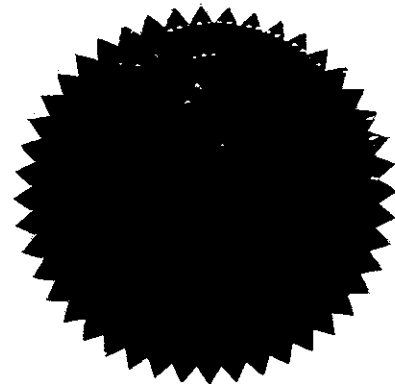


BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Adopt Rules) Docket No. 960258-WS
 on Margin Reserve and Imputation)
 of Contributions-In-Aid-Of-)
 Construction on Margin Reserve)
 Calculation, by Florida)
 Waterworks Association)



VOLUME 2
 AFTERNOON SESSION
 Pages 184 - 301

PROCEEDINGS: RULE HEARING

BEFORE: SUSAN F. CLARK, CHAIRMAN
 J. TERRY DEASON COMMISSIONER
 JULIA L. JOHNSON, COMMISSIONER
 DIANE K. KIESLING, COMMISSIONER
 JOE GARCIA, COMMISSIONER

DATE: Tuesday, December 10, 1996

TIME: Commenced at 9:40 a.m.
 Concluded at 5:30 p.m.

PLACE: FPSC Hearing Room 148
 Betty Easley Conference Center
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: Lisa Girod Jones, RPR, RMR

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FPSC-RECORDS/REPORTING

1 APPEARANCES: (Continued)

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4 ALSO PRESENT:

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6 Florida Water Management District.

6 HAROLD A. WILKENING, III, P.E., Assistant
7 Director, Department of Resource Management, St. Johns
8 Water Management District; appearing on behalf of
9 St. Johns Water Management District.

9 ALSO PRESENT:

10 JOHN WEHLE, Assistant Executive Director,
11 St. Johns Water Management District.

11 CYNTHIA CHRISTEN, Esquire, Department of
12 Environmental Protection, 2600 Blairstone Road,
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14 ALSO PRESENT:

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20 Commission.

19 ALSO PRESENT:

20 N. D. WALKER, FPSC
21 ROBERT CROUCH, FPSC
22 JOHN WILLIAMS, FPSC
23 JOHN STARLING, FPSC
24 CRAIG HEWITT, FPSC
25 GREG SHAFER, FPSC

	EXHIBITS	
2	<u>EXHIBIT NO.:</u>	<u>FOR I.D.</u>
3	4 - (Composite) Revisions to Deborah Swain's	
4	Testimony; Comparison of Customer Rates;	
5	(Late-filed) Working papers to support	
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12 REPORTER'S NOTE: Per Chairman Clark, all
13 exhibits identified will be included as part
14 of the record.
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1 PROCEEDINGS

2 (Transcript continues in sequence from
3 Volume 1.)

4 CHAIRMAN CLARK: Southern States?

5 MR. ARMSTRONG: Thank you, Madam Chair. First
6 Southern States would like to thank the Commission for
7 providing this opportunity to have this open
8 discussion. I think there's a lot of information that
9 has been created as a result of this docket, that is new
10 information and is generic information and obviously has
11 industry impact here. It's been mentioned a couple of
12 times that we're just rehashing. I don't think we are
13 rehashing at all. We have the FWWA study, which is the
14 first of its kind and which is compelling in its
15 results. Southern States' Witness Hartman presented a
16 study, economies of scale study, which is similar to the
17 study presented in the recent rate case, but which
18 modifies that and provides additional information. So
19 it's further information that is -- should be very
20 useful to the Commission when it's discussing these
21 rules.

22 Another comment, we request heartily that the
23 Commission not propose a rule or adopt a rule based on
24 the extremes. We've heard the reference to Sunny Hills,
25 and Mr. McLean did mention that that was the extreme.

1 He acknowledged that. There are hundreds and hundreds
2 of facilities out there, and a rule should be based upon
3 looking at an extreme. And in particular, in reference
4 to some of the discussion that just took place, the
5 margin reserve proposals being proposed by the FWWA, and
6 supported by Southern States in this docket, don't
7 request that the entire rate base or the entire
8 investment in facilities at those extremes be included
9 in rate base. They don't at all.

10 It's been mentioned several times regarding
11 the comparison of margin reserve times and periods with
12 electric utilities, and that is one comment that I just
13 would like to mention, and we've heard it and Staff has
14 acknowledged it. John Williams appeared before a
15 legislative committee last week and made a very
16 succinct, clear presentation about ratemaking.

17 One of the points made is one we all
18 acknowledge, the marginal cost of building facilities is
19 increasing for water and wastewater. And because the
20 marginal cost of building capacity is increasing, that's
21 further support and justification for giving larger
22 margin reserves now, because in the studies you see, the
23 economies of scale studies by FWWA and by Mr. Hartman,
24 it doesn't include those higher marginal costs, and the
25 fact that the cost is increasing, not just by inflation,

1 but also by additional requirements out there.

2 Also, you have the repetitive planning,
3 engineering, permitting, startup operation costs which
4 are not contemplated in those exhibits. So those are
5 additional costs that make it even more economical for
6 the utilities to be building in these larger
7 increments.

8 Another point is the emphasis and the
9 concentration -- we just heard it again, we heard it a
10 couple times today -- on 100 percent used and useful
11 facilities. And I think it's the emphasis on that 100
12 percent used and useful facility by Public Counsel and
13 others that we've heard that shows clearest -- most
14 clearly, the problem that we're facing right now.
15 There's an emphasis: Don't allow the utilities to
16 recover unless it's 100 percent used and useful that
17 plant.

18 Well, that is a direct conflict and contrast
19 with what we hear from DEP and from the management
20 districts. They abhor getting close to that 100 percent
21 used and useful level. And they abhor it because of
22 their own planning and they abhor it because of the
23 question of operating plants on the edge and the
24 possibility of environmental contamination, the
25 possibility of public health impacts, adverse public

1 health impacts, and that's part of the reason that
2 they're here today. They said that. That's what their
3 comments reflect.

4 But it's a clear, clear demonstration we
5 cannot have a margin reserve that puts us at the edge.
6 And the 18 months, we believe, and I think the studies
7 support the fact, that it does put us at the edge.

8 In that regard too, we have a proposed
9 amendment which we just drafted very, very recently, to
10 the margin reserve definition. And we would like to
11 pass it out. A number of the Florida Waterworks people
12 have reviewed this, and I would ask Mr. Schiefelbein, or
13 a representative from FWWA, if they will support it
14 formally as a friendly amendment to their rule
15 proposal. And we would ask, obviously, Staff to
16 consider it and the Commission.

17 What we believe this definition does is it
18 incorporates some of the concepts identified by
19 Mr. Seidman from the St. Lucie County case and the
20 discussion from Staff, as to the fact that the margin
21 reserve is there to ensure that there isn't a
22 deterioration in quality of service, and preserve and
23 protect the ability of the utility to provide service.
24 It also incorporates the concepts that margin reserve is
25 there, because we don't want to have a potential harm to

1 the environment or to the public health because too many
2 utilities are operating at the margin. It's not
3 something that the DEP wants, it's not something that
4 the management district wants. But also it's not
5 something that -- it's something they will be adversely
6 impacted by if we can continue, or have to continue, to
7 operate this way.

8 There is this question of AFPI. And I
9 mentioned earlier about the 1990 study and survey done
10 of water utilities and a study by Staff, and in that
11 study one of the questions that was left open was
12 whether AFPI cash flow will meet a utility's needs in
13 the future. And they said, we'll have to determine
14 that. Well, I think the information provided today by
15 FWWA clearly shows that AFPI does not provide the cash
16 flow. It doesn't do what everybody expected or thought
17 or hoped it might do. Utilities are far underearning
18 with AFPI. And the example is given with Southern
19 States, and it's a fact that there was a million dollars
20 in collections of AFPI prior to the last rate case,
21 while it was pending. It was a million dollars per
22 year. After the case the AFPI rates will allow \$177,000
23 a year, collection of AFPI. The prior accumulated AFPI
24 was wiped out, just wiped out. Even though it was
25 prudent investment, even though carrying charges were

1 supposed to be recoverable by the company below the
2 line, they were wiped out.

3 And we're somewhat encouraged to hear the
4 discussion about AFPI and unrecovered AFPI, because it's
5 our belief that possibly, maybe -- it's not for this
6 discussion or this case, the rulemaking, but certainly
7 AFPI, if it's unrecovered, and five years expires, or a
8 new rate case comes, we believe the unrecovered portion
9 should be capitalized and rolled over into rate base, if
10 it's unrecovered, because a determination has been made
11 it's a prudent investment. And I think that might be
12 some of what the discussion that took place earlier
13 today was about, and we'd hoped that that would be a
14 result.

15 There was a question from Staff regarding
16 margin reserve, and it was in the nature of is it
17 critical or is it material to the utility. And Southern
18 States wants it to be clear that we find it's very
19 material to the utility, because it's a -- the margin
20 reserve is one of the factors, and a material factor, in
21 determining whether or not we can recover our costs of
22 investment in facilities and repay our lenders and
23 provide even something of a return to our shareholders.
24 So it's a material. It's critical. It's something that
25 really does have to be addressed.

1 The last comment was -- that we would like to
2 make, and then I just would like Mr. Guastella and
3 Mr. Gower to make brief comments. The last comment
4 regards the ability to determine the accuracy of
5 forecasts, or provide accurate forecasts.

6 One thing that was not mentioned that I would
7 just like to briefly mention, there are so many
8 variables out there beyond the control of the utility,
9 the customers, or anybody else, that impact the accuracy
10 of those forecasts, that it's -- you know, it's totally
11 irrelevant, we believe, to sit there in 20/20 hindsight
12 and say, well, the growth didn't occur, so you were
13 wrong. We made the comments earlier, you have to look
14 at the time the investment was made in the facilities,
15 and the circumstances that existed then. Was it prudent
16 to build? And then you go to the next step: What was
17 the incremental capacity you were building? And then
18 you come to that final delineation of benefits to
19 existing customers: Lower per unit costs, lower rates,
20 now and in you future, if you allow a longer margin
21 reserve, reliability of service, the -- if you need
22 additional water, it's going to be there. If new
23 customers do hook up, you're still going to have
24 capacity, and you're not going to have to have the
25 utility building again and increasing the costs

1 dramatically.

2 And again, that flows back into the electric
3 utilities. We believe that's one of the principal
4 reasons why electric utilities have rate stability today
5 and why they can add plant and not come in for a rate
6 case. We would like to be in that situation. And
7 prudent planning and prudent ratemaking practice would
8 allow that to happen.

9 With that, I would just like Mr. Guastella to
10 provide some additional information. And then, as I
11 said, Mr. Gower would briefly respond.

12 MR. GUASTELLA: Good afternoon,
13 Commissioners. I'm not going to repeat all of the
14 recommendations and reasons given, because I think they
15 were adequately done by the other witnesses on behalf of
16 the utilities. I guess what I want to focus on, having
17 heard everyone else -- they covered some of the areas
18 that I covered in my testimony. And I suppose I would
19 like to get back to just some basics. Before I --
20 basics of rate setting.

21 Before I do that, I think we should understand
22 that in the rest of the world -- and the rest of the
23 world I mean other states, and also for nonwater and
24 wastewater utilities in Florida -- excess capacity is
25 not synonymous with nonused and useful. Utilities are,

1 as we heard here today, by DEP and the water management
2 districts, utilities in other states are also encouraged
3 to install economically sized facilities which have
4 capacity that go beyond the immediate needs of the
5 existing customers. That additional capacity is not
6 considered excess capacity in the sense that it
7 qualifies for exclusion from rate base.

8 Additional capacity included in economically
9 sized facilities is considered used and useful capacity
10 because those are the facilities which result in the
11 most economic cost to the customers in both the short
12 and the long term. So every time we hear excess
13 capacity -- at least today so far, and in the rate
14 proceedings I've been involved in -- the term excess
15 capacity is identified with plants and facilities that
16 have additional capacity to serve tomorrow's customers.
17 That's not considered nonused and useful capacity, for
18 the most part, around the country. There may be some
19 exceptions, and there will be some instances in other
20 states where used and useful adjustments are made for
21 very specific reasons. But there are no specific
22 widespread formulas that have been given the kind of
23 attention that Florida gives to used and useful analyses
24 for water and wastewater utilities.

25 And I guess I should also say, aside from

1 people dying, who no one takes credit for, most of
2 future customers are going to be existing customers. I
3 mean, in most normal circumstances, tomorrow's
4 customers, the majority of them, are going to be
5 existing customers, and there will also be some new
6 customers. So when utilities are able to provide
7 service in the future, they're providing service to all
8 its customers, and that's why we've heard time and time
9 again that it is necessary to design facilities with
10 adequate capacity.

11 The cost of providing service is really the
12 rate setting process. Used and useful analysis is one
13 calculation within a rate setting process that should be
14 geared to identifying the utility's cost of providing
15 service. I don't think I need to remind you, but I
16 think it's good to bring it up again, that the cost of
17 providing service is clearly defined, and this is an
18 informal process so I can go back to my rate school
19 position of quoting the Federal Power Commission vs. The
20 Hope Natural Gas Company, the 320 U.S. 591 United States
21 Supreme Court decision in 1944, where at page 608, it
22 says, "The revenues that a utility gets must be enough
23 to cover operating expenses and the capital costs."

24 It gets more complicated in the methodology,
25 but it's a rather simple formula. Your revenues must be

1 enough to cover your expenses and your capital costs.
2 We heard from DEP today and we've heard from the water
3 management districts that they're really looking, in
4 order to meet the demands of the customers in Florida
5 for water and wastewater, they're looking for the
6 utilities to install facilities that are large enough to
7 meet demands that extend out five years, ten years, and
8 I believe I heard in some instances maybe even 20 years
9 if that's what's necessary, because they want customers
10 to be preserved, they want the environment to be
11 preserved and they expect the utilities, if they build
12 facilities to meet those kinds of demands, those will be
13 the most economically sized facilities, which means
14 those will be the least-cost facilities for the
15 customers.

16 We also heard DEP talking about its revolving
17 fund, which may provide funds for utilities for
18 financing, and I believe Mr. -- one of Mr. McLean's
19 questions was, it's not a matter of spending the money
20 for the facilities, it's a matter of who pays for those
21 facilities, who pays for the up-front costs. I think it
22 may be interesting to look at who pays for the cost of
23 providing service and therefore what should the rates be
24 to cover the cost of providing service.

25 If half of the cost of the facilities that DEP

1 and water management districts say should be built, and
2 would be built, are financed with some revolving fund,
3 but only half of the cost is recovered through the rates
4 from the ratepayers, somebody else has to come up with
5 the rest of the money. And utilities either recover
6 their cost of providing service from ratepayers, or they
7 recover it someplace else. There was no question asked
8 about whether or not it's really the cost of providing
9 service because everyone, it seems, all the regulators,
10 seem to recognize that the cost of providing service,
11 the least cost of providing service, are the
12 economically sized facilities.

13 Well, now that we know what the cost is that
14 the Supreme Court says should be recovered through the
15 rates, the question is, how do you recover the costs?
16 If half will not be recovered through the rates from the
17 customers, where does the rest of the principal and
18 interest come from to pay for the revolving fund that
19 DEP is going to administer?

20 Facetiously, I suggest, that you go to a
21 lending institution, a bank, and you say, our rates will
22 only cover half of the principal and interest.
23 Therefore, we would like you to give us some money to
24 cover the other half. We will not return the dollars to
25 you and we will give you no interest on the money you

1 give to us. We just need the money because our
2 ratepayers will not be allowed to pay rates that cover
3 that cost.

4 Obviously you can't go to a lending
5 institution and do that. You shouldn't go to the
6 stockholders to do that. Stockholders shouldn't be
7 asked to provide funds to pay for carrying costs for
8 facilities for no return and no recovery of investment.
9 The Supreme Court says you have to get investors by
10 attracting capital by giving them a return on
11 investment.

