulf Power Company v. Cresse, 492 So.2d 410 (1982). Some may point out that Section 367.081(2)(a), Florida Statutes, provides, in part, that the Commission must consider investments for land acquired within 24 months from a historic test year, but no longer than that time unless extended by the Commission. However, the only logical reading of that provision limits its application, as expressly stated, to historic test years. In this case, SSU has utilized a projected test year, so that section does not apply.

Deltona Lakes, and Marion Oaks sites at issue is imminent, as clearly established in the record (Terrero: T. 455-6, 503-4, 526-32). Therefore, no adjustment to SSU's proposed land balances is appropriate.

Issue 11: Should Buenaventura Lakes' rate base be reduced to reflect adjustments made in Docket No. 941151-WS, pursuant to Order No. PSC-96-0413-S-WS, issued March 25, 1996, which approved the transfer?

Yes, as indicated in the argument below.

ARGUMENT: The Commission recently approved adjustments to the Buenaventura Lakes rate base in Order No. PSC-96-0413-S-WS. These adjustments were made to rate base as of December 31, 1994 and are already reflected in the MFRs. The adjustments proposed by Ms. Dismukes in Ex. 175 (KHD-1, Schedule 39) ignore the fact that 1994 adjustments to rate base already are accounted for in the 1994 base year in the MFRs. Ms. Dismukes also failed to account for Commission approved adjustments to accumulated depreciation due to: (1) certain assets that had not been properly offset to the accumulated depreciation reserve; and (2) an incorrect calculation to remove capitalized interest. The net required adjustments are reductions to water rate base of $38,355 and wastewater rate base of $456,530 (T. 5054-6).

With respect to depreciation expense, Ms. Dismukes again failed to account for the fact that 1994 adjustments were already reflected in the MFRs. The appropriate adjustment is a net decrease to depreciation expense of $2,132 and $40,411 for water and wastewater, respectively (Kimball: T. 5054-5).

Issue 13: Are adjustments necessary to the utility's

additions to plant, both historic and projected?

No.

ARGUMENT: SSU's 1996 MFR projection of plant in service (excluding general plant) is $16.7 million. By the end of May 1996, SSU will have placed approximately $9.2 million or 60% of this projected amount of additional plant into service -- $4.6 million of the 1996 projected plant was placed into service as of May 9, 1996 (the date SSU witness Paster testified) (T. 4628) and $4.6 million would be "in service" as of May 31 (T. 4628). This fact establishes the credibility of SSU's projection, and there are many other facts which do so as well, including the following: (1) SSU placed into service more than 93% of the 1995 MFR plant in service projection (T. 4507, 4521); (2) in Docket No. 920655-WS, SSU placed 100% of the MFR projected plant into service (T. 4509) at a cost of $365,000 above the projection; (3) in Docket No. 911188-WS, SSU placed the MFR projected plant into service at a cost of $304,000 less than projected;[19] (4) the only projects included in the 1996 MFRs were projects which SSU maintained a high degree of certainty of completing, including (i) projects already initiated in 1995 and carried over into 1996, (ii) company-wide blanket projects based on historical 1992 to 1994 experience such as meters, service lines and operations renewal and replacement projects, and (iii) highest priority projects (T. 4533-5, 4578,

[19]The variance resulted when SSU was able to complete the project at $300,000 below the project budget developed by the prior owner (T. 1289). The combined projected plant in service in these two cases exceeded $24 million whereas the net variance of actual to projected was only $61,000 (T. 4521).

4600-4, 4523-4); (5) for the period 1992 through 1995, cumulatively, SSU's plant in service variance, budget to actual, was a positive 4.25% (SSU actually spent 4.25% more than the projected amount) (T. 4509-10, 4521-2); and (6) no party presented any evidence attacking the prudence of any project or the reasonableness of the projected cost of any project, historic or projected. For all of these reasons, the Commission should accept SSU's plant in service projections in their entirety.

OPC proposes a slippage adjustment based on an analysis of the number of projects completed as of October 31, 1995. Ex. 242 contains year end 1995 data regarding the number of projects completed and, more importantly, the amount of plant placed into service. SSU witnesses Westrick and Kimball explained that OPC's concentration on the number of projects completed was misleading since the majority of the projects not completed as of October 31 were low cost operations projects -- the total cost of the delayed projects was only $638,657 or 2% of the budget (T. 4507) -- the impact of which was minimal when considered together with the fewer number, but higher cost, engineering projects (T. 4507, 5033-4, 5076-7). Ms. Kimball substantiated this fact in Ex. 242[20] which

[20]OPC introduced Exhibit 218 on cross-examination of SSU's engineers. This exhibit bears no relationship to the MFR plant in service projections (T. 4628). As SSU witness Paster explained, 1996 spending indicated in the exhibit is in no way indicative of 1995 plant in service dollars. By way of example, the part of Exhibit 218 upon which OPC would have the Commission focus is total direct spending as of March 31, 1996. With regard to SSU's Silver Lakes/Western Shores facility (identified on page 5 of the exhibit), direct 1996 spending as of that date was only $19,795. However, under the Total Project Spending column of Exhibit 218, the Commission will see that the project was placed

demonstrates that consideration of the projects completed and the cost of such projects for year end 1995 resulted in an additional $190,000 of plant in service over the MFR projection. This result occurred due to the disproportionately higher cost of engineering projects (despite being fewer in number compared to operations projects) and consideration of the fact that some projects were completed earlier than projected (Ex. 242; T. 4601) and some were delayed or replaced by other, higher priority projects completed ahead of schedule (T. 4507, 4516-7, 5076, 4549-50, 4595-6, 4620-1). On cross-examination, Ms. Kimball confirmed that regardless of the method used to perform this "slippage" analysis, the impact would be a higher plant in service amount than the one included in SSU's MFRs (T. 5081-83). Appendix A, attached, provides three versions of 13 month balance calculations applied to the information contained in Ex. 242. The end result, a positive variance of $190,579, is reached under each analysis. For these reasons, no slippage adjustment is justified.[21]

---

into service in January 1996 for a cost of over $1 million!! The same flaw is demonstrated with regard to the Tropical Park distribution project on the next line of the same page (the project was placed into service at a cost of approximately $350,000 -- which was below projection -- while only $250 of direct 1996 spending was authorized but not even spent). These examples are vivid demonstrations of the fallacy of any adjustment which OPC may propose in reliance upon this exhibit. Finally, as Mr. Goucher testified, Exhibit 218 includes service areas not even considered in this proceeding (T. 4577-8). Therefore, any attempt by OPC to attack the credibility of SSU's 1996 projection on the basis of Exhibit 218 would lack merit and should be rejected.

[21]A question was raised regarding double-booking of project costs in the amount of $520,079. Ms. Kimball identified $330,000

Issue 14: Are SSU's classifications of expenditures as to "growth", "regulatory", etc. well-founded and reasonable?

Yes.

ARGUMENT: It must be noted that this issue has no impact on revenue requirements.[22] No party presented a competent witness, engineer or otherwise, to rebut SSU's classifications. The pervasive nature of the environmental and safety regulations in Florida's water and wastewater industry is demonstrated in the record through SSU, Staff and DEP witnesses. SSU's engineers admitted that knowledgeable minds of engineers and operators may differ concerning the priority code to attach to a particular project (see e.g., T. 4603), however, no party presented any evidence that any of the projects identified by SSU were imprudent or unreasonable in cost.[23]

On cross-examination, OPC referred to a manhole project to contest the classification as regulatory mandate. It is true that

---

of project costs that were under-accrued in 1994 and not picked up in the 1995 MFRs because they were not budgeted 1995 costs (T. 5080-1). These additional costs, when applied as an offset to the double-booking amount, would result in an adjustment of only $190,079. Recalling the $190,000 positive variance in SSU's 1995 MFR plant in service demonstrated by Ms. Kimball in Ex. 242, no adjustment at all would be justified on the basis of this mistaken double-booking.

[22]This issue is simply another non-substantive, red-herring latched onto by OPC and intervenors due to a lack of substantive argument against SSU's rate application.

[23]The record reveals that it was OPC and Intervenors (including counsel) who suggested that all of SSU's projects were completed under environmental requirements (T. 4607-09). SSU's Ex. 116 confirms the following breakdown of projects by priority code: Safety - 9.5%; Regulatory Mandate - 34.5%; Growth - 35.4%; Quality of Service - 13.6%; and General Improvement - 6.9%.

one manhole replacement may be more of a maintenance item -- if the utility is afforded the opportunity to recover sufficient revenue through rates to maintain a periodic replacement program. However, as the record demonstrates, Florida's water utilities are among the most financially unstable water utilities in the country -- and SSU is among these financially distressed utilities. As noted by witness Harvey, DEP witnesses and Staff witnesses, without sufficient funds, any utility will experience difficulty maintaining and replacing equipment to maintain an optimum performance level -- the level desired by SSU (T. 3354-8, 3441-3, 3449, 3583-4).

In light of these facts, the utility is forced to use equipment for the maximum time possible and await direction by regulators to replace equipment, such as manholes, to ensure the utility's ability to recover the associated investment in rates. This appears to be the result desired by OPC in light of questions asked to the effect that "won't the Commission approve recovery of dollars spent to comply with consent orders?" (see T. 3523-4). The utility is left in an untenable position -- insufficient revenue to maintain compliance and optimal efficiency as a result of abusive used and useful rules, CIAC imputations, etc. -- while OPC and Intervenors clamor for penalties against SSU for insufficient maintenance, near capacity plants, etc. -- which problems, if they exist at all, would exist primarily due to OPC's support for such inequitable ratemaking treatment.

Issue 16: Is the utility's methodology of converting ERCs to connected lots for calculating used and useful for

transmission, distribution, and collection lines appropriate?

Yes, but the issue is moot.

ARGUMENT: SSU maintains this issue poses an irrelevant, academic question, as well as inaccurately infer that the conversion referenced is somehow instrumental to SSU's U&U calculations for lines. The conversion itself is as explained in Ex. 103. However, as discussed extensively in Issues Nos. 24, 41 and 44, the calculated values in the MFRs for comparing meters in use to the total number of lots with abutting lines has no bearing on the U&U percentages for lines requested in the MFRs. Accordingly, the Commission should find this issue moot.

Issue 17: Should a margin reserve be included in the calculations of used and useful for each facility?

Yes.

ARGUMENT: A margin reserve must be included in rate base to reduce costs to customers, comply with environmental regulations, protect the public health, preserve the environment, promote administrative efficiency, and to take advantage of economies of scale (Hartman: T. 707-23; Harvey: T. 3439-3523; Sowerby: T. 3815-29; Hoofnagle: T. 3566-3607, Ex. 90, GCH-2; Ex. 198). The record is replete with evidence in support of SSU requested three year and five year margin reserves for water and wastewater treatment plants.[24]

---

[24]SSU requested a one year margin reserve for lines. Although OPC and Intervenors took issue with margin reserve in general, there is no evidence in the record directly controverting SSU's requested margin reserve for lines. Therefore, the Commission should approve a one year margin

"Margin reserve" refers to plant capacity necessary to meet daily and seasonal variations in demand and to accommodate a reasonable allowance for growth (Hartman: T. 690-1, 720-3; Harvey: T. 3485, 3487, 3504; Gower: T. 2225-6). The Commission has consistently recognized margin reserve facilities as U&U property.[25] OPC's opposition to margin reserve is premised on two faulty notions: (1) current customers do not require or benefit from a margin reserve and (2) there are "other ways" for the utility to recover investment in margin reserve. The former premise is (1) contrary to Mr. Biddy's recognition that reserve capacity would be needed to serve current customers if their demand exceeds the demand allowed for U&U purposes (T. 2555), (2) inherently inconsistent with the testimony of OPC witness Dismukes who testified that current customers' consumption levels would increase (T. 2743-53), and (3) refuted by witnesses Hartman and Harvey concerning demand variability, compliance, and economies of scale (Hartman: T. 690-701, 707-23; Harvey: T. 3485, 3487, 3504). Mr. Biddy never substantiated the nebulous "other ways" (T. 2563) in which investment in margin reserve plant actually has resulted in

---

reserve for lines.

[25]According to Section 367.111(1), F.S., utilities have a legal obligation to provide service in their authorized service territory within a reasonable time after it is requested. The Commission has recognized that this obligation cannot be met without a margin reserve. See, e.g., 93 F.P.S.C. 7: 725, 734 (GDU - Silver Springs Shores and Port LaBelle), 93 F.P.S.C. 9: 39, 48-50 (Florida Cities South Fort Myers) and cases cited therein. Further, it certainly stands to reason that if CWIP, PHFU, and abandoned projects are U&U, so is margin reserve.

SSU's recovery of such investment.

Issue 18: If margin reserve is included in the calculation of used and useful, what is the appropriate margin reserve period?

Three years for water treatment plant. Five years for wastewater treatment plant. Twelve months for water distribution/transmission facilities and wastewater collection facilities.

ARGUMENT: Prudent utility design requires an allowance for margin reserve. SSU witness Hartman's testimony regarding economies of scale and threshold facility sizing is undisputed. Mr. Hartman's testimony and the Economy of Scale Evaluation in Ex. No. 91 empirically demonstrate the following with respect to economies of scale and the formula approach to U&U which OPC advocates: (1) the formula approach incents utilities to invest in plant components and facilities that are the least cost effective, to the detriment of the utility and its customers; (2) utility investment in the minimum size facility or plant component needed to serve existing customers, if allowed in rate base, harms neither the rate payers (who pay no more than they would had the utility installed the smaller size facility) nor the utility (who recovers the minimum amount of investment it would have incurred for doing so) and encourages economies of scale, whereas the formula approach penalizes the utility for taking advantage of economies of scale; and (3) assuming a formula approach (with no offsetting imputation of CIAC), minimum margin reserve periods of three years and five years for water and wastewater treatment plants, respectively, will

enable the utility to recover the cost of a minimum sized facility and encourage economies of scale (Hartman: T. 705-17, 760-74; Ex. 91, GCH-4).

SSU's requested margin reserve periods were unequivocally and repeatedly supported by representatives of DEP (Harvey: T. 3443-66, 3469-76, 3477-3524, 3554-8; Ex. 198; Hoofnagle: T. 3563-3607; Sowerby: T. 3813-32). Mssrs. Harvey and Sowerby uniformly testified that a margin reserve[26] of less than five years was inconsistent with DEP Rule 62-600.405, Florida Administrative Code would defeat the purpose of that rule (Harvey, T. 3459-3461, 3556-3567; Sowerby, T. 3818-9).[27] The logic of these statements is clear when one considers that a utility which designs, permits and constructs an expansion in accordance with that timetable in the rule and the expansion is for less than five years additional capacity, the utility will be in the second compliance cycle under the rule prior to having completed the first (Hartman: T. 699-700; Harvey: T. 3462-4, Ex. 198). For this reason and the varying time

[26]Through its cross-examination of these witnesses, OPC made a futile and irrelevant effort to distinguish margin reserve from reserve capacity. These witnesses uniformly testified that regardless of whether one used the term margin reserve or reserve capacity the meaning DEP intended in its repeated recommendations to the PSC was the same -- an allowance of additional capacity in U&U to be paid for by existing customers (T. 3482-9, 3578, 3595, 3606, 3821-4.)

[27]The witnesses and SSU concede that the rule does not directly state that a five year margin reserve is required. However, unequivocal on the record are the DEP's assertions that the intent of the rule is for utilities to maintain five years of capacity and that in order to comply with the rule, a utility must retain five years of capacity (Harvey: T. 3495, 3459-66, 3513-5; Hartman: T. 698-700; Sowerby: T. 3828-9, Exs. 90, 198).

frames and costs for designing, permitting, and construction, Mr. Harvey and Mr. Hartman specifically rejected that a margin reserve period should cover only the time for construction (Hartman: T. 691-702; Harvey: T. 3498, 3457-9, 3513-4). The DEP witnesses also expressed concern the Commission would send an economic disincentive for utilities to comply with DEP's rules, to properly size facilities, thereby promoting capacity crises which endanger the environment and the public health. It is administratively inefficient to provide utilities an economic incentive to phase plants in only 18 month increments. Current customers benefit from regulatory compliance, protection of the environment and public health, and economies of scale.

In consideration of the foregoing, SSU's requested margin reserves should be approved.

Issue 20: What is an acceptable level of unaccounted-for-water?

Unaccounted for water equal to or less than 12.5% on a company-wide basis is acceptable without further explanation, as SSU proposes. Alternatively, the same percentage on a plant-specific basis is also acceptable without further explanation.

ARGUMENT: The American Water Works Association ("AWWA") Manual M8 states that a fair average of unaccounted for water ("UFW") may range from 10 to 20 percent for fully metered systems with good meter maintenance programs and average conditions of service. The 12.5% UFW level proposed by SSU witness Denny is consistent with the AWWA Manual and mirrors the proposal in Staff's May 1995 draft used and useful rules (T. 4922).

Further, SSU's UFW should be considered on a consolidated basis for all water facilities. If UFW is evaluated on a plant-by-plant basis, SSU would be encouraged to incur costs to lower a high UFW percentage in a low water use service area rather than use those funds where more water can be saved per dollar expended (T. 394, 491). Clearly, the conservation goals of the Commission are best served by applying a 12.5% UFW standard (without further explanation) to SSU on a consolidated basis. Such an analysis is consistent with the prior Commission determination and the evidence herein that SSU operates one functionally related system.

Issue 21: Do any water facilities have excessive unaccounted-for-water and, if so, what adjustments are necessary?

No. Company-wide UFW is below 12.5%. Alternatively, if UFW is examined on a plant-specific basis, no adjustments are appropriate. Instances where an SSU plant experienced UFW above 12.5% can be explained or is otherwise justified.

ARGUMENT: The F-1 Schedules of Ex. 67 reflect a consolidated UFW level of SSU's water facilities of only 10.9%. Since the Commission has determined that SSU is one functionally related system, the Commission should view SSU's UFW on a consolidated, system-wide basis and determine that no used and useful or O&M expense adjustments[28] are appropriate.

Alternatively, if the Commission chooses to address UFW on a

---

[28]Ms. Dismukes acknowledged her purchased power adjustments are overstated (see Ex. 175, KHD-1, Schedule 32) due to the fixed demand charge associated with the purchase of electricity (T. 2854-5).

plant-by-plant basis, the testimony of Mr. Denny confirms that no adjustments are appropriate.[29] UFW for Amelia Island, Beecher's Point, Woodmere and Lehigh are now all below 6.0%. SSU has resolved the UFW problem at the Valencia Terrace plant acquired by SSU in 1995 by metering the landscaped areas, establishing customer accounts and reading the meters on a monthly basis (T. 4923). With respect to the remaining service areas for which OPC proposes adjustments, Mr. Denny testified on cross-examination that most of the UFW calculated for these service areas arises from improper metering and, thus, SSU is still pumping, treating and selling the water and incurring expenses associated with customer consumption (T. 4920-1, 4960). Mr. Denny explained that SSU has implemented numerous programs to address UFW including a residential meter change out program, a leak detection program, a large meter retrofit program and a series of flushing programs (T. 394). Accordingly, the UFW levels at specific plants exceeding 12.5% have been justified and no adjustments are appropriate.

Issue 22: What is an acceptable level of infiltration and/or inflow?

Acceptable levels depend upon the circumstances and cost/benefit considerations.

ARGUMENT: SSU measured infiltration and inflow ("I&I") using the guidelines supplied by the U. S. Environmental Protection Agency in its handbook "Sewer System Infrastructure Analysis and

[29]The Commission should not penalize SSU for addressing UFW levels on a Company-wide basis to achieve maximum cost/benefit results (T. 4945).

Rehabilitation" (EPA/65/6-91/030, October 1991). Under the EPA guidelines, I&I is measured by analyzing the preceding year's flow records from the treatment plant. Excessive I&I may exist if domestic wastewater plus non-excessive infiltration exceeds 120 gallons per capita per day ("gpcd") during periods of high ground water (Ex. 81).

OPC witness Biddy did not challenge SSU's use of the above-referenced EPA standard (T. 2585-6). In addition, both Mr. Biddy and Mr. Terrero confirmed that the Ten States Standard and the MOP 9 Standard are only applied to new treatment facilities (T. 521, 2591-3). Therefore, it would not be proper to apply such standards to SSU's facilities.

Staff attempted to elicit support through cross-examination of a measurement of excessive I&I as a function of whether wastewater flows exceed 80% of measured water flows. Such a standard is replete with deficiencies. The 80% standard makes no allowance for any excessive I&I, has no basis in engineering analysis and could not be applied to SSU since there is no single SSU service area where every wastewater customer is also a water customer (T. 4801-2, 4847).

Based on the foregoing, there is no competent and substantial evidence upon which the Commission could approve any other standard than that utilized by SSU to measure excessive I&I in this proceeding.

Issue 23: Do any wastewater facilities have excessive infiltration and/or inflow and, if so, what adjustments are necessary?

No adjustments are appropriate under the facts and circumstances in this case.

ARGUMENT: At the outset, SSU reiterates its objection to Staff's attempt to expand its prehearing statement of position without notice to SSU. During the hearing, and despite the fact that Mr. Terrero was deposed on two occasions, Staff was granted permission to procure Late-Filed Ex. 237 reflecting 1994 purchase power expenses for lift stations for the Holiday Haven, Jungle Den, Lehigh, Palm Port, Spring Garden, Sugar Mill and Venetian Village service areas. There is absolutely no evidence in the record remotely suggesting that these additional service areas have excessive I&I. Further, Staff's apparent "eleventh hour" attempt to place these service areas at issue for alleged excessive I&I and make adjustments therefore violates SSU's right to due process. Accordingly, no adjustment should be made for these additional service areas.

Moving to the service areas which were properly placed at issue by Staff and OPC, the record reflects that no adjustments are appropriate. Mr. Terrero testified that SSU's analysis was a preliminary, cost-effective analysis measuring wastewater flows against number of connections. Each connection was assumed to supply wastewater service for 2.7 persons, a conservative number based on state statistics which reflect a range of 2.2 to 3.5 persons per household on a statewide basis. No adjustments to used and useful or lift station purchase power expenses are appropriate for the Amelia Island, Sunshine Parkway, South Forty, Florida

Central Commerce Park and Marco Island service areas since these service areas have a high number of multi-family connections (condominiums or apartments) and/or commercial/industrial complexes. Since such connections are counted as a single customer, the allowable I&I is significantly understated (T. 515-6, 522-4, 551; Ex. 81).[30]

Staff's attempt to delve beyond the EPA standard and analysis employed by SSU and selectively pick and choose specific service areas for excessive I&I adjustments is inappropriate. To adequately assess whether the service areas properly placed at issue have excessive I&I would require an extensive analysis of the demographics of each service area in terms of types of connections as well as of the materials and construction of facilities. No such analysis was performed and no competent or substantial evidence is contained in the record which would support the unfounded adjustment which Staff appeared to desperately desire. Even Mr. Biddy, who in a prior case recommended allowable I&I of 1,500 gallons per day per inch per mile for the City of Apalachicola for an old system, acknowledged that an analysis would have to be conducted to determine if such an endeavor would be cost effective (T. 2592-4).

The record in this proceeding fails to establish a basis to impose adjustments for excessive I&I for any of SSU's service areas.

---

[30]For example, Marco Island has approximately 1,931 connections but SSU serves close to 12,000 customers (T. 517-8).

Issue 24: Should the hydraulic analyses performed on the Citrus Springs, Marion Oaks, Pine Ridge, and Sunny Hills transmission and distribution lines be the basis for determining used and useful percentages for water transmission and distribution facilities at these four sites?

Yes. The hydraulic flow method is the best measure of actual use of the facilities. T&D facilities are planned, designed and constructed using the hydraulic flow method. The lot count method ignores (i) reality, (ii) engineering design requirements and (iii) construction requirements with which SSU must comply and results in a confiscation of SSU property.

ARGUMENT: SSU requests that the Commission measure the U&U level of SSU's water transmission and distribution lines ("T&D") in the Pine Ridge, Marion Oaks, Sunny Hills and Citrus Springs service areas based on a hydraulic flow analysis. SSU's hydraulic flow analysis is the only reasonable method supported by competent substantial evidence for determining U&U.

The hydraulic analysis is superior to the Commission's lot-count method because the hydraulic analysis parallels regulatory and engineering design requirements and reflects the actual hydraulic utilization of T&D lines by customers -- in stark contrast to the lot-count method which satisfies none of these requirements.[31]

---

[31]There are a myriad of defects in the lot-count method, including: recognition of required line looping (Hartman: T. 702, 738; Edmunds: T. 954, 979; Elliott: 1047, 1053); no allowance for sizing lines for fireflow (Hartman: T. 702, 738; Edmunds: T. 952-3, 979, 981; Terrero: T. 537; Elliott: T. 1046); a disincentive for economies of scale (Hartman: T. 702-3, 738-9; Ex. 91; Edmunds: T. 955, 970; Hoofnagle: T. 3588); a disincentive for proper design (Hartman: Tr. 702-3; Edmunds: T. 951, 954-5,

Undisputed evidence confirms that (i) T&D lines, including those in the four service areas, must be designed using hydraulic analysis (Hartman: T. 739, 759, 761, 878); Edmunds: T. 945-8; Terrero: T. 444; Elliott: T. 1034, 1061); (ii) hydraulic analysis accurately reflects the actual amount of water flowing through pipes in a T&D network (Hartman: T. 702, 739; Edmunds: T. 952, 960, 1007, 1020; Elliott: Tr. 1034-5, 1065); (iii) the DEP routinely relies on the results of hydraulic analysis to issue permits and determine flows in T&D facilities; (iv) hydraulic analysis is the preferred and most accurate means of evaluating the demands placed on T&D lines (Edmunds: T. 949, 952, 960-2; Elliott: T. 1050); and (v) the Commission previously considered hydraulic analyses performed by Deltona Utilities, Inc. to establish the U&U level for T&D facilities (Bliss: 1144-6, 1184-5).

