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ORIGINAL

May 22, 1998

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 971663-WS

Dear Ms. Bayo:

Enclosed for filing in the above-references docket are the original and 15 copies of the Direct Testimony of Hugh Larkin, Jr. on behalf of the Citizens of Florida.

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

Sincerely,

Harold McLean
Associate Public Counsel

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**CERTIFICATE OF SERVICE
DOCKET NO. 971663-WS**

I HEREBY CERTIFY that a true copy of the foregoing Direct Testimony of Hugh Larkin, Jr. was served upon the following entities by United States Mail or by Hand delivery where indicated by an asterisk (*) on this 22nd day of May, 1998.

Florida Cities Water Company
(Barefoot Bay Division)
Mr. Gerald S. Allen
4837 Swift Road, Suite 100
Sarasota, Florida 34231-5157

Florida Water Services Co.
Matthew Feil, Esquire
1000 Color Place
Apopka, Florida 32703

Gatlin Law Firm
Kenneth B. Gatlin
3301 Thomasville Road, #300
Tallahassee, FL 32312

Cheryl Walla
1750 Dockway Drive
N. Ft. Myers, Florida 33903

Rosanne Gervasi*
Florida Public Service Commission
2540 Shumard Oak Drive
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Harold McLean

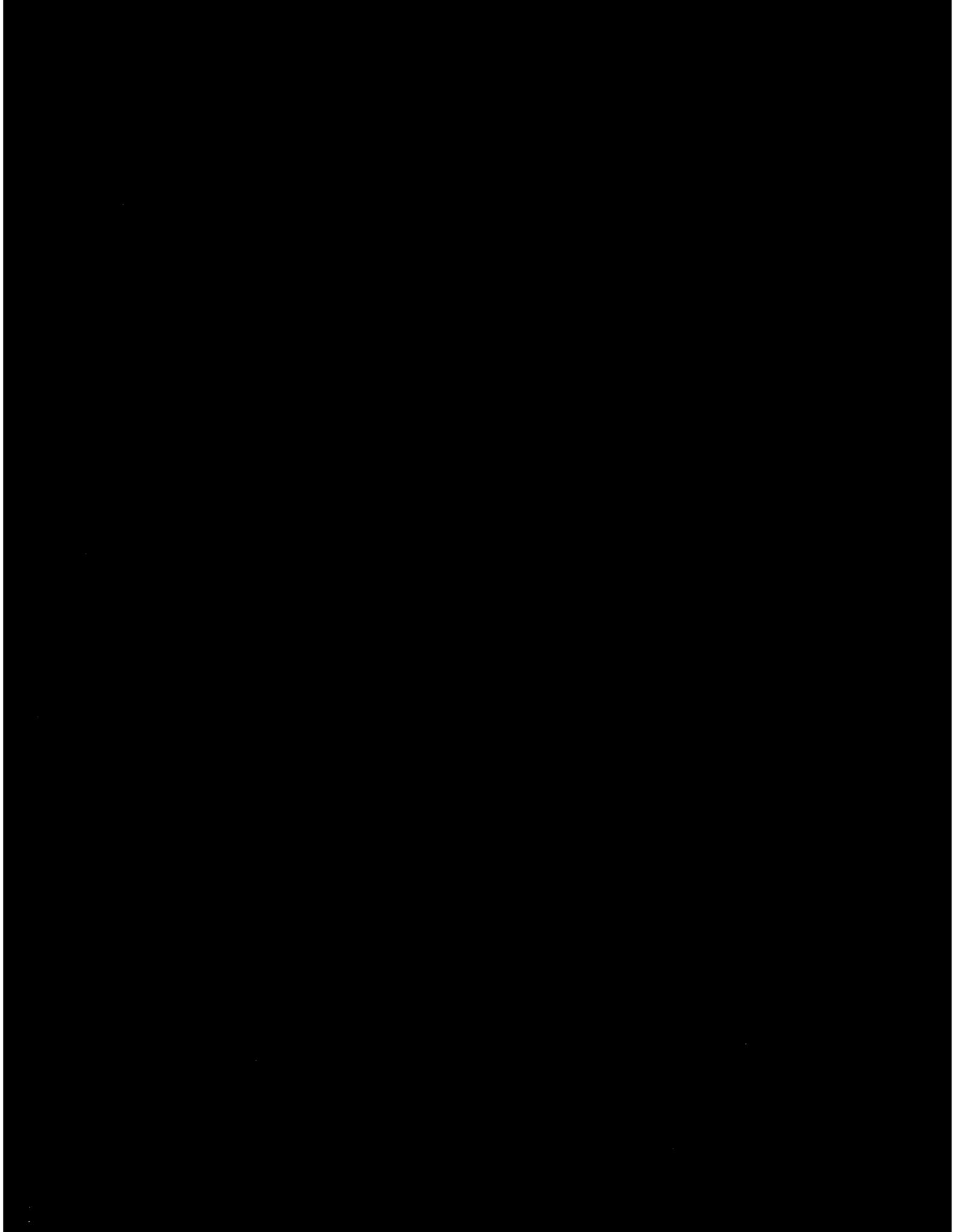


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1 DIRECT TESTIMONY
2 OF
3 HUGH LARKIN, JR.
4 ON BEHALF OF THE CITIZENS OF FLORIDA
5 BEFORE THE
6 FLORIDA PUBLIC SERVICE COMMISSION
7 REGARDING THE RECOVERY OF LITIGATION COSTS
8

9 INTRODUCTION

10 Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.

11 A. My name is Hugh Larkin, Jr. I am a Certified Public Accountant licensed in the states
12 of Florida and Michigan and the senior partner in the firm of Larkin & Associates,
13 Certified Public Accountants, with offices at 15728 Farmington Road, Livonia,
14 Michigan 48154.

15
16 Q. HAVE YOU PREPARED AN APPENDIX WHICH DESCRIBES YOUR
17 QUALIFICATIONS AND EXPERIENCE?

18 A. Yes. I have attached Appendix I which is a summary of my experience and
19 qualifications.
20

21 Q. ON WHOSE BEHALF ARE YOU APPEARING?

22 A. Larkin & Associates was employed by The Florida Office of Public Counsel ("OPC")
23 to provide testimony regarding the recovery of litigation costs from certain water and
24 wastewater customers of the Florida Cities Water Company (FCWC) who are subject
25 to the jurisdiction of the Florida Public Service Commission.

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Summary of Recommendations and Conclusions