12 This used and useful margin reserve
13 calculation seems to take precedence over what is the
14 cost of providing service. In other states,
15 economically sized facilities are considered 100 percent
16 used and useful for the most part. As I said, there may
17 be some exceptions. And those are facilities which may
18 go into service, such as land. And that's what my
19 testimony covers.

20 I think the presentation here on margin
21 reserve and the recommendations by the utility industry
22 with respect to adjusting the rule is only going part of
23 the way. They're not asking for all of the investment
24 be included in rate base as used and useful, but they do
25 want to get at least to some level that is similar to

1 the kinds of allowances that are made and recognized as
2 used and useful for the other industries.

3 It still will result in some nonused and
4 useful investment in the circumstances where its
5 warranted. But in circumstances where you want to
6 encourage them to build those facilities, meet DEP and
7 water management requirements, meet your requirements, I
8 think you want the utilities to provide safe and
9 adequate service as well as the other agencies. They
10 want the incentive to do that. But more than that,
11 they're entitled to earn the cost of providing service.
12 That's what rate setting is supposed to be about. And
13 that's no more -- they're not asking for any more than
14 what other states automatically receive. And it's hard
15 to find decisions in other states that make used and
16 useful adjustments. They all seem to recognize that if
17 the plant and facilities are necessary to serve needs of
18 the customers, that should be allowed in rate base
19 because it's a cost of providing service.

20 CHAIRMAN CLARK: Mr. Guastella, do you know if
21 the other statutes in the states provide for used and
22 useful adjustments?

23 MR. GUASTELLA: I'm sorry, I didn't hear the
24 last part.

25 CHAIRMAN CLARK: It strikes me as one of the

1 differences in the statutory language between electric
2 and water and wastewater, is the fact that the statute
3 uses used and useful. I don't remember seeing that in
4 the electric companies. In the states where they don't
5 make used and useful adjustments, do they have similar
6 language?

7 MR. GUASTELLA: It's universal language, I
8 believe.

9 CHAIRMAN CLARK: Used and useful is?

10 MR. GUASTELLA: Oh yes. Utilities are allowed
11 to earn a return on plant and facilities that are used
12 and useful in providing service. Its definition, if not
13 within statutes, it's certainly regulatory definition
14 found within rules and regulations. It's contained
15 within definitions in the Uniform System of Accounts.
16 So it's really not an exception. The concept of used
17 and useful is well known throughout the United States.
18 And I've been in about half of the states throughout the
19 United States. So I speak from that perspective.

20 I think then, finally, the last issue is
21 imputing CIAC. I don't think I need to belabor that
22 either. I've testified to that many times. There
23 really is simply a mismatch to take potential future
24 revenues and apply them to current costs for an
25 investment, especially when the future comes, you'll

1 have larger investment and the CIAC, through service
2 availability charges, will then still be in the future.
3 I think that's just a mismatch that needs to be
4 corrected. That's all I have.

5 MR. ARMSTRONG: Before Mr. Gower speaks, just
6 for clarification, Chapter 366 of the electric utility
7 statute in Florida also refers to the used and useful.

8 CHAIRMAN CLARK: Tell me what it says,
9 Mr. Armstrong.

10 MR. ARMSTRONG: 366.06 refers to -- I'll read
11 the pertinent portion, "shall be used for ratemaking
12 purposes and shall be the money honestly and prudently
13 invested by the public utility company in such property
14 used and useful in serving the public, less accrued
15 depreciation, and shall not include any good will, or
16 going concern value, or franchise value."

17 CHAIRMAN CLARK: What's the statute number,
18 again?

19 MR. ARMSTRONG: 366.06. And it's our
20 experience, as well, that used and useful is a concept
21 that is generic to ratemaking across the country.

22 There is that one comment I would like to
23 make, as well, in terms of the AFPI collection. Under
24 the current process a used and useful level is applied
25 for in MFRs. I know of one situation where the used and

1 useful doubled -- nonused and useful doubled from that
2 filed in an application, and yet the AFPI charges
3 decreased. And I think that highlights the problem with
4 AFPI and it underscores the fact that AFPI isn't an
5 answer for the utilities.

6 Mr. Gower just wants to address the imputation
7 of CIAC question.

8 MR. GOWER: Good afternoon, Commissioners.
9 Hugh Gower speaking on behalf of Southern States
10 Utilities. You have before you in this docket and I've
11 heard discussed today --

12 COMMISSIONER KIESLING: Could you get it
13 closer to your mouth? For some reason I'm losing you.

14 MR. GOWER: I'll do my best, Commissioner. Is
15 that better? You have before you some very voluminous,
16 weighty, technical, complicated testimony dealing with a
17 number of very important subjects, like economies of
18 scale, lowest long run revenue requirements and the
19 like. By contrast, my comments and my testimony are
20 very simple. So sit back and relax.

21 Mr. Guastella has already pointed out that
22 it's widely accepted in regulation that investors are
23 entitled to both a return on and a recovery of the
24 capital that they've invested. And in rate change
25 proceedings, rate cases, the amount of investor-supplied

1 capital is measured by the cost of plant, less
2 depreciation, less deferred taxes, less contributions in
3 aid of construction and plus or minus other rate base
4 items. And when rate base is properly constructed, the
5 rate base equals the amount of investor supplied capital
6 for that period. And as a result, when the Commission
7 applies the rate of return times the rate base, it
8 produces the proper amount of earnings requirement, net
9 operating income requirement, to service the company's
10 capital.

11 Now in the decade previous to this, the 1980s,
12 this Commission spent a lot of effort devoted to making
13 sure that rate base was properly constructed so that it
14 did equal capital. The Commission adopted the balance
15 sheet method, for example, and the Commission developed
16 minimum filing requirement schedules that required the
17 reconciliation of capital and rate base so that rate
18 base would be neither too large nor too small. And that
19 activity underscored the importance of having rate base
20 properly constructed so that the return allowed would be
21 neither too large nor too small.

22 Now, utilities, as my testimony points out,
23 who are subject to cost-based regulation, recover the
24 capital investments either through depreciation charges,
25 included in cost of service -- in other words prices for

1 service -- or through availability charges, commonly
2 called contributions in aid of construction. That takes
3 care of the return of capital.

4 Insofar as the return on capital, in measuring
5 the amount of investor capital that requires a return,
6 as my testimony illustrates, when depreciation is the
7 method, the rate base is cost of plant less accumulated
8 depreciation. And by contrast, if contributions are
9 involved, it's the cost of plant, less contributions in
10 aid. And in this way the proper rate base is devised.
11 And that's exactly what this Commission does for all the
12 utilities whose prices you regulate, except for water
13 and sewer companies.

14 And in the case of water and sewer companies,
15 since the 1980s, as you well know, the Commission has
16 made the assumption that a substantial portion of the
17 investor-supplied capital has already been recovered.
18 And of course I'm referring to the imputation of
19 contributions in aid for periods subsequent to the test
20 period. And that's wrong, because it means that rate
21 base will not be equal to the amount of
22 investor-supplied capital. And that means that the
23 return allowed will not be adequate to cover the cost of
24 capital.

25 I have an exhibit in my testimony, Exhibit 2,

1 which demonstrates exactly how that works. And it shows
2 that where the imputation is made, rate base is less
3 than the amount of investor-supplied capital.

4 Earlier today there was a discussion between
5 Commissioner Deason and Ms. Swain about the potential
6 for a declining rate base and subsequent overearnings.
7 What I would tell the Commission is, properly
8 constructed rate base works where rate base is stable,
9 where rate base is growing or where rate base is
10 declining. It's true, when rate base declines through
11 recovery of capital, or whatever reason, overearnings
12 could occur in the future. But the Commission has its
13 very well known continuing surveillance program to rely
14 on. And if that doesn't work, I would recommend to you
15 a cost-of-service tariff approach. They're fairly rare,
16 but they are used.

17 Coastal Transmission Corporation, now part of
18 Florida Gas Transmission, and some generating and
19 transmission cooperatives, as well as investor-owned
20 generating and transmission companies, do use
21 cost-of-service tariffs. What that means is every month
22 or every quarter the actual revenue requirement is
23 computed, and that's what's billed to the company's
24 customers. I would caution you that it would be pretty
25 complex to administer, if there are 150 service areas

1 with 150 separate tariffs. But that's an opportunity.
2 The fact that overearnings may occur in the future is
3 not sufficient reason to short change investors today,
4 any more than the prospect, which is much more likely,
5 that underearnings are likely to occur in the future is
6 a sufficient reason to overcharge customers today.

7 In your recent order, in Docket 950-495, the
8 Commission stated, and I quote, "We find it appropriate
9 to offset margin reserve to account for the anticipated
10 collection of contributions in aid of construction for
11 future customers," close quote, and went on to explain
12 that, quote, "The imputation recognizes that future
13 customers will hook up to the facility with
14 contributions in hand," close quote. No doubt there
15 will be future customers who will hook up, and that will
16 provide some return of capital previously invested.

17 But what that analysis and that order misses
18 is that contributions in aid, which are collected in the
19 future, provide zero return on capital, which investors
20 are entitled to, until that capital is recovered.

21 And further, it fails to recognize that 100
22 percent of the contributions imputed will never
23 materialize because some part of that increase, which is
24 projected, relates to current customers, and current
25 customers only pay contributions once, and they've

1 already paid it.

2 It's also interesting that if it's necessary
3 to go beyond the test period to account for future
4 capital recoveries, as the Commission suggests, then why
5 isn't it fair to go beyond the test period to account
6 for future capital investments? In the case of Southern
7 States, for the three years ended 1995, additional
8 capital investments occurred at the rate of ten times
9 the collections of contributions in aid of
10 construction. So the company's recovery of its cost of
11 capital just gets worse and worse. Nor do AFPI
12 collections provide return on margin reserve, by
13 definition. For the five years ended 1995 in the case
14 of Southern States, AFPI collections amounted to 1.2
15 percent of plant held for future use, nothing for margin
16 reserve.

17 I would just have to tell you, commissioners,
18 and with greatest respect, that analysis was just
19 wrong. The company has been shortchanged to the extent
20 of that imputation of contributions in aid of
21 construction, as has every other company. And if you
22 really want to provide investors an opportunity, a fair
23 opportunity to earn a fair return, you should cease that
24 practice because it's inappropriate. That concludes my
25 comments.

1 MR. ARMSTRONG: Madam Chair, I just have 60
2 seconds of concluding remarks. In 1990 I mentioned a
3 couple of times the survey performed by Staff of
4 utilities, and one of the questions asked was: "In what
5 way do you feel that the Florida Public Service
6 Commission influences the size plants which are built
7 through its ratemaking practices?"

8 Sixteen of the 17 utilities that responded
9 responded that utilities will build smaller plants to
10 minimize nonused and useful and nonearning investment.
11 A number of those utilities aren't here today. And if I
12 could just read, I would just like to identify the 16
13 utilities. Decca Utilities, Florida Cities Water
14 Company, Florida Public Utilities Company, General
15 Development Utilities Company, Kingsley Service Company,
16 Lake Placid Utilities, Lehigh Utilities, Lindrick
17 Service Corporation, Meadowbrook Utility Systems,
18 Mid-Clay Service Corporation, Ocala Oaks Utilities,
19 Ortega Utility Company, Regency Utilities, Sanlando
20 Utilities, South Side Utilities and Southern States
21 Utilities.

22 I think it was -- as I mentioned earlier, as
23 well, the Commission -- well, one of the questions left
24 open for investigation and determination based on
25 experience to be had at that point was whether AFPI

1 would provide cash flow which would make up the
2 difference from the Commission's nonused and useful
3 policies, the 18-month margin reserve and the 12-month
4 margin reserve. They have not. AFPI does not provide
5 that cash flow. And this is not a perfect world.

6 The question raised about -- the information
7 about building larger capacity in a perfect world, maybe
8 you'll do better, it is not a perfect world. We're not
9 going to do better under the current situation building
10 a larger plant. And what I mentioned before should
11 conclusively demonstrate that. If you apply in your
12 MFRs for X percent nonused and useful, it's doubled, and
13 yet your AFPI charge goes down. That tells you right
14 there it's not a perfect world, you're not recovering
15 the dollars. Thanks again for the opportunity to
16 address you all.

17 CHAIRMAN CLARK: Commissioners, are there any
18 questions?

19 Mr. McLean, would you like to pursue some
20 questions?

21 MR. McLEAN: Yes, ma'am, briefly for
22 Mr. Gower.

23 Mr. Gower, your courteous criticism of
24 Commission's imputation of CIAC to margin reserve is the
25 focus of my question. You say that it was flat wrong, I

1 think you said. That rests on an assumption that the
2 investment actually made, in your view, by utility
3 investors, speaking of that investment, they are
4 entitled to a return on that investment. And I didn't
5 hear you qualify that in any way. Your view is that if
6 the investment is made, then they are entitled to a
7 return on it?

8 MR. GOWER: I didn't qualify it, didn't intend
9 to. I would say this, and by "the investment," I was
10 referring to the investment in used and useful plant,
11 which includes margin reserve.

12 MR. McLEAN: Which you say includes margin
13 reserve.

14 MR. GOWER: It does include margin reserve.
15 It says so in the order.

16 MR. McLEAN: Now with respect to what's
17 included in margin reserve, what is used and useful, you
18 promised to get basic, and I want to follow that basic
19 notion. The statute says that investors are to be
20 allowed a fair return on their investment which is used
21 and useful in provision of utility service to the
22 public. Unfortunately, it doesn't say present or
23 future, does it? It doesn't say present customers or
24 future customers?

25 MR. GOWER: I would have to refer to the

1 statute. I don't recall exactly what it does say.

2 MR. McLEAN: I think it doesn't. It's just
3 silent on the point.

4 MR. GOWER: I'll accept that.

5 MR. McLEAN: And the real task for the
6 Commission today, I think, to put it in the most simple
7 terms possible, is to determine to what extent present
8 customers have a benefit from the investment, which on
9 the one hand provides for their very needs today, which
10 would include economies of scale, and which on the other
11 hand provides for needs which are exclusive to customers
12 who have yet to arrive. Isn't their real task today
13 simply to determine where to draw the line, irrespective
14 of whether you call it imputation of CIAC, irrespective
15 of whether you call it used and useful, or irrespective
16 of whether you call it margin reserve?

17 MR. GOWER: No, Mr. McLean, I think that line
18 has been drawn a long time ago, not only for water and
19 sewer companies insofar as so-called margin reserve, but
20 for other utilities as well. I've read the proposed new
21 rules, which is the subject of this hearing. And I
22 didn't see anything in there about redefining -- or the
23 need to redefine used and useful.

24 MR. McLEAN: Well, margin reserve is a
25 component of used and useful, isn't it?

1 MR. GOWER: Yes, it is.

2 MR. McLEAN: And whether it's to be included,
3 and to what extent, if any, it's to be offset, doesn't
4 that affect the size, the ultimate size and the ultimate
5 magnitude of used and useful?

6 MR. GOWER: Only in that some parties to these
7 proceedings propose to increase the amounts used to
8 calculate -- or the periods of time used to calculate
9 margin reserve. The concept of whether margin reserve,
10 however it may ultimately be defined, is used and
11 useful, at least in my view, is not open to question.

12 MR. McLEAN: Do you believe that investors in
13 the enterprise of providing water and sewer service
14 should face risks, particularly the risk that people
15 might not want their product, they might not attract
16 customers?

17 MR. GOWER: I don't know whether they should,
18 but investors in all utilities face that risk, not only
19 utilities as we know them today, electric, gas,
20 telephone, water and sewer, motor carriers and airlines
21 have faced that risk, and telephone companies, in
22 particular, are now facing that risk, as well as
23 electric companies and gas companies. They may not want
24 that product and service from that utility, or they may
25 choose alternative services. That's not so much an

1 issue for the water and sewer companies the way
2 technology stands today, but they might face those
3 risks.

4 MR. McLEAN: And people may not move to the
5 service area, despite the fact that margin reserve has
6 assumed that they will?

7 MR. GOWER: I'm sorry, I couldn't hear the
8 last.

9 MR. McLEAN: Customers may not come, despite
10 the fact that the margin reserve calculation, which you
11 encourage the Commission to make, assumes that they will
12 arrive, doesn't it?