OPC witness Biddy opposes use of hydraulic flow analysis to establish U&U levels. Quite simply, Mr. Biddy's opposition is premised on the fact that its use would increase U&U levels of T&D facilities. Mr. Biddy suggests that a hydraulic analysis is too complicated, requires calibration and utilities should bear the risk of development (T. 2510-1). However, Mr. Biddy admitted that:

980-1, 1004-5); as well as the complete disregard for the reality of pipe flows (Terrero: T. 444, 536; Edmunds: T. 978, 981, 984, 1007; Elliott: T. 1047, 1065). The legal infirmities and practical fallacies of the lot count method are discussed more extensively under Issue 41; see also 87 F.P.S.C. 5:211 and 89 F.P.S.C. 1:63, 67 (Commission found lot count method inappropriate based on flow requirements and subsequently suggested a computerized hydraulic analysis to evaluate pressure problems).

(i) hydraulic analysis was a reliable design tool (T. 2509), (ii) hydraulic analyses are required by counties to obtain construction permits for T&D lines (T. 3575), and (iii) he previously advocated Commission reliance on an uncalibrated hydraulic analysis which he performed for St. George Island ("SGI") to measure the flows in that water system (T. 2571).

Mr. Biddy failed to explain why it is appropriate for him to advocate Commission reliance upon an uncalibrated hydraulic analysis to measure actual flows and confirm the capability of SGI existing distribution facilities to handle such flows, but to attack the validity of such flow information when SSU offers it as a reliable measure of actual flows for U&U purposes. If a hydraulic analysis, calibrated or not, truly is not a reliable measure of actual flows, then Mr. Biddy's prior request that the Commission rely on his hydraulic analysis of the SGI facilities would be unconscionable (because the safety of the public and the government would have been placed at risk). However, it is more likely that Mr. Biddy's uncalibrated hydraulic analysis was reliable and it is Mr. Biddy's testimony in this proceeding disputing the validity of hydraulic analysis which is unconscionable.

SSU provided a detailed explanation of the hydraulic models and the U&U percentages derived therefrom (Bliss: T. 1119-22; Ex. 63, Volume VI, Book 2/2; Ex. 100). SSU's experts Terrero and Edmunds validated the various components of SSU's hydraulic model, advocated its use by the Commission to determine U&U levels and

confirmed that: (1) the Pine Ridge Model was calibrated (Edmunds: T. 961-3; Ex. 99); (2) the calibrated Pine Ridge model produced U&U figures for the 1996 test year identical to those for the model filed in the MFRs[32]; (3) field calibration of all models is neither necessary nor cost-effective (Edmunds: T. 964-6, 973; Bliss: T. 1252-3); (4) the spot testing conducted for Marion Oaks, Sunny Hills and Citrus Springs revealed pressures substantially similar to those produced by the models, again, validating the models and confirming the data and pertinent assumptions (T. 1252-3), (5) U&U computations for T&D are not affected in a meaningful way when modeling potential future supply sites versus existing supply sites for build-out conditions[33]; and (6) SSU's models tend to understate U&U because the demand per connection at build-out (denominator) is overstated as being equal to the current .9 gmp/ERC demand (Bliss: T. 1176; Hartman: T. 843-7). In consideration of the foregoing, SSU's hydraulic flow analysis is clearly the only appropriate basis to calculate U&U for T&D lines.

Issue 25: Should adjustments be made to SSU's filing for its deep injection well on Marco Island?

---

[32]This fact validates the model and confirms the data and pertinent assumptions therein (T. 1119-21; Ex. 100).

[33]While flows would differ on a pipe-to-pipe basis modeling future versus existing supply sites, the total flow spread over all the pipes in the network yields a U&U figure comparable to SSU's model results which used existing supply sites (Bliss: T. 1257-9; Edmunds: T. 1022-7; Terrero: T. 4828-9). Mr. Terrero , in particular, offered testimony undisputed in the record that when modeling the build-out condition using the potential future supply sites identified in the community master plans, U&U was actually higher than in the MFR models (T. 4828-49).

No adjustment should be made.

ARGUMENT: The Commission should find the injection well 100% U&U. According to SSU witness Hartman:

> 100% of the injection well's capacity is required for the reverse osmosis water plant, and the well also serves as a back-up disposal source for effluent reuse. Moreover, no less of a facility could have been constructed to meet the present functions.

(T. 743; also Terrero, T. 4789.) Mr. Biddy performed no analysis of whether a smaller facility could have been constructed and still perform the disposal functions required, and he ignored the necessity of the injection well for reuse. (Please also refer to Issues Nos. 42 and 145 regarding reuse.) The evidence in the record is insufficient to support Mr. Biddy's proposed adjustment.

Issue 26: Should an adjustment be made to the Burnt Store water plant facility?

No adjustment should be made.

ARGUMENT: SSU witness Terrero explained: (1) an R.O. plant never achieves rated flows continuously; (2) a 10% capacity allowance for the Burnt Store R.O. plant was justified to account for down time needed for membrane maintenance and flushing (based on experience with the Marco Island R.O. plant); and (3) the blend water for the Burnt Store R.O. plant is raw water, unlike at the Marco Island R.O. plant which uses lime softened water for blend, and the variation in amount and quality of the raw water blend at Burnt Store impacts total plant output, further justifying the 10% consideration (T: 4668-9, 4730-2, 4851-2). In consideration of the foregoing, no adjustment to U&U should be made.

Issue 27: What is the correct wastewater treatment plant capacity to use for calculation of SSU's used and useful percentage at Sugarmill Woods?

500,000 gallons per day as indicated on the current operating permit D009-218511 on page 661 of Volume XI, Book 15 of 17.

ARGUMENT: The correct wastewater treatment plant capacity is 500,000 gallons per day (Bliss: T. 1150-1; Terrero: T. 4740). Although there is evidence that the capacity should be 400,000 gpd based on the existing digestor capacity, the plant capacity shown on the operating permit should be used. SMWCA's suggested capacity of 700,000 gpd should be rejected as discussed under Issue No. 32 regarding use of construction, rather than operating permit, capacities.

Issue 28: Should rate base include water mains laid in the ground but not connected to the existing distribution system?

For purposes of this proceeding, SSU agrees unconnected crossings are not used and useful. The appropriate dollar amounts for crossing in this case are as stated in OPC's position in the prehearing order. The crossings, all prudently installed, should remain in plant and a used and useful percentage applied, consistent with SSU's last case, so as to allow SSU to recover AFPI on the carrying costs.

Issue 29: Should an adjustment be made to Buenaventura Lakes rate base to remove non-used and useful wetlands?

No adjustment is justified since wetlands are required by DEP permit as backup for reuse disposal.

ARGUMENT: The Buenaventura Lakes ("BVL") wetlands must be

considered 100% used and useful pursuant to Sections 403.064(10) and 367.0817(3), F.S., since the wetlands are **required** by SSU's DEP operating permit as a means for backup disposal of reclaimed water (Terrero: T. 3524-5; Ex. 222, RAT-11; Harvey: T. 3467, 3524).

Issue 30: Should the fire flow requirement be included in used and useful calculations?

Yes. When fireflow is part of the design criteria it must be acknowledged in the used and useful consideration.

ARGUMENT: SSU's requested allowance for fireflow is consistent with Commission precedent. The demand and capacity figures listed in the F-Schedules and the line sizes and hydrants on the area maps in the MFRs confirm that SSU is able to provide fireflow in accordance with the fireflow requirements established by local authorities (Exs. 67, 102). There were no instances subsequent to 1991 where SSU was unable to meet a demand for fireflow (Bliss: T. 1252, 1259).[34] OPC offered no evidence controverting or tending to disprove that SSU could provide fireflow.[35] The law is clear that

[34] The only service area for which current ability to provide fireflow was directly questioned through cross-examination was Pine Ridge (Bliss: T. 1186). However, as Mr. Bliss testified, and as confirmed by Ex. 98 (the Pine Ridge Calibration Report), the Pine Ridge wells could provide the required fireflow in accordance with the design point on the pump curves. Specifically, the tables on pages 19-23 of Ex. 98 show that Pine Ridge Well No. 4, for example, which has a design capacity of 600 gpm, pumped at an average rate of over 900 gpm for the on/off cycling periods during field testing -- a level sufficient to meet fireflow with SSU's other wells.

[35] OPC suggests that there should be a presumption against fireflow unless SSU could produce hydrant flow test results. The Commission has never imposed such a requirement on any utility. Moreover, the application of such a presumption is not authorized by statute and, thus, is not lawful. See Chandler v. HRS, 593 So.2d 1183 (Fla. 1st DCA 1992) (agency does not have authority to

uncontroverted evidence must be accepted as true if it is not impeached, discredited, controverted, contradictory within itself, or physically impossible. See State v. Bowden, 538 So.2d 83, 85 (Fla. 2d DCA 1989).

Issue 31: Should a single maximum day flow be used in calculating the used and useful percentages for water facilities instead of the average of 5 maximum day flows?

Yes, the single maximum day demand should be used in the calculation of percentages for water supply wells and water treatment equipment at plants with finished water storage. Peak hour demands and fire flows should be used in the calculation of used and useful percentages for water supply wells at plants with no finished water storage, for high service pumps and for the determination of the equalization and fire flow volumes of the finished water storage. Annual average daily demand should be used for the determination of the emergency storage volume portion of the finished water storage.

ARGUMENT: The single maximum day must be used as the basis for determining water facility U&U since that standard is required by regulation and design criteria (Hartman: T. 679-81, 726-8, 875;

---

create presumptions). Conducting hydrant tests is the responsibility of local fire departments (T. 1116, 1133-5). To impose this requirement on SSU would create additional expense (T. 724) without cause since a single hydrant test is not conclusive of inability to provide fireflow (Hartman: T. 724; Bliss: T. 1117). Finally, acceptance by the Commission of Mr. Biddy's proposed standard would open the floodgates to similarly useless standards which would drive up rate case expense with no corresponding benefit to SSU, its customers or the Commission.

Elliott: T. 1035-6, 1056, 1058; Hoofnagle: T. 3575).[36] Section 367.111(2), Florida Statutes, requires that utilities provide service as prescribed in Parts 1 and 2 of Chapter 373 and rules adopted pursuant thereto. Commission Rule 25-30.225, F.A.C., imposes these service requirements on water and wastewater utilities. OPC witness Biddy considered it **obvious** that the single maximum day was the design requirement (T. 2546). OPC's witness further conceded that he had never obtained a permit for a facility designed using a figure other than the single maximum day (T. 2559) and doubted that a permitting authority would issue a permit on any other basis (T. 2560).

OPC's witness confirmed that he could offer no evidence that the single maximum days SSU used included leaks, line flushing or unusual use (T. 2545). He further admitted that he did not even review the plant production data (T. 2546). In contrast, SSU witness Bliss testified that he scrupulously reviewed the plant production data for several years for unusual occurrences and used alternate data where unusual circumstances appeared (T. 1102, 1118-9). No evidence refutes the reasonableness or accuracy of SSU's maximum day data. The Commission has no basis to reject it. U&U must be calculated on the maximum day data.

Issue 32: Should the Commission use operating permit

[36]See Sr. Citizens Coalition v. Minn. Pub. Util. Comm'n, 355 NW 2d 295 (Minn. 1984) (recreational facilities, not functionally needed for electric service, which were required by FERC must be considered used and useful). The specific methodologies and bases for considering the single maximum day demand in the U&U calculations for the various water plant components are described in Ex. 67 (MFRs Volume VI, Book 1/2).

capacities instead of construction permit capacities for used and useful calculations?

The capacities should be those used in the MFRs.

ARGUMENT: Operating permit capacities, not construction permit capacities, should be utilized for U&U calculations because an operating permit sets forth the level of flows approved for facility operation, and a construction permit merely allows, but does not require, construction to take place (Bliss: T. 1128-9, 1261; Terrero: T. 4743-5; Hartman: T. 728-9). The only facility this issue pertains to is Beacon Hills (Bliss: T. 1187-9). There is no question this plant cannot currently operate at the 1.78 mgd contact stabilization mode, and could not do so without additional improvements (Terrero: T. 4825-6). It would be unfair and unlawful to assume a capacity to provide treatment under a treatment method that cannot be performed without considerable investment. See 92 FPSC 4:547 (Florida Cities, South Fort Myers, involving 2.5 mgd inactive train of 5.0 mgd total plant capacity).

Issue 33: Should the "firm reliable capacities" be used in used and useful calculations for supply wells, high service pumps and water treatment facilities?

Yes. These firm reliable capacities are required to permit uninterrupted service to SSU's customers. To deny recovery of investments in these assets would be confiscation.

ARGUMENT: SSU's method for calculating firm reliable capacity ("FRC") separately for wells, treatment, and high service pumps is consistent with the method adopted by the Commission in Docket No. 920199-WS, and the record neither supports nor justifies deviation from that precedent. 93 F.P.S.C. 3: 504. An allowance for FRC in

the U&U calculations of well, treatment and pumping components is consistent with design standards, reliability design and permitting practice (Hartman: T. 729-32; Terrero: T. 4648). No adjustments are appropriate.

Issue 34: Should an emergency storage of 8 hours of average daily flow be allowed in used and useful calculations?

SSU's request for emergency storage, 8 hours of average daily flow, is reasonable and consistent with precedent and should be approved where requested. SSU agrees the allowance should be added to the numerator of the storage calculation, rather than removed from the denominator.

ARGUMENT: SSU's request for emergency storage is reasonable on the basis of need and cost. As indicated in the Water Discussion Section of the MFR F Schedules, emergency storage is important where water treatment is provided by one unit (or is otherwise limited) and the service area is susceptible to emergencies (Ex. 67). Historic experience demonstrates the need for emergency storage in SSU's service areas at Deltona Lakes, Marco Island and Burnt Store (Hartman: T. 734, 861; Terrero: T. 4823-5; Bliss: T. 1114). Moreover, as proven beyond doubt by Mr. Hartman, there are tremendous economies of scale associated with ground storage tanks (Hartman: T. 707-15, 765-73; Ex. 91), making SSU's modest request very economical (T. 2506).[37] SSU's requested used and useful level

[37] Mr. Biddy opined emergency storage should not be allowed unless stated on design documents (T. 2506). SSU witness Terrero explained that comparing the design rule of thumb to U&U terminology for storage, emergency storage is a design consideration (T. 4649). Common sense, however, dismisses this

for emergency storage is also consistent with that allowed in Docket No. 911188-WS and should be calculated similarly in this case (Ex. 101). See 93 F.P.S.C. 2: 775, 786.

Issue 35: What peaking factor should be allowed for peak domestic hour demands in finished water storage used and useful calculations?

The peaking factor requested in the MFRs -- 2 times maximum day.

ARGUMENT: The 2.0 peaking factor used by SSU reflects reality and sound engineering design (Hartman: T. 843-7). Larger plants require a lower peaking factor while smaller plants require larger peaking factors (T. 843-7). A review of several large metropolitan utilities shows their peaking factors to be between 1.3 and 1.6, yet all of SSU's small water plants combined may not serve as many customers as these large metropolitan utilities (Hartman: T. 732-3). It is contrary to the record evidence to suggest that the minimum peaking factor be used simply because it is the minimum.[38]

Issue 36: Should 10% of the finished water storage be treated as dead storage?

Yes.

ARGUMENT: Rather than conduct discovery, inspect the tanks or otherwise present any competent evidence, OPC urges a presumption

---

debate in favor of an examination of the added customer safety and economies of emergency storage.

[38]As with hydraulic modeling, Mr. Biddy asks the Commission to do what he says, not what he does -- what Mr. Biddy does when he designs facilities for facilities larger than SSU's facilities is use a 2.0 peaking factor (T. 2557-8).

against all dead storage.[39] SSU witness Hartman presented unrefuted testimony in support of SSU's proposal (T. 734, 862, 868).[40] OPC's suspicions concerning dead storage are not competent substantial evidence.

Issue 37: For high service pumps used and useful calculations, should the maximum daily flows or peak hourly flows be used for peak demands?

For plants where firelow is requested, peak hour plus fireflow should be used for plants less than 1 MGD and maximum day plus fireflow should be used for plants greater than 1 MGD. For plants where no fireflow is requested, peak hour demand should be used.

ARGUMENT: Mr. Hartman testified that in small service areas where small pumps are used to meet peak flows, a single fire rated pump may be used for fireflow requirements (T: 735-6). In consideration of this testimony, SSU's position should be accepted.

Issue 38: Should facility lands, hydro tanks, and auxiliary power be considered 100% used and useful without analysis?

Yes.

ARGUMENT: The record contains no evidence which would justify

---

[39] Acceptance of OPC's requested presumption would be unalwful. See Chandler v. HRS, supra.

[40] The Commission recognized dead storage in the last Lehigh Utilities, Inc. rate case (Ex. 101). 93 F.P.S.C. 2:775, 786. The Commission also recognizes dead storage when calculating oil inventory for electric utilities. See e.g. 84 F.P.S.C. 7:136, 158. Mr. Hartman testified that it was not at all uncommon for storage tank as-built drawings not to denote pump data (T. 861-8).

Commission deviation from its determination in Docket No. 920199-WS that existing plant sites and auxiliary power are 100% U&U (Hartman: T. 736-7; Terrero: T. 4652, 4650). While OPC suggests that a portion of SSU's auxiliary power at Deltona Lakes is non-used and useful, DEP has required SSU to install additional stand-by power (T. 4117). The Catch-22 aspect of OPC's U&U approach is not proper for utility ratemaking. The record demonstrates significant economies of scale for hydropneumatic tanks and auxiliary power -- economies which should be encouraged for financial as well as service reasons (Hartman: T. 736-7; Ex. 91; Terrero: T. 4652).

Issue 39: What is the appropriate flow data to use for calculating used and useful for wastewater treatment plant and effluent disposal?

The average daily flow in the maximum month should be used.

ARGUMENT: SSU's method was not questioned or refuted by any evidence. In fact, OPC's witness agreed with it (Ex. 170). Therefore, SSU's methodology must be accepted.

Issue 40: Should iron infiltration equipment be considered water treatment plant, and if so, what is the appropriate used and useful percentages?

Iron filtration equipment may be considered water treatment plant for used and useful purposes only. Depending on the facility, the proper used and useful percentage for such equipment would be either peak hour or maximum plus fireflow divided by the firm capacity of the equipment.

ARGUMENT: SSU witness Bliss testified that since SSU's iron removal filters are pressure filters and the energy to pump water

through them is provided by the supply wells, the capacity of the filters is a function of the pumping capacity of the supply well and, therefore, the same U&U percentage as applied to the supply wells should apply to the iron removal filters (Bliss: T. 1197-9). Accordingly, the Commission must accept the methodology submitted in the MFRs.

Issue 41: What is the appropriate method for determining used and useful percentage for water transmission and distribution mains and wastewater collection lines?

The lot count method is inappropriate. SSU has requested U&U for Sunny Hills, Citrus Springs, Marion Oaks and Pine Ridge using the hydraulic flow method which is the appropriate method. For all other service areas, SSU requests U&U levels be established, at a minumum, at the levels approved in the Commission's last rate orders which are acceptable at this time. Multi-family, large meter use and minimum sized facilities must be considered when such circumstances exist consistent with such prior orders and Commission practice.

ARGUMENT: Before analyzing U&U lines, the Commission must first recognize what is **not** at issue in this proceeding: whether the lines now owned and maintained by SSU were prudently installed. The Prehearing Order does not identify prudence as an issue; the issue is therefore waived. It goes without saying that prudence and U&U are separate and distinct inquiries under the law.[41]

[41]The Commission itself has previously treated them as distinct issues. See e.g. 93 F.P.S.C. 2: 526 (prudence of Marco Island R.O. plant costs separate consideration from U&U), 93 F.P.S.C. 2: 695 (Mad Hatter abandonment costs found prudent, then adjusted for U&U).

Whereas the focus of U&U is the extent to which prudent investment is required to provide for service in a particular period of time, the focus of a prudence evaluation is whether an investment decision was reasonable and cost-effective when made given the facts and circumstances at that time.

Particularly instructive of the impropriety of the lot-count method itself is the case of State v. Public Service Comm'n of Mo., 669 S.W.2d 941 (Mo. App 1984). The pertinent issue on appeal there was the Missouri Commission's decision concerning a 1.8 mile distribution line extension to provide electric service within the service area. The facts, in pertinent part, are as follows:

> At the time the distribution line extension was authorized, there was some expectation of subdivision development in the area, but no existing unfilled need for service. Experience since the line was built has not confirmed expectations for home construction and the capacity of the line in terms of numbers of customers who could be served. The Commission Order eliminated the utility's investment in the line extension ....

669 S.W.2d at 946.[42] The court distinguished U&U and prudence and applied both to the case at bar, stating:

> The line extension cannot be excluded from the rate base under the used and useful theory because customers are served by the line and there was no evidence before the commission that any portion of the line was surplus in terms of providing service to customers who were connected.
>
> * * * *
>
> By considering the cost versus revenue test as a ground to exclude a distribution line actually in service, the commission inferentially has held that each

[42]The line in fact served only six customers. Id.

> segment of the company's lines must be cost effective or the line will be deemed unjustified. The commission cites no authority for use of this approach in utility ratemaking and independent research has disclosed none. To the contrary, common experience suggests that a decision to expand service facilities usually involves a forecast of future needs of customers and that line extensions are seldom fully utilized upon completion of construction. The cost effective test is therefore not an independent basis upon which to deny inclusion of plant and equipment investment, but is a factor to consider in determining whether a prudent management decision was made.

669 S.W.2d 946-7 (emphasis added, citations omitted). The court then found that there was no evidence in the record that the line extension was imprudent when made.[43]

The record confirms the following: (1) at least the minimum investment in lines needed to provide service to customers must be considered U&U; (2) the lot-count method will **never** allow the utility to recover the minimum level of investment needed to provide service to existing customers; and (3) the lot-count method is particularly confiscatory when fireflow is provided because fireflow is an amount of water which must be provided to each lot. The line running to each lot must be sufficient to accomodate the

---

[43]Notwithstanding whether reversible error arises from consideration of prudence in SSU's case at this late hour, there is no competent substantial evidence on the record establishing imprudence at the time the line installations in this case were made, only conclusory allegations. Further, the Commission's taking administrative notice of Order No. 22307, which notably does not distinguish extensions from extant installations, cannot be relied upon. Judicial notice cannot serve to "fill the vacuum created by the failure of a party to provide an essential fact." Moore v. Choctawhatchee Electric Cooperative, 196 So.2d 788, 789 (Fla. 1st DCA 1967). See also Huff v. State, 495 So.2d 145 (Fla. 1986); Carson v. Gibson, 595 So.2d 175 (Fla. 2d DCA 1992); and cases cited therein.

necessary fireflow to put out a fire which could occur at any lot. 100% of the line is required to accomodate such flow to the lot, i.e., it is ludicrous to suggest that fireflow could be provided through 1/100th of a line in a 100 lot subdivision or 1/50th of a line in a 50 lot subdivision.

Further defects of the lot-count method are described in the discussion of Issue 24 which discussion is incorporated herein by reference.

OPC witness Biddy agreed that a utility should earn a return on the minimum sized facility necessary to provide service to existing customers, as did staff witness Shafer (T. 2541, 3412-3). Mr. Biddy admitted that a utility cannot avoid investment in lines passing unoccupied lots and that if fireflow is provided, six inch lines are a required minimum size (T. 2566-7).

In addition, SSU's witnesses provided minimum facilities and incremental cost information (Hartman: T. 770-4, 830-5; Ex. 91; Bliss: T. 1113-5).[44] SSU witness Hartman advocated a threshold facility cost approach to T&D lines and specifically recommended that where fireflow was provided, no less than the cost for six inch lines be considered U&U (T. 760, 831-2). Anything less than the cost for the minimum line size would deprive SSU of the necessary investment to provide service (Hartman: T. 831-2). For example, the level of U&U investment produced by the lot count

[44]The Commission has accepted incremental cost approaches in previous cases. See e.g. 83 F.P.S.C. 2: 148, 152 (common facilities for sister generating units of Florida Power Corp.), 93 F.P.S.C 9: 39 (South Ft. Myers dual train wastewater plant).

method for Sunny Hills is so inadequate that the only lines which could be installed at that cost would yield negative line pressures -- an absurd result (T. 4745, 4826-8).

As illustrated in Appendix B to this brief, the record amply demonstrates that the lot-count method produces U&U investment significantly below the minimum investment required to provide service **even** to the paradigm development, i.e., where all lots with service available were connected. Referring to the Appendix, if for example, one were to attempt to install 6 inch pipe in a paradigm Citrus Springs development where there were 1,900 lots and 1,900 customers, the U&U investment which Mr. Biddy would permit in rate base, trended to today's cost, would be $733,819 short of the cost necessary to pay for the line ($1,704,923 - $966,104 = $738,819).

In consideration of the confiscatory effect of the lot count method[45], SSU's requested U&U percentages[46] should be approved.

Issue 42: What wastewater plant components should be considered as reuse components? And if not 100 percent used and useful pursuant to Sections 367.0817 and 403.064, what are the appropriate used and useful percentages for such components?

*Wastewater plant components that should be considered reuse components include the following: (a) equalization basin; (b)

[45]The lot-count method is not applied to utilities in any other industries (Sandbulte: T. 190, 194, 198, 3962-3).