13 MR. GOWER: Well, I haven't personally
14 suggested any particular calculation of margin reserve
15 to the Commission. I'm only suggesting that it not
16 reach beyond the test period and eliminate that
17 investment from rate base, whatever it may be.

18 I don't know that customers really very
19 carefully analyze how margin reserve might be calculated
20 by this commission. What they might analyze is what is
21 the price of the lot or the home that a seller, whether
22 a developer or a reseller, might want to charge. And if
23 the price is too high, they go someplace else. It
24 hasn't seemed to deter much growth in Collier County so
25 far, but it might happen.

1 MR. McLEAN: To the extent that the Commission
2 adopts the rule as it's now proposed, less the
3 imputation of CIAC, which Staff seems to oppose, will
4 that lessen the sort of risk we've just been talking to
5 about to investors?

6 MR. GOWER: By "that sort of risk," are you
7 referring to our earlier discussion about competition
8 from other sources?

9 MR. McLEAN: The notion that customers may not
10 come, the notion that the projections may be overly
11 optimistic, the notion that the time period it takes to
12 construct the plants may have been unduly short, it may
13 take longer, things of that nature, those sorts of
14 risks. Will the passage of this rule, will the adoption
15 of this rule lessen those risks to the utility
16 investors?

17 Let me maybe ask the question a little bit
18 differently. You have identified that utility investors
19 are presently at risk because they will not earn a
20 return on the investment they make for a number of
21 factors, one of which you identified, was imputation of
22 CIAC, another one which you identified was an inadequate
23 planning horizon, if I may use the terms, and so forth.
24 They face the risks that they will not earn a return on
25 that investment at the present point in time. I have

1 it, from all I've heard today, that if this rule was
2 adopted without the imputation of CIAC that that risk
3 will be considerably lessened to utility investors. And
4 I wonder if you agree.

5 MR. GOWER: That sure was a long question.
6 Let me see if I can capsulize it so we can move on.

7 MR. MCLEAN: Yes, sir.

8 MR. GOWER: You're asking me if the Commission
9 adopts the rule as proposed, but eliminates the
10 imputation of CIAC --

11 MR. MCLEAN: Yes, sir.

12 MR. GOWER: -- would the risk to investors be
13 reduced?

14 MR. MCLEAN: Yes, sir.

15 MR. GOWER: Yes, marginally it would, because
16 at least to whatever extent margin reserve is in rate
17 base, there would be compensation for it. So that's an
18 improvement. Whether that's sufficient improvement to
19 affect very positively the rating of securities and all
20 of those things, I just don't know at this time. But
21 it's certainly an improvement. It is not what Southern
22 States and the Waterworks Association seeks, but it's
23 improvement over the present situation.

24 MR. MCLEAN: The impression I have from the
25 answer you just gave is that it -- is that the passage

1 of this rule will yield somewhat immaterial results to
2 the industries; is that what you're saying?

3 MR. GOWER: I don't think I said that. I said
4 that I couldn't make a judgment about the effect of the
5 question that you posed to me, but that it's an
6 improvement over what's being done now.

7 MR. McLEAN: Okay. To the extent the risk is
8 lessened, does the risk go away, or does it come to the
9 people who I have the honor to represent?

10 MR. GOWER: I don't think there's risk to the
11 customer for -- if the Commission were to cease
12 improperly imputing post test period AFUDC, there isn't
13 risk to the customer, because that's a certain thing,
14 that revenue requirement exists. It is just currently
15 being obviated by the improper imputation. But it's
16 there.

17 MR. McLEAN: The revenue requirement, based
18 upon an investment which is made for the benefit of
19 present customers and for future customers?

20 MR. GOWER: Yes, it exists today.

21 MR. McLEAN: Have you considered any
22 accounting device by which the benefit to present
23 customers could be compensated but that the benefit to
24 future customers, and the revenue associated there with,
25 should be foregone by the utility until the future

1 customers arrive?

2 MR. GOWER: I infer from your question that
3 you're asking whether it's possible to capitalize
4 carrying costs and recover them later on.

5 MR. McLEAN: AFUDC, like you mentioned, I
6 think.

7 MR. GOWER: Yes. That question has pretty
8 well been decided by the Financial Accounting Standards
9 Board. There was a period of time when something like
10 that might have been done. I don't believe that it
11 could be done now. Any -- if the Commission were to do
12 that for ratemaking purposes, the only time when
13 companies could recognize whatever that calculation is
14 as revenue, is when it is collected in cash from the
15 customers. It can't be accrued now and recovered in the
16 future. When I say it can't be accrued now, it can't be
17 accrued on the books of account and put in financial
18 statements that are accepted by the public by lenders
19 and others, because there would be an adverse opinion
20 from the outside CPAs.

21 MR. McLEAN: FASB, of course, defers somewhat
22 to regulatory accounting where regulatory accounting
23 differs from FASB?

24 MR. GOWER: The one I'm thinking of deals
25 specifically with that issue in phase-in plans and makes

1 it very clear that that game is over.

2 MR. McLEAN: The game is over in the extent of
3 external financial reporting. For example, you don't
4 want investors or lenders to rely on that revenue stream
5 because it is tentative, or it is speculative?

6 MR. GOWER: Sure, and they don't.

7 MR. McLEAN: And the speculation, of course,
8 is directly associated with the notion that the
9 forecasts may be wrong, or the customers may not arrive;
10 isn't that right? Isn't that the precise nature of the
11 speculation we're talking about, that the revenue may
12 never be received?

13 MR. GOWER: Well, that's the bottom line. The
14 revenue may never be received. It has not been
15 realized. And it's more than that. To qualify for
16 recognition right now, the earnings process has to be
17 completed. The mechanism that you and I have been
18 kicking around here, capitalizing costs now to be
19 collected in the future, doesn't meet that criteria,
20 because to collect that revenue, the company would also
21 have to provide service in the future. And either
22 because of competition or because a neighborhood becomes
23 unpopular and all the customers move away, so the
24 company has no customers, whatever reason, no certified
25 public accountant could give a clean report on a

1 financial statement which recognized an item like that.

2 MR. McLEAN: Because those expected revenues
3 are contingent.

4 MR. GOWER: And speculative.

5 MR. McLEAN: And speculative. However, the
6 speculation and contingency which would prevent a
7 certified public accountant from giving an unqualified
8 statement with respect to those things, and which may
9 well prevent other -- or investors and lenders from
10 making investments in lenders, it's perfectly okay with
11 you, however, to allow customers to stand and pay money
12 in the face of that contingency.

13 MR. GOWER: No, that's not my testimony.

14 COMMISSIONER KIESLING: Mr. McLean, I'm having
15 a hard time following your questions because they are
16 quite lengthy and they get kind of broken up in the
17 middle by statements. And I'm not trying to give you a
18 hard time, but if I can't follow what you're asking,
19 then the answers are not particularly helpful.

20 MR. McLEAN: Then let me make a statement,
21 Madam Commissioner, and maybe it will help the witness
22 answer the question as well.

23 There is a contingency associated with AFUDC,
24 and there is speculation associated with AFUDC. Now,
25 the witness, I think it's fair, and he'll correct me if

1 I'm wrong, has said, that AFUDC is not a good way to
2 recognize the -- recognize the value to investors who
3 have given up investment.

4 COMMISSIONER KIESLING: Wait a minute. All I
5 wanted was for you to restate your question so that I
6 can understand what it was. I didn't necessarily need
7 more explanation. I just couldn't follow the question.

8 MR. McLEAN: I'm sorry. I'll try to do a
9 little better.

10 Mr. Gower, with respect -- you and I have been
11 having a fairly lengthy -- perhaps all too lengthy --
12 discussion about AFUDC. You say the game is over and
13 the reason you point out for that is because AFUDC has
14 contingencies and speculation associated with it, and
15 neither lenders, nor investors, nor certified public
16 accountants care to bet their reputation and resources
17 on that sort of speculation and that sort of
18 contingency; is that a fair statement?

19 MR. GOWER: Let's be sure we're not talking
20 about AFUDC in the normal sense that the companies
21 normally capitalize on their ordinary construction
22 projects. I think we're talking about something more
23 like AFPI.

24 MR. McLEAN: I agree.

25 MR. GOWER: I just hate for the record to be

1 too muddy on that issue.

2 MR. McLEAN: Now, the uncertainty, the
3 contingency and the speculation associated with those
4 notions are something, it seems to me, that the industry
5 today says to the Commission, the customers can pay
6 money today in the face of that speculation, contingency
7 and uncertainty, and that doesn't seem to give the
8 industry any trouble. Is that a fair statement of the
9 case?

10 MR. ARMSTRONG: It's not the statement.

11 MR. GOWER: I think that out of our long
12 discussion you've suddenly leapt to a very short
13 conclusion that doesn't relate to our discussion at
14 all. What the industry is asking for is to simply not
15 offset the amount of plant in service by an improper
16 imputation of post test period collections. That has
17 nothing to do with our lengthy discussion of carrying
18 forward carrying charges year after year after year.
19 They're two completely different scenarios that we're
20 talking about here.

21 CHAIRMAN CLARK: Mr. McLean -- and I would
22 point out to you, you have the opportunity to make
23 whatever points that you wish to make with regard to
24 imputation of CIAC. You know, to the extent that you
25 can't get the witness to agree with your conclusions,

1 you're free to put on those conclusions yourself.

2 MR. McLEAN: As Mr. Armstrong did?

3 CHAIRMAN CLARK: Sure.

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

5 MR. ARMSTRONG: Just in response to the
6 question and the tete-a-tete that just occurred too.
7 We've focused today, and obviously Mr. McLean and Public
8 Counsel has focused on when you make projections and you
9 overproject. You know, there is that flip side of that
10 equation, and if the utility underprojects and invests
11 smaller and has higher growth than projected, what's the
12 result of that? The result of that is you're going to
13 have to build sooner than otherwise would have been the
14 case, and you're going to have the higher marginal
15 costs, and you're going to have higher rates to your
16 customers. So we have to look at both sides, and not
17 just concentrate on one where we're overprojecting.
18 There's also the possibility of underprojecting. And it
19 has just as much of a deleterious impact if it's not
20 done in a reasonable manner. But there's nothing to
21 suggest that utilities are going to do it in any way
22 other than reasonable, to minimize the cost.

23 CHAIRMAN CLARK: Does Southern States have
24 anything more they want to comment on at this point?

25 MR. ARMSTRONG: No, thank you.

1 CHAIRMAN CLARK: All right. Mr. Kramer?

2 MR. KRAMER: Yes, Madam Chairman. Thank you
3 very much for holding this discussion so we can get our
4 opinion out there, too. And most of my opinions have
5 already been expressed by the Florida Waterworks
6 Association or Southern States.

7 I do, however, have one question, and it's
8 more of a clarification, for Mr. Crouch. And he stated
9 that the maximum reserve that he would offer would be 20
10 percent. And I question, would that also be if the
11 period is three years or even five years, would that
12 still be a maximum of 20 percent?

13 MR. CROUCH: We were looking at the
14 possibility of three years and the 20 percent cap. If
15 the ultimate rule comes out to be five years, we might
16 have to readjust that cap. That was my recommendation,
17 though, at a three-year margin reserve and a 20 percent
18 cap.

19 MR. KRAMER: I'm concerned that our utility
20 owns several different systems that the growth rate
21 exceeds 20 percent, possibly, in a year, much less two
22 or three years. In those instances where the Staff will
23 admit that the growth is that high, will you reconsider
24 the 20 percent margin reserve?

25 MR. CROUCH: Most definitely. In fact, the 20

1 percent cap was like a default. For lack of any other
2 evidence, 20 percent would be the cap. Now, if you
3 could come in and show that there's going to be a motel
4 come in right across the street that's ultimately going
5 to add considerable customer base to you right away,
6 there would be exceptions allowed. The 20 percent would
7 have been a default.

8 MR. KRAMER: That lends to my next question,
9 which is on regression analysis. You say that
10 regression analysis and looking at the past five years
11 is a good indication of future growth. Like I stated
12 earlier, a lot of our utilities have quite a bit higher
13 growth than the normal utility, and often when we have
14 territory expansion, the last five years is an improper
15 assumption of what will occur in the future. My concern
16 is if there is a regression analysis put in the record,
17 that everybody will rely on that regression analysis as
18 opposed to looking at what other data may suggest, like
19 you say, a motel.

20 MR. CROUCH: We originally used the average of
21 five years. We found out that that average may not be
22 indicative. If somebody has a growth potential that
23 shows increasing growth over the last two years and next
24 year is going to be even more increasing, we realize
25 that the average was not a true indication. So several

1 years ago, we suggested going to regression analysis,
2 which gives you a trend, which is even more realistic
3 but still could have discrepancies. So if you can show
4 in your MFRs when they're filed, you can show growth,
5 you can show a reason for something as an exception, we
6 would definitely take that into consideration.

7 MR. KRAMER: I have no further questions right
8 now. Thank you.

9 CHAIRMAN CLARK: Thank you. Any other
10 utilities who want to comment at this point?

11 Mr. Yingling, did you come to make a comment?

12 MR. YINGLING: Yes, actually, I did. Just so
13 everybody knows, I'm Jay Yingling with the Southwest
14 Florida Water Management District. And I've been kind
15 of following all of this here and just had a couple
16 comments before this moves along very much further.

17 But in terms of the margin reserve, I think
18 that we need to consider that what kind of incentives
19 are we giving to the utilities in terms of economies of
20 scale? And I say this in reference to what will be
21 happening around the state in the next few years, and
22 that's that we're going through minimum flows and
23 levels, rule development, and in several cases probably
24 will be looking more at developing alternative sources
25 of supply. And typically those are more expensive than

1 the traditional sources of supply. And if we don't
2 build in the economies of scale by allowing a longer
3 margin reserve, the rates for those customers will go
4 up, probably significantly more than they would if you
5 had a greater economy of scale built in. That's just in
6 reference to the alternative sources.

7 As far as who bears the risk, if we're really
8 concerned about building facilities too large, then
9 maybe perhaps we need to look at tightening up on
10 reviewing forecasts of growth; that it would be better
11 to handle it on that end than later after the facility
12 is built. And in terms of fairness between
13 investor-owned utility customers and government-owned
14 utility customers, there are cases where counties have
15 overbuilt their utility systems, their wastewater
16 treatment facilities, their water treatment facilities,
17 and the customers bore the cost of that. So just in
18 comparing an investor-owned utility customer and a
19 government-owned utility customer, there is a risk there
20 of either overprojecting or underprojecting, but in the
21 end, you know, the government-owned utility customers
22 also bear that risk.

23 CHAIRMAN CLARK: Thank you.

24 COMMISSIONER KIESLING: I have some questions
25 for that. Sorry, I'm still trying to fight a lingering

1 cold. So if I lose my voice, I'll try to find it
2 again.

3 On your alternative sources statement just
4 now, if I understand correctly, what you're suggesting
5 is that when it comes to consumptive use permits in the
6 future, that some utilities may be forced to go to an
7 alternate source of supply, and pass the costs of that
8 on to their customers. Is that what you said?

9 MR. YINGLING: Yes.

10 COMMISSIONER KIESLING: Well, how are y'all
11 planning to do that, then, in the sense that -- are you
12 going to shift to something like western water law
13 where, you know, it's, you know, the order in which you
14 got a dibs on the supply is the order in which you get
15 to stay? In other words, in a certain area where
16 there's one source of supply and everybody is drawing
17 from it -- let's say it's an aquifer -- and there have
18 been enough and maybe too many consumptive use permits
19 already issued for that aquifer, then the next applicant
20 that comes in and asks for a consumptive use permit,
21 you're going to say, nope, there's no more left, you
22 have to pay more?

23 MR. YINGLING: There's probably several
24 options, and in fact they're being tested in
25 administrative hearings right now as to how you would

1 deal with a limited supply from a major resource.

2 As you know, we proposed the Southern Water
3 Use Caution Area Rule, and it does allow permitted
4 quantity trading. But in those instances where there's
5 the availability of another source, then the utility may
6 choose to go to that other source. And typically it
7 will be higher costs.

8 The alternative of either not going to the
9 alternative source or not permit trading would be, under
10 Florida water law, competing applications. And that
11 could be a very expensive and time consuming way of
12 divvying up that pot of water. It hasn't really been
13 tested on a large scale. And depending on how the
14 administrative hearings pan out, we may get to test
15 that.

16 COMMISSIONER KIESLING: Okay, I'm just
17 expressing some level of concern that the customers of
18 one utility in their rates will be paying a certain
19 level for that resource and customers of another utility
20 that are similarly situated will be paying more. And I
21 find that problematic, unless -- unless the whole way of
22 setting, you know, rates for water customers in the
23 state is changed so that every customer is paying an
24 amount that is really equal to the true cost and value
25 of the water that they're using.

1 MR. YINGLING: That situation actually
2 currently exists. There are several utilities in the
3 northern Tampa Bay area, some of which got into that
4 area early on, and were able to build water facilities
5 that could not be permitted today. And so their cost of
6 water, even when it was built, was lower than would be a
7 similar utility coming in and trying to withdraw the
8 same amount of water today because of environmental
9 regulations and other factors. So it's not necessarily
10 just the upcoming situation, it depends on what the
11 regulations were at the time that the facility was
12 built. So there are differentials in existing utilities
13 today.

14 CHAIRMAN CLARK: Okay.

15 MR. YINGLING: Did that respond to your
16 question?

17 COMMISSIONER KIESLING: Well, it didn't
18 alleviate my concern. I can tell you that.

19 CHAIRMAN CLARK: Let me ask a question. We
20 need to deal with the margin of reserve rule.

21 COMMISSIONER KIESLING: Yeah.

22 CHAIRMAN CLARK: So. That's what this hearing
23 is about.

24 COMMISSIONER KIESLING: Well, I understand,
25 but the witness, you know, made a statement --

1 CHAIRMAN CLARK: I appreciate -- I know you
2 have to follow up on it.

3 COMMISSIONER KIESLING: -- that somehow must
4 have been related in his mind to margin reserve.

5 CHAIRMAN CLARK: Do you want to follow up any
6 more?

7 COMMISSIONER KIESLING: I guess I also had
8 some questions about the third point that you made about
9 government-owned utilities that -- and if you could
10 repeat what that point was, I would appreciate it.

11 MR. YINGLING: The third point was, is that in
12 scenarios where I guess growth projections were off and
13 there was excess capacity that was built, that I know --
14 I can think of one situation in particular in the Tampa
15 Bay area where the facilities were built too large based
16 on bad population projections, and currently those
17 ratepayers are paying a fairly high rate. And it is a
18 government-owned utility. I was just trying to draw the
19 parallel between an investor-owned utility customer and
20 a government-owned utility customer.

21 COMMISSIONER KIESLING: That's where I had the
22 problem, is that I don't know that you can compare those
23 two, in the sense that there is absolutely no
24 requirement on governmentally owned utilities, that
25 their rates be cost-based. They can use other forms of

1 general revenue to subsidize that operation, or they can
2 charge high rates and use the extra revenue that isn't
3 necessary to cover costs to subsidize some other
4 governmental service, as opposed to investor-owned
5 utilities who by statute can only collect rates that are
6 cost-based. And so even if there is a particular
7 governmentally owned utility whose local government
8 decided to make their customers pay for that bad
9 planning, it's not because they are comparable; it's
10 just because that particular governmental entity decided
11 to collect some of the revenues it needed through that
12 mechanism. And so that, to me, makes them not
13 comparable.

14 MR. YINGLING: My point was it was just not a
15 good forecast. It wasn't that they needed to collect
16 additional revenues for other government operations.

17 CHAIRMAN CLARK: Anything else?

18 COMMISSIONER KIESLING: No.

19 COMMISSIONER CLARK: Are there any other
20 utilities representatives who want to make comments at
21 this point?

22 MR. ARMSTRONG: Just one. I've been informed
23 that FWWA agrees with the margin reserve definition that
24 we submitted.

25 CHAIRMAN CLARK: Okay, Mr. Schiefelbein?

1 MR. SCHIEFELBEIN: We can support Southern's
2 revised definition. If it's your pleasure, Ms. Swain is
3 prepared to answer Mr. Williams' --

4 CHAIRMAN CLARK: Go ahead, Ms. Swain.

5 MS. SWAIN: The answer is really two part. No
6 answer can go without an explanation. In the very first
7 year that a utility would place its new plant into
8 service, the rate under the Florida Waterworks proposed
9 rule would be approximately, in our model, 34 percent
10 higher than under the PSC proposed rule.

11 The graph that I'm handing out is something
12 that I had prepared to see what the impact would be in
13 the short and long term, and it's very similar to the
14 graph that I showed you earlier comparing customer rates
15 dependent upon plant size. But in this case the dark
16 area in the back of the graph is the two and a half year
17 increment plant under the PSC proposed rule. And the
18 line in front is the Waterworks' proposed rule. The
19 line in front, you see in both cases, water and
20 wastewater, does start out higher. In the case of
21 water, it reverses in the 13th year, which is after six
22 or seven years in service. In the case of the
23 wastewater, the reversal in the rates takes place after
24 three years in service. In other words, within --
25 within three years and seven years, or after three years

1 and seven years, it is less expensive under the
2 Waterworks' proposal to the customer than under the PSC
3 proposed rule.

4 COMMISSIONER DEASON: Let me ask a question.
5 All of these graphs are based upon input data that you
6 derived; is that correct?

7 MS. SWAIN: That's right.

8 COMMISSIONER DEASON: And in any real world
9 situation, those inputs may be different?

10 MS. SWAIN: Absolutely.

11 COMMISSIONER DEASON: So, for example -- I'm
12 looking on your Page 21 again -- I would think that one
13 of the significant inputs would be the difference in
14 cost per thousand gallons of 286 versus 390, for
15 example.

16 MS. SWAIN: That input data was the capital
17 construction cost data that I derived from data that has
18 been presented to the Commission in prior rate cases,
19 but that -- any example could be a different -- come out
20 with different per gallon costs, absolutely. But that
21 is a real world example. That's not something we
22 hypothesized. That was a true cost example.

23 COMMISSIONER DEASON: That was just one real
24 world example that you analyzed. Or was it an average
25 of several real world examples?

1 MS. SWAIN: No. In the per gallon cost, each
2 one of those, the water example and the wastewater
3 example, is a real world example, one example. The
4 wastewater was a situation in Florida Cities and the
5 water example is a Southern States situation.

6 COMMISSIONER DEASON: But obviously, for
7 example, if that differential were narrowed, the results
8 would not be as significant.

9 MS. SWAIN: That's right, but the opposite
10 holds true as well. For example, a water line, a
11 four-inch water line may cost \$10 a foot, where a
12 six-inch line is \$12 a foot. So the incremental cost is
13 even that much more in the other direction.

14 COMMISSIONER DEASON: And of course what we're
15 trying to do is develop a rule that's going to be
16 applicable in a default situation.

17 MS. SWAIN: Right. And I didn't pick and
18 choose numbers. I took an example and stuck with it
19 whether it -- whatever the results came out to be. This
20 is a real life example and we just wanted to see what
21 would happen.

22 COMMISSIONER CLARK: Mr. McLean?

23 MR. McLEAN: Yes, ma'am. I'm sorry, I was
24 getting the exhibit when you answered Mr. Williams'
25 question. What was the number you said?

1 MS. SWAIN: In the very first year it was 34
2 percent higher.

3 MR. McLEAN: Thirty-four percent. And what
4 are the two scenarios?

5 MS. SWAIN: Under the Waterworks' proposal,
6 which is five-year margin reserve and no imputation of
7 CIAC, the immediate rate would be 34 percent higher in
8 my model situation, compared to the PSC proposal.

9 MR. McLEAN: Compared to the PSC proposal,
10 which is --

11 MS. SWAIN: Which is one and a half years
12 margin reserve and imputation of CIAC.

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

14 CHAIRMAN CLARK: Any other utilities?

15 MR. SCHIEFELBEIN: If I may, could we get the
16 two packages of supplemental -- I'm going to get used to
17 this mike by the time the hearing is over. The first
18 set of handouts that were revisions to Ms. Swain's --

19 CHAIRMAN CLARK: We'll go ahead and mark the
20 revisions and the one you just handed out as composite
21 Exhibit 4.

22 MR. SCHIEFELBEIN: Thank you.

23 CHAIRMAN CLARK: And we'll allow it to be a
24 part of the record.

25 (Exhibit No. 4 marked for identification.)

1 MR. McLEAN: Is there a hope of our getting a
2 late-filed exhibit in support for that 34 percent?

3 CHAIRMAN CLARK: The working papers that
4 support it?

5 MR. McLEAN: Sure.

6 COMMISSIONER CLARK: Ms. Swain, can you get
7 the working papers that support the graph?

8 MS. SWAIN: Yes, I can.

9 CHAIRMAN CLARK: And it will be -- have it
10 distributed to the parties that have participated, and
11 it will be part of Exhibit 4.

12 MR. McLEAN: Thank you, Commissioner.

13 MS. MOORE: Madam Chairman, there's also --
14 water management districts also had a handout that
15 should be numbered.

16 CHAIRMAN CLARK: You mean --

17 MS. MOORE: The rule revision, amendment --

18 CHAIRMAN CLARK: We'll make that Exhibit
19 No. 5.

20 MS. MOORE: And then Southern States' Proposed
21 Amendments to the Rule.

22 CHAIRMAN CLARK: We'll make that No. 6. You
23 mean the margin of reserve?

24 MS. MOORE: The definition of margin reserve,
25 yes.

1 CHAIRMAN CLARK: We'll make that 6.

2 (Exhibit Nos. 5 and 6 marked for
3 identification.)

4 MS. MOORE: The other thing is the 1990 study
5 that Southern States has referred to a couple times that
6 was prepared by our research division. And we have
7 copies available and most everyone has seen a copy, but
8 I don't know if the commissioners have one, if that's --
9 it's good background information.

10 CHAIRMAN CLARK: Do you want that to be part
11 of this record too? Is it already part of the record?

12 MS. MOORE: It's not already been part of the
13 record, but it's been referred to a couple of times,
14 so.

15 MR. SCHIEFELBEIN: This was referred to one
16 time, I believe, by Mr. Feil in some comments.

17 CHAIRMAN CLARK: Well, Mr. Schiefelbein, this
18 is --

19 MR. SCHIEFELBEIN: I know, it's rulemaking.
20 And if this had been filed as comments by Staff -- this
21 study does not support the Staff-proposed rule. This
22 study does not support Mr. Crouch's testimony. This
23 study does not support N. D. Walker's testimony. I know
24 this is rulemaking, and I know the rules are different
25 here, but we have had no opportunity -- there was a

1 procedure set up to file comments, and there was a
2 procedure to file responsive comments. We have done
3 both. Now we're being given something that was
4 compiled, that was published in March of 1990, that
5 contains a survey of the states in 1988 and 1989, a lot
6 of data where there's been no opportunity to really pore
7 over it. Some of the stuff in this report is very
8 helpful to us. Some of this is not.

9 CHAIRMAN CLARK: Mr. Schiefelbein, let me
10 interrupt you. Mr. Armstrong brought it up, as did
11 Mr. Feil. I'm going to allow it to be part of the
12 record. I also will put you on notice that there will
13 be a comment period after the hearing, and that will be
14 your opportunity to comment on any concerns you have
15 with respect to this survey.

16 MS. MOORE: And copies were made available
17 over a month ago, two months, probably.

18 CHAIRMAN CLARK: Okay.

19 MR. FEIL: Commissioner, if I may make one
20 comment with respect to that 1990 report. I asked for a
21 copy of the report because Mr. Crouch makes a reference
22 in his testimony on Page 6, beginning at Line 13
23 addressing as follows: "In the early 1980s the PSC
24 Staff conducted research and found that the average
25 planning, permitting and construction time for plant was

1 1.5 years and the distribution collection systems one
2 year." As Mr. Schiefelbein referenced, the report does
3 not support that statement in Mr. Crouch's testimony. I
4 suppose I can ask Mr. Crouch that. He has already
5 acknowledged it. So I just wanted to make that clear
6 for the record. He's nodding yes.

7 MR. CROUCH: In fact, I planned on addressing
8 that in my discussion coming up in just a few minutes.

9 MR. SCHIEFELBEIN: We have not had a break for
10 a couple hours. May we have one?

11 CHAIRMAN CLARK: In just a minute.
12 Mr. McLean, I wanted to know what you propose now. You
13 are next on my list.

14 MR. McLEAN: We'll simply stand on our
15 comments, Madam Chairman.

16 MR. SCHIEFELBEIN: We would like an
17 opportunity to cross-examine Mr. McLean about his
18 comments -- ask him questions. Excuse me.

19 MR. McLEAN: He can give it a shot. I don't
20 know much about them, but I'll do the best I can.

21 MR. SCHIEFELBEIN: We'll accept their
22 withdrawal.

23 CHAIRMAN CLARK: Mr. Schiefelbein, any idea
24 how long?

25 MR. SEIDMAN: I just had a couple of

1 clarifying questions just to get a better idea on the
2 position of a couple things they had in their comments.
3 That's all.

4 CHAIRMAN CLARK: Okay, now, and after Public
5 Counsel we have other persons and Staff comments. I
6 don't -- was Staff planning on making further comments?

7 MR. CROUCH: I believe that Mr. Walker and I
8 both had comments to make tonight.

9 CHAIRMAN CLARK: Well, then I'm confused,
10 because when I asked earlier if the Staff was going to
11 make anything beyond what they had prefiled, I thought
12 there was an indication that you were not. Has there
13 been some confusion on that point?

14 Okay, we will go ahead and take a break until
15 about five after four, and then I want some
16 clarification as to our procedure from Staff. Thank
17 you.

18 (Recess from 3:55 p.m. until 4:10 p.m.)

19 CHAIRMAN CLARK: Let's call the hearing back
20 to order.

21 Mr. McLean, as I understand it, you want to
22 stand on your comments. I will give other parties an
23 opportunity to ask you questions about those comments
24 but I would like to identify The Analysis of the Margin
25 Reserve, Used and Useful Adjustments, and Allowance for

1 Funds Prudently Invested as Exhibit 7. And it will
2 become part of the record, this rulemaking record.

3 (Exhibit No. 7 marked for identification.)

4 COMMISSIONER CLARK: Mr. Schiefelbein.

5 MR. SCHIEFELBEIN: May I, for the record,
6 renew my objection to receiving that? That is
7 essentially a report prepared -- just for the record --
8 a report prepared following up on a March 1987 workshop
9 on margin reserve, and there has been no opportunity,
10 that this has been done totally in a disorderly fashion,
11 in our opinion. We do not have an adequate opportunity
12 for you all to make a presentation that contradicts
13 this. There's been no showing whatsoever that Staff
14 agrees with this, relies on this, believes in this,
15 whatsoever. And yet I guess it's the countervailing
16 expert that's been set up. It's by a gentleman who, to
17 my knowledge, is now doing continuing property record
18 audits for the Division of Electric and Gas. I do not
19 think it's fair play to have received this into
20 evidence. I think it could have been filed as comments
21 and then it would have been very much in fair play.
22 Thank you.

23 CHAIRMAN CLARK: I would only point out to you
24 again that you have the opportunity to file subsequent
25 comments to the hearing. Mr. Schiefelbein.

1 MR. SCHIEFELBEIN: Mr. Seidman.

2 MR. SEIDMAN: I just had a couple of questions
3 on OPC's position on margin reserve. I want to clarify
4 that it's the position of OPC that margin reserve is
5 neither used nor useful and should not be in rate base
6 to recover through rates for present customers.

7 MR. McLEAN: That's correct, Mr. Seidman.
8 However, we also recognize that there is good to be had
9 on behalf of the people we represent in the economic
10 expansion of -- or expanding utility plant in a way
11 which takes advantage of economies of scale. And with
12 respect to a related issue, we believe that the
13 underlying calculations of used and useful take into
14 consideration the changing needs of existing customers.
15 So with respect to the piece part that provides -- that
16 provides existing customers with economies of scale, to
17 put it simply -- and remember that I'm not an expert
18 witness on this topic -- we can live with that notion.
19 But we believe, on behalf of the customers, that one --
20 that part of the regulatory compact is such that you
21 have the obligation to expand the plant in an
22 economically efficient manner, irrespective of whether
23 there's an allowance or margin reserve.