[46]With the exception of the four service areas for which hydraulic analyses were done, SSU's requested U&U percentages are consistent with prior Commission decisions, as the request here is for the percentage previously approved by the Commission from the last case.

automatic screens; (c) dual aeration tanks; (d) dual filters; (e) dual chlorine contact; (f) substandard ponds; (g) injection wells; (h) monitoring wells; (i) monitoring equipment (chlorine residual turbidity); (j) pumping facilities; (k) transmission mains; (l) booster stations; (m) percolation ponds; and (n) standby power. Both the law and public policy require these components to be considered 100% used and useful -- there is no used and useful alternative.*

ARGUMENT: DEP's expert David York, P.E., explained that all reuse facilities listed in Rule 62-610.810(2), F.A.C., except single-cell percolation pond systems, constitute reuse systems and should be considered 100% used and useful pursuant to Section 403.064, F.S. (T. 3896). SSU has requested 100% used and useful treatment only for those facilities which provide unlimited public access reclaimed water (Schedule F-6.1(S); T. 905, 930). The dollar amounts for these facilities are provided in Schedule F-6.1(S) of Ex. 67. The equipment required for the operation of SSU's reuse facilities includes: (a) equalization basins; (b) automatic screens; (c) dual aeration tanks; (d) dual filters; (e) dual chlorine contact chambers; (f) substandard ponds; (g) injection wells; (h) monitoring wells; (h) monitoring equipment (chlorine residual, turbidity); (i) pumping facilities; (j) transmission mains; (k) booster stations; (l) percolation ponds; and (m) standby power equipment (T. 4661, 4787, 4788). In particular, percolation ponds used as backup for a public access reuse system are a required component of that system and should be

considered 100% used and useful (Harvey: T. 3524; Hartman: T. 808; Terrero: T. 4789, 4843).[47] Similarly, applicable permits confirm that the Marco Island injection well is required for back-up disposal of reuse and, therefore, must be considered 100% used and useful (T. 743, 4662). Reuse facilities are expensive to build and are only built after intensive reviews by DEP and the applicable water management district. After such reviews, the Commission must recognize that the costs were prudently incurred. Also, given Florida's current water situation, it is critical that water utilities be able to recover such costs (Wilkening: T. 4016).

Although OPC witness, Mr. Biddy rejects prior commission decisions on used and useful, he makes no attempt to show how the Commission allegedly erred in its prior decisions (Hartman: T. 743).

Issue 43: Should an adjustment be made to reflect non-used and useful lines constructed by Lehigh Acquisition Corporation?

The refundable advances from Lehigh Corporation do not impact rate base nor the used and useful calculations for the Lehigh service area.

ARGUMENT: Ms. Dismukes asks the Commission to double count non-used and useful by first treating all refundable advances as 100% non-used and useful and then imposing a non-used and useful percentage to the related plant (Ex. 175; KHD-1, Schedule 38). The refundable advances at the crux of Ms. Dismukes' proposal are

[47]The Marco Island percolation ponds must be considered 100% used and useful because they are required for back-up disposal.

provided to SSU by Lehigh Acquisition Corporation ("LAC") pursuant to a modified developer's agreement. The assets transferred to SSU are funded by "no cost" advances from LAC and either are converted to in-service assets (funded by CIAC when a customer connects) or, if no connection occurs, remain non-used and useful developer contributions. The CIAC received from customers is refunded by SSU to LAC (T. 4418-9; T. 1359).

SSU witness Kimball confirmed that the methodology employed by SSU to account for the refundable advances in the derivation of the non-used and useful Lehigh lines is appropriate and required to ensure that the refundable advances have a zero rate base impact (T. 5051-3; Ex. 242, JJK-5 and JJK-9).[48]

Issue 44: If the used and useful calculations in this rate proceeding result in used and useful percentages lower than those allowed in previous rate cases, which percentages should be used?

*Used and useful percentages may not be adjusted downward absent a change in the capacity of the facility due to expansion. Even under these circumstances, no change to used and useful would be appropriate if the capacity change was consistent with the most economical design and construction. To decrease used and useful

---

[48]The accounting entries reflecting the zero rate base impact would typically involve a debit to non-used and useful plant and credit to refundable advances and then a debit to rate base with a credit to CIAC once the customer connects and pays the service availability charge. As Ms. Kimball noted, in order to maintain the zero rate base impact, if a true-up downward adjustment to 1995 Lehigh plant in service is made to account for the fact that actual 1995 refundable advances were less than projected, the same dollar amount downward adjustment needs to be made to refundable advances before non-used and useful is applied (T. 5053; Ex. 242, JJK-5).

solely on reduced consumption would discourage utility conservation efforts and result in a confiscation of utility property which was properly built at the time the decision to build was made to meet engineering requirements and customer needs.*

ARGUMENT: The Commission should expressly reject the notion that it is appropriate to decrease a prior Commission approved used and useful percentage. As noted by Mr. Hartman, prior Commission orders have recognized that decreases in demand which may take place over a period of time should not result in decreases in used and useful for treatment plant. See Order No. PSC-93-1113-FOF-WS issued July 30, 1993 in General Development Utility's consolidated rate cases for Silver Springs Shores and Port LaBelle; Order No. PSC-94-0739-FOF-WS issued June 16, 1994 in Utilities, Inc.'s rate case for Marion and Pinellas Counties (T. 684-7). The rationale articulated by the Commission in the General Development case is instructive:

> For this system, maximum usage occurred four years ago and has not been repeated since. We find that this demand is appropriate because the potential for the customers to create the May 1989 demand still exists.

General Development, Order No. PSC-94-0739-FOF-WS, at 17.

The Commission's reluctance to reduce a previously approved used and useful level also has been applied to distribution and collection lines. The Commission adopted prior used and useful determinations in SSU's 1992 consolidated rate case and SSU's 1993

Marco Island rate case (T. 687).[49]

The rationale supporting the Commission's reluctance to decrease prior established used and useful percentages is compelling. First, the application of such a policy would create a direct disincentive for proper facility sizing which would ultimately increase the cost to customers over time and decrease the level of service. When a utility makes an investment and that investment is determined to be prudent and a used and useful percentage established by the Commission, the utility must be given the opportunity to recover its Commission approved investment as well as the return thereon. The fact that demand placed on the plant may diminish at any specific point in time (whether due to conservation, price elasticity, rainfall, or loss of customers), does not permit a regulator to revisit the determination of whether it was prudent for the utility to have built the size facility it built, based on the facts and circumstances confronting it at the time it was required to make that decision. Such an action would be unprecedented in utility ratemaking. In the real world, a utility cannot extract from its plant-in-service a portion of the prudent investment it has already made. To do so would ignore reality and result in a second guessing of prior Commission determinations where there is no evidence to conclude that the

[49]See also In Re: Request for Rate Increase in Sumter County, 91 F.P.S.C. 11:332, 337 (1991) (Commission approved 100% used and useful for water distribution lines and wastewater collection lines due to finding in prior rate case despite the fact that test year calculations reflected 92% used and useful level).

Commission's initial determination of used and useful was flawed in the first instance (T. 685-6, 744-5; T. 1423-4).

There is no question that it would be unlawful for the Commission to now embark on a policy of imposing downward adjustments to previously established used and useful percentages. Moreover, such a policy would exacerbate the already tenuous viability of water and wastewater utilities in this state. As Mr. Hartman put it, "utilities, at a minimum, would face higher capital costs caused by the pervasive risk of diminishing returns which readjustment [of used and useful levels] poses" (T. 745). Moreover, the many significant benefits articulated in this record and acknowledged by the Commission that come with planning facilities to account for economies of scale and promoting the conservation of potable water would be severely undermined as utilities would be forced to maximize usage of facilities in order to avoid downward used and useful adjustments (T. 745-6). To conclude, absent evidence that facilities have had capacity increases since used and useful levels last were established, the Commission may not lawfully reduce such levels.

Issue 45: What are the appropriate used and useful percentages for each facility?

*The appropriate used and useful percentages for water supply wells, high service pumps, water treatment equipment and finished water storage are as stated in the response to FPSC Interrogatory No. 360. The used and useful facilities for water transmission and distribution are as stated in the used and useful summary schedules on pages 21 through 33, Book 1 of 2, Volume VI, of the MFRs. The

appropriate used and useful percentage for wastewater treatment, effluent disposal and collection/pumping plant are as stated in the used and useful summary schedules on pages 831 through 937, Book 1 of 2, of Volume VI, of the MFRs with the exception of Sugarmill Woods where the wastewater used and useful should be 99.86% and the effluent disposal used and useful should be 85.59%.*

ARGUMENT: The appropriate used and useful percentages for each facility are simple arithmetic calculations based on the decisions made by the Commission under prior issues. As considered at the prehearing conference, this issue should encompass no issues other than those expressly identified in the Prehearing Order. (Prehearing Conference, T. 205). The only variable which would impact any of the figures submitted in the MFRs are those specifically agreed to by SSU on the record.

Issue 46: Should the utility's proposed adjustment to reverse depreciation taken on non-used and useful facilities be approved?

Yes. This represents a correction of past errors and does not constitute retroactive ratemaking.

ARGUMENT: SSU proposes to reduce the beginning 1996 balances of accumulated depreciation by $795,371 for conventional water, $161,544 for reverse osmosis water and $904,261 for wastewater. The adjustment represents the cumulative effect of depreciation incorrectly taken by the Company on: (1) non-used and useful assets through 1991 where AFPI charges were not in effect; and (2) non-used and useful facilities at Deltona Lakes and Marco Island from 1992 through 1994 where the Commission increased the non-used

and useful levels requested by SSU in rate cases without including the increased depreciation costs in the AFPI charge established in the Commission's rate order (T. 1363; T. 5103-4).[50]

OPC opposes this adjustment asserting that SSU should shoulder the responsibility for not requesting AFPI recovery for these non-used and useful assets and that the adjustment would constitute retroactive ratemaking (Larkin: T. 2640-3; Ex. 174, HL-1, Schedule 14). OPC's rationale has no merit.

The fact that SSU has come forward with this adjustment in this rate case, rather than in years past or in a motion for reconsideration in Docket No. 920199-WS or Docket No. 920655-WS rate cases, is irrelevant. Ms. Kimball and Mr. Bencini explained that the analysis and reconciliation of the Commission approved plant balances and AFPI rates on the Company's books following these rate cases was an extensive undertaking, taking well over a year (and the use of 3 employees) to accomplish (T. 1370-3, 5195-6). The argument that SSU is somehow bound by the Commission's failure to adjust AFPI charges to permit recovery of the relevant depreciation expense (after used and useful levels were adjusted downward by the Commission) is nothing more than a thinly-veiled attempt to bar SSU from recovering this expense under principles of res judicata or collateral estoppel. These principles do not apply

[50]The adjustment accounts only for depreciation expense incurred through 1994 and, thus, is understated by an additional $101,950 for Deltona Lakes and Marco Island for the years 1995 and 1996. The additional $101,950 of depreciation expense should be considered to offset other Commission adjustments in this proceeding (T. 5105-6).

in ratemaking proceedings as they serve to stifle the Commission's discretion to adjust a utility's rate base, particularly where, as here, new facts are brought to the Commission's attention.[51]

SSU has produced evidence in this proceeding which confirms that depreciation expense was taken on certain non-used and useful assets which the Commission should have permitted SSU to recover through AFPI charges. SSU's proposed adjustment would allow such recovery and is consistent with principles of equity and fairness that must be applied in ratemaking proceedings, as recently reaffirmed by the Florida Supreme Court in GTE Florida Inc. v. Clark, 668 So.2d 971 (Fla. 1996).

Finally, the adjustment would not constitute retroactive ratemaking. The assets have never been included in rate base, have never impacted rates and could not possibly be viewed as a retroactive adjustment -- there has been no recovery of the depreciation expense! (T. 5104-5, 5198-9). The adjustment proposed by SSU is no different than prospective adjustments traditionally made by the Commission to correct past errors in the calculation of accumulated depreciation and depreciation expense to

---

[51] In re: Application of Southern States Utilities, Inc. for Increased Water and Wastewater Rates in Collier County (Marco Island systems), 93 F.P.S.C. 2:249, 252-253 (1993), citing In re: Application of Miles Grant Water and Sewer Company for an Increase in Water and Sewer Rates in Martin County (Order No. 20066 issued September 26, 1988), aff'd per curiam, Miles Grant Water and Sewer Company v. Florida Public Service Commission, 545 So.2d 871 (Fla. 1st DCA 1989); In Re: Petition for interim and permanent rate increase in Franklin County by St. George Island Utility Company, Ltd., 94 F.P.S.C. 11:141, 152-153 (1994).

reflect Commission guideline rates[52] or to reflect prior orders of the Commission.[53] Moreover, the adjustment is distinguishable from the adjustment considered by the Commission in the 1995 Ortega Utility Company rate case[54] because the adjustment at issue here is not an adjustment which would "restore losses" (or offset prior lost revenue requirements) arising from depreciation taken on used and useful assets since the assets at issue here were all non-used and useful.

Issue 47: What adjustments are necessary to correct accumulated amortization of CIAC related to guideline depreciation and amortization rates being booked prior to implementation of service rates (Response to FPSC Interrogatory 33)?

Adjustments to the MFRs are required to reduce accumulated amortization of CIAC by $128,751 and $135,129 for water and wastewater, respectively. Adjustments decreasing accumulated depreciation are already reflected in the MFRs in the amount of $199,086 and $518,176 for water and wastewater, respectively. If any changes are made to the accumulated depreciation adjustments, then corresponding changes must be made to the amortization adjustments as given above.

---

[52]See, e.g., In re: Application of SOUTH BROWARD UTILITY COMPANY, INC. for a rate increase in Broward County, 90 F.P.S.C. 4:438, 452 (1990); In re: Application of BEAUCLERC UTILITIES COMPANY for a rate increase in Duval County, 89 F.P.S.C. 5:348, 350 (1989).

[53]In Re: Application for a rate increase in Collier County by FLORIDA CITIES WATER COMPANY - Golden Gate Division, 95 F.P.S.C. 6:137, 140 (1995).

[54]In Re: Application for a rate increase in Duval County by ORTEGA UTILITY COMPANY, 95 F.P.S.C. 11:247, 257-259 (1995).

ARGUMENT: These adjustments would simply permit SSU to reduce accumulated depreciation balances to permit recovery of additional depreciation expense approved in Docket No. 920199-WS and booked by SSU prior to the implementation of new rates in September 1993.[55] SSU has not recovered this expense since recovery does not begin until the Company begins to collect the revenue designed to recover the expense (T. 5039-41). The adjustment does not constitute retroactive ratemaking, as contended by OPC witnesses Larkin/DeRonne (T. 2644). To the contrary, the same type of adjustment was approved by the Commission in the 1995 Ortega Utility Company decision (T. 5042).

Issue 48: If a margin reserve is approved, should CIAC be imputed on the ERCs included in the margin reserve?

No. The imputation of CIAC on the margin reserve negates the margin reserve and thus is counter to economic construction of facilities, places the public health and environment at risk and results in increased levels of administration and increased costs. The imputation constitutes a taking of utility property prudently constructed and places unjustified and unreasonable risk on the lawful recovery of a shareholder investment as well as a return thereon.

---

[55]The adjustment also would permit SSU to recover booked but unrecovered depreciation expense for the Deltona plants for the years 1989 and 1990. Additional depreciation expense for these plants was presented in the MFRs in Docket No. 900329-WS using a 1989 test year. The Commission dismissed the rate case in Docket No. 900329-WS thereby denying SSU's requested recovery of additional expenses in full. SSU inadvertently carried forward the increased (but unrecovered) depreciation expense for the Deltona plants in the MFRs in Docket No. 920199-WS (T. 5041-3).

ARGUMENT: The record establishes that a margin reserve is required for the following reasons: (1) to achieve lower rates for customers in the short as well as long term; (2) to best protect the public health and safety; and (3) to best protect the environment (T. 4869). Plant included in the margin reserve is used and useful plant which should be included in rate base for rate setting purposes (T. 4869-69, 4884, 4912) The Commission's past practice of imputing contributions in aid of construction ("CIAC") against the margin reserve simply has the effect of excluding U&U margin reserve plant from rate base recovery. This exclusion constitutes a confiscation of utility property.[56]

First, it must be understood that margin reserve is not a financial concept, but an engineering one. When customer growth occurs, the need for margin reserve plant continues -- in other words, a portion of the $30,000,000 of plant identified in SSU's MFRs as Plant Held for Future Use, and thus considered non-used and useful plant in this proceeding, becomes margin reserve plant. (T. 4868). The need for margin reserve plant does not suddenly occur only when a rate case is filed (T. 4867-8). Rather, it is a continuing need confronted by the utility from an engineering and operating perspective every day (Harvey: T. 3455-9, 3484-5; Hoofnagle: T. 3566-8, 3583-8; Hartman: T. 690-702).

---

[56]Moreover, in addressing Intervenor witness Hansen's remarks concerning the margin reserve, the former Director of DEP's Water Division testified that the imputation of CIAC against the margin reserve has a cause and effect: the imputation encourages a Commission regulated utility to operate at or near capacity (T. 3456).

Second, the record demonstrates that since rates last were established in Docket No. 920199-WS, SSU actually received less than 50% ($762,366) of the CIAC collections which the Commission imputed in that docket ($1,573,728) (T. 2223). Obviously, SSU was deprived recovery of and a return on used and useful plant as a result of the imputation.[57]

Third, SSU witness Gower and Exhibit 162 demonstrated that CIAC imputation denies SSU investors recovery of their investment in the same way that an assumption that the margin reserve plant is fully depreciated on Day One of the margin reserve period would deny such recovery (T. 2220-2). In Mr. Gower's words:

> It is no more appropriate to assume that plant capacity investments not yet recovered through CIAC charges have already been fully recovered than it is to assume that accumulated depreciation accruals equal to 20% of the related plant cost are instead equal to 100% of the plant cost (T. 2222).

Fourth, whereas margin reserve plant is used and useful plant and, as such, the utility should have the opportunity to recover its investment in such plant from current customers (T. 2220), the imputed CIAC represents potential post test period collections which should not even be considered for ratemaking purposes (T.4866). Mr. Gower confirmed that potential post-test period collections would not result in utility over-earnings or reductions to rate base since (1) part of the margin reserve must be available

---

[57]In addition, by imputing 100% of the CIAC as if SSU had possession of the cash on Day One of the margin reserve, which is an impossible occurrence, the Commission ensures that a confiscation of SSU's property will occur because SSU is denied such recovery and return.

to meet peak demands of current customers from whom no CIAC is collected (T. 2225-6, 2231-2, 4883, 4904-5)[58] and (2) margin reserve plant does not disappear as new customers connect.

Fifth, OPC's witness suggests that the AFPI mechanism makes SSU whole, even if CIAC is imputed against the margin reserve. This is not accurate. Margin reserve plant is used and useful plant. As such, it is not included in the AFPI calculation (T. 4912). Therefore, if the CIAC imputed against the margin reserve does not materialize, as $800,000 of the imputed CIAC did not materialize after Docket No. 920199-WS, SSU forever has lost the opportunity to recover the associated investment in margin reserve plant and a return thereon. SSU most definitely has been harmed by the Commission's CIAC imputation policy. (T. 4871-3).[59]

For the foregoing reasons, no CIAC should be imputed against the margin reserve.

Issue 49: Should the Commission impute CIAC associated with assets constructed by Lehigh Corporation?

---

[58]Mr. Gower confirmed that "previous applications of the CIAC imputation adjustment also have an implicit unwarranted assumption that additional margin reserve capacity serves only new customers." (T. 2224-5). If new peaks of consumption from existing customers cannot be met from existing plant (i.e., in a draught situation), one can be sure that customers would object to the utility's inability to meet their peak needs.

[59]Mr. Gower testified that "AFPI collections do not even approach a compensatory return on the plant to which they do relate, much less provide a return on margin reserve plant as well" (T. 4872). In fact, AFPI collections produce only slightly more than 3% of the investments they were designed to compensate SSU for (T. 4872). It is no wonder that OPC so heartily endorses the AFPI concept and continues to misrepresent its effectiveness as a capital recovery mechanism. The Commission should no longer be mislead.

No. SSU customers remain unaffected by the Lehigh Corporation escrow account. The states of New York and Michigan, which are charged with the protection of residents in their states who purchase land in Florida, approved the modifications to the escrow provisions and developer agreement.

ARGUMENT: OPC witness Dismukes proposed the same adjustment in the Lehigh Utilities, Inc. rate case. As noted by Staff in its position in the Prehearing Order, and acknowledged by Ms. Dismukes (T. 2855), the Commission rejected her proposed adjustment.[60]

The record provides no basis to modify the above decision. The evidence confirms that:

(1) SSU is not a party to the escrow agreement;

(2) SSU cannot access the funds in the escrow account:

(3) Facilities constructed by Lehigh Corporation with the escrow monies and which will be transferred to SSU (beginning in 1996) have no rate base impact as they are properly treated as refundable advances such that once a New York or Michigan customer connects and pays the service availability charge, such advances are returned to Lehigh and the SAC paid by the customer is booked as CIAC;

(4) When a New York or Michigan customer requests service from SSU, the customer is given a credit against the service availability charge in the amount of the customer's individual escrow payment, plus interest, through March 31, 1994; and

---

[60] In Re: Application for a Rate Increase in Lee County by Lehigh Utilities, Inc., 93 F.P.S.C. 2:775, 787-8 (1993).

(5) If the Commission imputes CIAC on top of the service availability charge (also CIAC) paid by the customer, as recommended by Ms. Dismukes, there will be a double counting of CIAC (Vierima: T. 4417-21; Dismukes: T. 2853-4, 2858-60).

Ms. Dismukes attempts to support her proposed "penalty" of double counting CIAC against SSU with two theories. First, she states that imputing CIAC will assure that customers are not harmed by the escrow arrangements (T. 2796). Her contention has no merit. As previously stated, SSU customers from New York and Michigan who have paid funds into the escrow account are reimbursed with interest. SSU remains responsible for ensuring that customers are not harmed economically as a result of Lehigh Corporation's development activities. To the extent Lehigh Corporation's installation of facilities and sale of lots in the future enhance growth, customers will benefit from increased economies of scale and lower costs per customer (T. 4421-2).

Second, Ms. Dismukes seeks to escape the double CIAC impact she recommends by advising the Commission that CIAC levels in the future could be adjusted to compensate SSU to "take care of ... (the) double collection of CIAC ...." (T. 2863). Such a notion would obviously result in the confiscation of SSU's rate base, has no basis or precedent in utility ratemaking and should be rejected by the Commission.

Issue 50: Should an adjustment be made for non-used and useful offsets to plant capacity fees and line/main extension fees?

No adjustment is appropriate.

ARGUMENT: OPC proposes to increase CIAC (and, therefore, reduce rate base) by eliminating SSU's application of non-used and useful adjustments to plant capacity fees and line/main extension fees. The alleged basis for the adjustment is that these fees are cash contributions from customers representing cost-free capital which should not be reduced by non-used and useful percentages (T. 2627-8).

The proposed adjustment should be rejected for several reasons. First, the cash at issue was never cost-free capital to SSU. The cash was used to build the lines prior to SSU's ownership of the facilities. Second, it is appropriate to offset non-used and useful lines with non-used and useful prepaid CIAC since the money was used to construct the lines and failure to correspondingly attach a non-used and useful percentage to the fees would inappropriately and unfairly understate rate base. Third, SSU's treatment of the prepaid CIAC is consistent with the treatment approved by the Commission in Docket 920199-WS for Burnt Store and Sugarmill Woods and approved by Charlotte County in the last rate case for Deep Creek (T. 5038-9).

Issue 51: Should CIAC be increased to reflect cost share funds for the Marco Island ASR project?

No.

ARGUMENT: Although the CIAC attributable to cost share funds for the ASR project were not included as CIAC in the MFRs, the actual total project cost through 1995 has far exceeded the project cost included in the MFRs. SSU agrees with Ms. Dismukes' proposal to increase CIAC by $225,100 (representing the cooperative funding

from the Big Cypress Basin Board) only if the related ASR project cost reflected in the MFRs for 1995 is included in rate base such that there would be no rate base impact (T. 5122-3). A one-sided adjustment to CIAC, but not to rate base, for the ASR project would be inequitable and should be rejected.

Issue 53: Should the Commission recognize any negative acquisition adjustment in rate base for facilities purchased at less than book value?

*No. No negative acquisition adjustment is appropriate for several reasons: (1) the Deltona Utilities, Inc., United Florida Utilities Corporation and Lehigh Utilities, Inc. transfers were stock transfers therefore no acquisition adjustment should apply; (2) OPC failed to establish that the acquisition costs for Deltona and Lehigh were below net book value; (3) no extraordinary circumstances have been presented by OPC to meet the Commission's long-standing policy; and (4) OPC seeks a windfall to customers since customers pay no more and no less in rates whether or not the transfer occurs. Purchases by SSU below net book value often result because SSU pays only for used and useful assets. OPC seeks a double penalty by first having the Commission apply a negative acquisition adjustment and then, second, having the Commission apply its non-used and useful policy to the remaining assets. For instance, SSU purchases a utility with assets with a net book value of $100. SSU has determined that only $50 or 50%, of the assets are used and useful so SSU pays only $50. OPC proposes that the Commission apply a negative acquisition adjustment to reduce the investment upon which SSU can earn a return to $50. Then, OPC

proposes that the Commission apply its non-used and useful adjustment of 50% so that SSU would earn a return on only $25. This result would be confiscatory and unconscionable.*

ARGUMENT: The same acquisition adjustment issues raised by OPC in this case have been addressed and rejected by the Commission on numerous occasions in the past. The Commission has rejected OPC's request for negative acquisition adjustments based on the absence of extraordinary circumstances or the fact that acquisitions have been accomplished by stock transfer, or both.[61]

OPC once again would have the Commission ignore the fact that the Deltona, United Florida and Lehigh transfers were accomplished by stock transfer. Each transfer was approved by the Commission and, subsequently, the Commission rejected OPC's request for a negative acquisition adjustment (in some instances on more than one occasion).[62]

---

[61]In Docket No. 920199-WS, OPC presented half-truth upon half-truth to customers at customer service hearings alleging the injustice of the Commission's acquisition adjustment policy, only to devote one sentence on the issue in the OPC's post-hearing brief. One sentence is all that should be required in the Commission's order in this case to once again reject OPC's acquisition adjustment arguments.

[62]Without exception, the Commission has found that negative acquisition adjustments are not made in stock transfer situations. Utility investors cannot be left in limbo from year to year or rate case to rate case that the Commission will revisit an acquisition adjustment issue stemming from a transfer determined by the Commission years before to have been in the public interest and not subject to a negative acquisition adjustment. The imposition of the proposed negative acquisition adjustments at this time will exacerbate the adverse reaction of potential investors and lenders to the poor financial circumstances of Florida's water utilities.

Similarly, once again, OPC attempted to show that the acquisition of Deltona and Lehigh were made at below book value.[63] Regarding Deltona, OPC suggests that the Commission ignore $9 million of the purchase price which represented cash due to Topeka from Deltona which Deltona simply withheld from Topeka, by agreement, as a portion of the purchase price. There is no legal or practical basis for ignoring $9 million paid by Topeka for the Deltona facilities simply because the money was not first paid by Deltona to Topeka and then returned from Topeka to Deltona. This $9 million payment wipes out the alleged $7 million negative acquisition adjustment suggested by OPC (T. 4410-3).

OPC proposes a negative acquisition adjustment associated with SSU's Lehigh acquisition.[64] OPC re-argues positions previously rejected by the Commission concerning the price paid by Topeka for the Lehigh facilities. OPC argues that because LAC has sold and profited from the sale of real estate assets in the 5 years since they were acquired from the Resolution Trust Corporation ("RTC"), the Raymond James' 1991 market valuation of the utility assets must

---

[63]OPC's arguments already were rejected by the Commission. Moreover, OPC would have the Commission ignore positive acquisition adjustments. As Mr. Sandbulte testified, the net acquisition adjustment on SSU's books as of December 31, 1995 is less than $500,000 -- hardly worthy of OPC's repeated mischaracterizations of the issue's importance to SSU's customers during each customer service hearing (T. 3966).

[64]Again, OPC ignores the fact that this acquisition was accomplished by way of stock transfer (T. 4395). The Commission's policy is to not recognize negative acquisition adjustments when a stock transfer occurs. No party presented any evidence which would justify a deviation from this long-established policy.

have been flawed.

Once again, OPC has presented no valuation expert knowledgeable of (1) purchase transactions with the RTC; (2) real estate valuation; (3) utility valuation; (4) how developers develop an area and package properties to secure profits; or (5) other factors which an expert such as Raymond James would have knowledge of when presenting a competent valuation argument. Instead, OPC contracted the services of a former OPC employee, Ms. Kimberly Dismukes, an all-purpose witness who OPC portrays as competent to testify about a myriad of issues now including utility valuation. Ms. Dismukes neither demonstrated nor identified any expertise or knowledge concerning any of the above-referenced areas. Ms. Dismukes' testimony should be given no more weight or credibility than any non-expert witness or customer testifying from a layman's perspective without benefit of the required expertise.[65]

OPC, having failed to even establish the existence of a negative acquisition adjustment, persisted in attempting to identify the existence of an escrow account maintained by Lehigh

---

[65]For example, compare the testimony of customers that water should be free because it comes from the skies and nothing needs to be done to it against the testimony of the Commission's expert, Dr. Janice Beecher, Ph.D., that the water industry is among the most capital intensive of the regulated industries (T. 1542, 1657) or DEP representatives' confirmation of the high cost of regulatory compliance in the water/wastewater industries (see, e.g., T. 3449, 3585). This dramatic difference between the layman/customer's perspective and a true expert is akin to the lack of expertise and, therefore, credibility of Ms. Dismukes' perspective versus the professional valuation performed by the experts, Raymond James, relied upon by the Commission in the past to reject Ms. Dismukes' proposed acquisition adjustment.

Acquisition Corporation ("LAC") as an alleged "extraordinary circumstance." OPC presented no justification for the Commission to reverse its prior rejection of this argument.[66]

Finally, OPC presented no evidence of "extraordinary circumstances" concerning any of the other SSU acquisitions. In fact, OPC presented no evidence of the circumstances of such acquisitions at all.[67]

To conclude, OPC and Intervenors presented no credible evidence that the Deltona and Lehigh utility facilities were purchased at less than net book value. Also, neither OPC nor Intervenors presented any competent evidence of extraordinary circumstances. Therefore, the proposed negative acquisition

---

[66]OPC insinuates that facts allegedly relied upon by the Commission in Docket No. 911188-WS to reject OPC's proposal were not truthful (T. 2798, 2817). There is no merit to OPC's accusation. SSU does not now and has never had authority to access the escrow funds. SSU's affiliate, LAC, entered the escrow arrangement with the States of New York and Michigan. LAC reached an agreement with those states which would modify the terms of LAC's access to the funds as long as the effected lot purchasers were made whole. LAC satisfied the states' requirement by entering a modification to the developer agreement with SSU. This modification provides that SSU will credit the CIAC payment of effected lot owners upon hooking up to SSU's facilities and LAC will pay to SSU the amount credited. In this way, both SSU and the lot owners are made whole (T. 4417-22). These facts are the only facts pertaining to the escrow account which are relevant to or within the jurisdiction of the Commission. However, it should be noted that these facts are irrelevant to the acquisition adjustment issue.

[67]In a dramatic demonstration of how far Public Counsel is willing to go to achieve a rate reduction, Public Counsel's witness Larkin suggested that the Commission should impose a negative acquisition adjustment simply due to the level of the increase SSU is requesting in this proceeding (T. 2649). Mr. Larkin did not even attempt to identify a nexus between acquisitions by SSU and the revenue increase SSU is requesting. Such a proposal is unconscionable and must be rejected.

adjustments must be rejected.

Issue 56: Are any adjustments necessary to SSU's projected balance in the Preliminary Survey and Investigations (PS&I) account?

No. The MFRs only reflect the 1995 budget for PS&I's and no projection for additional 1996 spending was included. As such, any spending variance from budget in 1995 relating to PS&I's should be offset by the 1996 actual PS&I spending.

Issue 58: What adjustments are necessary to reflect reduced costs associated with the Keystone Heights aquifer performance test?

1996 test year expense should be reduced by $1,073 (T. 5113-4).

Issue 59: Should deferred debits for the Spring Hill wastewater treatment plant expansion be included in working capital?

Yes.

ARGUMENT: Working capital, like debt and the A&G expenses, is a corporate resource common to all service areas. As such, jurisdiction over specific plants for purposes of calculating working capital (including deferred debits) is irrelevant. SSU's treatment of the abandonment of this PSI project is consistent with all such projects whereby SSU includes the unamortized balance of these prudently incurred expenses as deferred debits in the working capital calculation. Accordingly, the deferred debits for the Spring Hill wastewater treatment plant expansion should be included in working capital (T. 5125-6, 5150-1, Ex. 244, MAB-5, page 3 of 5).

Issue 61: What is the total company balance for working

capital?

The total company balance of working capital on a 13-month average basis and using the balance sheet formula is $7,154,922. This balance can be found on Schedule A-17(W)(S) in any rate base presentation in the MFRs, including Volume III, Books 1 and 2 and Volume XII, Books 1-9. Working capital is presented in all cases on a total company basis.

Issue 62: Should deferred debits related to the attempts to obtain a water supply for Marco Island be allowed if so, what is the appropriate amount and amortization period?

The deferred debits related to the attempts to obtain a water supply for Marco Island should be allowed. The amount of deferred debits being requested for amortization treatment is $1,465,808. The amortization period is 5 years beginning January 1, 1996, which results in a yearly amortization expense of $293,162.

ARGUMENT: SSU spent $1,465,808 attempting to secure long-term water supplies for Marco Island customers. SSU concentrated its efforts on the least cost alternatives available to it (T. 4974-87; Ex. 238) and pursued such least cost alternatives until either access to the water supply was foreclosed (i.e., Dude supply due to inability to obtain Collier County approval) (T. 4662-4), or the alternative no longer represented a least cost alternative (i.e.,efforts to purchase water from the City of Naples halted due to continued escalation of project cost by City) (T. 755-7; 4977-80). No evidence was presented which even insinuated that SSU's pursuit of these alternatives was imprudent or that the costs

associated with such pursuits were unreasonable.[68]

In fact, the only evidence opposing the Company's proposed treatment of the deferred debits was presented by Staff witness Dodrill. Mr. Dodrill suggested that "a portion" of the deferred debt should be reclassified as Miscellaneous Non-utility Expenses and disallowed. The record is devoid of evidence establishing the "portion" of such expenses which should be so reclassified, or any mechanism for determining such "portion" except for the $30,000 cost associated with the 160 acres which Mr. Bencini agreed should be transferred to that project (T. 5101). Therefore, Mr. Dodrill's proposed disallowance must be confined to the $30,000 adjustment.

Issue 63: What are the appropriate rate base amounts in total and by plant?

*Average rate base in total for 1996 is $95,252,212 and $62,770,852 for water and wastewater, respectively. Rate base presentations for the plants not coming into the rate case with uniform rates can be found by referring to Schedules A-1(W) and A-2(S) in Volume III, Books 1 and 2. Rate base presentations for the plants coming into the case with uniform rates can be found by

---

[68]OPC suggests that the associated costs should be disallowed merely because SSU did not seek pre-approval from the Commission to defer them. This suggestion is unconscionable. No Commission rule requires such pre-approval. To impose such a requirement would be conducive only to increasing a utility's cost of operation and would be unduly burdensome on utilities and the Commission. Should the utility be left to guess when such pre-approval is required? What if the acquisition of the Collier Lakes property had not worked out and SSU had to revisit one of the prior alternatives despite its higher cost (T. 5100-1). Would the cost of securing pre-approval to defer associated costs have been unreasonably incurred? OPC's proposal must be rejected as it creates, as opposed to reduces, uncertainty.

referring to Schedules A-1(W) and A-2(S) in Volume XII, Books 1-9. Identical rate base information is also presented in total and by plant in Summary Volume II, Book 1, pages 39-48.*

ARGUMENT: The appropriate rate base amounts are simple arithmetic calculations based on the decisions made by the Commission under prior issues. As considered at the prehearing conference, this issue should encompass no issues other than those expressly raised. (Prehearing Conference, T. 205) The only variable which would impact any of the figures submitted in the MFRs are those specifically agreed to by SSU.

Issue 65: Should any adjustments be made to the equity component of the Company's capital structure?

* No.*

ARGUMENT: There is no evidence supporting any adjustment to SSU's equity component. OPC's suggests that the Commission should accumulate all profits from sales by Topeka/Minnesota Power and/or SSU including the 1989 sale of Minnesota Power's former telephone subsidiary in Wisconsin, Universal Telephone (T. 3964) and subtract such profits from SSU's equity component. Also, Ms. Dismukes' proposed an adjustment to the equity component based on gains on sale. OPC's attempt to convince the Commission that it must take either of these unprecedented, and, SSU suggests, unlawful, actions to reduce SSU's rates lays bare OPC's willingness to go to any extreme to reduce rates from justified and lawfully required levels (T. 3958, 3963-4). OPC's monomaniacal focus on low rates at all costs is reminiscent of the focus of the economic regulators in the Miami/Dade and Apalachicola areas, which focus placed the public

health and environment at risk and, in the long run, cost customers more (T. 3449-52).

The Commission does not have the luxury of adopting this "low rates at any cost" approach which, although crowd pleasing, should be recognized as the most irrational, unjust, not to mention unlawful approach conceivable to an economic or environmental regulator.

Issue 66: What is the appropriate cost of common equity?

With the weather normalization clause, 12.25%. Without the weather normalization clause, 12.5%.

ARGUMENT: SSU presented Dr. Roger Morin, Ph.D., a cost of equity expert who presented an analysis of the Commission's leverage graph and proposed various adjustments. Dr. Morin previously had presented these proposals to the Commission in a cost of equity workshop. On August 10, 1995, several weeks after Dr. Morin pre-filed his testimony in this case (June 28), the Commission issued an order (the "1996 Leverage Graph Order") adopting many of Dr. Morin's proposals (T. 4489-91). Under the leverage graph approved in the 1996 Leverage Graph Order, SSU's return on equity would be 11.83% (T. 4489).

Dr. Morin proposed a 12.25% return on equity based largely on the adjustments subsequently approved by the Commission after the cost of equity workshop. However, if the WNC is not approved, Dr. Morin proposes a 12.5% return on equity (T. 317-8).

Dr. Morin's return calculations reflect a studied analysis of the risks confronting water utilities and, specifically, SSU. Dr.

Morin's 12.25% return is premised upon established cost of equity analyses which recognize the higher returns shareholders require from a business operating in a rising cost industry and facing the risks and uncertainties inherent in the water/wastewater industry.[69]

No party presented evidence refuting the inordinate risk being faced by Florida's water utilities, particularly the volatility of revenues (from weather/conservation efforts). Dr. Morin supports the imposition of the WNC so as to demonstrate to investors that this level of risk has been addressed and convince them that a lower return on equity is appropriate (T. 317-8; 4470-1). Dr. Morin's testimony substantiates a return of 12.25%, considering SSU's facts and circumstances and provided that a WNC is implemented.

Issue 67: What is the appropriate amount of accumulated

---

[69]In contrast, OPC rolled out a standard cost of equity witness, Dr. James A. Rothschild, Ph.D., who manufactured an analysis which unquestionably was designed to provide an unconscionably low cost of equity (T. 4429-31). SSU witness Morin presented rebuttal testimony identifying the various conceptual flaws in Dr. Rothschild's analysis -- flaws which of necessity would appear when the sole intent of OPC's witness so transparently was to achieve the lowest return possible (T. 4431-89). In fact, Dr. Morin noted that:

> Mr. Rothschild's cost of equity recommendation of 10.10%, if ever adopted, would result in one of the lowest rate of return awards for water utilities in the country (T. 4430-1).

Once again, OPC's exuberance to keep rates artificially low by hook or by crook, as demonstrated in Dr. Rothschild's flawed analysis, is sorely misguided. It is SSU's belief that a quest for low rates without consideration of the rising cost of protecting the public health and the environment has lead to the poor financial health and increased abandonments of Florida's water utilities recognized by witnesses for both Staff and DEP.

deferred income taxes and what are the appropriate methods for allocating deferred income taxes to the individual plants?

The appropriate average balance of accumulated deferred income taxes is $4,496,962.

ARGUMENT: Volume IV, page 8, line 11 of Ex. 67 identifies Accumulated Deferred Income Taxes of $4,784,352. The MFR amount must be adjusted in accord with Ex. 148 (T. 2124-5). The required adjustment is as follows:

Depreciation Adjustment (Acct. No 190)	($276,683)
Unclaimed CIAC Gross-up Refunds (Acct. No 190)	$16,515
Lehigh Lines (Acct. No. 283)	($27,341)
Plant Interconnects (Acct. No. 283)	$119
	($287,390)

Issue 68: What is the appropriate amount of unamortized investment tax credits?

The average unamortized investment credit tax credits balance should be $1,933,972 per Volume IV, page 19, line 11 of the MFRs (T. 2126-8).

Issue 69: What is the appropriate weighted average cost rate for investment tax credits?

The appropriate weighted average cost rate for investment tax credits is the average weighted cost of capital. All ITCs should be treated in accordance with Section 46(f)(2) of the Internal Revenue Code as filed in the MFRs.

ARGUMENT: Regulated companies are required to account for ITCs pursuant to either Section 46(f)(1) or Section 46(f)(2) of the IRC. The appropriate accounting method for each company is determined by comparing the overall adjusted basis of assets and gross receipts of the component businesses that have been integrated into the

parent company, in this case SSU, pursuant to IRS Regulation 1.381(c)(4)-1(c)(2) (T. 2129; Ex. 150). In accordance with Regulation 1.381(c)(4)-1(c)(2), SSU is required to utilize Section 46(f)(2) for all of its service areas and, to be consistent, the Commission should use Section 46(f)(2) for all of the service areas (T. 2129; Ex. 150). However, if the Commission elects to use Section 46(f)(1) for any of the integrated companies that used Section 46(f)(1) prior to their merger into SSU, additional adjustments are required (T. 2133; Ex. 149).

Issue 70: What is the appropriate overall cost of capital including the proper components, amounts and cost rates?

Per the MFRs.

ARGUMENT: The appropriate cost of capital is 10.32%. This figure assumes adoption of the WNC.

Issue 72: Has SSU correctly calculated its 1996 water revenues at Marco Island?

Yes.

ARGUMENT: The Company's projection methodology for Marco Island was consistent with the methodology for every service area in this proceeding. Mr. Bencini identified numerous errors in Intervenor witness Woelffer's calculations. Most significant from Mr. Bencini's testimony is the fact that based on actual 1995 data, SSU overprojected revenues at Marco Island rather than under-projected revenues. Exhibit 244 (MAB-10 Page 3, line 93) shows that actual 1995 water revenues for Marco Island were $907,305 less than the amount projected in the MFRs, and page 4, line 41 of Exhibit 244 shows that actual 1995 wastewater revenues were $48,138

less than projected. These overprojections should be considered to offset any downward adjustments proposed by the Commission in this proceeding (T. 5144-9; Ex. 244, MAB-10).

Issue 73: Are any revenue or expense adjustments necessary to reflect the normalization of test year revenue for weather/rainfall?

No. Actual 1995 consumption was even lower than the MFR projections of consumption. An adjustment to increase consumption above the projected levels would be wholly inappropriate.

ARGUMENT: As discussed under Issue 75, supra, the Commission should reject Ms. Dismukes' proposed adjustments to SSU's projections of 1996 consumption. Likewise, no adjustment should be made to test year expenses. As confirmed by Mr. Bencini, actual 1995 consumption was 3.2% lower than projected 1995 consumption in the MFRs (T. 5135). SSU's projections are conservative and resulted in an under-projection of 1995 revenues by $1,053,802 (Id.). The notion that SSU's projected 1996 consumption should be increased is absurd and should be rejected by the Commission.

Issue 74: Are any revenue or expense adjustments necessary due to the utility's proposed repression adjustment?

No. SSU made the adjustment in the MFRs. In fact, the MFR adjustment exceeds a proper adjustment because SSU treated the decreased charges in electric power bills as variable costs thus overstating the adjustment.

ARGUMENT: No party other than SSU took a position on this issue. Under the express language of the Order Establishing Procedure, the Intervenors have waived the entire issue and the

issue should be dropped from this proceeding or, alternatively, SSU's position should be approved by the Commission.

Issue 75: What are the appropriate projected number of water and wastewater bills and consumption to be used to calculate revenue for the 1996 projected test year and to calculate rates for service?

Per the MFRs. SSU witness Dr. Whitcomb and Southwest Florida Water Management District Senior Economist Jay Yingling verified the proper use of the WATERATE program to reflect price elasticity adjustments to consumption. SSU's conservation program adjustments are supported by SSU witness Kowalsky. As discussed in the "projection factors" tab of Volume V, Book 1 of 1, the methodology employed to calculate growth projection factors for the projected 1996 test year has been consistently applied to all plants. As evidenced in the rebuttal testimony of SSU witness Bencini, the projection factors for 1995 resulted in a slight overstatement of billing determinants. SSU believes this fact confirms the conservative basis of the projected 1996 billing determinants.

ARGUMENT: The record confirms that SSU's projection of bills and consumption for the 1996 test year are reasonable and conservative. Projections for 1996 water consumption and bills were derived by taking the average of the consumption experienced at each plant in 1991 through 1994 and applying a plant specific four year (1991-94) compound growth rate for 1995 and 1996. Projections for 1996 wastewater consumption were based on actual 1994 bills multiplied by the plant specific four year compound growth rate for 1995 and 1996. By using a four year average, SSU effectively normalized the variability and consumption due to the

effects of weather, tourism, elasticity of demand and conservation (T. 1315-7, 5133; Ex. 67 Volume V, Book 1). Further, SSU witness Bencini demonstrated that had actual 1995 consumption been taken into account as part of a five year average, projected consumption would have been even lower than that reflected for 1996 in the MFRs (T. 5134-7; Ex. 244, MAB-6, MAB-7, MAB-8, MAB-9 and MAB-10).

Ms. Dismukes conveniently ignored the fact that she previously supported the five year average approach advocated by OPC witness Stewart in Docket No. 920655 (T. 2846) and offered her two latest proposals for increasing SSU's projected revenues.

Under her first approach, Ms. Dismukes suggests that rainfall in 1991-1994 exceeded the average level of rainfall experienced from 1960 through 1990 (T. 2745-7). The defects in this approach are numerous (T. 5138). First, her methodology only attempts to adjust for rainfall. Ms. Dismukes' use of historical rainfall levels presents an incomplete picture of the impact of weather on consumption. The appropriate factor to be considered is the Net Irrigation Requirement ("NIR") which factors in not only rainfall but evapotranspiration ("ET"), a measure of the amount of water evaporated and transpired from a vegative surface such as turfgrass due to air temperature and solar radiation. In the words of the expert, ET "is at least as important as rainfall" (T. 1763-4, 1860-1, 1911). Second, Ms. Dismukes ignores the fact that there are a number of factors affecting fluctuations in consumption in addition to weather (T. 5138; T. 1931). SSU's approach takes all such factors into account (T. 5139). Third, in developing her

alleged weather normalized billing data to project 1996 consumption, Ms. Dismukes inappropriately used a figure of 9,476 gallons per bill per month for residential consumption (T. 2748). As SSU witness Bencini explained, the number includes the county regulated plants which are not a part of this proceeding. In addition, the number was prepared by Dr. Whitcomb to model consumption on a consolidated, uniform rate basis without accounting for effects of the price elastic responses resulting from the final rates and rate structure ordered in Docket No. 920199-WS[70] or the rate increases proposed by SSU in this proceeding (T. 5141-2).

The alternative tactic proposed by Ms. Dismukes to increase SSU's projected revenues would simply eliminate the consumption numbers from 1991 and 1994, the two years in the 1991-1994 time frame with the lowest consumption (T. 2748-9). Amazingly, Ms. Dismukes characterizes SSU's use of a four year average (the result of which was confirmed to be conservative as a result of the computation of a five year average including actual 1995 data) as "relatively simplistic and inaccurate" (T. 2743) but offers the Commission instead a simple two year average. Ms. Dismukes, by her

[70]Dr. Whitcomb's analysis of this issue reflected that the 33% BFC/67% GC uniform rate structure and the increase in gallonage rates imposed by the Commission in Docket No. 920199-WS, without a corresponding reduction to water consumption levels, resulted in estimated reductions in gallonage charge revenues and revenue deficiencies for SSU of 6.2% or $864,992 in 1992, 9.2% or $1,276,893 in 1993, and 10.8% or $1,482,843 in 1994, respectively (T. 1725-6). It was the rate and rate structure adjustments in the past rate cases that most directly caused the reduction in 1994 water use levels -- not the level of rainfall in 1994 as claimed by Ms. Dismukes (T. 1765).

own admission, simply proposes to eliminate the two lowest consumption years so as to reduce projected consumption (T. 2848). Casting further doubt on Ms. Dismukes' proposal, SSU's witnesses pointed out that by eliminating 1994 data, Ms. Dismukes eliminated the year in which the NIR was the most normal of the years 1991 through 1994 (T. 2849).[71]

In short, despite Ms. Dismukes' uncorroborated criticism of SSU's projections (T. 2750), the record confirms that SSU's projections of 1995 consumption were conservative -- actual annualized revenues totalled $23,034,024 compared to 1995 projected annualized revenues in the MFRs of $24,087,826 (T. 5139). In sum, the record supports SSU's 1996 projection of consumption and bills, including each of the adjustments to such projections discussed below.

1. **SSU's Elasticity Adjustment**

SSU decreased projected water consumption 10.9% for conventional treatment customers and 2.6% for reverse osmosis treatment customers as a result of the elasticity of demand which will arise from SSU's proposed revenue increase and conservation rate structure (T. 1318; T. 1731-2; Ex. 135, JBW-3, JBW-6). These adjustments were supported by Dr. John Whitcomb, an expert in water use and water demand forecasting. Dr. Whitcomb has conducted over 30 studies on water demand analysis including studies quantifying the impacts on water use resulting from the effects of weather,

[71]The 1994 NIR values calculated by Dr. Whitcomb were only three percent below normal -- therefore, 1994 was the most "normal" weather year SSU has experienced (T. 1764; 5140).

pricing and water conservation programs (T. 1720, 1968-9). He also has authored or co-authored nearly a dozen articles regarding water use and water demand forecasts (T. 1720; Ex. 135, JWB-1).

Dr. Whitcomb was retained by SWFWMD to quantify price elasticities and measure rate structure impacts on water consumption for 10 utilities located within SWFWMD's geographic region, including SSU's Spring Hill service area in Hernando County (T. 1721, 1724). Dr. Whitcomb's work culminated in the "Water Price Elasticity Study" included in Ex. 135 which he relied upon to support SSU's proposed elasticity adjustment. Dr. Whitcomb's study formed the basis for the development of a software program known as WATERATE, a program which provides price elasticity calculations in response to alternative rate structures. The WATERATE program is used by approximately 75 utilities in Florida to evaluate the impacts of rates and rate structure on demand for water (T. 1959; Ex. 135).[72]

It must be emphasized that every witness who testified in this proceeding agreed that price elasticity is a valid economic concept applicable to water consumption. The only question is the level of elasticity. Both Dr. Dismukes and Ms. Dismukes acknowledged these facts. Indeed, Ms. Dismukes admitted that a repression adjustment would be appropriate, "if properly calculated" (T. 2276; 2819). Ms. Dismukes also acknowledged that if her 25% BFC/75% GC rate

---

[72]In contrast to Dr. Whitcomb's extensive experience, Public Counsel presented testimony from David Dismukes, Ph.D., who never conducted a water price elasticity study (T. 2276) and who had virtually no experience with water utilities at all.

structure were adopted, there will be: (a) greater levels of conservation than projected by SSU; (b) a greater level of elasticity in consumption and, therefore, the need for a larger elasticity adjustment than that proposed by SSU; and (c) greater revenue instability for SSU (T. 2832-3).

Dr. Whitcomb used the Price Elasticity Study to develop the WATERATE 2.1 software program which he applied to SSU's proposed rate structure of 40% BFC/60% GC and proposed increase in uniform gallonage charges from $1.23/1,000 gallons to $2.16/1,000 gallons (T. 1767-8, 1773, 1888, 1963; Ex. 135, JBW-3). The WATERATE 2.1 program forms the basis for Dr. Whitcomb's elasticity adjustments in this proceeding -- not the revised WATERATE 2.2 program which mistakenly was the focus of OPC's cross-examination and Dr. Dismukes' rebuttal testimony (T. 1806, 1832, 1921-2, 1953).[73]

Dr. Whitcomb's Price Elasticity Study is unprecedented in its level of detail and the size of the database. The study includes more utilities, more homes and more variables over a larger range of prices than any water elasticity study conducted anywhere (T. 1767). Dr. Dismukes claims that the Study cannot properly be applied to SSU's service areas. The overwhelming evidence demonstrates Dr. Dismukes' lack of competence in this area. This evidence includes the following facts: (1) SSU has 24 water service areas serving an estimated population of 125,000 people within the SWFWMD jurisdiction (T. 1724); (2) Approximately 80% of

[73]Application of the WATERATE 2.2 model would have produced a greater level of price elasticity (i.e., lower projected consumption) and, therefore, higher rates (T. 1954, 1959).