24 MR. SEIDMAN: We have an obligation to expand
25 in an economic manner whether or not we recover the cost

1 of it, through rates?

2 MR. McLEAN: Yes, for the customers who are
3 the beneficiaries of the expansion.

4 MR. SEIDMAN: Well, let me get back to the
5 margin reserve again. Margin reserve, as we propose
6 that it be defined, that -- it is OPC's position on
7 that, that that is not used and useful?

8 MR. McLEAN: That is correct, sir.

9 MR. SEIDMAN: And that is because --

10 MR. McLEAN: I would like to expand on -- I
11 would like to tell you because in my own words,
12 actually. It's because the element of plant, the
13 increment of plant which is included in -- apparently
14 included in margin reserve, which is of use to future
15 customers, the return on the investment associated with
16 that plant ought to be paid by the customers who will
17 benefit from it, not by existing customers.

18 MR. SEIDMAN: I understand now. Is this
19 position a consistent one for the Office of Public
20 Counsel with regard to reserve margin for electric
21 utilities?

22 MR. McLEAN: Mr. Seidman, you're a bit outside
23 my area of expertise. I'll try to give you as fair an
24 answer as I can. There is the general notion, I think,
25 in the Office of Public Counsel that the consideration

1 of margin reserve is far less material in the electric
2 industry and in the gas industry than it is in the water
3 and sewer industry. As you heard from Mr. Armstrong and
4 from other witnesses as well, it is a very material
5 issue in this industry. Now I am not personally
6 assigned to the electric industry enough to tell you
7 what the general practices and procedures are there.

8 MR. SEIDMAN: Well, my question was not a
9 question of materiality. It's a question of
10 consistency. Does the OPC take the position with
11 electric utilities that if the reserve margin serves
12 existing customers, it's used and useful, and if it
13 serves for growth, it's not used and useful?

14 MR. McLEAN: I don't think that you
15 characterized our position with respect to water and
16 sewer utilities. But a fair answer to your question is,
17 I simply don't know that the issue has ever arisen for
18 us to address. Has a utility, an electric, gas,
19 telephone, ever come in seeking an increment of plant to
20 be added to rate base to serve future customers? If
21 they did, I'm relatively confident that we would oppose
22 it, upon the same basis that we oppose it here.

23 MR. SEIDMAN: Let me see if I understand.

24 MR. McLEAN: Yes, sir.

25 MR. SEIDMAN: An electric utility has a

1 certain amount of capacity.

2 MR. McLEAN: Yes, sir.

3 MR. SEIDMAN: Part of that is used to serve
4 their load. Part of that is identified as reserve
5 margin. That's all they've got. That's the only two
6 things they identify. Do you take the position when you
7 go into a rate case, in an electric utility, to evaluate
8 the reserve margin and see if part of it is used to
9 serve existing customers and part of it is used to serve
10 for growth?

11 MR. McLEAN: In my experience, which is
12 limited, no, we do not, because we do not perceive it to
13 be material, and thus we do not perceive it to be an
14 efficient use of our own time and resources to pursue.
15 There are other differences. Margins of reserve are
16 maintained in the electric industry to meet
17 instantaneous demand. One unfortunate aspect, perhaps,
18 of electrical energy is that it's extremely difficult to
19 store in any commercially usable form. That's not the
20 case with water and sewer companies. If I were to give
21 you a layman's point of view, water and sewer companies
22 have a great deal more elasticity in both the furnishing
23 of water and the treating of sewage. When an electric
24 utility does not meet a peak, lights go out.

25 MR. SEIDMAN: I'm not disagreeing with you. I

1 know that for electric utilities reserve margin is
2 determined by a probability method so that load is --

3 CHAIRMAN CLARK: Mr. Seidman, I have trouble
4 hearing you.

5 MR. SEIDMAN: I'm sorry. I know that with an
6 electric utility, the reserve margin is determined on a
7 probabilistic method. Is it Public Counsel's position
8 that all of the reserve margin for a utility, for an
9 electric utility, is used for existing customers
10 because -- for reliability, or any part of it is used
11 for future customers?

12 MR. McLEAN: Well, again, Mr. Seidman, I don't
13 know that we have directly addressed that issue. It has
14 never been material enough to draw our attention. If it
15 ever is, I think we will say so. But I also think that
16 margin reserve in the electric industry is much more
17 instantaneous, directed to the median of instantaneous
18 demand, which the utility either meets or we're faced
19 with brownouts and so forth.

20 So in this particular discussion, many of your
21 witnesses have said that margin reserve is to serve the
22 very needs of existing customers and to serve the needs
23 of future customers. Well, with respect to the electric
24 industry, I think that is much more heavily weighted in
25 terms of the very needs of existing customers.

1 And there is one other factor. A kilowatt, or
2 a kilowatt hour, is extremely easy to transfer from one
3 place to another. Florida electric utilities, who are
4 faced with an instantaneous demand which for some reason
5 they can't meet or don't think they can meet, have the
6 opportunity to buy elsewhere. It was, after all, a
7 dispute among utilities which led this Commission to
8 adopt a rule which addressed the specific margin of
9 reserve requirements. In other words, the analogy is
10 very difficult for me to follow because this Commission
11 insisted that electric utilities maintain a margin
12 reserve, which is a far cry from the dynamics we have in
13 this hearing, which was the industry itself coming
14 forward and wanting a rule which permits margin
15 reserve. For me, the analogy fails. I hope that's a
16 fair answer to your question.

17 MR. SEIDMAN: Well, it was an answer. I don't
18 know that it gets to the guts of the issue. I have a
19 problem because, as I say, electric utilities only has
20 two identified pieces of their power, the portion
21 serving the load and the portion in reserve margin.
22 Take a utility like Florida Power and Light, a big
23 utility in a state, growth state, they grow at the rate
24 of about -- on the average, about 200 megawatts a year,
25 equivalent of a combustion turbine plant. If all of the

1 capacity in the reserve margin is for existing
2 customers, I don't understand where they get the
3 capacity to serve future customers. They're only
4 charging one group of customers rates, and that's
5 current customers. So I'm trying to find out why it's
6 not material for Public Counsel to take the same
7 position in both instances.

8 MR. McLEAN: Well, I can only speculate what
9 we would do if Florida Power and Light came in with a
10 rate case and said, commissioners, we would like to have
11 some increment of our plant identified as serving future
12 customers, and we would like to earn a return on that.
13 But that is a far cry, again, from the real world
14 situation. Florida Power and Light, for example, just
15 finished their purchase of Scherer No. 4 in Georgia.
16 They just added Martin Units No. 3 and 4 in 1994, they
17 repowered Fort Lauderdale units, and yet FP&L isn't
18 before this Commission asking for more money to earn a
19 return on those investments, some of which, undeniably,
20 are for future customers. But we can hardly suggest to
21 them that their margin of reserve is inappropriate if
22 they don't bring a case in.

23 MR. SEIDMAN: You're not suggesting that the
24 reason they didn't come in is because they don't think
25 they should earn on that plant?

1 MR. McLEAN: One thing we almost never do at
2 the Office of Public Counsel is direct a great deal of
3 attention to why utilities don't file a rate case.

4 MR. SEIDMAN: Are you suggesting --

5 CHAIRMAN CLARK: Let me interrupt you,
6 Mr. Seidman. I think Commissioner Deason wants to ask a
7 question, perhaps clarify things for us.

8 COMMISSIONER DEASON: I was just going to ask
9 Mr. Seidman a question. And is the basis of your
10 questions that the Commission has never questioned the
11 amount of reserve margin of an electric utility, or made
12 an adjustment for what was perceived to be an excessive
13 reserve margin?

14 MR. SEIDMAN: No. No. My question is the
15 consistency in the policy towards reserve margins and
16 margin reserve between the industries, when they look at
17 our industry and say, if it's for existing customers
18 it's used and useful, if it's for future customers it's
19 not used and useful. I want to know if they do the same
20 thing with electric company utilities. I know this
21 Commission has looked at reserve margins and has made
22 judgments on them. I don't know that that judgment has
23 ever been made because it involved distinction between
24 what the reserve margin was used for.

25 COMMISSIONER DEASON: You're probably -- in

1 fact, the Commission has made adjustments in the form of
2 imputing revenues for capacity which this Commission
3 felt what could be utilized to provide service on an all
4 systems sale basis as opposed to serving current
5 customers.

6 MR. SEIDMAN: Yes, and I'm familiar with
7 that. That's fine. I have no problem at all with the
8 Commission's handling of the reserve margins in the
9 evaluation of prudence of construction and capacity with
10 electric utilities.

11 MR. FEIL: Commissioners, if I may make a
12 comment, which I believe to a degree explains what
13 Mr. McLean's position, and to a degree detracts from
14 it. As the Commission routinely includes plant held for
15 future use in rate base for electric, telephone and gas
16 utilities, and in the case of -- I believe it was Shevin
17 vs. Yarborough, the Supreme Court upheld the inclusion
18 of plant held for future use in rate base, even though
19 that property is not in service.

20 MR. ARMSTRONG: If I could comment again. I
21 guess in the guide to the rulemaking here, in his own
22 inimitable way, Mr. McLean referred to the fact, or
23 seemed to be, that there is some additional significance
24 to margin reserve for electric utilities because if you
25 don't have margin reserve lights go out. Now we know

1 there's a pool there, and there's interconnected
2 facilities so that shouldn't happen too often, but the
3 statement was made, if there's no electricity, the
4 lights go out.

5 And one very important point we wanted to have
6 out in the forefront here is if we don't have adequate
7 treatment of wastewater, land gets polluted, rivers get
8 polluted. If you don't treat your wastewater, your
9 water properly, people can get sick. It's an extremely,
10 extremely important consideration. And again, to hear
11 the constant references to give them 100 percent used
12 and useful only when the current customers are using all
13 the plant, that's totally, totally conflicting with what
14 the DEP and water management districts are saying, in
15 particular DEP that have the primary responsibility for
16 environmental health and public health. It's a total,
17 total conflict. When you're talking about adjusting
18 water, when you're talking about polluting water and
19 land, I think the significance is far greater to the
20 water and wastewater than it is to any electric
21 utility.

22 CHAIRMAN CLARK: I think Mr. McLean was just
23 drawing the analogy that there is just such a thing as
24 meeting an instantaneous demand, and electricity is
25 different from water and wastewater, but I understand

1 your point, too, from the public health standpoint.

2 Mr. Seidman, do you have anything else to ask
3 Mr. McLean?

4 MR. SEIDMAN: Yes, I just want to summarize,
5 the point of all this is, make no mistake about it, the
6 reserve capacity of electric utilities is what's used to
7 provide capacity for future customers, and it's paid for
8 in current rates. And I think that's the consistency
9 we're looking for with treatment of water and wastewater
10 utilities. The capacity that has to be provided to meet
11 our service obligations, having readiness to serve, is
12 no different than what the electric utilities face with
13 that regard. And it should be --

14 CHAIRMAN CLARK: Mr. Seidman, let me ask you a
15 question. In the used and useful, what do we use to
16 determine what is needed to serve current customers? Do
17 we do a peak --

18 MR. SEIDMAN: Yes.

19 CHAIRMAN CLARK: We do a peak demand?

20 MR. SEIDMAN: Depending on the type of plant.

21 CHAIRMAN CLARK: Why is that?

22 MR. SEIDMAN: Basically it's a peak, or an
23 average of peaks, or something like that, but it's
24 related somehow to the peak for water and wastewater
25 utilities.

1 CHAIRMAN CLARK: Why isn't that more akin to
2 the margin of reserve in electric utilities as opposed to the
3 margin of reserve --

4 MR. SEIDMAN: Well, the margin reserve for
5 electric utilities, or the reserve margin, is over and
6 above the system peak, just like our reserve is.

7 CHAIRMAN CLARK: Let me ask you this. Don't
8 we add to used and useful to take into account the
9 peak?

10 MR. SEIDMAN: Say that again. I'm sorry, I
11 didn't hear you.

12 CHAIRMAN CLARK: In the calculation of used
13 and useful for water and wastewater, does that
14 calculation take into account the peak load?

15 MR. SEIDMAN: Yes, that is the basic demand.
16 Just like with electric utilities, the basic demand is
17 the summer peak or the winter peak, depending on what
18 type of system it is. And on top of that is the
19 reserve. And that reserve is there to serve two
20 functions. It's obvious with electric, we know that.
21 Reliability, because of instantaneous requirements, is a
22 big factor. But it's also there to serve future
23 customers.

24 CHAIRMAN CLARK: And when we do used and
25 useful, we're only taking into account --

1 MR. SEIDMAN: The peak.

2 CHAIRMAN CLARK: The peak capacity is --

3 MR. SEIDMAN: Right, with no recognition of
4 anything if load goes above that peak for any reason.

5 MR. FEIL: Madam Chairman, if I may, to
6 address something Mr. Seidman said, the Commission has
7 not consistently used the peak for various plant
8 components, types of plants, water versus wastewater, in
9 water and wastewater cases. You have not used the peak
10 in every instance.

11 MR. SCHIEFELBEIN: I would like to add to
12 that, unless I've been hallucinating the last few months
13 of my interactions with the Commission here, on the
14 wastewater front we have seen very haphazard
15 decision-making on used and useful where, in at least
16 two rate cases of recent vintage, the Commission used a
17 straightforward annual average daily flow for wastewater
18 treatment plant. That's no peak. There is a -- there
19 is a -- I think a historical tendency prior to those
20 cases where the Commission Staff has advocated using a
21 peak for a three-month average -- three-month peak
22 average figure, which is still not a peak, and which may
23 in fact be reasonable. But there certainly is no
24 consistent use of any kind of a peak methodology in
25 wastewater before this Commission.

1 CHAIRMAN CLARK: Go ahead, Mr. Seidman. Did
2 you have anything else?

3 MR. SEIDMAN: No, that's it.

4 MR. McLEAN: Actually, Commissioner, the
5 witness has something else to say on that topic. I
6 don't like the characterization of haphazard. As a
7 matter of fact, you've done this used and useful on a
8 case-by-case basis for years. You haven't met with our
9 approval on every occasion, but you've done it on a
10 case-by-case basis because, as many an engineer has
11 testified before you, peaking the capacity to meet
12 peaks, averaging, whether it's appropriate to vary,
13 whether the correct characteristics, the physical
14 characteristics of the physical assets which are in the
15 ground.

16 Some water systems must meet peak from
17 pumping -- and even well capacity perhaps, because they
18 lack storage to such a great degree. A utility with a
19 great deal of storage can handle peaks better than one
20 that doesn't. The same is true of sewage treatment
21 plants. Those which can equalize, if that's the right
22 word, can absorb variations in the load much better than
23 others. I would suggest to you that the decision-making
24 has not been haphazard, but that it has followed the
25 evidence before the Commission which has been presented

1 on a case-by-case basis. Thank you.

2 MR. HOFFMAN: Madam Chairman, may I make one
3 comment in response to something Mr. McLean said? With
4 respect to the distinction between electric utilities
5 and water and wastewater utilities, my understanding is
6 that with an electric utility, if, for example, you had
7 a 500-megawatt winter peak electric utility, and demand
8 was placed at the level of, say, 530 megawatts on a
9 particular day, the Florida electric utility could look
10 to the Florida broker system or even outside the State
11 of Florida and bring in that additional 30 megawatts,
12 subject to any transmission line constraints, and meet
13 its needs.

14 A water utility can't do that. And a
15 wastewater utility can't do that. If the peak that it
16 experiences exceeds the amount that it is capable of
17 treating and producing, there's nowhere to go, unless
18 there's a situation where the water utility is
19 interconnected with another utility.

20 CHAIRMAN CLARK: Okay. Staff, questions of
21 Public Counsel?

22 MS. MOORE: No.

23 CHAIRMAN CLARK: Now we're at the point that,
24 Ms. Moore, you've indicated to me that Staff wanted to
25 make some brief comments.

1 MS. MOORE: That's correct. Mr. Walker,
2 first, and then Mr. Crouch, and I'm sure the other --
3 the parties have questions for them.