SSU's service areas are located in either SWFWMD's territory or the abutting territory of the St. Johns Water Management District -- thus from a geographic standpoint, the Study was conducted under "ideal circumstances" in SSU's "own neighborhood" (T. 1768, 1774, 1868, 1910); (3) SSU's combined water and wastewater rate structure represents a declining block rate structure similar to those used by some of the SWFWMD utilities involved in the Study;[74] (4) The variation in NIR between the 10 SWFWMD utilities and SSU's service areas is almost identical (T. 1821, 1911); and (5) The climatic conditions for the 10 SWFWMD utilities and SSU's service areas are similar in that both were characterized by the National Oceanic and Atmospheric Administration as subtropical (i.e., warm, humid, wet and variable) and the climatic variations among SSU's service areas are very similar (T. 1868, 1912).

Dr. Dismukes asks the Commission to reject Dr. Whitcomb's Study and instead settle for an elasticity adjustment equal to 50% of Dr. Whitcomb's recommendations (T. 2278). The flaws in Dr. Dismukes' testimony are numerous.[75] For example, much of Dr. Dismukes' rebuttal is devoted to rebutting the WATERATE 2.2 program which is not even at issue in this case. Dr. Dismukes' inability to distinguish between the two distinct programs (WATERATE 2.1 and

---

[74]Dr. Dismukes' assertion to the contrary failed to factor in SSU's wastewater cap of 6,000 gallons per month for approximately 50% of its customers (T. 1738-9, 1959-60) -- a flaw which demonstrates Dr. Dismukes' lack of competence in this area.

[75]SWFWMD senior economist Yingling agreed with the entirety of Dr. Whitcomb's rebuttal of Dr. Dismukes' testimony (T. 3930-2).

WATERATE 2.2) underscores his lack of competence to analyze and assess water demand studies.

To summarize, the alleged "fatal flaw" was not even directed to the Elasticity Study and WATERATE 2.1 model relied on by Dr. Whitcomb to support SSU's elasticity adjustments in this proceeding. In addition, there is no "flaw" in the WATERATE 2.2 model. The "flaw" was in the faulty inference of the peer reviewer whose views were rejected by Dr. Whitcomb, his co-authors (including Mr. Yingling), SWFWMD and approximately 75 other utilities in Florida which currently use the WATERATE 2.2. program (T. 1739-47, 1832, 1914, 1957-60).[76]

The Commission has approved elasticity adjustments to consumption in the past.[77] The record could not possibly contain more persuasive support for SSU's proposed elasticity adjustment in this proceeding.

2. The Remaining Adjustments for Implementation of SSU's Conservation Programs and Reuse for Hideaway Beach and the Tommie Barfield School

These adjustments were described by Mr. Bencini (T. 1318-9). Ms. Dismukes challenged SSU's adjustments relating to sales of

---

[76]Dr. Whitcomb also refuted Dr. Dismukes' claims that the Price Elasticity Study has a low explanatory power and does not adequately consider differences in customer income which, in and of itself, is of marginal significance when measuring the impact of changes in rates and rate structure on customer demands (T. 1739-40, 1746-7, 1914, 1960).

[77]In re: Application for a rate increase in Martin County by Hobe Sound Water Company, 91 F.P.S.C. 5:176, 181 (1991); In Re: Application for a rate increase by General Development Utilities, Inc., 93 F.P.S.C. 7:725, 779 (1993).

reuse at Hideaway Beach and the Tommie Barfield School in Marco Island but provided no corroborating support for her claim that SSU would not be providing such service by the end of 1996 (T. 2751-2). Accordingly, Ms. Dismukes' proposed adjustments should be rejected.

Issue 76: Should an adjustment to revenue be made for reuse revenue on Marco Island?

No.

ARGUMENT: As previously discussed, the adjustments to water revenue and wastewater revenue proposed by Ms. Dismukes on Schedule 20 of Exhibit 175 should be rejected. In addition, no party disputed the Marco Island effluent reuse rate of $.87 per 1,000 gallons substantiated by the study of SSU witness Guastella (Ex. 163).

Issue 77: Should the miscellaneous revenue adjustments proposed by Witness Dismukes for billing adjustments and non-utility income be made?

*No. Test year revenue should be increased by $50,595 and test year income should be increased by $8,351. These adjustments are included on Ex. 244 (MAB-4).

ARGUMENT: SSU concurs with the revenue/billing and non-utility income adjustments proposed by Ms. Dismukes in Schedule 35 of Ex. 175 (KDH-1) except the adjustment concerning billings greater than cost. SSU already incurs the administrative costs for those bills. The "additional" cost of adding the fixed electricity charge is de minimus (T. 5115-6). SSU's revised adjustments reflecting increases to test year revenue of $50,595 and to test year income of $8,351 are set forth in Ex. 244 (MAB-4).

Issue 80: Should the Commission accept the projected wage increases of SSU regarding market equity, merit, licensure, and promotional adjustments?

Yes. SSU's 1996 projected salary increases are reasonable, consistent with prior years, and necessary for SSU to retain, recruit and hire qualified employees.

ARGUMENT: The unrefuted testimony of SSU witness Lock is that (1) the 5.75% increase in question is an aggregate of merit, license, promotions and step pay increases virtually equal to the amount spent for 1995 and for each of the three years prior and (2) the percentage is reasonable and prudent (T. 4330-2). OPC witnesses Larkin and DeRonne propose to exclude the adjustment relying solely on the testimony of OPC witness Katz. Mr. Katz did not even address this issue or, if he did, it was in so nebulous a fashion as to be useless for the Commission's consideration. Denial of the payroll adjustment would permit SSU's excessive attrition and inability to recruit to continue (T. 1992-5; 4324-8; Ex. 211). OPC's desire to ignore these facts is irresponsible and should be rejected.

Issue 82: Should the utility's proposed salary adjustment based on the Hewitt Study be approved?

Yes. The adjustment is reasonable and, as requested by SSU, represents significantly less than the salary increases needed to bring SSU pay levels to market levels. SSU has implemented the first steps by bringing operations and maintenance and customer service salaries closer to market levels.

ARGUMENT: SSU's attrition levels are abominable (T. 1992-7; 4328). SSU retained Mr. Frank Johnson from one of the most well

respected human resources consulting firms in the world, Hewitt Associates, to analyze the competitiveness of SSU salaries for benchmark positions comprising more than 60% of SSU's employee population (T. 4338-47). The Hewitt Study conclusions established that SSU's salaries are dramatically below average market levels (Lock: T. 1997, 2017-8, 2071; Ex. 142, DGL-3; Johnson: T. 4348-54, 4358-64, 4368-9).[78] The amount of the so-called Hewitt adjustment requested by SSU brings SSU's salaries only half way to the lowest acceptable "competitive" salary levels.[79] In an effort to stem the exodus of trained employees and given the critical nature of the operations and maintenance and customer service functions in maintaining high quality service to customers, SSU already has implemented the Hewitt adjustments for these positions (Lock: T. 4333; Denny: T. 4397).

OPC presented witness Katz, a solo practitioner retired from government service, who relied on a 1954 publication to support his claim that salary is not among the most critical factors in an employee's decision to remain with an employer (T. 2293). Does Mr. Katz expect anyone to believe that the employer/employee

---

[78]As explained by Hewitt's representative, the Hewitt Study was performed using the most up-to-date analytical methods which Hewitt has applied to hundreds of clients, including Florida corporations (T. 4338-40; 4354-5). The Study analyzed salary data from numerous statewide and local sources (T. 4308). For instance, since most of SSU's customer service and clerical staff are located in Apopka, the Hewitt Study analyzed salaries from around the state but gave more weight to salaries being paid in the Orlando area (T. 4314).

[79]As witness Lock explained, an acceptable competitive level is plus/minus 5% from market (T. 1990).

relationshp has not changed since 1954? Strike One. To further gauge the credibility of Mr. Katz's assessment of the Hewitt Study, one need look no further than his testimony on cross-examination that government pay is competitive with market pay -- only lagging behind (T. 2303). Strike Two. Mr. Katz then struck out in the form of his fatally miscalculated analysis of the NAWC data to suggest that SSU's payroll is excessive. Ms. Lock pointed out that Mr. Katz (1) compared SSU's total water and wastewater payroll to partial water only revenues which erroneously inflated SSU's payroll to revenue ratio (T. 4305; Ex. 211); (2) compared SSU's water and wastewater payroll to water only customers which improperly inflated SSU's payroll to customers ratio (T. 4306, Ex. 211); and (3) referred to statistics of NAWC utilities located nationwide as a reliable basis for analyzing the reasonableness of SSU's payroll (T. 2296) after criticizing the Hewitt Study as lacking "local focus" because it included an analysis of salaries from locations statewide (T. 2294-5, 4308-9). Ms. Lock's rebuttal of Mr. Katz's analysis was not disputed by OPC. Finally, a review of the record leads one to doubt whether Mr. Katz could have testified as he did if he ever truly reviewed the Hewitt Study (T. 4309-14).

Since Mr. Katz had produced no analysis of the Hewitt Study, OPC introduced Operator II salary data from a Florida League of Cities Salary Survey from cities of less than 10,000 in population

(Ex. 145).[80] The information presented by OPC represented 21 Operator II positions. Factoring in the 21 positions would have little significance on the market average reported, since 96% of all Operator IIs were already represented in the Hewitt Study results (the data relied upon by Hewitt represented salary data for 451 positions). It is noteworthy that SSU's Operator IIs would not likely leave SSU's employ to be among the lowest paid 5% of the Operator IIs in the state. It should also be noted that the Commission has reviewed SSU's payroll on three occasions since 1992 and has never identified any excessive pay practices.[81] Therefore, in the absence of evidence in the record establishing that SSU's salaries for employees not considered in the Hewitt Study are excessive, the Commission cannot deny SSU the Hewitt adjustment costs on the basis of OPC's flimsy innuendo.[82]

In this regard, Ex. 142, DGL-3, pages 7 and 15, indicate that SSU did not consider several salaries which were at or above market

---

[80]The number of Operator IIs indicated 21 positions in Ex. 145 as employed by small utilities constitutes less than 5% of the total number of all Operator IIs which identified in the three Florida League of Cities surveys.

[81]93 F.P.S.C. 3:504, 562-4 (SSU's incentive compensation approved where no evidence indicating wages and compensation were excessive or unreasonable); see also 93 F.P.S.C. 1:491, 540-1 (GTE Florida's supplemental retirement benefits and incentive compensation allowed where proven reasonable and OPC presented no analysis proving the contrary).

[82]The reasonableness of SSU's 1996 payroll adjustments is further demonstrated by the fact that after both adjustments requested by SSU are implemented, SSU's payroll would be consistent with the 1994 average for NAWC members (Ex. 211, DGL-5, 6).

as a set-off against the proposed Hewitt adjustment. Such a set-off would not be appropriate for the following reasons: (1) using the actual pay rates and market data on Ex. 142 (DGL-3, page 7), there is only $21,000 in above market payroll for all of the positions combined; and (2) SSU already is requesting only one-half of the adjustment necessary to get to the minimum acceptable salary -- a $21,000 offset pales by comparison to this voluntary concession by SSU.

Similarly, OPC apparently intends to rely upon Ex. 146 to suggest that SSU's Vice President-Finance is paid more than the Florida market for this position. As Ms. Lock testified, no other Florida water utility is anywhere close to the size of SSU. In fact, Ms. Lock could not even identify another Florida water utility that had a Vice President-Finance (T. 2061-2). Just as a lone tree in a cornfield does not turn the field into a forest, OPC's inability to identify anything more substantial than 2 twigs (the Operator II FLC analysis for small utilities and Florida Vice President-Finance data) to even test the crop of SSU's expert testimony confirms the reasonableness of SSU's payroll adjustments.

Issue 83: What adjustments are necessary to remove salaries and benefits necessary with employee lobbying?

Fifty percent (50%) of the salary of SSU's manager of Communications and Governmental Relations should be removed.

ARGUMENT: Ms. Dismukes limited her analysis to the travel reimbursement forms of the subject employee, failed to address the employee's timesheets, and made no mention of the employee's correspondence and activities with persons other than SSU's

lobbyist (T. 61-3). The unrebutted testimony of Ms. Lock that only three of the 13 itemized responsibilities on this employee's job description pertain to lobbying supports her liberal suggestion that 50% of the employee's salary should be moved below the line (T. 4335-7; Ex. 211).[83]

Issue 84: Should expenses be reduced to reflect salaries and expenses related to SSU's acquisition efforts?

Adjustments should only be made according to time sheets consistent with the Commission's past practice. OPC failed to present this information to the Commission and failed to provide credible evidence supporting any adjustment whatsoever. Therefore, the Commission should accept SSU witness Vierima's proposal to allocate 50% of the salaries for the employees identified in Mr. Vierima's testimony to acquisition efforts (T. 4414).

Issue 86: What adjustments are necessary to SSU's Hepatitis Immunization Program (Audit Disclosure No. 11)?

The adjustments to SSU's Hepatitis Immunization Program should be ($8,896) for 1995 and ($9,031) for 1996.

ARGUMENT: The cost of SSU's Hepatitis Immunization Program is $160 per employee, and the adjustments to SSU's Hepatitis Immunization Program should be ($8,896) for 1995 and ($9,031) for 1996 as shown in Exhibit No. 193. Staff witness Small's Audit Disclosure No. 11 recommends adjustments of ($12,800) for 1995 and ($14,508) for 1996, which are based upon the erroneous assumption

[83]See 93 F.P.S.C. 2: 695, 717-718 (Mad Hatter Utility allowed percentage of salary expense of employee based on number of recurring duties in list of job responsibilities); 92 F.P.S.C. 10: 408, 442 (portion of costs for government liaison allowed above the line based on showing of liaison's function).

that SSU's cost per employee is $80. Mr. Small agreed that the adjustments identified in Ex. 193 are correct based upon a cost per employee of $160 (T. 3260-2).

Issue 86(a): Should an adjustment be made to reflect Other Administrative Projects that will be amortized by the end of the test year?

Yes. However, the reductions in test year expense should only total $63,817, rather than the $93,452 proposed by OPC witness Kim Dismukes.

ARGUMENT: Ms. Dismukes proposes to reduce deferred debit amortization expenses related to Operations and Administrative projects ("OAP") by $93,452. The basis for her adjustment is that these OAP projects will be fully amortized at the end of the 1996 test year (T. 2774; Ex. 175, Schedule 33). The 1995 budget was used as a basis to project the 1996 amortization expense for OAP projects. Actual 1996 OAP projects and their respective amortization expenses were not included in the MFRs. There are seven OAP projects which either began amortization in 1996 or had only a partial year amortization for 1995. The annualization of these expenses totals $45,377 compared to the $15,742 (for partial amortization of the three 1995 projects) in the MFRs. When the $29,635 difference is applied to Ms. Dismukes' proposed adjustment, the appropriate net expense decrease is $63,817 (T. 5111-3; Ex. 244, MAB-2).

Issue 87: Are any adjustments necessary to sludge hauling expense at the Beechers Point/Palm Port facility (Audit Disclosure No. 5)?

*No. The sludge hauling expenses being incurred are the most

cost effective remedy available to date, and these are recurring expenses.*

ARGUMENT: There is no record evidence to support an adjustment to the sludge hauling expenses for the Beechers Point/Port Palm facility. Mr. Small admitted that he is not aware of any disposal methods that are more cost-effective than the disposal method currently employed by SSU at the Beechers Point/Palm Port facility (T. 3255). Mr. Small also admitted that any effluent disposal method utilized by SSU for this facility will involve recurring costs (T. 3256). In the absence of evidence establishing that the costs are unreasonable or imprudently incurred, SSU must be permitted to recover them in rates.

Issue 88: Should SSU's requested amount of purchased power expense for Deltona Lakes be approved (Audit Disclosure No. 8)?

Yes. Although the total purchased power for 1995 was under budget by approximately $76,000 (or 14%) in 1995, this was due largely to wet weather. Actual year-to-date costs exceed the MFR budgeted costs.

Issue 90: Should an adjustment be made to remove the utility's allocated share of Shareholder Services (Audit Exception No. 5)?

No. The allocated expenses of $208,776 are reasonable.

ARGUMENT: The allocated expenses represent SSU's portion of the cost incurred by MPL for reporting and communicating with shareholders. The services provided to shareholders include annual shareholder meetings, SEC filings, stock exchange fees, rating agency fees, registrar and transfer agent expenses, board fees,

annual and quarterly reports, proxy statements, and staff to respond to shareholder inquiries (T. 267). These recurring costs are necessary for SSU to obtain equity financing through MPL, which is critical to the financial well-being of SSU (T. 267, 4389). The Commission previously has allowed utility recovery of similar expenses. 83 F.P.S.C. 2:148, 175.

OPC provides no justification for its proposed disallowance of 50% of there costs (T. 2766-7). OPC cites Order No. 11307 for the proposition that the Commission does not allow shareholder relations expenses that are incurred for activities related to image building and good will (T. 2767). Yet OPC makes no claim that the expenses allocated to SSU are for image building or good will. Mr. Vierima confirmed that SSU's allocated share of MPL's Shareholder Services does not include expenses related to image building and good will (T. 4388). Staff's proposal to impose a similar adjustment for those costs also should be rejected as Staff witness Small acknowledged that he had no prior experience reviewing shareholder communication expenses and, therefore, did not know if any of the expenses were related to image building or goodwill (T. 3231, 3236-47, 3263).

Issue 92: Should the Commission allow the Company's proposed conservation expenses?

Yes. Several representatives of Florida's water management districts endorsed SSU's program and support recovery of the associated expenses.

ARGUMENT: SSU requested $524,425 for its conservation programs including $153,420 for a statewide education program, $87,500 for

a conservation program specific to Marco Island customers, and $283,505 to support an aggressive conservation program in six targeted high use communities (Ex. 153, p. 73). State Water Policy dictates that "conservation of water shall be required unless not economically or environmentally feasible" (Rule 63-40.412, F.A.C.; Farrell: T. 3754; Wilkening: T. 4014). To meet the reasonable-beneficial use requirement for obtaining a consumptive use permit, a utility must undertake all reasonably available conservation measures (Rule 62-40.410(2)(i), F.A.C.; SJRWMD Applicant's Handbook Section 10.0; Rule 40D-2.301(1)(k), F.A.C.; Wilkening: T. 4014). The WMD witnesses confirmed that the costs for the programs requested by SSU are well within the range of costs expended by other utilities of similar size (T. 3741-42, 3676, 4019, 4036).[84] These witnesses further substantiated SSU witness Kowalsky's testimony that all costs for public education, including activities that could possibly be categorized as "public relations", are essential to implementing a successful conservation program and should be recovered by SSU (T. 3678-82, 3781-2). Surveys to measure the results of program elements also are important and should be recovered (T. 3744, 3760). The WMDs believe that

[84]The conservation techniques proposed in SSU's program, such as plumbing retrofit programs, rebates for low flow toilets and irrigation shut-off devices have been proven effective in many other applications in Florida (Adams: T. 3672-3, 3676; Farrell: T. 3742, 3745-6; Kowalsky: T. 4151). SWFWMD recently agreed to fund an identical SSU program specific to the Spring Hill service area. The SWFWMD performed a line by line analysis of the expenses before funding it (T. 4165; see Farrell: T. 3774).

conservation is the most cost-effective means of meeting Florida's water supply needs (Farrell: T. 3759; Wilkening: T. 4015). SSU's proposed conservation program comports with such belief and complies with the WMDs' opinion that conservation is the best supply tool and is in the best interest of SSU's customers (T. 3675-6). For these reasons, the Commission should approve SSU's conservation program costs.

Issue 93: What is the appropriate amount of current rate case expense associated with Docket No. 950495-WS?

Per the MFRs, and as increased due to the extension of this proceeding, additional customer notices, additional hearings, etc. through completion of this proceeding.

ARGUMENT: SSU's revised estimate of rate case expense and actual charges incurred through March 31, 1996 is $1,628,065 and $1,084,376, respectively (Late-Filed Ex. 255, Volume IV). The revised estimate represents an expense of approximately $11,500 per service area (Id.; T. 1477). In Docket No. 920199-WS, rate case expense per service area is $13,869 based on the revised estimate of charges as of March 31, 1996 (Late-Filed Ex. 255, Volume IV). Thus, SSU successfully has reduced rate case expense per service area by approximately 17%.

The reduction in rate case expense is even more impressive when the Commission considers that significant unanticipated costs were incurred in this proceeding due to: (1) the Commission order requiring SSU to file revised MFRs to include Hernando, Hillsborough and Polk Counties -- a requirement ultimately rescinded by the Commission; (2) the impact of scheduling, noticing

and attending an additional round of customer hearings (a total of 21); (3) the impact of requiring an updated filing and a second set of notices to customers to reflect potential final rates under alternative rate structures; (4) the volume of discovery; (5) the volume of pleadings and motions to dismiss; and (6) the impact of rescheduling the final hearing dates to the April-May, 1996 time frame which provided additional time for additional discovery, discovery disputes and other pleadings (T. 1458, 5225). In light of these facts, the rate case expense incurred by SSU in this proceeding is reasonable and prudent and should be approved.

On the final day of the hearing, the Commission refused to admit Late-Filed Exhibits 257[85] and 258 which reflect actual charges through April 30, 1996 of $1,301,277 and a revised estimate of rate case expense of $1,730,174. The Commission should reconsider and reverse this ruling. During the hearing, a dispute arose over SSU's right to submit a late filed exhibit revising estimated rate case expense and updating actual charges incurred. The Chairman admitted Late-Filed Ex. 255 into evidence stating in no uncertain terms that:

> Rate case expense is a legitimate expense. It is though subject to examination by the parties, and cross examination by the parties, as well. My recollection is that it is either provided as a late filed exhibit or provided at the end. And there is not that much opportunity to look at it.

[85]The Chairman admitted a portion of Late-Filed Exhibit 257 as Late-Filed Exhibit 259. Late-Filed Exhibit 259 consists almost entirely of invoices and related documents supporting legal fees incurred in connection with the Docket No. 920199-WS appeal and remand proceedings.

opportunity to look at it.

(T. 5368).

Here, the parties were provided Late-Filed Ex. 255 on Monday, May 13, 1996, three days after the conclusion of the hearing on May 10, 1996 (except the additional day set aside for rate case expense on May 31, 1996). Due to the quick turn-around time required by the Chairman, SSU was unable to update Ex. 255 until May 28, 1996 when it served Late-Filed Ex. 257. Exhibit 258 was a one-page update to Ex. 257 served on the morning of the May 31, 1996 hearing. Counsel for intervenors asked questions concerning Ex. 257 thereby undermining the credibility of their claim that they were not provided sufficient time to review the exhibit. Moreover, the procedure followed by SSU in this case went above and beyond the standard practice employed by the Commission which would permit the filing of Late-Filed Exs. 257 and 258[86] and allow the parties 10 days to file objections thereto and/or address the exhibits in their post hearing briefs.

The fact that the updates to rate case expense in Exs. 257 and 258 were filed after the due date for late-filed exhibits should not be determinative of whether the exhibits are admitted into evidence. Since every party had a right to either address the exhibits at hearing (which they did!) or in post hearing objections and/or briefs, no party was prejudiced and Exs. 257 and 258 should be admitted into evidence. See State Dept. of Environmental Regulation v. Puckett Oil, 577 So.2d 988 (Fla. 1st DCA 1991)

[86] Id.

(hearing officer/agency lacks statutory authority to impose sanction of striking untimely response to motion for attorney's fees and costs where there was no prejudice arising from late filed response and to do so would impose a penalty in violation of Art. I, Sec. 18 of the Florida Constitution).

Issue 94: Should the expense associated with Docket No. 930880-WS (Uniform Rate Investigation Docket) be considered Regulatory Commission Expense-Other, and if so, what is the appropriate treatment and amount?

The expenses should be recovered as rate case expense allocated to all FPSC jurisdictional customers in this case. The amortization period should begin on the effective date of final rates in this case.

ARGUMENT: As of April 30, 1996, SSU had incurred expenses of $459,064 in connection with the Docket No. 930880-WS uniform rate investigation, including legal fees and costs associated with the pending appeal before the First DCA (Late-Filed Ex. 255). SSU's original filed estimate of $432,089 for costs associated with this docket has been increased by $65,000 to cover anticipated additional legal expenses associated with appeals and remand proceedings before the Commission (T.47-8, May 31 Hearing).

OPC seeks to deny SSU $345,671 of these costs on the premise that SSU's "advocacy of uniform rates in that docket was unnecessary ...." (T. 2774, Ex. 175, Schedule 30). Ms. Dismukes' proposal strains credibility as it would not even allow SSU to recover the cost of Commission required notices in the docket (T. 5222).

The record confirms that SSU's costs should be recovered as prudent rate case expense. Ms. Dismukes was unaware but ultimately admitted that rates were subject to change in Docket No. 930880-WS (Ex. 179) and that the Hernando County bulk wastewater rate and uniform residential wastewater rates were changed in Docket No. 930880-WS (T. 2851-3). SSU, the Commission and other participating parties observed the procedural requirements of a rate case proceeding including customer notices and customer service hearings (T. 5222).[87]

The uniform rate investigation was a docket initiated by the Commission (not SSU) in response to the requests of various intervenors. SSU exercised its right to actively participate in this proceeding by supporting the rate structure that best serves the long term interests of SSU, its customers and the environment -- uniform rates. Those who opposed uniform rates also actively participated in the proceeding. Ultimately, customers on both sides of the issue were fully and fairly represented, the Commission was fully informed on all relevant issues and had a full and complete record upon which to base their decision. Accordingly, all costs incurred to date, including SSU's costs incurred in educating customers on the impact of various rate structures, should be recovered as rate case expense and allocated to all of SSU's FPSC jurisdictional service areas (T. 5222-4, 5304-

---

[87]See also Order Establishing Procedure in Docket No. 930880-WS, Order No. PSC-93-1516-PCO-WS, issued October 14, 1993, at 4; and, Notice of Service Hearings issued March 1, 1994 in Docket No. 930880-WS.

5).

In the alternative, SSU has agreed that these costs may be amortized over 5 years with the unamortized balance in working capital and the amortization period beginning on the effective date of final rates.

Issue 95: Should the expense associated with Docket No. 930945-WS (Jurisdiction Docket) be considered Regulatory Commission Expense-Other, and if so, what is the appropriate treatment and amount?

Yes. The costs should be amortized over five years to all SSU plants. The amortization period should begin on the effective date of final rates.

ARGUMENT: The Commission instituted the comprehensive investigation into SSU's statewide jurisdiction resulting in the costs incurred by the Company. There is no evidence that any of the $95,530 of costs included in the MFRs was imprudently incurred. The $95,530 should be amortized over five years (an annual expense amount of $19,106) to all SSU service areas (T. 5298-301). The unamortized balance should be included in working capital with the amortization period beginning on the effective date of final rates.

Issue 96: What is the appropriate treatment for additional rate case expense incurred subsequent to the final order in Docket No. 920199-WS (Prior Rate Case)?

*The unrecovered rate case expense consists of two parts. One part consists of previously Commission authorized rate case expense in the final order in Docket No. 920199-WS. The remainder consists of costs incurred to process reconsideration requests, defend appeals, address issues on remand and represent SSU in subsequent Commission proceedings. The Company did not initiate the appeals,

achieved an affirmance of revenue requirements and supported the Commission's defense of its rate structure decision through the Florida Supreme Court level. There is no basis for disallowance of recovery of these costs. As the appeal costs for Docket No. 920199-WS which are included in this case are reasonable, and waiting for the conclusion of the remand to approve the costs would be administratively inefficient, the costs should be approved. The amortization period should begin on the effective date of final rates for this case.*

ARGUMENT: Again, there is little debate on this issue. Marco and OPC agree with Staff's position that all prudently incurred expenses incurred subsequent to the issuance of the Final Order in Docket No. 920199-WS should be amortized over four years as rate case expense to all facilities included in Docket No. 920199-WS. SSU agrees.

The expenses at issue were supported by Mr. Ludsen. Mr. Ludsen has testified in support of legal rate case expense in prior SSU rate cases and his testimony has been relied upon by the Commission in its determination of SSU's rate case expense.[88] At the May 31st hearing, Mr. Ludsen offered ample evidentiary support and justification for the legal fees and costs incurred by SSU for the Greenberg Traurig and Cullen and Dykman law firms in connection with this docket. These expenses total $89,187 for Greenberg Traurig and $76,158 for Cullen and Dykman (Late-Filed Ex. 259;

[88]See, e.g., In re: Application for a rate increase by SOUTHERN STATES UTILITIES, INC., et. al., 93 F.P.S.C. 3:504, 580 (1993).

T.37, May 31 Hearing).

Mr. Ludsen testified that Greenberg Traurig and, specifically, Arthur England, a former Florida Supreme Court justice who wrote a number of opinions concerning Commission cases while on the court, were retained by SSU to challenge the First DCA's decision reversing the Commission imposed uniform rate structure and to represent SSU in the remand proceedings before the Commission. Cullen and Dykman was retained after the Commission voted to order SSU to provide refunds in the magnitude of $10 million. The Cullen and Dykman firm has extensive experience in ratemaking and rate design issues and, like Mr. England, was retained on the recommendation and advice of SSU's General Counsel. Their services were justified and necessary in light of the tight time frame faced by SSU at the time to research and prepare a motion for reconsideration of a Commission order which, in Mr. Ludsen's words, "would be disastrous to the company and to the customers" and, indeed, "could be a death blow to the company" (T. 41-7, 51-2, 56, 60-1, 64, May 31 Hearing). SSU maintains that these expenses are justified. SSU draws the Commission's attention to the fact that SSU's positions articulated in its Motion for Reconsideration of the Refund Order (Order No. PSC-95-1292-FOF-WS) have been vindicated and confirmed by the Florida Supreme Court's GTE Florida Inc. v. Clark decision and the Staff Recommendation dated May 30, 1996 in Docket No. 920199-WS recommending that the Commission not order a refund.

Issue 97: Should an adjustment be made to administrative and general and customer expenses for SSU's

inefficiency?

No.

ARGUMENT: Once again, OPC proposes an "inefficiency adjustment" (T. 5213-4) which not only previously has been rejected by the Commission as it concerns the Lehigh service area but which also is driven solely by a desire to reduce rates at all costs.[89] First, the transfers which OPC considers inefficient were approved by the Commission as being in the public interest (T. 5214-5).

Second, OPC suggests that because the level of certain A&G costs for the acquired utilities increased after acquisition, this fact somehow demonstrates an inefficiency or "diseconomy of scale." OPC ignores the subsidies from the prior developer-owners to the acquired utilities -- subsidies which keep rates artificially low, present no conservation signal, and otherwise are to be discouraged. For instance, SSU witness Ludsen pointed out that the former parent of OOU, Landstar Development Corporation, charged the utility an annual fee of only $30,000 for accounting and data processing services during the period 1987 through 1994 (T. 4214). Obviously, Landstar was subsidizing OOU's A&G costs by not billing OOU for the true cost of these services (T. 4214). OPC also ignores the fact that SSU's A&G and customer service cost per customer before the acquisition of OOU was $85 per customer -- after the acquisition, the cost per customer was down to $80 --

[89]With regard to the Lehigh service area, Public Counsel presented no evidence different from the evidence previously rejected by the Commission as insufficient to justify the proposed "inefficiency" adjustment.

hardly evidence of a "diseconomy of scale" (T. 4215).[90]

Finally, OPC ignores the extreme dissatisfaction expressed by customers in the Buenaventura Lakes service area with the service provided by the former owner, Orange Osceola Utilities, Inc. ("OOU") (T. 5217-8). In fact, one customer, Mr. James Downing, testified that he owned three properties. Kissimmee Customer Service Hearing (9/20/95), T. 26. Two properties were served by SSU, and one by OOU. Mr. Downing testified that he was happy with SSU's service, happy with SSU's rates and had no problems with SSU in the two service areas served by SSU (T. 26-33). Apparently not understanding that SSU was not then serving the OOU service area, the witness expressed consternation as to how he could be so happy with SSU in the other two areas but treated so poorly in the OOU area. The cause for his dissatisfaction was then made apparent, SSU did not yet own, therefore, was not yet operating, the OOU facilities. (Kissimmee CSH at T. 31).[91]

Issue 98: Should an adjustment be made to corporate insurance expense?

---

[90]OPC further ignores the evidence that SSU's A&G costs are at levels below the average levels per customer and per dollar of revenue achieved by the water utilities nationwide comprising the National Association of Water Companies (T. 5216-7). These facts hardly demonstrate an inefficiency.

[91]This sequence of events demonstrates the Catch-22 which capitulation to OPC's monomaniacal drive to low rates has placed utilities like SSU in -- when service complaints are made during customer service hearings of the type made by Mr. Downing in Buenaventura Lakes, OPC and Intervenors argue that SSU's quality of service is poor and the return on equity should be reduced. However, when the utility incurs the A&G and customer service costs necessary to address such types of complaints, OPC and Intervenors complain that the increased cost should not be borne by customers.

No, except that workers compensation expense should be increased to reflect 1995 actual expenses as an offset if any reduction to SSU expenses is to be made.

ARGUMENT: The adjustment proposed by OPC witnesses Larkin/DeRonne should be rejected for a number of reasons. First, Mr. Larkin understates SSU's 1996 premiums by $63,096 by failing to include the insurance premiums of Buenaventura Lakes. Second, Mr. Larkin inappropriately compares insurance premiums to insurance expense. The accrued insurance expense in the MFRs will never match the amount of budgeted insurance premiums because the accrued insurance premiums are budgeted on a cash basis. Mr. Larkin's attempt to create an adjustment by erroneously tying an understated amount of insurance premiums to insurance expense should be denied (T. 5044-6).

Further, Ms. Kimball confirmed that on a gross expense basis, 1995 actual expense exceeded the MFR projection by $121,150 (T. 5046-7; Ex. 242, JJK-7). SSU requests that such additional expense be used as an offset to any Commission imposed expense reductions without exceeding the revenue requirement projected in the MFRs.

Issue 99: Should a true-up budget adjustment be made to test year expenses?

No. Actual 1995 expenses were only $65,685 less than the projected 1995 total expenses in the MFRs.

ARGUMENT: Mr. Bencini testified that "actual 1995 expenses of $25,531,190 (excluding Buenaventura Lakes) were only $65,865 less than the projected total expenses of $25,596,875 indicated in the MFRs (which also excluded Buenaventura Lakes)." (T. 5114-5). This

amounts to a variance of less than 3% -- a true reflection of the startling accuracy of SSU's projections. In granting OPC's Motion to Strike SSU witness Broverman's rebuttal testimony, the Chairman counseled SSU "that it is inappropriate to allow you (SSU) to select one category to use actual expenses as opposed to budget expenses in the use of a projected test year" (T. 789). Based on the Chairman's ruling, Ms. Dismukes' adjustments in Ex. 175 (KHD-1, Schedule 28) must be denied. Contrary to the Chairman's ruling, these adjustments decrease selected projected expenses which [exceeded] actual amounts (annualized using September 1995 actual expenses).[92]

Issue 100: Should the miscellaneous adjustments for bad debt, excessive employee recognition and the Price Waterhouse audit proposed by Witness Dismukes be made?

No.

ARGUMENT: SSU concurs with Ms. Dismukes' proposed adjustments for salary expense and Enterprise purchased water shown on Ex. 175 (KHD-1, Schedule 35). The adjustments proposed for rate case overtime, employee recognition expense, bad debt expense and the Price Waterhouse audit fees should be denied for the reason indicated in Issue 99 as well as for the reasons discussed below.

Ms. Dismukes proposes to reduce employee recognition expenses

---

[92]If the Commission approves the adjustments proposed by Ms. Dismukes in Ex. 175 (KHD-1, Schedule 128), fairness and equity would require the Commission to make upward adjustments for 1995 expenses, such as insurance expense, which exceeded projected amounts. Nevertheless, SSU would not have been treated fairly concerning the actual 1995 FAS 106 issue which SSU attempted to address through witness Broverman.

by $14,341 on the ground that the $19,099 increase in these expenses budgeted for 1995 is due solely to this rate case and is allegedly non-recurring (T. 2776-7). Her premise is misplaced. Historically, SSU has not adequately recognized employees who have persevered with an excessive workload over the past several years. This is evidenced by the high employee turnover rate since 1991. Moreover, SSU has limited employee recognition expenses in the 1996 MFRs to $34,444, well below the 1996 budgeted O&M amount of $52,112. For these reasons, Ms. Dismukes' proposed adjustment should be rejected (T. 5117-8).

Ms. Dismukes also proposes to decrease bad debt expense on the ground that SSU's March 1995 Budget Variance Report indicated an adjustment of $46,955 to reflect a lower reserve requirement (T. 2777). The proposed adjustment should be rejected. SSU's average annual bad debt requirement since 1989, adjusted (increased) for the acquisition of Buenaventura Lakes, totals $193,862. The $217,899 of bad debt expense included in the MFRs for 1995 represents a .39% bad debt expense as a percentage of revenues, a low figure when compared to the industry average. Although the .39% factor applied to requested final 1996 revenues equates to a bad debt expense of approximately $254,000, SSU included only $246,165 of bad debt expense in the MFRs for 1996. Finally, the Commission's decision to implement a modified stand-alone rate structure for interim rate purposes is likely to increase, not decrease, bad debt expense for 1996 (T. 5119-20).

Finally, Ms. Dismukes proposes to reduce test year expenses by

$76,463 on the mistaken premise that SSU's budget included two audits (T. 2777). There is one annual audit. The 1995 budgeted expense of $284,110 includes 1994 and 1995 audit fees actually billed by Price Waterhouse during 1995 (this expense is historically accounted for on a cash basis).[93] The 1995 budget includes $75,000 for the year-end portion of the 1994 audit and $60,000 for the interim portion of the 1995 audit. The 1996 budget includes $75,000 for the year-end portion of the 1995 audit and $65,000 for the interim portion of the 1996 audit. Further, audit fees have substantially decreased since 1990 (1990 - $200,350; 1996 - $140,000). For these reasons, Ms. Dismukes' proposed adjustment should be rejected (T. 5120-2).

Issue 102: Should a 1996 attrition factor of 2.49% be applied to 1995 expenses as opposed to the 1.95% used in the MFRs?

Yes. The 1996 attrition factor of 2.49% should be applied to the 1995 projected expenses in the MFRs.

ARGUMENT: The Commission took official recognition of Order No. PSC-96-0177-FOF-WS, the Order Establishing the 1996 Price Index for Water and Wastewater Utilities, without objection from any party. This Order establishes the 1996 attrition factor of 2.49% which should be applied to SSU's projected 1995 expenses in the MFRs.

Issue 103: Should actual 1995 FASB 106 expenses be considered in the 1995 test year?

---

[93]Typically, each annual audit is conducted in two phases. The interim phase begins in October/November (prior to year-end) and year-end fieldwork takes place in February of the following year (T. 5121).

Yes.

ARGUMENT: SSU attempted to present its actual 1995 FASB 106 expense in the rebuttal testimony of Scott Broverman. Chairman Clark refused to permit the introduction of this evidence into the record on the basis, in part, that "it is inappropriate to allow [SSU] to select one category to use actual expenses as opposed to budget expenses in the use of a projected test year" (T. 789).

Given Chairman Clark's instruction, this issue appears to have been de facto stricken. SSU notes that actual 1995 expenses were $25,531,190 compared to the $25,596,875 projection of 1995 expenses contained in the MFRs (a $65,000 variance) (T. 5114-15). Given the Chairman's ruling, SSU believes that this minimal $65,000 or less than .3% deviation demonstrates the validity and credibility of SSU's projections in this case. Further, given Chairman Clark's ruling, the Commission should not reduce SSU's revenue requirements where one actual expense item below may be shown to be the MFR projection serve the Commission refused to consider expense items where actual costs exceeded the projected MFR amount.

Issue 105: Are adjustments appropriate to reflect gains or losses on the sale of SSU plants as above the line income?

No adjustments are appropriate.

ARGUMENT: Once again, OPC simply reargues facts concerning SSU's gain from the condemnation of SSU's St. Augustine Shores ("SAS") facilities which the Commission has rejected four times in the past -- the most recent of which decisions was affirmed by the

First District Court of Appeals. Citrus Co. v. SSU, 656 So.2d 1307 (1st DCA 1995).[94] The material facts relating to the Venice Gardens facilities previously serving SSU's customers in Sarasota County are in all material respects identical to the facts concerning the SAS facilities. These facts include: (1) the sales were involuntarily made by condemnation or under threat of condemnation; (2) SSU forever lost the ability to serve the customers in the SAS and Venice Gardens service areas; (3) the Commission never regulated SSU's service in the SAS or Venice Gardens service areas; and (4) the facilities which were sold that served customers in the SAS and Venice Gardens service areas were never considered in ratesetting procedures for SSU's Commission-regulated customers. (T. 3939-61; 3965-7). As the Commission found in Order No.PSC-93-0423-FOF-WS regarding St. Augustine Shores:

> We agree with Mr. Sandbulte that customers who did not reside in the SAS service area did not contribute to recovery of any return on investment in the SAS system. Further, when this system was acquired by St. Johns County, SSU's investment in the SAS system and its future contributions to profit were forever lost. Thus, the gain on the sale serves to compensate the utility's shareholders for the loss of future earnings. Arguably, if the sale of this system had been accompanied by a loss, any suggestion that the loss be absorbed by the remaining SSU customers would be met with great opposition. However, the rationale for sharing a loss is basically the same as the rationale for sharing a gain. Since SSU's remaining customers never subsidized the investment in the SAS system, they are no more entitled to share in the gain from that sale than they would be required to absorb a loss

[94]Intervenors simply ride on OPC's flimsy coattails regarding this proposal.

from it.[95]

The Commission reached the same conclusion in Order Nos. PSC-93-1958-FOF-WS, PSC-93-0301-FOF-WS and PSC-93-1023-FOF-WS.

Florida law supports the Commission's finding that customers do not acquire an ownership interest in a utility's property.[96] This fact applies regardless of whether customers paid contributions in aid of construction to the utility.[97] Certainly, as the Commission consistently has found, the owner of the property faces the risk of loss, i.e., under-recovery of the owner's investment, the perils of being underinsured if the property is lost to fire, theft or other casualty, or if the value of the property cannot be recovered through rates or sale of the property. As the Commission recognized in its prior orders on this issue, OPC certainly would never countenance recovery from remaining customers of losses sustained by SSU from the sale of its facilities.[98]

---

[95]See 93 F.P.S.C. 3:504, 561-562 (1993).

[96]See Dade County v. General Waterworks Corporation, 267 So.2d 633 (Fla. 1972); General Development Utilities, Inc. v. Charlotte County, Florida, 620 So.2d 1035 (Fla. 2d DCA 1993); In Re: North Ft. Myers Utility, Inc., 93 F.P.S.C. 12:404, 409 (1993).

[97]SSU's Commission-approved tariff informs customers at the time they apply for service that they do not acquire ownership rights in SSU's property when they pay SSU the CIAC required in the tariffs (T.3883). Given this fact, the testimony of Intervenors' witnesses Hansen and Mann indicating that customers have some basis to believe otherwise regarding their CIAC payments is without merit and must be rejected.

[98]Mr. Sandbulte's apartment analogy is instructive in these and other regards (T. 3950-1). The Commission also previously has rejected OPC's attempts to equate this gain on sale issue to the ratemaking treatment of abandonments. See orders cited above. SSU witness Sandbulte provided further justification for the

Perhaps OPC once again will attempt to convince the Commission that the apparent sharing of a $5,000 loss from the sale in the 1980s of certain inconsequential facilities is sufficient justification for the sharing of gains it seeks in this case. The Commission repeatedly has rejected this argument and should do so again.[99]

Appendix C identifies each of the sales relevant to OPC's proposal and provides a number of the reasons why OPC's proposal must be rejected regarding each sale.[100] Any other result would be confiscatory and unlawful.

Issue 106: **If gains on sale are to be amortized and shared by ratepayers, should the amount of the gain first be offset by an amount sufficient to increase the level of utility earnings during the historic period to a level equivalent to the applicable rate of return authorized by the Commission for each year during the historic period?**

*The denial of any gain on sale from shareholders would not be proper or lawful. At minimum, any amount to be shared with ratepayers must first be reduced by an amount necessary to increase the level of utility earnings during the historic period to a level

---

rejection of Public Counsel's argument (T. 3969-70).

[99]The order was a decision made without a hearing (in fact, a proposed agency action order) and there is no record as to the facts and circumstances in that case (T. 3943-4).

[100]For instance, another reason to reject OPC's proposal is that no Commission precedent exists whereby the Commission ever has forced a utility to share a gain from the sale of assets which never were included in rate base. OPC's witness admitted no basis to dispute SSU's evidence establishing that the Spring Hill facilities sold by SSU never were included in rate base (T. 2840-3).

equivalent to the authorized rate of return for each year during the historic period.*

ARGUMENT: For each year, 1992 through 1995, except 1994, SSU either experienced losses or insignificant earnings levels such as returns on equity of -3% in 1992, 1.3% in 1993 and -3.1% in 1995. Losses in 1992 and 1995 and the pitiful 1.3% return in 1993 can be contrasted with the Commission authorized returns on equity during this period in excess of 11%. Shareholders suffered the loss of millions of dollars during these years (approximately $3 million, T. 3962, 3974) -- yet, OPC suggests that it would be equitable to accumulate extraordinary gains from property sales, forced or otherwise, during and even before this period of time so as to justify a further deprivation of shareholder property. Such a result could not be countenanced under law or principles of equity.

Issue 107: Is an adjustment appropriate to reduce regulatory assessment fees related to Marco Shores purchased water from Marco Island (Audit Exception No. 4)?

Yes, but only if the revenue associated with the transfer of water from Marco Shores is eliminated from Marco Island's test year.

Issue 108: Are adjustments necessary to property taxes for used and useful plant adjustments?

No, SSU's property tax presentation in the MFRs is consistent with prior practice previously approved by the Commission.

ARGUMENT: SSU's MFR calculation of used and useful property tax expense for 1996 comports with the Commission's rationale in

Docket No. 920199-WS.[101] SSU first calculated the total amount of taxable 1994 property and 1995 capital budget additions to plant in service. A composite, average millage rate representing 25 counties was used to gross-up taxes to account for property on which SSU is not assessed tax (instances where a county partially taxes non-used and useful property). The grossed-up tax expense of approximately $4 million was allocated to individual service areas by applying the ratio of each service area's taxable property to total SSU taxable property. The non-used and useful percentage for each plant was then applied to the allocated tax expense to derive each service area's adjustment for 1996 non-used and useful property tax exposure (T. 5108-09; Ex. 67, Volume III of MFRs).

The adjustment to 1996 property tax expense proposed by OPC witness Larkin should be rejected; however, his adjustment for cash discounts is appropriate if applied as a reduction to A&G expense (not to property tax expense) (T. 5107-11).

Issue 110: What is the proper amount of parent debt adjustment and the method of allocation to the individual plants?

The appropriate parent debt adjustment for the test year is $264,652 for water and $222,787 for wastewater as shown on Line 5 of Schedule C-1, on page 1 of Volume IV of the MFRs, subject to resolution of other issues which may affect the rate base or capital structure of the Company.

---

[101] 93 F.P.S.C. 3:504 at 589 ("... it would be erroneous to reduce property taxes by the non-used and useful plant ratio unless the utility is taxed at the same rate on all of its property").

ARGUMENT: The proper amount of parent debt adjustment is $487,439 for plants included in the filing. Mr. Larkin's assertion that deferred ITC's at the MPL level should be removed from MPL's capital structure for purposes of computing the parent debt adjustment is contrary to Rule 25-14.004(3), F.A.C. (T. 2114-5). Mr. Larkin's rational also is inconsistent with the Commission's determination of parent debt adjustments in previous SSU rate cases. See e.g., 93 F.P.S.C. 3:504, 592.

Issue 111: What is the above-the-line amount of ITC amortization and what is the appropriate method for allocating the above-the-line ITC amortization to the individual plants?

The total above-the line amortization should be $69,178, with $37,560 allocated to water and $31,618 allocated to wastewater as shown in Volume II, Book 2, page 97.

Issue 112: Is an ITC interest synchronization adjustment appropriate, and if so, what is the proper amount and the proper method of allocation to the individual plants?

Yes, in the amount of $103,854 as shown in Volume IV, page 5, line 6 of the MFRs subject to resolution of any item which impacts the capital structure.

Issue 113: What is the appropriate provision for test year income tax expense, in total?

The appropriate amount of income tax expense is dependent upon the recalculation of other issues and should include the state income tax expense, with no adjustment made for NOL carryforwards.

ARGUMENT: Net operating loss carry-forwards should not be considered by the Commission as a set-off against SSU's revenue requirements in this proceeding (T. 2137). A carry forward of the

NOLs would unfairly reduce the appropriate level of income tax expense and, consequently, SSU's revenue requirements in this proceeding (T. 2141; Ex. 152). The record confirms that SSU has incurred operating losses and has not recovered its O&M or interest costs (T. 2137-8). Carrying forward NOLs unfairly makes a bad situation worse, a "double whammy", by inappropriately reducing the appropriate amount of 1996 test year income tax expense for ratemaking purposes (T. 2137-8). Also, due to Staff's method of calculating revenue requirements, a carry forward of the NOLs would allow SSU to recover only a portion of its future tax expense (T. 2139-40). The Commission has rejected OPC's request to include NOLs in other rate cases.[102] The Commission also rejected the notion of adopting a rule that mandates the utilization of NOL carryforwards in the determination of income tax expense in Docket No. 911082-WS (T. 2134). For these reasons, no NOL tax carryforward is appropriate. Consideration of such amount would constitute an unconstitutional deprivation of property.

Issue 114: What are the test year operating income amounts before any revenue increase in total and by plant?

*Test year operating income amounts before any revenue increase is $3,384,754 and $2,629,025 for water and wastewater, respectively. These amounts can be found in Volume III, Books I and II, on Schedule B-1(W) and B-2(S), page 49 for both water and wastewater. Test year operating income amounts for the plants not

[102]See 87 F.P.S.C. 5:224, 235-7 (1987).

coming into the rate case with uniform rates can be found by referring to Schedules B-1(W) and B-2(S) in Volume III, Books 1 and 2. Operating income for the plants coming into the case with uniform rates can be found by referring to Schedules B-1(W) and B-2(S) in Volume XII, Books 1-9.*

Issue 115: Should SSU's revenue requirement be calculated on a plant specific basis?

Yes. Revenue requirements should be calculated based upon individual plants and then accumulated to arrive at total FPSC jurisdictional revenue requirements.

Issue 116: What are the revenue requirements in total and by plant?

Additional revenue requirements in total are $11,791,242 and $6,346,260 for water and wastewater, respectively. These amounts can be found in Volume III, Books 1 and 2, on Schedule B-1(W) and B-2(S), page 49 for both water and wastewater. Revenue requirements for the plants not coming into the rate case with uniform rates can be found by referring to Schedules B-1(W) and B-2(S) in Volume III, Books 1 and 2. Revenue requirements for the plants coming into the case with uniform rates can be found by referring to Schedules B-1(W) and B-2(S) in Volume XII, Books 1-9. The total revenue requirement can also be found in Summary Volume II, Book 1, page 37, columns 8 and 9, line 13.

Issue 117: Are SSU's facilities and land functionally related, and if so, does the combination of functionally related facilities and land, wherever located, constitute a single system as defined under Section 367.021(11), Florida Statutes?

Yes.