4 CHAIRMAN CLARK: Mr. Walker?

5 MR. WALKER: My part of Staff's presentation
6 concerns the subject of imputing CIAC. I describe how
7 this measure offsets the utility's investment in margin
8 reserve and the consequent revenue impact. Next I
9 explain my misgivings concerning the propriety of this
10 adjustment. I believe this practice negates most, if
11 not all, of the investment related to increased demand
12 by existing and future customers.

13 If subsequently collected, CIAC is counted in
14 the test year, and any added investment in plant
15 capacity should also be counted.

16 With respect to the imputed CIAC, that balance
17 is omitted not only from the rate setting equation, but
18 also when AFPI charges are set. Thus, the imputed CIAC
19 is not recovered from existing or future customers.
20 Also, I don't believe the recently adopted averaging
21 procedure concerning future CIAC is appropriate. The
22 added CIAC itself will be offset by the utility's next
23 incremental investment in its margin reserve. Thus on a
24 going forward basis, the utility's investment in margin
25 reserve is undiminished. That concludes my remarks.

1 CHAIRMAN CLARK: Mr. Crouch?

2 MR. CROUCH: I would like to recap several of
3 the questions that were put forth today, I think I will
4 try to answer. We have a continuing dilemma in
5 virtually every water and wastewater rate case that goes
6 to hearing. On one side we have the utility, which
7 argues for more margin reserve and longer margin reserve
8 time frame. On the other, the Office of Public Counsel
9 argues against the allowance of any margin reserve
10 whatsoever, and if one is approved, that imputation of
11 CIAC to offset the margin reserve. I think the -- we
12 see tonight from the turnout that we've had, that there
13 is quite a demand for some codification of a rule in
14 margin reserve.

15 As I go through the discussion, I'll try to
16 answer some of the questions that were brought up
17 today. First off, Mr. Feil asked quite some time ago,
18 and referred to it today, about where did Staff come up
19 with the 18-month time frame that we have? This goes
20 back to the early 1980s. It was strictly an in-house
21 study, no documentation of it. It was the best
22 engineering judgment from the engineers. The best we
23 can figure out is that Mr. Collier, who was the deputy
24 director of Water and Wastewater at the time, who was an
25 engineer, came forth with that as the best engineering

1 judgment. And in the absence of any other evidence or
2 documentation, we accepted that and put that in our
3 standard operating procedures.

4 It was not until January of 1991 that the DEP
5 rule, 62-600.405, was adopted, which showed how they
6 wanted you to plan for a wastewater treatment facility
7 with their capacity analysis reports, et cetera. That
8 is the first documentation, other than engineering
9 guidelines, such as Ten State Standards, et cetera, to
10 give us any guidance on how long the margin reserve
11 should be. We have nothing in the rules. We have no
12 rules. So we need something.

13 I briefly explained in my testimony about the
14 Commission's used and useful policy and how a margin
15 reserve is computed and incorporated into the used and
16 useful calculations. As you well know, we have no used
17 and useful rule either. We're working on one. But we
18 do not have anything in the rules on used and useful.

19 It is for that reason that I would like to
20 recommend that where the Florida Waterworks Association
21 requested in their draft rule, on paragraph 5,
22 "Reclaimed water reuse facilities constructed in
23 accordance with Section 403.064, Florida Statutes, shall
24 be considered 100 percent used and useful, and margin
25 reserve shall therefore not be a factor," many in Staff

1 do not agree with that at this time because we have not
2 even decided what is used and useful yet. So to
3 preclude consideration of reuse in margin reserve, when
4 in fact we may decide under used and useful and joint
5 agreement that reuse is not 100 percent used and
6 useful. Therefore, some margin reserve could be
7 applicable.

8 Like I said, many in Staff believe that, but
9 we -- we're not in full agreement. We've kicked it
10 around and are still kicking it around. We also believe
11 that our policy is not inconsistent with the FDEP rule
12 which says that all prudent investment will be recovered
13 through rates. There are two keys words there.
14 Prudent. What is a prudent investment? Who is going to
15 decide prudent?

16 On one side, Staff agrees that the existing
17 policy does not adequately compensate, or may not
18 adequately compensate utilities for their investment.
19 It does not insulate the utility from risk. But on the
20 other hand, how much should existing ratepayers be
21 forced to pay for future capacity? Should the customer
22 pay for all of the risk? We feel, as Mr. Guastella
23 said, that it is not a perfect world; risk must be
24 shared -- or I think Mr. Hoffman said that, not a
25 perfect world. Excuse me.

1 Mr. Guastella was talking about some states do
2 not have used and useful. Therefore, it falls upon
3 somebody, some governmental body, or somebody, to decide
4 what is prudent and what is a reasonable investment by
5 the utility and what is a reasonable charge to the
6 customers? Who ensures that the utility will not make
7 an unwise expansion if the utility has no risk? Here
8 again, it falls upon the Commission. The Commission and
9 the Commission Staff face a simple margin reserve
10 question, how much margin reserve, and for how long?

11 Mr. Milian mentioned his economies of scale,
12 \$1.7 million for half a million gallon plant, versus
13 \$1.9 million for a 1 million gallon plant. We agree.
14 And Staff proposes that we take into consideration
15 economies of scale. If the utility makes that
16 information available to Staff, that will be
17 considered. And if that half a million gallon plant was
18 fully justified, then the \$1.7 million would be
19 considered used and useful, 100 percent. But unless the
20 utility makes that information known to Staff, we're at
21 a loss. So we hope that in codification of a rule, that
22 the utilities will better understand what information we
23 need in order to make a decision.

24 Mr. McLean, you asked earlier: What about the
25 utility that's 100 percent used and useful but still has

1 growth, how do they handle that? They sell fire flow.
2 We've had cases where that's happened. In a water
3 utility there's no requirement for them to do capacity
4 analysis reports yet. There's no comparable DEP rule.
5 Utility comes in and they can justify 100 percent used
6 and useful, but then they keep adding customers.
7 They're selling fire flow, which is not a good policy,
8 but it is done. And they could very theoretically end
9 up in an overearnings posture, but that's how they
10 handle it.

11 Capacity of 20 percent. We recommend that
12 there be a capacity on the amount of margin reserve that
13 can be placed into effect. That's strictly our feelings
14 right now among the Staff that there should be some
15 cap.

16 I believe the question was brought up earlier,
17 what happens if they go to five years, if the final rule
18 says five years margin reserve? Possibly that cap
19 should be adjusted. But basically, we feel that we need
20 some type of rule, not only Staff, not only the
21 Commission, but the utility. If they see a rule, they
22 see a default formula that they can fall back on, they
23 know what to provide us to give them a margin reserve
24 and a used and useful. And like I said, it's a
25 default. If you can come in with some extraneous

1 circumstance that changes the guidelines, we're open to
2 that too, but you have to tell us what these extraneous
3 circumstances are for us to know what to work with.

4 In a hearing, our hands are tied, virtually,
5 on how much information we can get from the utilities.
6 We have to go out with interrogatories and all that
7 garbage, and by the time we get answers back, it's
8 almost too late. So we need the information up front
9 from the utilities, and we hope that as a result of the
10 hearing today and the comments that you'll make later
11 on, that we can come up with some type of rule that will
12 at least give us a rule on margin reserve and give us a
13 start on used and useful. Thank you.

14 CHAIRMAN CLARK: Thank you, Mr. Crouch. Other
15 questions? Go ahead, Mr. Schiefelbein.

16 MR. SCHIEFELBEIN: Thank you. Good evening,
17 Mr. Walker.

18 MR. WALKER: Good evening.

19 MR. SCHIEFELBEIN: I believe you testified --
20 let me do this directly from your text. Page 4, Lines 4
21 and 5, you indicate that you understand that the
22 imputation practice is no longer advocated by any
23 members of this Division's accounting staff. Is that an
24 accurate statement today?

25 MR. WALKER: That's true.

1 MR. SCHIEFELBEIN: Has that been a valid
2 statement for some time?

3 MR. WALKER: I don't know how long.

4 MR. SCHIEFELBEIN: Could you give a
5 guesstimate as to how long? A period of years?

6 MR. WALKER: Several years, the Staff has --
7 the accounting Staff has generally opposed the practice
8 of including imputed CIAC.

9 MR. SCHIEFELBEIN: Mr. Crouch, let me get your
10 testimony in front of me. You've been active in the
11 last year, perhaps longer, as a spokesperson for the
12 Commission in dealing with various agencies and
13 explaining what PSC used and useful procedures are; is
14 that correct?

15 MR. CROUCH: To a degree, yes, along with
16 other members of Staff.

17 MR. SCHIEFELBEIN: Did you recently appear
18 before a Reuse Committee, with other members of Staff,
19 and members of DEP and the water management districts?

20 MR. CROUCH: Yes, I did.

21 MR. SCHIEFELBEIN: Did you distribute a
22 handout there that explained what the Commission
23 policies were on used and useful?

24 MR. CROUCH: I believe I did, yes. I don't
25 have it in front of me right now, but it was a work

1 sheet, yes.

2 MR. SCHIEFELBEIN: I apologize, I'm working on
3 it myself. If you'll bear with me a moment.

4 Could we have that assigned an exhibit number,
5 Madam Chairman?

6 CHAIRMAN CLARK: It will be Exhibit 8.

7 (Exhibit No. 8 marked for identification.)

8 MR. SCHIEFELBEIN: Mr. Crouch, is this a
9 handout that you distributed at the November 19th, 1996
10 meeting of the Reuse Coordinating Committee meeting?

11 MR. CROUCH: Yes, it is.

12 MR. SCHIEFELBEIN: To best of your knowledge,
13 is this a pretty fair summary of what PSC used and
14 useful policy is?

15 MR. CROUCH: To the best of my knowledge,
16 yes. I explained to the people at the Reuse Committee
17 that we do not have rules, but these are the guidelines
18 that we try to follow, and then I elaborated on it in
19 discussion.

20 MR. SCHIEFELBEIN: Well, have these been the
21 used and useful procedures that the Commission has
22 followed in, oh, say, the last four rate cases or so?
23 How about Southern States, were these procedures
24 followed in their rate case?

25 MR. CROUCH: Basically, yes, sir.

1 MR. SCHIEFELBEIN: So you used average daily
2 flows in max month for wastewater, for example?

3 MR. CROUCH: That's the normal policy we use
4 for figuring the capacity. There are times that they
5 can use average annual flows if they -- if that's what
6 they request and can show justification for that. But
7 usually we do look at the average daily flows in the max
8 month.

9 MR. SCHIEFELBEIN: Well, I hope that Southern
10 will inquire further, because I believe that they're
11 more familiar with their case than I am.

12 MR. ARMSTRONG: Just since it's a rulemaking,
13 we don't have to inquire, but we didn't request -- I
14 don't what the purpose of your question is -- we didn't
15 request average flow for -- I mean, average annual
16 flow. We did request that we have this treatment, which
17 was average daily flows in the maximum month. That's
18 what we requested. That's not what we were given.

19 MR. SCHIEFELBEIN: But it's not what you were
20 given?

21 MR. ARMSTRONG: No.

22 MR. SCHIEFELBEIN: I didn't think so. Is
23 average daily flows in max month, for example, what was
24 given to Palm Coast Utility in its recent case?

25 MR. CROUCH: I believe it was.

1 MR. SCHIEFELBEIN: So the Commission could
2 just simply -- because I don't mean, Commissioners, to
3 relitigate that which has been done, but we can take
4 notice of the order in the recent Palm Coast rate case.

5 MR. CROUCH: I'm not sure right off the top of
6 my head as to what was requested by Palm Coast. We may
7 have looked at average annual flows with Palm Coast, if
8 that's what was requested.

9 MR. STARLING: Wayne, I might be able to
10 answer that question for you. We did use annual average
11 daily flow.

12 MR. SCHIEFELBEIN: Okay. Thank you.

13 MR. STARLING: And I would also like to add
14 something else. If you would refer to Mr. Harvey's
15 exhibit, RMH-2, Page 6, and paragraph 8, the last
16 paragraph of that statement talks about this issue a
17 little bit. And in that paragraph DEP recommends that
18 we use that annual average daily flow when the permit is
19 based on that.

20 MR. SCHIEFELBEIN: I think that that specific
21 subissue we're not in agreement in, we're not going to
22 be in agreement in today, and perhaps we'll all address
23 it in another forum. But what I'm trying to go to is to
24 whether this piece of paper adequately informs other
25 agencies and so forth as to what this commission's

1 policies really are on used and useful, is the only
2 place I'm going on this.

3 MR. McLEAN: I'm not sure I can object, but
4 that's not even what the paper purports to do. What a
5 PSC engineer looks for when determining used and useful
6 percentage for a regulated utility, point of beginning.

7 MR. SCHIEFELBEIN: I also asked -- and I don't
8 want to get into a debate with Mr. McLean, but I also
9 asked Mr. Crouch if this is how the Commission
10 determines used and useful these days, and he said, as a
11 general principal it is.

12 MR. FEIL: May I interrupt for a moment,
13 Mr. Starling? Could you repeat the reference to
14 Mr. Harvey's exhibit please?

15 MR. STARLING: Yes, it was RMH-2, Page 6 of
16 6.

17 CHAIRMAN CLARK: I would only point out that
18 to the extent the Commission treats used and useful,
19 it's in the orders. If you want us to take official
20 notice of a particular order, let me know,
21 Mr. Schiefelbein.

22 MR. SCHIEFELBEIN: Well, I don't have the
23 order from Southern States' recent rate case. The --
24 certainly the Order 96-1338 in the Palm Coast rate case,
25 and specifically Pages 36 and 37 on the annual average

1 daily flow.

2 CHAIRMAN CLARK: We'll go ahead and take
3 official notice of that order.

4 MR. SCHIEFELBEIN: Appreciate that.

5 CHAIRMAN CLARK: And it will be part of this
6 rulemaking record, as will Exhibit 8.

7 MR. SCHIEFELBEIN: Order No. 96-1133 in the
8 North Fort Myers case for Florida Cities, and I believe
9 specifically --

10 CHAIRMAN CLARK: We'll take administrative
11 notice of the whole order. If you would, though, give
12 us the page numbers, so people can --

13 MR. SCHIEFELBEIN: I think that most
14 pertinently for my present purposes, I'm just referring
15 to Pages 16 and 17 which disregards peak flows and uses
16 annual average daily flow.

17 Mr. Crouch, you say that -- and I think you've
18 said at the various meetings that you've appeared at
19 around the state this past year -- that used and useful
20 rulemaking is in the works; is that correct?

21 MR. CROUCH: That is correct.

22 MR. SCHIEFELBEIN: Well, I have a file here I
23 call History of the World, Part One. And without
24 torturing us all with that, I show that we've been
25 hearing that for five years. Is that consistent with

1 your recollection?

2 MR. CROUCH: That is probably correct. At one
3 time we were ready to go forward with used and useful
4 rules. They were withdrawn as part of the other
5 rulemaking because used and useful is very
6 controversial, and at that time it was decided to
7 withdraw the used and useful portion of the rules for
8 further study, and Staff has done considerable study on
9 that. And in the meantime DEP came up with their new
10 rule. We thought that if we piecemealed it and worked
11 on margin reserve, get a definition of unaccounted for
12 water, get a definition of fire flow, and narrow it
13 down, and then come up with a used and useful rule
14 incorporating all of these others, that would be easier.

15 MR. SCHIEFELBEIN: When was the memorandum of
16 understanding entered into, approximately, with DEP
17 agreeing that you would initiate used and useful
18 rulemaking? Do you know?

19 MR. CROUCH: I believe Mr. Williams might be
20 able to answer that. I don't know right off the top of
21 my head.

22 MR. WILLIAMS: I'm not aware that we have any
23 MOU with DEP that references used and useful.

24 MR. SCHIEFELBEIN: Well, we may come back to
25 that. When was the plant capacity expansion rule, the

1 DEP rule, when was that effective? About 1991?

2 MR. CROUCH: The DEP rule was January of '91,
3 I believe.

4 MR. SCHIEFELBEIN: That's the new rule that
5 you were referring to?

6 MR. CROUCH: And their Capacity Analysis
7 Report Guideline was prepared and published July of
8 '92.

9 MR. SCHIEFELBEIN: That was the new DEP rule
10 that you were referring to?

11 MR. CROUCH: The Rule DEP 62-600.405, Planning
12 for Wastewater Utilities Expansion, states that it's the
13 history. It's a new rule as of January 30th, 1991.