ARGUMENT: The Commission should reaffirm its finding in Docket No. 930945-WS that SSU's land and facilities statewide are functionally related so as to constitute one system under Section 367.021(11), Florida Statutes. The evidence presented by SSU in this proceeding contains the evidence upon which the Commission relied in making that finding in Docket No. 930945-WS -- and more. The functional relationship between and among SSU land and facilities statewide, best analogized to a wagon wheel, is demonstrated in Appendix D to this brief. This wagon wheel analogy was acknowledged by the Commission in Docket No. 930945-WS. This record contains evidence supplemental to the evidence presented by SSU in Docket No. 930945-WS to support the "one system" finding. For example, the central laboratory located in the Deltona Lakes service area -- only a work in progress in Docket No. 930945-WS -- was completed by SSU and bolsters the functional relationship between SSU's plants statewide from an operating perspective. Also, the record in this proceeding presents clear substantiation of SSU's position in Docket No. 930945-WS that SSU's facilities are indeed physically interconnected -- not by man's contrivances, but by nature -- in the form of Florida's aquifer system. This position was soundly rejected by the Commission in Docket No. 930945-WS. However, water experts from both the Southwest Florida Water Management District and St. Johns Water Management District testified that such an interconnection does exist and to an extent that should not so easily be dismissed. For instance, SFWMD witness Adams testified that the aquifer interconnection between

the SFWMD and SJRWMD results in the coordination of water conservation efforts between the two districts (T.3697-9, 3700-01). SJRWMD witness Wilkening confirmed the existence of the aquifer interconnection and refused to permit such fact to be down played by Intervenors during his cross-examination (T. 4023-4).[103]

For all of these reasons, the Commission should reaffirm its "functional relatedness" and "one system" findings from Docket No. 930945-WS.

Issue 118: Should the utility's proposed weather normalization clause be implemented?

Yes. The weather normalization clause ("WNC") is a win-win-win for SSU, our customers and Florida's water supply. The adjustment provides for monthly adjustments to the gallonage charge both up and down. The WNC will provide many benefits to both SSU and its customers.

ARGUMENT: SSU proposes the implementation of a WNC in this proceeding. Representatives of the WMDs also support approval of the WNC. SSU faces one of the highest exposures to revenue fluctuations in the country, largely because of weather. Dr. Morin confirmed that the WNC would shield SSU from the financial risk associated with revenue volatility (T. 4470-1). It would also protect SSU's customers against the risk of high bills associated with increased consumption and gallonage charges (T. 1732-3, 1855-

[103]In contrast to this overwhelming amount of new and reproduced evidence from SSU, Intervenors were unable to produce any evidence other than the dubious evidence they previously relied upon in Docket No. 930945-WS which was rejected by the Commission as insufficient to deny SSU's "one system" existence.

6). SSU witness Ludsen described the mechanics of the WNC (T. 1415-20; Ex. 127, FLL-4 and FLL-5). Most notably, any volatility in the customer's monthly gallonage charge will be minimal as SSU has proposed to spread the accumulating deviation between actual and projected gallonage revenues over a twelve-month period. Therefore, only one-twelfth of the outstanding balance in the WNC will be billed or credited to the customer in any given month (T. 1417-8, 1735-6).

Apart from eliminating the risk to both SSU and customers from uncontrollable events which influence consumption levels, the WNC brings many other benefits. First, the WNC should lead to reduced rate case expense as less time and resources would be necessitated to litigate issues relating to water use forecasts. Second, SSU could pursue more aggressive water conserving rate structures and programs without incurring increased business and financial risk. Third, the implementation of a WNC should lower SSU's financing costs and required return on equity (T. 317-8, 1724, 2819).[104]

The only testimony offered in opposition to the WNC was provided by Ms. Dismukes. When asked why she objected to the establishment of a mechanism which would permit SSU to earn the Commission determined revenue requirement and authorized return, Ms. Dismukes could only offer that such a mechanism would not give SSU "... an incentive to operate efficiently" (T. 2826). Ms. Dismukes' suggestion strains credibility. As confirmed by Mr.

[104]Dr. Morin testified that it would be appropriate to reduce SSU's required return on equity to 25 basis points if the WNC is implemented (T. 317-8).

Ludsen, SSU is not about to begin compromising the efficiency of its operations or its quality of service simply because the Commission chooses to implement the WNC (T. 5245).

Ironically, Ms. Dismukes provided an effective endorsement of the WNC by testifying that the WNC (or, using her terminology, a "revenue normalization clause") should be implemented if her 25% BFC/75% GC rate structure is adopted (T. 2709). Ms. Dismukes confirmed that her "revenue normalization clause" would accomplish the same result as SSU's WNC (T. 2831-2). Although Ms. Dismukes would limit SSU's recovery under the WNC to 75% of the changes in consumption, the fact remains that she has acknowledged the validity of the WNC mechanism for SSU. By doing so, she effectively undermines the credibility of each and every point of opposition she directed in her testimony to the WNC.

The WNC is essentially no different than other cost and revenue recovery clauses utilized by this Commission (T. 1416, 1523-4, 2821-3). The notion that WNC will provide a deterrent to conservation is absurd. The WNC would only provide further incentives for SSU to pursue water conserving rate structures and programs. Conversely, customers who consume excessive amounts of water will pay higher bills and benefit those who conserve water by lowering the unit price paid for the decreased volume of water (T. 1421). The Commission should adopt the WNC proposed by SSU.

Issue 119: Should rates be adjusted for any service areas for the purpose of encouraging water conservation?

*This would not be required if SSU's conservation program and

rate structure proposal are approved.*

Issue 120: What is/are the appropriate bulk rate(s)?

The only bulk rate in Docket No. 950495-WS is a Raw Water rate for Marco Island. This rate should be $1.82 as shown in Volume V, Book 1 of 1 on Schedule E1-1, page 199.

ARGUMENT: A raw water rate of $1.75 per 1,000 gallons is reasonable to reflect the costs associated with the potential supply and transmission of raw water at Marco Island. This rate would recover only the costs necessary to produce and transmit raw water, not the costs associated with treatment and delivery of potable water (T. 2249-50) Since only the costs for providing the above service in Marco Island have been analyzed, the approved rate should apply only to SSU's Marco Island service area. No other bulk rates are proposed or supported by evidence in the record.

Issue 121: In light of Section 367.0817, Florida Statutes, should any of the revenue requirement associated with reuse be allocated to the water customers of those systems?

Not at this time.

ARGUMENT: The provision allowing recovery of reuse facility costs in Section 367.0817, F.S., envisions a utility submitting a reuse plan to the PSC along with a proposal for how to fund the new system. The reuse facilities operated by SSU were constructed prior to adoption of this statute. Therefore, spreading the costs to water customers was not considered, and contracts were entered into based on the circumstances of SSU and the reuse irrigation customer at that time.

With regard to Marco Island, SSU determined that $.87 is an

appropriate rate for new reuse customers based on the rate study performed by John Guastella (Ex. 163). In this case, those water customers who will be receiving reclaimed water will receive a great benefit by paying substantially less for their irrigation use. Therefore, to move additional costs to water customers who will not be receiving reclaimed water would only serve to penalize those water customers for which reclaimed water is not yet available.

Issue 122: What are the appropriate rates for reuse customers in this case?

Except where noted, the reuse rates should be the current rates factored up by the percentage revenue requirement increase requested by SSU. For Marco Island, a rate study was conducted by John Guastella. Marco Island's rate of $.87 can be found in Volume V, Book 1 of 1 on Schedule E1-1, page 461. The rate for Florida Central Commerce Park is $.08 and the correct rate for Lehigh is $.14. The Florida Central Commerce Park and Lehigh effluent rates shown on pages 459 and 460 of Volume V incorrectly had the revenue requirement percent increase applied twice. The rates filed by SSU for Florida Central Commerce Park and Lehigh were $.10 and $.18, respectively. All other rates should be approved as contained on the E schedules.

Issue 123: What are the appropriate miscellaneous service charges for this utility?

*The appropriate service charges can be found in Volume V, Book 1 of 1 on the E-4 Schedules. Page 139 lists the rates for the Conventional Treatment group, and page 227 lists the rates for the

Reverse Osmosis group.*

ARGUMENT: The record is devoid of evidence establishing that the miscellaneous service charges requested by SSU are unreasonable. Further, the record contains no evidence establishing that any other charges would be more reasonable or even justified. Mr. Ludsen testified that the charges in the MFRs were based on the applicable Staff Advisory Bulletin (T. 5293). SSU conducted no cost study concerning these charges and neither did any other party (T. 5293-8). In light of these facts, there is no legal basis upon which the Commission could approve the changes being advocated by Staff in the Prehearing Order.

Issue 124: For SSU, what goals and objectives(i.e., safe and efficient service at an affordable price, resource protection, financial viability, regulatory efficiency) should the Commission consider in determining the appropriate rate structure and service availability charges?

Rate structure should be determined in the manner which best reflects SSU's "one system" manner of operation. Consistency of rate structure should be maintained to the extent practicable. No party disputes the fact that the water/wastewater industry is a rising cost industry. Uniform rates mitigate rate shock which result from forced compliance with regulatory mandates. Service availability charges should be set per the MFRs. The SACs requested by SSU reflect the results of market analysis -- the FPSC guidelines are meaningless to builders, and applications of the guidelines can inhibit growth thereby increasing customer rates unnecessarily.

ARGUMENT: As in every rate setting proceeding, the Commission

must be fair and equitable to SSU's shareholders and customers. Rates must be fair, just and reasonable to both shareholders and customers. Intervenors in this proceeding are an indistinguishable part of the residential customer class and no evidence was presented which would justify segregating any of Intervenors from the body of SSU's residential customers other than the customers segregated into the reverse osmosis water classification.

SSU's proposals concerning rate structure and service classifications are premised upon well-established ratemaking criteria. Before addressing the goals and objectives which the rate structure and service classifications proposed by SSU would permit the Commission to achieve, it is perhaps more important to address certain goals and objectives which the Commission must reject.

The most critical goal and objective for the Commission to address and reject is the monomaniacal desire exhibited by OPC and Intervenors to keep rates as low as possible. OPC and Intervenors have not recognized that establishing rates in response to such fervor results in the Miami-Dade and Apalachicola situations described by SSU witness Harvey (T. 3449-52) -- the public health and the environment ultimately is placed in jeopardy -- or the situation described by Staff witness Dr. Beecher -- Florida having been the state with the most water utilities in the country with negative net worth/negative earnings situations (T. 1637, Ex. 134). Moreover, continued adherence by the Commission to the treatment of used and useful and margin reserve concepts as financial

mechanisms, as opposed to their true identity as engineering concepts, can only continue a steady decline of SSU and other Florida water utilities (Shafer: T. 3307 regarding frequency of abandonments). For instance, used and useful should not be driven by the level of rates which result if one mechanism is used as opposed to another -- which DEP witnesses testified appeared to be the priority of the Commission's staff in the past (T. 3443-8) -- rather, the proper mechanism to use must be established based on appropriate engineering criteria.

Unless this fundamental problem is addressed, the viability of SSU and other Florida utilities will remain in grave question, the safety of Florida's residents and the environment will be in danger (Shafer: T. 3307, 3411-12) and, while OPC and Intervenors may enjoy short-term gratification from customers, the future for such customers will be adversely, not favorably, impacted.

On the other hand, if the Commission responds appropriately to the overwhelming evidence presented by SSU from Company witnesses (concerning used and useful generally), from witnesses from the Department of Environmental Protection (concerning margin reserve), the DEP expert on reuse (concerning the used and useful level for reuse facilities), from several independent professional engineers such as the former Director of the DEP's Water Division, Mr. Harvey, as well as Mr. Edmunds, Mr. Hartman and Mr. Elliot, and witnesses from the water management districts (concerning the used and useful level for reuse facilities), the Commission will recognize the used and useful and margin reserve concepts as

engineering concepts and not financial ones. This change will go a long way toward restoring the financial health of SSU and Florida's other water utilities. With the restoration of such financial health, the public health and the protection of the environment will be enhanced and customers will pay less for service in the short as well as long term.

As will be discussed further later in this brief, the Commission also should adhere to its prior determination that SSU is one utility which operates one system. But for this mode of operation, SSU could not offer customers in any individual service area so called "stand alone" rates as low as they might be. Such rates are the financial consequence of consolidated purchasing, shared operations labor and maintenance personnel, reduced financing costs, lower cost in-house expertise and the myriad of other benefits, both quantitative and qualitative -- all of which would not exist but for SSU's "one system" mode of operation. Moreover, the ephemeral nature of the lower "stand alone" rates suggested by Intervenors cannot be more clearly demonstrated than through the recognition that the level of stand alone rates can be dramatically altered simply by changing the method of allocating common costs (T. 310).

Moreover, a reaffirmation of SSU's "one system" operation will permit the Commission to reaffirm once again the appropriateness of uniform rates for SSU's residential customers. The record confirms that uniform rates represent the most affordable rates for SSU's residential customer classes for both the short and long term.

All evidence from Staff, DEP and SSU witnesses confirms that the water and wastewater industries are capital intensive, rising cost industries -- facts ignored by OPC and Intervenors. In fact, in its essence, the case presented by OPC and Intervenors (1) ignores these facts; (2) fails to produce evidence that SSU's costs were imprudently incurred or unreasonable in amount; (3) fails to produce evidence that SSU's investments in utility facilities were imprudently made or unreasonable in amount; but yet (4) urges the Commission to deny SSU rate relief based solely upon consideration of the percentage increase in revenues requested by SSU (a la OPC witness Larkin's suggestion that a negative acquisition adjustment is appropriate simply due to the level of the revenue increase requested by SSU (T. 2647).

There simply is no ratemaking precedent for the deprivation of revenues to a utility on the basis of the type of case put forth by OPC and Intervenors. Once their case is rejected, the Commission would be free to fulfill the proper goals of utility ratemaking: fair and reasonable rates established in a manner that is fair to shareholders and customers and which best protects the public health and welfare as well as the environment.

Goals and objectives related to service availability charges will be discussed in Issue 138.

Issue 125: What is the appropriate rate structure for SSU in this docket?

*SSU has requested that the Commission authorize a uniform rate structure for water with two service classifications: conventional and reverse osmosis; and a uniform rate structure for

wastewater.*

ARGUMENT: The only appropriate rate structure for SSU is a uniform rate structure for conventional water treatment, reverse osmosis water treatment and wastewater service classifications. The Commission's "one system" finding in Docket No. 930945-WS, if reaffirmed as advocated by SSU, satisfies the dictate of the First District Court of Appeals in the Citrus County decision.

The uniform rate structure proposed by SSU is the only structure which recognizes SSU's "one system" operation. The only basis for differentiating SSU's residential customers supported in the record is the inherent capital and operating cost differences between the conventional treatment facilities and reverse osmosis facilities which serve SSU's water customers. Moreover, the record once again confirms that there is no true stand alone rate or cost of service for any individual SSU service area (T. 1480). Financing considerations, centralized bulk purchasing, common cost allocations, labor and equipment sharing as well as a number of other factors all obliterate the notion of a true "stand alone" rate or cost of service for individual SSU service areas. Therefore, the uniform rates proposed by SSU are the only rates which reflect the true cost of SSU's service to all of its customers. The Commission should reaffirm the uniform rate structure.

Issue 126: Should the Commission adopt the rate structure of 40% of revenue collected from the BFC and 60% of revenue collected from the gallonage charge, as proposed by SSU?

Yes.

ARGUMENT: The Commission should adopt the 40% BFC/60% GC rate structure proposal of SSU. Dr. Whitcomb offered unrebutted testimony that SSU's proposed rate structure is a water conserving rate structure under the criteria set forth in the SWFWMD Conservation Rate Study (T. 1727; Ex. 135, JBW-5). SSU's proposed rate structure provides the proper balance between the water conservation message and business risk reduction. Based on Dr. Whitcomb's study of SSU's historic residential water consumption and relevant weather statistics, Dr. Whitcomb concluded that SSU has experienced average annual water consumption variations of 11% resulting from weather. This is the largest weather caused variation in the United States (T. 1729). Moreover, and as previously discussed under Issue 75, these variations coupled with the 33% BFC/67% GC rate structure ordered in Docket No. 920199-WS caused SSU to lose some $3.5 million in gallonage charge revenues (T. 1725-6).

The record in this proceeding supports the adjustment of SSU's current 33% BFC/67% GC[105] rate structure to the 40% BFC/60% GC proposed by SSU. Ms. Dismukes testified in favor of a 25% BFC/75% GC split.[106] In fact, in her zeal to persuade the Commission to

[105]The one exception is the Marco Island service area which was ordered to implement a rate structure of 20% BFC/80% GC. See 93 F.P.S.C. 7:526, 573 (1993).

[106]According to Ms. Dismukes, SSU's proposal does not send a sufficient conservation message to customers. Ms. Dismukes' primary reliance on rate structure to send conservation signals is misplaced as SSU's proposed increase in gallonage charges alone will result in a decrease in consumption of 11% for customers of conventional water treatment plants (T. 1762).

accept her proposed rate structure, Ms. Dismukes opined that a rate structure with a zero based facility charge is reasonable. When confronted with the fact that SSU lies in an area of the United States that has the most extreme variability in consumption, she reluctantly withdrew that opinion (T. 2838-9). Ms. Dismukes also acknowledged that if her rate structure proposal were adopted, the Commission must impose a larger elasticity adjustment than that proposed by SSU (T. 2833).

The record clearly supports the 40% BFC/60% GC rate structure proposed by SSU as opposed to the more extreme rate structure proposed by Ms. Dismukes which loads an excessive percentage of SSU's revenue requirement into the gallonage charge.

Issue 127: What is the appropriate rate for wastewater-only residential customers?

The appropriate rates for residential wastewater only customers are those found in Volume V, Book 1 of 1 on the E1-1 schedule. This rate of $44.27 can be found on page 457.

Issue 128: If a capped rate structure is approved, what should be the treatment for indices and pass throughs on a going forward basis?

Going forward, indexes and pass-throughs should be accumulated on top of the caps. New caps would be established only in full-blown rate proceedings.

Issue 129: What are the appropriate rates for SSU?

*The appropriate rates for SSU are the Uniform Conventional Treatment water rates, Uniform Reverse Osmosis water rates and Uniform sewer rates as requested by the Company and presented in

Volume V, Book 1 of 1 on the E1-1 schedules.*

Issue 130: **What are the appropriate amounts by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?**

Fall-out number based upon approved rate case expense.

ARGUMENT: All parties agree that the final rates after amortization of rate case expenses are a fall-out calculation subject to the resolution of other issues.

Issue 131: **In determining whether any portion of the interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund?**

No interim revenue should be refunded unless it is determined that SSU was earning outside the range of returns authorized in the final order during the pendency of the proceeding pursuant to Section 367.082(4), Florida Statutes.

ARGUMENT: SSU should not be required to refund any revenue collected from customers under interim rates unless it is determined that SSU was earning outside of the range of returns authorized in the final order during the period in which such revenue was collected. This method of determining refunds is the only method consistent with the dictates of Section 367.082(4), Florida Statutes.

SSU presented evidence substantiating the 1995 MFR expense projection within $65,000 (T. 5139, Ex. 244). SSU's evidence also confirms that the variance from SSU's 1995 plant in service projection was less than seven percent (7%) (T. 5033-4, Ex. 242).

Given these facts, and the absence of evidence disputing the prudency of investments and reasonableness of SSU's 1995 costs, and particularly in light of the Legislature's recent amendment to Section 367.082, F.S., permitting interim rates on the basis of a projected test year, the deprivation of SSU from any portion of the interim revenues would deprive SSU of the opportunity to recover reasonably incurred expenses and investments, as well as a return thereon and, thus, would be confiscatory.

Issue 132: What are the appropriate meter installation and service availability charges for this utility?

The appropriate meter and service installation charges are as stated on pages 21, 43 and 65 of Book 1 of 4 of Volume VII of the MFRs.

ARGUMENT: The appropriate meter installation and service installation charges are those charges set forth in the MFRs. No evidence was presented which either suggests that such charges are unreasonable or establishes the reasonableness of any increase or decrease in such charges. In the absence of such evidence, the charges requested in the MFRs must be approved by the Commission.

Issue 133: What are the appropriate main extension charges for this utility?

The appropriate main extension charges are $298.00 per ERC for Conventional water plants, $17.00 per ERC for Reverse Osmosis water plants and $480.00 per ERC for all wastewater plants as stated on pages 21, 43 and 65 of Book 1 of 4 of Volume VIII of the MFRs.

ARGUMENT: The appropriate main extension charges are those

charges set forth in the MFRs. No evidence was presented which either suggests that such charges are unreasonable or establishes the reasonableness of any increase or decrease in such charges. In the absence of such evidence, the charges requested in the MFRs must be approved by the Commission.

Issue 134: Has SSU's sewer main extension charge of $280 under the heading of "present charges" been approved by PSC order?

SSU agrees that there is not an approved $280 CIAC main extension charge for Sugarmill Woods. The $280 charge on the tariffs was never requested by SSU or approved by the Commission and thus is an error which occurred when the Company refiled its tariffs to reflect the consolidation of companies effective June 5, 1992. Although the tariff reflected an incorrect main extension charge of $280, the Company has not charged this amount to Sugarmill Woods' customers. The Company has only charged the customer connection tap-in charge of $100 as contained in the prior SSU tariff for Sugarmill Woods which was effective August 17, 1989.

Issue 135: Should the utility's plant capacity charges be differentiated by type of treatment?

Yes. The charges should be differentiated as filed in the MFRs for the two different water service classifications: conventional treatment and reverse osmosis treatment.

Issue 136: Should the utility's plant capacity charges be differentiated by the level of CIAC of the service area?

No.

Issue 137: Should the utility's plant capacity charges

include a provision for replacement costs as well as plant added for growth?

No. The charges indicated in the MFRs were determined based upon market analysis. If plant capacity charges rise to a level above competitive market levels there will be no growth, rates will rise and customers will suffer.

Issue 138: What are the appropriate service availability charges for each plant?

The service availability charges ("SAC") proposed in the MFRs.

ARGUMENT: The service availability charges proposed by SSU comply with the guidelines set forth in Commission Rule 25-30.580. SSU witness Ludsen provided a detailed explanation of the analysis performed by SSU to substantiate the reasonableness of SSU's proposed charges.

The SAC charges is that the charges must be established at a level which will not discourage growth.[107] Mr. Ludsen described the adverse effect on SSU's customers from a past Commission action which established the SAC for the Chuluota service area at the maximum level indicated in the guidelines. The direct result -- no growth. The consequence -- on a so-called "stand-alone basis, the Chuluota service area would have among the highest water and wastewater rates of all of SSU's customers. Higher rates, and a weakened utility, are two consequences which should be expected if

[107]As Staff witness Dr. Beecher testified, growth is essential to the viability of a business (T. 1662-3) and this includes a water utility like SSU.

SAC levels are too high.[108]

The second, but inextricably intertwined, premise upon which SSU's proposed charges are based is the market study contained in Exhibit 127, FLL-2. This study identifies the SAC levels charged by hundreds of utilities throughout Florida -- thus identifying the charges the market will bear before SSU's growth will be inhibited.[109]

Finally, no party presented evidence establishing that any other charges, company-wide or service area by service area, would be reasonable. For the foregoing reasons, the Commission should authorize the charges proposed by SSU.

Issue 140: Should the utility's requested AFPI charges be approved?

Yes, per the MFRs. Also, if used and useful levels are adjusted with changes in property taxes, etc., AFPI must be adjusted.

Issue 142: Should the utility be required to offer the option of electronic funds transfer for direct payment of customer bills?

---

[108]Of course, SSU would be the first to feel the adverse impact if the Commission chose the "Chuluota" course and arbitrarily set SAC levels at the maximum level. However, it would not be long until such action alone would force SSU into filing another rate proceeding because no growth would occur while costs industry-wide would continue to rise. The "no position" stance of OPC and Intervenors suggests that even they recognize the inevitability of such a result.

[109]There is no evidence disputing the reasonableness of SSU's proposed charges -- regardless of the rate structure ultimately established by the Commission. As Mr. Ludsen testified, there is no prohibition which would apply to prevent the Commission from authorizing the collection of the proposed SAC levels even if the proposed uniform rate structure is not authorized by the Commission.

This requirement is not necessary. SSU will have implemented the electronic funds transfer process in April 1996.

ARGUMENT: This issue is moot. As stated by Ms. Teasley in her testimony, the company's electronic fund transfer program has already been instituted (T. 5006).

Issue 144: Are the utility's books and records in compliance with Rule 25-30.450, Florida Administrative Code (Audit Exception No. 1)?

Yes.

Issue 145: Do Sections 367.0817 and 403.064, Florida Statutes, require that reuse facilities be considered 100% used and useful?

Yes.

ARGUMENT: The following sections are being considered here:

> 403.064(1) states, "The encouragement and promotion of water conservation, and reuse of reclaimed water as defined by the department, are state objectives and are considered to be in the public interest."
>
> 403.064(10) states, "Pursuant to chapter 367, The Florida Public Service Commission shall allow entities under its jurisdiction which conduct studies or implement reuse projects, including, but not limited to, any study required by subsection (2) or facilities used for reliability purposes for a reclaimed water reuse system to recover the full, prudently incurred cost of such studies and facilities through their rate structure."
>
> 367.0817(3) states, "All prudent costs of a reuse project shall be recovered in rates."

The clear intent of these laws is to encourage utilities to construct reuse facilities by ensuring that the full costs of such facilities will be recovered through rates. The representatives of DEP and the WMD's consistently agree that 100% recovery of reuse assets is intended (Wilkening: T. 4009, 4010, 4013, 4031; York: T. 3890, 3913, 3924, 3927). The Memorandum of Understanding between

the PSC and DEP underscores this intent by stating, "as noted in Section 403.064(6), F.S., and pursuant to Chapter 367, F.S., the PSC shall allow utilities which implement reuse projects to recover the full cost of such facilities through their rate structures" (Ex. 90). DEP also has written numerous letters to the PSC concerning this issue. One of the most recent letters states, "As noted in Comment 19, we recommend that the Commission consider reclaimed water reuse facilities to be 100 percent used and useful. We believe this is clearly required by section 403.064 of the Florida Statutes" (Ex. 198).

Dr. David York, DEP's Reuse Coordinator, recounted his involvement with the drafting of this legislation stating "... at that time the intent of the folks that were drafting that language, of which I played a prominent role, was indeed what that meant, was that we were looking for allowance of considering those facilities as being 100% used and useful and recovered through the rate structure" (T. 3913).