14 MR. SCHIEFELBEIN: Mr. Crouch, I think -- and
15 I don't mean to intentionally misinterpret your
16 testimony, but I believe you've come out in favor of a
17 three-year margin reserve period for wastewater
18 treatment plant, while all other components of plant
19 that are on the table you've advocated the additional 12
20 or 18 months; is that a fair summary?

21 MR. CROUCH: For all distribution and
22 collection system, the pipes in the ground, we were
23 sticking with 12 months. At the time I said 18 months
24 for water treatment plant and 36 months for wastewater
25 treatment plant. Subsequent discussion among Staff, we

1 have decided that since DEP is coming up with a rule for
2 water, comparable to the wastewater rule, that we might
3 as well go ahead and incorporate 36 months in the water
4 plant also at this time.

5 MR. SCHIEFELBEIN: So your present state of
6 thinking is for treatment plant, water or wastewater, of
7 36 months?

8 MR. CROUCH: That's correct.

9 MR. SCHIEFELBEIN: I'm trying to understand
10 why you don't include in your own 36-month period that
11 length of a period for margin reserve for disposal
12 plant. And I'm not so much getting at reuse. Do you
13 consider disposal plant for purposes of this rule to be
14 a part, a subset of treatment plant, or is that
15 something different?

16 MR. CROUCH: I think that that would be on a
17 case-by-case basis. If disposal plants, you're talking
18 about perc ponds or spray fields, it definitely does not
19 take 36 months to prepare a new perc pond. If you were
20 talking about some type reuse facility as disposal, then
21 it could very possibly. So that would be on a
22 case-by-case. I do not include that as a blanket 36
23 months for disposal, no.

24 MR. SCHIEFELBEIN: What's your recommended
25 default period for disposal systems?

1 MR. CROUCH: 18 months.

2 MR. SCHIEFELBEIN: Aren't you basing your -- I
3 think you just said that -- I know you said in your
4 prefiled comments that part of the reasoning -- and if I
5 misinterpret, just jump right in -- but part of the
6 reason you're going to 36 months is in recognition of
7 the DEP rule for wastewater?

8 MR. CROUCH: That's correct, as a compromise
9 between the DEP rule and how much we should make
10 existing customers pay.

11 MR. SCHIEFELBEIN: And you seem to be thinking
12 that given the possible pendency of a water treatment
13 rule, that that also is taken into account in going for
14 a three-year. Do you have handy Rule 62-600?

15 MR. CROUCH: Yes, I do.

16 MR. SCHIEFELBEIN: Good. Would you turn to --

17 MR. CROUCH: Yeah, 62-600.

18 MR. SCHIEFELBEIN: Now this isn't a wastewater
19 treatment plant expansion rule, is it?

20 MR. CROUCH: It's Wastewater Facilities
21 Expansion.

22 MR. SCHIEFELBEIN: Do you know if that
23 includes disposal systems within the same obligations
24 and lead times and capabilities as it does for treatment
25 plant?

1 MR. CROUCH: According to paragraph 1, "The
2 permittee shall provide for timely planning, design and
3 construction of wastewater facilities necessary to
4 provide proper treatment and reuse or disposal of
5 domestic wastewater and management of domestic
6 wastewater residuals." So, yes, under their definition
7 it would include disposal.

8 MR. SCHIEFELBEIN: And without taking this
9 Commission's valuable time to walk through this entire
10 rule, I think you will notice that the same sort of flow
11 methodologies, the same sort of triggering, flow levels
12 and so forth that apply to treatment facilities, apply
13 equally to disposal systems. And again, I'm not getting
14 into that reuse niche that we don't really agree on. So
15 I would recommend that the Staff take a look and that
16 the Commission take a look at a longer period of time
17 for disposal as well as treatment.

18 Now, when you all say -- I think somewhere in
19 your testimony, and I'm too disorganized to refer to it,
20 but somewhere in your testimony you indicate that,
21 balancing a lot of things, utilities have got to be sent
22 a signal to get out of the build, build, build cycle.
23 Is that a pretty fair -- the constant building mode that
24 they seem to be in. Is that a --

25 MR. CROUCH: I don't recall that in my

1 testimony, no.

2 MR. SCHIEFELBEIN: Let me see if I can find
3 it.

4 MR. CROUCH: I do state on Page 3, Line 19,
5 "Utilities should be encouraged to undertake planning
6 that recognizes conservation, environmental protection
7 and economies of scale, which are economically
8 beneficial to their customers over the long term."

9 MR. SCHIEFELBEIN: Okay, well let's try
10 Page 6. Starting around Line 8, don't you say, "It will
11 be unduly burdensome, unrealistic, as well as very
12 costly, to a utility company to constantly be in some
13 phase of construction in order to add new customers"?

14 MR. CROUCH: Yes, I do.

15 MR. SCHIEFELBEIN: Now, Staff is not --
16 Staff -- at least Staff that is testifying here today,
17 is advocating turning away from the imputation policy;
18 is that fair?

19 MR. CROUCH: I would not say that that
20 sentence says that Staff is --

21 MR. SCHIEFELBEIN: I'm off that sentence.

22 MR. CROUCH: Okay, yes, Staff is turning away
23 from imputation of CIAC.

24 MR. SCHIEFELBEIN: Staff is of a mind that for
25 treatment, and maybe disposal systems, that a three-year

1 no imputation might be the way to go?

2 MR. CROUCH: That's correct.

3 MR. SCHIEFELBEIN: Does that, given what we
4 know about what it takes to design and construct a plant
5 and to permit a plant, does a three-year margin reserve
6 for treatment and disposal get us out of the build,
7 build, build cycle?

8 MR. CROUCH: It is a compromise between the
9 existing 18-month margin reserve that is policy and the
10 five-year plus that is requested by some other parties.

11 MR. SCHIEFELBEIN: So it's an effort at -- and
12 I mean this word in its finest sense -- politics; isn't
13 it?

14 MR. CROUCH: Okay.

15 MR. SCHIEFELBEIN: But it doesn't get where
16 we're trying to get, which is according to your own
17 testimony, to get utilities out of the constant building
18 cycle; does it?

19 MR. CROUCH: I disagree. I think it is a step
20 in that direction. It is not the whole piece of cake.
21 It's part of it. Because in our opinion, while the
22 utility plans, programs, designs and constructs a
23 facility over a five-year period, a well-run utility is
24 sitting at the table and planning for expansion, just a
25 regular staff meeting, and should have plans developed

1 in their own staff as to what they will do for
2 expansion, with virtually no expenditure of funds at
3 that stage of the game. So the full five-year cycle
4 should not be expensive for the utility, but the
5 construction, the engineering, the purchase of land,
6 et cetera, which is in the latter stages of that five
7 years, would be costly.

8 MR. SCHIEFELBEIN: I understand. Certainly
9 you would agree with me, then, that a three- or a
10 five-year margin reserve with imputation would not send
11 the proper signal to utilities trying to escape the
12 constant building cycle?

13 MR. CROUCH: I agree.

14 MR. SCHIEFELBEIN: I would like to read you a
15 quote. And I'm going to cheat a little bit, I'm going
16 to change one word, and I'll tell you what the word is
17 afterwards. It says -- and it's not material. It says,
18 "We do not believe that the Staff's proposed used and
19 useful adjustment would be proper in this case. The
20 expansion of the treatment facility was required by the
21 Department of Environmental Protection, and we do not
22 believe that the utility should be penalized for
23 expanding beyond current customer needs where a
24 governmental agency has required it to do so in the
25 public interest. Accordingly, we have disallowed the

1 Staff's proposed adjustment and have included that
2 amount in the utility's rate base." Sound like a
3 reasonable approach by the Commission?

4 MR. CROUCH: Without knowing the circumstances
5 behind it, I would say possible.

6 MR. SCHIEFELBEIN: Sounds like pretty
7 forward-looking -- possibly, if the circumstances
8 warranted, pretty forward-looking regulation by the
9 Commission?

10 MR. CROUCH: I'm not going to disagree with
11 what the Commission ordered.

12 MR. SCHIEFELBEIN: The word that I changed was
13 "Regulation" to "Protection," because that was the
14 Department of Environmental Regulation, and the quote is
15 from Order No. 13132, which is 1984, for Kingsley
16 Service Company. How far we've come.

17 Is it fair to say that your recommendation and
18 your testimony to cap the permissible margin reserve at
19 20 percent is also somewhat of a political or compromise
20 sort of a decision?

21 MR. CROUCH: Yes.

22 MR. SCHIEFELBEIN: You make some comments in
23 your prefiled comments, Mr. Crouch -- picking on you
24 today -- about AFPI. And are you an expert on AFPI?

25 MR. CROUCH: No.

1 MR. SCHIEFELBEIN: Is that more -- although
2 there is, I'm sure, some engineering involvement as far
3 as communicating plant values and things to the folks
4 that crunch those numbers, is that more a function of
5 accountants and economists at the Commission?

6 MR. CROUCH: Yes.

7 MR. SCHIEFELBEIN: Do you have any data that
8 would -- have you read this 1990 report that Staff has
9 filed today?

10 MR. CROUCH: Yes, I did.

11 MR. SCHIEFELBEIN: That kind of says at the
12 end of it that this is all well and good, but who really
13 knows if it really will -- what seems so good on paper
14 will really work out. Doesn't it conclude on that
15 note?

16 MR. CROUCH: I believe so.

17 MR. SCHIEFELBEIN: And we've provided in this
18 case on behalf of the association, a study, perhaps the
19 first of its kind by this industry, showing what --
20 supporting what we believe is the track record of AFPI
21 over these last six years or so.

22 Do you have any data available to you that
23 would show any kind of a different conclusion as far as
24 AFPI and its pluses and minuses?

25 MR. CROUCH: I don't have any information

1 along those lines. I think my feelings are that if we
2 increase margin reserve, that will increase used and
3 useful percentage, thereby decreasing the nonused and
4 useful which would be applicable to AFPI, and that while
5 AFPI is not the perfect answer, maybe we need to look at
6 some way of reorganizing AFPI in the future. But for
7 lack of a better solution, it gives the utility some
8 method of recouping some portion of their nonused and
9 useful.

10 MR. SCHIEFELBEIN: While a margin reserve is
11 certainly used and useful plant, in your view?

12 MR. CROUCH: That is true.

13 MR. SCHIEFELBEIN: So basically, AFPI is
14 better than a stick in the eye, as I said to our
15 consultants last night.

16 MR. CROUCH: Okay.

17 MR. SCHIEFELBEIN: Okay. (Pause) Mr. Walker.

18 MR. WALKER: Yes.

19 MR. SCHIEFELBEIN: Did you testify in the
20 Rolling Oaks case?

21 MR. WALKER: Yes.

22 MR. SCHIEFELBEIN: Before the Commission?

23 MR. WALKER: Yes.

24 MR. SCHIEFELBEIN: That was something like in
25 1985 or '86, I think a 1985 rate case, or docket anyway;

1 is that --

2 MR. CROUCH: I testified in two Rolling Oaks
3 cases about 1985 and 1980, both dates, two separate
4 cases.

5 MR. SCHIEFELBEIN: And your recommendation
6 in -- and let's just concentrate on the latter case,
7 the one that was appealed to the First DCA. On the
8 imputation question, your recommendation was --

9 MR. WALKER: I didn't review that record and I
10 don't recall.

11 MR. SCHIEFELBEIN: That -- in that case --

12 CHAIRMAN CLARK: Mr. Schiefelbein?

13 MR. WALKER: If I testified in the case, I
14 probably didn't write a recommendation at all.

15 MR. SCHIEFELBEIN: I thought you did.

16 MR. WALKER: And I'm not sure that subject was
17 brought up.

18 CHAIRMAN CLARK: Mr. Schiefelbein, why don't
19 you tell us the point you're trying to make.

20 MR. SCHIEFELBEIN: Well, I can testify, but I
21 would rather --

22 CHAIRMAN CLARK: It's a rulemaking hearing.
23 Tell us what you want us to know about the Rolling
24 Oaks. I'm concerned about spending time trying to find
25 out what this individual recalls when you can refer to

1 the order and the appeal and we can look at those.

2 MR. SCHIEFELBEIN: I was hoping to approach it
3 in a little bit different way, and I'll try to expedite,
4 Madam Chairman. So you don't recollect whether you --
5 and I don't recollect myself either. So that case was
6 decided in 1988, by the First District Court of
7 Appeals?

8 MR. WALKER: I'm not sure.

9 MR. SCHIEFELBEIN: Okay, fair enough.
10 Commissioners, that case was decided in 1988 by the
11 First District Court of Appeals, and I think that -- I
12 think that Mr. McLean inadvertently might have
13 overstated what that case says. And at the risk of
14 myself misinterpreting it, that case, Rolling Oaks
15 Utilities, Inc. vs. Florida Public Service Commission,
16 which is 533 So. 2d, 770, 1988, upheld this Commission's
17 decision to impute CIAC on the margin reserve. It did
18 so based on the record before it and it did so under the
19 idea that such an approach was within this Commission's
20 discretion at that time and based on the facts and the
21 record in that case. That is what that case holds.

22 Now, we are certainly taking a position in
23 this proceeding and we will continue to take it, that
24 circumstances have changed an awful lot since 1986 when
25 that rate case was done. We have a new DEP rule that's

1 five years in the can. We've got a new state water
2 policy regarding reuse. We've got a lot of -- a lot
3 more complicated environmental permitting process than
4 we've ever had before. And the economics have changed.
5 And so I think it's a good way to close that we think
6 that we're not litigating this over and over and over
7 again, as Mr. McLean said. We think that we've given
8 you a new opportunity to exercise your discretion in a
9 more proactive way for our industry. Thank you.

10 CHAIRMAN CLARK: Mr. McLean? Does anyone
11 else want to ask questions of Staff?

12 MR. KRAMER: Yes, I actually have one
13 question.

14 CHAIRMAN CLARK: Go ahead, Mr. Kramer.

15 MR. KRAMER: This is for Mr. Walker. In the
16 Public Counsel's comments on the proposed rule, they
17 state, "If the Commission changes policy and does not
18 impute CIAC on margin reserve, it will need to adjust
19 its leverage graph formula to account for the lower risk
20 of the utility inherent in requiring current customers
21 to bear the risk that future customers will not connect
22 to the system." Do you know if the current leverage
23 formula in fact does account for the lower risk of the
24 utility, currently?

25 MR. WALKER: No, I don't.

1 MR. KRAMER: And do you believe that if that
2 is true, that the leverage graph formula will have to
3 change if the Commission chooses not to impute CIAC on
4 margin reserve?

5 MR. WALKER: I don't believe the notion that
6 you would impute CIAC is considered at all in the
7 leverage formula. I don't believe that they're making
8 any evaluation of whether or not future CIAC has been
9 historically counted against the Company, was a factor
10 when they decided to adopt the rule, to adopt the
11 leverage formula.

12 MR. KRAMER: Mr. Williams, do you happen to
13 know if it's included in the leverage formula?

14 MR. WILLIAMS: I don't have any idea.

15 MR. KRAMER: Then I'll ask Mr. McLean, do you
16 know for a fact that that is included in the leverage
17 formula? Because I believe it's not. That's the only
18 reason I question this.

19 MR. McLEAN: No, I do not. I have no idea.
20 But my position would be, and it is the position of our
21 comments that if it should be, you have a mature agency
22 policy on the table which says you're going to impute
23 CIAC every time, it's been the case for years, it seems
24 to me that if they're going to stop doing that, then
25 perhaps they ought to revisit the leverage graph, which

1 after all was adopted by the Commission to avoid hearing
2 from endless witnesses on cost of capital.

3 MR. KRAMER: If that's the case then, do you
4 also believe that if CIAC is not -- or is continued to
5 be imputed, that the leverage graph formula should
6 actually be increased to account for increased risk, if
7 it's not currently in the formula currently?