The testimony is uncontroverted that reuse is a state objective and should be encouraged as a means of relieving ongoing environmental degradation (Harvey: T. 3470; Farrell: T. 3753). If the PSC does not allow 100% used and useful recovery of the costs of reuse facilities, it will present a disincentive to implementation of reuse and will impede the State goal of maximizing utilization of reclaimed water (Wilkening: T. 4010; York: T. 3926).

OPC argues that PSC may reduce the used and useful percentage

of a reuse facility through its consideration of prudency pursuant to section 367.0817(3). OPC's argument should be rejected because it is contrary to the MOU and the intent expressed by the DEP representatives involved in drafting the legislation (York: T. 3890, 3913; Harvey: T. 3551).[110]

Issue 146: Are uniform rates as proposed by SSU in the instant case both in accord with statutes and constitutional?

Yes.

ARGUMENT: Uniform rates comply with all applicable criteria of Chapter 367, Florida Statutes and are, therefore, lawful. Uniform rates are fair, just and reasonable and not unduly discriminatory. Pursuant to Citrus County v. Southern States Utilities, Inc., 656 So.2d 1307 (Fla. 1st DCA 1995) a uniform rate structure may be approved if the utility's land and facilities are functionally related.[111] By Order No. PSC-95-0894-FOF-WS issued in Docket No. 930880-WS, the Commission held that all of SSU's facilities and

---

[110]Section 367.081(2)(a), F.S., clearly provides that the PSC may include a used and useful adjustment to the costs of facilities other than reuse facilities. In contrast, section 367.081(3) makes no mention of a used and useful adjustment. Under the principle of statutory construction, *expressio unius est exculsio alterius*, by omitting the term "used and useful" from section 376.0817, the legislative drafters specifically intended that "used and useful" not be considered to reduce the portion of reuse assets which should be recovered in rates. Leisure Resorts, Inc. v. Rooney, 654 So.2d 911 (Fla. 1995).

[111]See 656 So.2d 1307 at 1311 ("Until the Commission finds that the facilities and land owned by SSU and used to provide its customers with water and wastewater services are functionally related as required by the statute, uniform rates may not be lawfully approved.").

land statewide are functionally related.[112] SSU has presented virtually identical evidence of such functional relatedness in this docket. Therefore, uniform rates are lawful under the Citrus County standard.

The Commission has no jurisdiction to interpret statutes or laws other than Chapter 367 to defeat uniform rates. Similarly, the Commission has no jurisdiction to decide constitutional questions.[113]

Respectfully submitted,

KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
MATTHEW FEIL, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

---

[112]Order No. PSC-95-0894-FOF-WS was given official recognition in this proceeding (Ex. 55).

[113]See In Re: Investigation into Florida Public Service Commission Jurisdiction over SOUTHERN STATES UTILITIES, INC. in Florida, 95 F.P.S.C. 7:256, 267-68 (1995).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Post-Hearing Brief of Southern States Utilities, Inc. was furnished by U. S. Mail to the following on this 10th day of June, 1996:

Lila Jaber, Esq.
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building
Room 370
Tallahassee, FL 32399-0850

Charles J. Beck, Esq.
Office of Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Michael B. Twomey, Esq.
P. O. Box 5256
Tallahassee, FL 32314-5256

Mr. Kjell Pettersen
P. O. Box 712
Marco Island, FL 33969

Mr. Paul Mauer, President
Harbour Woods Civic Association
11364 Woodsong Loop N
Jacksonville, FL 32225

Larry M. Haag, Esq.
111 West Main Street
Suite #B
Inverness, FL 34450

Mr. John D. Mayles
President
Sugarmill Woods Civic Asso.
91 Cypress Blvd., West
Homosassa, FL 34446

Arthur I. Jacobs, Esq.
P. O. Box 1110
Fernandina Beach, FL
32305-1110

Mr. Frank Kane
1208 E. Third Street
Lehigh Acres, FL 33936

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
117 S. Gadsden Street
Tallahassee, FL 32301

Darol H.N. Carr, Esq.
David Holmes, Esq.
Farr, Farr, Emerich,
Sifrit, Hackett & Carr,
P.A.
2315 Aaron Street
P. O. Drawer 159
Port Charlotte, FL 33949

KENNETH A. HOFFMAN, ESQ.

Southern States Utilities

Summary of Monthly 1995 FPSC Filed and Actual Plant In Service Balances
As of December 31, 1995 and 13 Month Average

	VERSION JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL ADDITIONS	13 Mo Avg Additions
Plant In Service (Excl. General Plant)	108,264	38,601	121,777	232,539	166,936	8,487,320	1,823,229	167,483	295,905	1,174,739	3,959,343	4,186,893	18,343,308	6,678,881
General Plant	488	7,616	32,381	4,071	11,527	4,674	361,233	1,323,269	4	27,520	918	1,105,962	2,379,361	811,484
Non-Projects Added and Completed	0	0	156,803	0	0	0	0	48,219	28,829	236,718	0	1,281,716	1,770,284	313,878
ACTUAL PIS ADDITIONS	108,752	46,218	320,941	236,659	208,363	8,501,994	1,384,462	1,538,991	312,734	438,037	3,960,261	6,534,571	23,492,952	7,796,415
MFR PIS ADDITIONS (w/Lehigh Limit)	156,133	471,204	894,749	851,936	1,962,301	3,221,231	2,548,525	254,699	4,131,475	1,621,933	1,326,369	9,576,345	27,316,329	8,822,459
ACT JAL VS FILED														
AMOUNT VARIANCE	(48,381)	(424,986)	(573,808)	(595,337)	(1,753,938)	5,280,763	(1,164,063)	1,285,392	(3,818,740)	(1,213,926)	2,633,861	(3,041,774)	(3,522,378)	(827,844)
% VARIANCE	(30.90%)	(90.19%)	(64.13%)	(68.70%)	(89.39%)	163.94%	(45.68%)	504.87%	(92.43%)	(74.84%)	191.04%	(31.79%)	(13.04%)	(9.59%)
Existing Lehigh Refundable Advances														
ACTUAL PIS ADDITIONS	108,752	46,218	320,941	236,659	208,363	8,501,994	1,384,462	1,538,991	312,734	438,037	3,960,261	6,975,167	22,333,548	7,752,304
MFR PIS ADDITIONS	156,133	471,204	267,999	851,936	1,962,301	2,681,481	2,548,525	254,699	3,504,725	1,621,933	1,326,369	8,849,695	24,500,329	7,961,935
ACT JAL VS FILED														
AMOUNT VARIANCE	(48,381)	(424,986)	52,942	(595,337)	(1,753,938)	5,987,513	(1,164,063)	1,285,392	(3,191,990)	(1,213,926)	2,633,861	(2,974,528)	(1,576,282)	190,579
% VARIANCE	(30.90%)	(90.19%)	19.75%	(68.70%)	(89.39%)	227.70%	(45.68%)	504.87%	(91.09%)	(74.84%)	191.04%	(33.24%)	(6.43%)	2.52%

APPENDIX A

Page 1 of 3

9225

PIS_REV.XLS 1:10 PM 12/8/96

Southern States Utilities
Summary of Monthly 1995 FPSC Filed and Actual Plant In Service Balances
As of December 31, 1995 and 13 Month Average

	VERSION 2 12/31/94	1/31/95	2/28/95	3/31/95	4/30/95	5/31/95	6/30/95	7/31/95	8/31/95	9/30/95	10/31/95	11/30/95	12/31/95	13 Mo Avg Balance
Plant In Service (Excl. General	0	108,264	146,885	238,642	531,230	728,085	9,226,335	10,248,814	10,416,886	10,732,032	10,816,771	14,676,113	18,843,036	6,470,881
General Plant	0	458	8,105	40,436	44,537	56,084	30,738	431,971	1,745,281	1,745,231	1,772,751	1,773,669	2,879,631	611,464
New Projects Added and Corr	0	0	0	196,833	166,803	166,803	136,833	166,803	216,822	242,851	508,589	508,589	1,770,234	313,870
ACTUAL PIS ADDITIONS	0	108,752	154,970	475,911	742,670	950,922	9,452,926	10,837,368	12,377,379	12,630,113	13,098,120	16,958,381	23,432,952	7,795,415
MFR PIS ADDITIONS (w/Lehigh	0	156,133	626,337	1,521,096	2,373,052	4,335,353	7,656,534	10,105,108	10,359,708	14,431,132	16,113,115	17,439,485	27,016,829	8,622,480
ACTUAL VS FILED														
AMOUNT VARIANCE	0	(48,361)	(471,367)	(1,045,175)	(1,630,452)	(3,384,431)	1,836,342	732,260	2,017,671	(1,831,039)	(3,014,995)	(481,104)	(3,522,876)	(827,040)
% VARIANCE	#DIV/0!	(29.90%)	(75.23%)	(68.71%)	(68.71%)	(78.07%)	25.10%	7.26%	19.43%	(12.43%)	(18.71%)	(2.73%)	(13.04%)	[illegible]
Excluding Lehigh Refundable A														
ACTUAL PIS ADDITIONS	0	108,752	154,970	475,911	742,670	950,922	9,452,926	10,837,368	12,377,379	12,630,113	13,098,130	16,959,381	22,933,648	7,752,384
MFR PIS ADDITIONS	0	156,133	626,337	894,336	1,746,352	3,703,603	6,303,034	8,951,608	9,106,208	12,810,932	14,232,865	15,569,235	24,538,829	7,581,805
ACTUAL VS FILED														
AMOUNT VARIANCE	0	(48,361)	(471,367)	(418,425)	(1,003,722)	(2,757,671)	3,149,892	1,885,760	3,271,171	79,131	(1,134,745)	1,389,146	(1,575,232)	180,579
% VARIANCE	#DIV/0!	(29.90%)	(75.23%)	(46.75%)	(57.48%)	(74.35%)	49.97%	22.43%	35.92%	0.63%	(7.97%)	8.93%	(6.43%)	2.12%

APPENDIX A
Page 2 of 3

Southern States Utilities
Summary of Monthly 1995 FPSC Filed and Actual Plant In Service Balances
As of December 31, 1995 and 13 Month Average

VERSION 3	12/31/94	1/31/95	2/28/95	3/31/95	4/30/95	5/31/95	6/30/95	7/31/95	8/31/95	9/30/95	10/31/95	11/30/95	12/31/95	13 Mo Avg Balance
Plant in Service (Excl. General	287,373,596	287,431,840	287,520,481	287,642,238	287,934,826	288,101,881	296,599,981	297,622,290	297,789,692	298,075,597	298,130,336	302,049,709	306,216,802	294,043,077
General Plant	21,326,301	21,326,799	21,334,405	21,366,766	21,370,837	21,382,365	21,387,039	21,748,272	23,071,561	23,071,581	23,039,031	23,069,869	24,205,982	22,137,765
New Projects Added and Com	0	0	0	166,803	136,803	166,803	166,803	166,803	216,022	242,851	639,630	508,569	1,770,284	313,070
ACTUAL PIS ADDITIONS	308,699,896	308,808,640	308,854,866	309,175,807	309,442,436	309,650,829	318,152,822	319,537,284	321,077,275	321,390,010	321,738,016	325,658,277	332,192,948	316,405,311
MFR PIS ADDITIONS (w/Lehigh)	308,699,896	308,856,029	309,326,233	310,220,982	311,072,949	313,035,249	316,256,480	318,805,006	319,059,604	323,191,079	324,813,012	326,139,361	336,715,726	317,322,368
ACTUAL VS FILED														
AMOUNT VARIANCE	0	(46,391)	(471,367)	(1,045,175)	(1,630,432)	(3,384,421)	1,896,342	732,280	2,017,671	(1,801,069)	(3,074,936)	(481,104)	(3,522,878)	(827,046)
% VARIANCE	0.00%	(0.02%)	(0.15%)	(0.34%)	(0.52%)	(1.08%)	0.60%	0.23%	0.63%	(0.56%)	(0.95%)	(0.15%)	(1.05%)	(0.28%)
Eliminating Lehigh Refundable A														
ACTUAL PIS ADDITIONS	308,699,896	308,808,640	308,854,866	309,175,807	309,442,436	309,650,829	318,152,822	319,537,284	321,077,275	321,390,010	321,738,016	325,658,277	331,633,444	316,462,289
MFR PIS ADDITIONS	308,699,896	308,856,029	309,326,233	309,594,232	310,446,138	312,408,459	315,002,980	317,551,505	317,806,104	321,310,829	322,832,732	324,289,131	333,208,726	316,261,792
ACTUAL VS FILED														
AMOUNT VARIANCE	0	(46,391)	(471,367)	(418,425)	(1,003,732)	(2,757,871)	3,149,842	1,985,780	3,271,171	79,181	(1,134,745)	1,369,146	(1,575,282)	199,578
% VARIANCE	0.00%	(0.02%)	(0.15%)	(0.14%)	(0.32%)	(0.88%)	1.00%	0.63%	1.03%	0.02%	(0.35%)	0.43%	(0.47%)	0.06%

APPENDIX A
Page 3 of 3

PIS_3H XLS 1:10 PM 6/10/96

APPENDIX B

COMPARISON OF LOT COUNT USED AND USEFUL INVESTMENT TO THE IDEAL DEVELOPMENT INVESTMENT

Ln No.	A	B	C	D	E	F
1		CITRUS SPRINGS	MARION OAKS	PINE RIDGE	SUNNY HILLS	
2	Original Cost T&D Investment (1)	$4,398,076	$6,353,208	$3,485,998	$1,587,499	
3	Lot Count U/U % (2)	16.66%	22.96%	23.30%	7.48%	
4	Hyd Analysis U/U% (3)	42.71%	66.57%	100.00%	28.09%	
5	Orig. Cost Lot Count U/U Invest (4)	$732,719	$1,458,697	$812,238	$118,745	
6	Orig. Cost Hyd Analy U/U Invest (5)	$1,878,418	$4,229,331	$3,485,998	$445,928	
7	Est. Avg. Year of Installation (6)	Jan 1983	Feb. 1987	Feb. 1988	Jan 1976	
8	ENR Index for Avg. Year of Install (7)	3960	4352	4473	2305	
9	ENR Index for June 1995 (7)	5433	5433	5433	5433	
10	Trended Lot Count U/U Investment (8)	$1,005,269	$1,821,024	$986,561	$279,888	
11	Footage of Pipe (9)	829,670	790,513	541,235	379,516	
12	Total Lots (10)	11,667	12,262	3,828	5,868	
13	Avg. Frontage (11)	71	64	141	65	
14	No. of Customers (12)	1,918	2,791	938	437	
15	Minimum Footage (13)	136,394	179,932	132,622	28,263	
16	1995 Cost/Ft (14)	$12.50	$12.50	$12.50	$12.50	
17	Ideal Development Minimum Cost Investment (15)	$1,704,923	$2,249,146	$1,657,760	$353,290	

18		BURNT STORE	DELTONA	LEHIGH	MARCO ISLAND	SUGARMILL WOODS
19	Original Cost T&D Investment (1)	$2,262,484	$6,642,177	$8,093,122	$3,681,114	$4,197,192
20	Lot Count U/U % (2)	11.99%	70.23%	77.17%	44.10%	33.39%
21	Orig. Cost Lot Count U/U Invest (4)	$271,272	$4,664,801	$6,245,462	$1,623,371	$1,401,442
22	Avg. Accum Depre Bal. 1996 (16)	$656,407	$1,310,337	$1,931,057	$1,239,619	$844,671
23	% Depreciated of Orig. Cost (17)	29.01%	19.73%	23.86%	33.68%	20.12%
24	Estimated Avg. Age of T&D (18)	13.07	8.89	10.75	15.17	9.07
25	Est. Avg. Year of Installation (19)	Nov. 1982	Jan 1987	March 1985	Oct. 1980	Nov. 1986
26	ENR Index for Avg. Year of Install (6)	3917	4354	4151	3327	4342
27	ENR Index for June 1995 (6)	5433	5433	5433	5433	5433
28	Trended Lot Count U/U Investment (8)	$376,262	$5,820,823	$8,174,319	$2,650,970	$1,753,578
29	Footage of Pipe (9)	241,516	2,278,096	692,643	723,724	602,885
30	Total Lots (10)	4,347	34,940	7,789	14,014	8,252
31	Avg. Frontage (11)	56	65	89	52	73
32	No. of Customers (12)	706	23,912	9,079	6,132	2,622
33	Minimum Footage (13)	39,225	1,559,069	807,357	316,674	191,561
34	1995 Cost/Ft (14)	$12.50	$12.50	$12.50	$14.00	$12.50
35	Ideal Development Minimum Cost Investment (15)	$490,310	$19,488,366	$10,091,966	$4,433,442	$2,394,517

Footnotes:

(1) NARUC Acct. 331.4 average Utility Plant in Service balance shown in Schedule 6W of the Service Availability filing Books 2 and 3 of Volume VIII.

(2) Lot Count Used and Useful Percentage as advocated by Mr. Biddy from MFRs contained in Vol. VI Book 1 of 2, Schedule F-7W including a one year margin reserve period.

(3) Hydraulic Analysis Used and Useful Percentage from MFRs contained in Schedule F-7W of Book 1 of 2 of Volume VI.

(4) T&D Investment times Lot Count Used and Useful Percentage.

(5) T&D Investment times Hydraulic Analysis Used and Useful Percentage.

(6) Pipe age analysis for Citrus Springs, Pine Ridge, Marion Oaks, and Sunny Hills based upon information in Schedules 4, 5, 6 and 7 of Book 2 of 2 of VolumeVI. Calculated by sorting Work Release Number by year (Column 5), then summing Average Cost Per Lot (Column 11) and then determining an average weighted cost by year.

(7) Engineering News Record (ENR) Cost Indices as used in Hartman & Associates, Inc. Economies of Scale Study, Page 2-8, Exhibit 91.

(8) Trended Lot Count Used and Useful Investment using ENR Cost Indices.

(9) Footage of pipe from Service Availability filing Schedule No. 4W in Books 2 and 3 of Volume VIII.

(10) Total lots served by T&D lines as of 12/31/96 from Schedule No. 11W in Books 2 and 3 of Vol VIII.

(11) Division of footage of pipe by total lots.

(12) Number of customers from Service Availability filing Schedule 10W in Books 2 and 3 of Vol. VIII.

(13) Minimum footage of pipe needed to serve existing customers based on average footage times the number of customers. This assumes unrealistic scenario of all existing customers living all on consecutive lots (i.e. no vacant lots). For example, Citrus Springs per lot Frontage of 71' and 1,981 lots out of 1,981 served.

(14) The 1995 cost per foot for typical pipe size in the plants indicated. Typical pipe size determined by weighted average of quantities of pipe of various diameters corrected to the closest standard pipe size for all the plants listed above with Marco Island being the only one having an 8" typical pipe size and the others having 6". Quantities of pipe by diameter from maps submitted as part of MFRs in Books 1-5 of Vol. XI. The cost per foot from Hartman Economies of Scale Study, page 6-10, Exhibit 91

(15) Minimum cost of T&D in 1995 dollars to serve existing number of customers plus a one year margin reserve assuming unrealistic development of all existing customers living on consecutive lots (i.e. no vacant lots).

(16) NARUC Acct. 331.4 Average Accumulated Depreciation Balance as indicated in Schedule 7W of Service Availability Filing Books 2 and 3 of Volume VIII.

(17) Average Accumulated Depreciation Balance divided by Original Installed Cost.

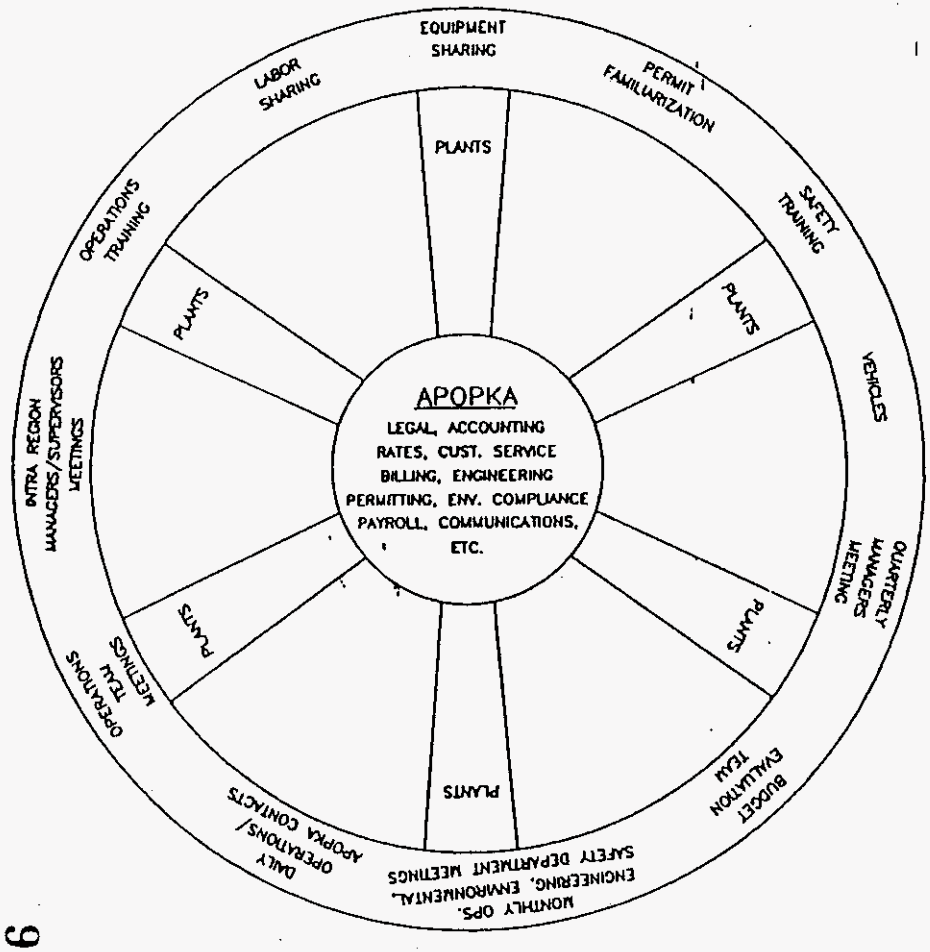
(18) % Depreciated of Original Cost divided by the 2.22% per year (45 year service life) depreciation rate for distribution pipe.

(19) Estimated Average Age of T&D subtracted from 1996.

APPENDIX C

SOUTHERN STATES UTILITIES, INC.
GAINS ON SALES
1991-1995

Service Area	Description	Year	Gain		FPSC Jurisdiction?	Uniform Rates At Time of Sale?	Rates Designed to Recover This Investment?	Lost Customers?	Comments
			Before Tax	After Tax					
St. Augustine	Condemnation	1991	6,758,377	4,215,200	No	No	N/A	Yes	Docket 920199 FPSC denied customers sharing the gain
University Shores	Condemnation	1991	526,820	328,578	Yes	No	No	Yes	Docket 920199 FPSC denied customers sharing the gain
Deltona Lakes	.21 Acres, Tract A	1991	1,361	849	Yes	No	No	No	Future Use Plant
Deltona Lakes	Interlocal Agreement	1992	63,545	39,633	Yes	No	Possibly--NU&U Unquantifiable	Yes	Age of assets and rate case history make it difficult to determine if rates were designed to recover this investment
Shadowbrook, Manatee County	Sale to Homeowners	1992	(41,376)	(25,806)	No	No	No	Yes	No known history of rate cases
Deltona Lakes	20 Acres--Doyle Rd.	1993	44,055	27,061	Yes	No	No	No	Non-Utility Property
Venice Gardens	Threat of Condemnation	1994	19,088,663	11,725,211	No	No	N/A	Yes	Remaining SSU customers did not pay rates designed to recover this investment
Sanlando/Apple Valley	.11 Acres	1994	(187)	(115)	Yes	Yes	Yes	No	
Spring Hill	2.069 Acres,Parcel 6	1994	12,926	7,940	Yes/No	Yes	No	No	Non-Utility Property
Spring Hill	1.424 Acres,Parcel 9	1994	6,804	4,179	Yes/No	Yes	No	No	Non-Utility Property
Spring Hill	6.759 Acres,Parcel 8	1995	73,071	44,884	Yes/No	Yes	No	No	Non-Utility Property
Spring Hill	5.139 Acres,Parcel 8	1995	54,387	33,407	Yes/No	Yes	No	No	Non-Utility Property
River Park	Water plant	1995	54,928	33,740	Yes	Yes	Partly	Yes	$120,000 of investment is reflected in rates. Another $97,000 of investment was added from 1992-1995 which has not been included in rates. One of five plants purchased in 1983 with a rate base at that time of $55,130. Total purchase price was $103,682.



- LEGAL
- ACCOUNTING
- RATES
- CUSTOMER SERVICE
- BILLING
- ENGINEERING
- PERMITTING
- ENVIRONMENTAL COMPLIANCE
- PAYROLL
- COMMUNICATIONS
- EQUIPMENT SHARING
- PERMIT FAMILIARIZATION
- SAFETY TRAINING
- VEHICLES
- QUARTERLY MANAGERS MEETING
- BUDGET EVALUATION TEAM
- MONTHLY OPS, ENGINEERING, ENVIRONMENTAL, SAFETY DEPARTMENT MEETINGS
- DAILY OPERATIONS/APOPKA CONTACTS
- OPERATIONS TEAM MEETINGS
- INTRA REGION MANAGERS/ SUPERVISORS MEETINGS
- OPERATIONS TRAINING
- LABOR SHARING
- FINANCING
- PURCHASING
- FLEET MANAGEMENT
- TELECOMMUNICATIONS
- INSURANCE
- DATA PROCESSING
- CASH MANAGEMENT
- BUDGETING
- PROPERTY ACCOUNTING
- PROJECT ADMINISTRATION
- TAX ADMINISTRATION
- OFFICE SERVICES
- RECORDS MANAGEMENT
- FINANCIAL PLANNING
- AUDIT

9230

SSU

WAGON WHEEL ANALOGY

PART 1 OF 1

CAD FILE
DH-WHEEL

APPLICATION