8 MR. McLEAN: No, because the formula currently
9 adopted the status quo at the time the rule was
10 adopted. You have a procedure in place by which you
11 establish a leverage graph, as opposed to listening to
12 stream of cost of capital. And it seems to me to
13 implicitly take the general commission theater as it
14 finds it, and one of those things that you would see if
15 you looked was that the Commission routinely imputes
16 CIAC against margin reserve. So, in my view, it's
17 implicitly one of the risk factors which one takes into
18 consideration when they're trying to determine what the
19 cost of capital is to a utility, irrespective of whether
20 it expressly says that.

21 MR. KRAMER: So if we were to bring in a Staff
22 witness, they would say one of the implicit risk factors
23 would be the imputation of CIAC?

24 MR. McLEAN: You might bring in any number of
25 witnesses who testified in the case, and you might find

1 that out. I don't know. There were a number of parties
2 who participated before the Commission in that
3 proceeding, and I might add that they participate every
4 year, and that this year the number which was adopted
5 was adopted because the number which came out of the
6 formula seemed too low. So don't look to me to suggest
7 that that number is the result of any science.

8 MS. SWAIN: I would like to follow up with
9 that. To the best of my understanding, the leverage
10 formula is not based upon privately-owned investor-owned
11 water and sewer utilities in the State of Florida at
12 all.

13 MR. McLEAN: You're looking to see what it
14 takes to attract capital. You and I have both for years
15 listened to cost of capital witnesses, beginning with
16 Stan Cohen and all, who tells us what the cost of money
17 is to a utility. Well the Commission, I think with a
18 good deal of wisdom, decided instead of listening to
19 those witnesses all the time, we'll establish the graph,
20 and we're going to use a whole lot of surrogates,
21 substitutes, for what these utilities actually face.

22 So whether it's expressly identified as one of
23 the risk factors means nothing to me. I would say if
24 you change it, if the scenario which led to the
25 development and adoption of that rule changes in a

1 material way, that perhaps the rule should too; that it
2 will lessen the risk which is faced by utility
3 investors.

4 MS. SWAIN: And of course we're stating that
5 the risk was not measured based upon that factor to
6 begin with.

7 CHAIRMAN CLARK: Thank you very much for
8 that -- the opposing views on that issue.

9 Is there anything else from Staff?

10 MS. MOORE: No, there is not.

11 CHAIRMAN CLARK: Is there anything else any
12 party would like to add at this point? Mr. Armstrong?

13 MR. ARMSTRONG: Two points for Staff. Just
14 this one is a housecleaning.

15 Mr. Williams, I've had the memorandum of
16 understanding dated November 20th, 1992 handed to me.
17 That's the MOU between the Commission and DEP. There
18 was a question about whether or not the used and useful
19 consideration was reflected in that MOU. And under --
20 on Page -- let's see, under the heading Wastewater
21 Management, Subdivision 6, I think you'll note, it
22 states as follows: "The DER has adopted rules requiring
23 utilities to perform timely planning, design and
24 construction of expanded facilities to ensure that
25 sufficient wastewater treatment, disposal and reuse

1 capacity is available. In light of DER rules, the PSC
2 agrees to evaluate capacity constraints imposed by
3 statute and rules on private utilities within PSC
4 jurisdiction by PSC's application of the used and useful
5 concept. If justified, this evaluation shall include
6 assessment of possible need for statutory or rule
7 revision."

8 In addition, under Reuse, Subdivision 6,
9 you'll find similarly there's reference to the reuse law
10 and the reuse provisions, and the statement that, "The
11 PSC shall allow utilities which implement reuse projects
12 to recover the full cost of such facilities through
13 their rate structure." I just want the record to be
14 clear that it was contemplated in the memorandum of
15 understanding dated 1992.

16 MR. WILLIAMS: Thank you. I hadn't looked at
17 that in a while.

18 MR. ARMSTRONG: I hadn't either. It was
19 handed to me.

20 MR. CROUCH: I believe there was a revision to
21 that where they added the word "prudent" costs after
22 that fact.

23 MR. ARMSTRONG: That could be. I think the
24 point was just that used and useful is contemplated in
25 the MOU as being area for discussion, 1992.

1 Mr. Crouch, just one point with you,
2 Mr. Hartman has presented comments and his economies of
3 scale study, which as you know is very thorough,
4 considers many variations of plant, plant sizing by
5 component, many, many variations of these things. And
6 in our -- in Southern States rate case, the Staff
7 recommendation referred to that study as providing some
8 compelling or persuasive, or some words to that effect,
9 facts, and suggested, let's go ahead and look at this
10 thing further in the rulemaking, and referred to this
11 rulemaking. Now, I know you've referred to that study
12 and you've seen the other one. You also reviewed this
13 one, I assume, as modified and submitted in this
14 rulemaking?

15 MR. CROUCH: Somehow in the rulemaking I would
16 like to, yes. In my testimony, I do refer to economies
17 of scale would be one of the considerations. And yes, I
18 think that should be included in the new rules somehow.

19 MR. ARMSTRONG: And you would agree that the
20 characterization is compelling and persuasive evidence
21 applies today to the study provided by Mr. Hartman in
22 this rulemaking, correct?

23 MR. CROUCH: Yes.

24 MR. ARMSTRONG: Yes?

25 MR. CROUCH: Yes.

1 MR. ARMSTRONG: In light of that, it doesn't
2 seem, the facts there, the validity of the analysis, the
3 information provided, is compelling evidence upon which
4 the Commission can make a determination of the economies
5 of scale and the benefits to customers from reduced
6 costs; isn't that correct?

7 MR. CROUCH: That economies of scale would
8 result in possible reduced costs for the customer?

9 MR. ARMSTRONG: Right.

10 MR. CROUCH: That is correct.

11 CHAIRMAN CLARK: Anything else?

12 MR. McLEAN: Two very brief points, if I may.
13 Mr. Crouch, didn't margin of reserve -- you gave us a
14 historical perspective on margin reserve, and you
15 mentioned Jim Collier's -- you mentioned the 1982 memo
16 which sort of gave birth to the notion of margin
17 reserve, did you?

18 MR. CROUCH: I had heard about that. I was
19 unable to find that memo myself, and that was before my
20 time.

21 MR. McLEAN: Maybe this was before your time
22 too, but didn't margin reserve come into the parlance of
23 this Commission shortly after utilities lost the
24 opportunity to take as an expense the depreciation on
25 contributed property?

1 MR. CROUCH: I don't know, sir.

2 MR. McLEAN: And you said that those utilities
3 that we talked about that were 100 percent used and
4 useful might be in the business of selling the fire
5 flow. You remember making that can comment sort of to
6 me just a little while ago? Now wastewater utilities
7 don't meet fire flows. You would exclude from that
8 wastewater, right?

9 MR. CROUCH: That is correct.

10 MR. McLEAN: Now with respect to water
11 utilities, sometimes, at least in one case that I can
12 think of, mainly General Development Utilities, the
13 capacity that the Commission was persuaded was needed
14 was the peak day, plus fire flow on that day, plus line
15 flushing on that day, less some diminished capacity of
16 the physical plant to meet demand. Isn't that true?
17 Remember that?

18 MR. CROUCH: I vaguely remember the case. I
19 don't believe I worked on the recommendation because I
20 think I testified in the GDU case, so I did not work on
21 the recommendation.

22 MR. McLEAN: So in the event that the peak day
23 doesn't occur on the same day as the fire and they don't
24 flush the lines on the same day, they could sell
25 something other than fire flow; couldn't they?

1 MR. CROUCH: They could, but we have to look
2 at worst case scenario, that that fire could occur on
3 the same as the peak day.

4 MR. McLEAN: Well, they might be selling their
5 line flushing capacity, too, mightn't they, instead of
6 fire flow?

7 MR. CROUCH: That's true.

8 MR. McLEAN: Thank you, Mr. Crouch.

9 CHAIRMAN CLARK: Any other thing we need to
10 take up at this time? Mr. Schiefelbein?

11 MR. SCHIEFELBEIN: Hopeless. I would like to
12 have a clear understanding of where we go from here and
13 approximately when.

14 CHAIRMAN CLARK: I understand that.

15 Ms. Moore, are there anymore substantive
16 comments or are we on procedure?

17 I understand, Ms. Moore, you have copies of
18 the CASR.

19 MS. MOORE: That's correct.

20 CHAIRMAN CLARK: And you have some
21 post-hearing deadlines in there. Why don't you have
22 them handed out, and then if you would read to us the
23 post-hearing procedures.

24 MS. MOORE: The transcripts, I think, will be
25 ready December 30th. Post-hearing filings due on

1 January 16th. And we'll then issue a -- Staff will
2 issue a final recommended version of the rule February
3 13th. And the parties or interested participants can
4 file comments about that on March 6th. Staff will file
5 its recommendation --

6 CHAIRMAN CLARK: You mean on April 3rd?

7 MS. MOORE: The Staff recommendation is on
8 April 3rd.

9 CHAIRMAN CLARK: Okay.

10 MS. MOORE: And then an agenda of April 14th.

11 CHAIRMAN CLARK: Okay. Anything? Now, are
12 there questions about that procedure?

13 MR. SCHIEFELBEIN: If we could be given a few
14 moments to consult. This is the first I've seen of this
15 list.

16 CHAIRMAN CLARK: Sure.

17 MR. SCHIEFELBEIN: Appreciate it. (Pause)

18 Commissioners, on behalf of Florida Waterworks
19 Association, in any event -- and you have to understand
20 where we're coming from on this, we're -- we've waited a
21 long time and we're -- we filed a petition early this
22 year with the request that a rule be adopted by the end
23 of this year. We're not going to make that and that's
24 life. We're looking -- without any sacrifice of our own
25 due process rights, we're looking at trying -- and also

1 without unnecessarily burdening you all, we're trying to
2 cut to the chase here. And really, speaking somewhat
3 extemporaneously because I had not exactly understood
4 what Staff was going to propose, but it seems to me that
5 we can go from post-hearing filings to a Staff
6 recommendation, and I -- although --

7 CHAIRMAN CLARK: Mr. Schiefelbein, Staff
8 talked to me about this. This was just to give you a
9 final crack at the rule version as it comes out. If you
10 all don't want that, that's fine with me.

11 MR. SCHIEFELBEIN: Well, I guess there's a
12 trade-off involved, and I think we would really like to
13 know where we stand. We do have a pending petition over
14 at DOAH on the originally proposed rule. That is in
15 abeyance. There's nothing magical about that, as you
16 know, and we're at this point supposed to advise the
17 hearing officer there by, I think February 27th or 28th,
18 something like that. And I would really like to kind of
19 have something to tell him or her. And if any other
20 parties had any particularly meaningful reason to
21 object, that's fine, but I think -- I would just as soon
22 go from post-hearing filings straight to Staff
23 recommendation and let's be done with it.

24 MR. ARMSTRONG: And then immediately to the
25 agenda conference hearing. That's the done part.

1 MR. SCHIEFELBEIN: Right.

2 MR. ARMSTRONG: Southern States agrees, we
3 would prefer to see the process expedited such that we
4 would have the post-hearing filings, the Staff final
5 recommended rule, or rules, and then a Commission
6 agenda.

7 CHAIRMAN CLARK: It's your recommendation we
8 eliminate post-hearing filings?

9 MR. ARMSTRONG: No, post-hearing filings we
10 would have. And then we would have -- on February 13th,
11 Staff's final recommended version of rule would be the
12 final recommended version of the rule, and then we would
13 prefer to go straight to PSC agenda.

14 MR. McLEAN: Well, Commissioners, we're faced
15 with a proposed rule which the Staff doesn't support.
16 We may well want to say what we think the ultimately
17 proposed rule will do to us.

18 CHAIRMAN CLARK: I appreciate the desire to
19 hurry this up and cut down on the time involved, but I
20 think it would be important to have a rule and then have
21 the interested parties' comments on it. I for one
22 prefer that method because I think the rule will be
23 changed and I would like to have specific comments from
24 interested parties as to where they take issue with the
25 rule.

1 And as far as telling the hearing officer
2 something --

3 MR. SCHIEFELBEIN: We can certainly cope with
4 that, but -- and I don't mean to press my luck, but I
5 think you do know where we are all coming from on this,
6 as far as what period of time. I think we've all
7 aligned or unaligned ourselves on what the appropriate
8 definitions ought to be, and I don't --

9 CHAIRMAN CLARK: I appreciate that. Thank
10 you. We're just going to go ahead with the proposed
11 schedule. I think it would be beneficial to have the
12 parties' comments to it. And if you would let the
13 hearing officer know that we -- given the magnitude of
14 the impact of this rule, that's how we've elected to
15 proceed, and let him or her know what our revised
16 schedule is.

17 MR. SCHIEFELBEIN: Can I take it as a given
18 that -- I'm looking to cut corners without prejudicing
19 my client's rights. So certainly if we file as our
20 comments, "Please see post-hearing filings," or
21 something like that, that would be adequate. We don't
22 need to get into a whole new paper mill, from our
23 perspective, if we don't believe it's necessary.

24 CHAIRMAN CLARK: That's up to you,
25 Mr. Schiefelbein.

1 MR. SCHIEFELBEIN: As far as prejudicing my
2 rights, it's not. If -- I mean we don't have a
3 procedural order on this. Will one be coming out on
4 this, or --

5 CHAIRMAN CLARK: No. What I like to see is
6 the side-by-sides that we do, and I would expect that
7 will be done. Let me ask a question. I'm trying to
8 remember, Chris, in other hearings where the -- where we
9 have a hearing officer that -- what usually comes out is
10 the proposed rule --

11 MS. MOORE: Proposed final version.

12 CHAIRMAN CLARK: Right, and then comments to
13 that, and then the hearing officer's comments.

14 MS. MOORE: Recommendation.

15 CHAIRMAN CLARK: Accepting it or not accepting
16 it.

17 MS. MOORE: Right, recommendation to the
18 Commission.

19 CHAIRMAN CLARK: It would be my intention to
20 follow the CASR as indicated. And what I will commit to
21 do is that I would ask Staff that after we have the
22 agenda -- let me ask this. Is there a time frame within
23 which we must file the rule? I think there is.

24 MS. MOORE: Yes, there is. If there are
25 changes to rule, we must first file a notice of changes,

1 under the new APA, and that has to sit out for there 21
2 days before we can then file the rule for adoption.

3 CHAIRMAN CLARK: But we will do that as soon
4 as we can.

5 MS. MOORE: That's correct.

6 CHAIRMAN CLARK: Okay. Thank you.

7 Mr. Schiefelbein.

8 MS. MOORE: That's right, as long as the
9 challenge is pending, I don't know that we can file it
10 for adoption.

11 COMMISSIONER CLARK: All right.

12 MR. SCHIEFELBEIN: Okay. One other small
13 question. Within what time frame would you be expecting
14 our response to that March 1990 report? Could we agree
15 that would be -- well --

16 CHAIRMAN CLARK: That's part of the
17 post-hearing filings.

18 MR. SCHIEFELBEIN: All right. Thank you.

19 MR. McLEAN: Late-filed exhibit Ms. Swain owes
20 us when?

21 CHAIRMAN CLARK: Yes, Ms. Swain, you indicated
22 you could give us a late-filed -- well, it's going to be
23 part of an exhibit we've already identified, but the
24 work papers to your graph on the 34 percent.

25 MR. SCHIEFELBEIN: Can we have a week?

1 CHAIRMAN CLARK: That would be fine, a week.

2 MR. McLEAN: Fine.

3 CHAIRMAN CLARK: A week from today, close of
4 business. Today is the 10th. So it will be the 17th.

5 MR. McLEAN: That's adequate, certainly.

6 COMMISSIONER CLARK: Anything else? Thank you
7 all very much for coming and participating and providing
8 the information on this rule. Thank you.

9 MR. McLEAN: Thank you, Commissioners.

10 (Hearing concluded at 5:30 p.m.)

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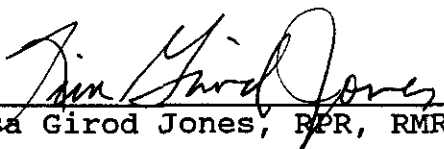
13

14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled
16 matter.

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Lisa Girod Jones, RPR, RMR

12/30/96
Date

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