Q. WOULD YOU PLEASE SUMMARIZE THE RECOMMENDATIONS AND CONCLUSIONS YOU HAVE REACHED REGARDING THE RECOVERY OF LITIGATION COST FROM FLORIDA CITIES WATER COMPANY'S (FCWC) RATEPAYERS SUBJECT TO THE JURISDICTION OF THE FLORIDA PUBLIC SERVICE COMMISSION?

A. I am recommending that the Florida Public Service Commission not authorize the recovery of litigation costs from those ratepayers subject to its jurisdiction. I have reached this recommendation based on my conclusion that if the Commission were to authorize the recovery of these legal fees it would be retroactive ratemaking. Additionally, the litigation costs incurred primarily benefitted the stockholders and debtholders of FCWC. Also, to establish a precedent of this nature in the State of Florida would place ratepayers in a position of guaranteeing or being the payer of last resort for any and all litigation undertaken by regulated public utilities in the State of Florida.

Q. HOW WILL YOUR TESTIMONY BE ORGANIZED?

- A. My testimony will be organized in the following headings:
- a. Company's Proposal is Retroactive Ratemaking
 - b. Ratepayers Not Responsible for Fines, Penalties and Related Costs
 - c. Financial Integrity
 - d. Legal Expenses in this Instance are Atypical
 - e. Criminal Legal Fees
 - f. Inclusion of Unrecovered Legal Fees in Rate Base

1 g. Alternative Allocation of Legal Fees

2
3 Company's Proposal is Retroactive Ratemaking

4 Q. IS THERE ANY RATEMAKING BASIS FOR THE COMPANY TO REQUEST
5 THE LEGAL FEES UNDER CONSIDERATION IN THIS CASE?

6 A. No, there is not. Clearly, what the Company is requesting is retroactive ratemaking.
7 The Company did not and does not have an accounting order authorizing them to
8 defer any of the expenses associated with the legal fees in question. In fact, the
9 Company did not defer any of the legal expenses requested in this case. In each
10 accounting year 1991 - 1997 the Company booked, "below the line" the legal fees
11 according to Mr. Murphy's testimony. Thus, each year the Company recorded as
12 expense the legal fees incurred. Since the Company has no accounting order allowing
13 it to defer the expense and the expenses were incurred throughout the period 1991 -
14 1997, the Company cannot accumulate those expenses and then ask the ratepayers to
15 compensate the Company at some future point. This is clearly retroactive ratemaking
16 and is not authorized, either by the Florida Public Service Commission or generally
17 accepted ratemaking principles. The Company has expensed the incurrence of the
18 legal fees in each of the years 1991 - 1997. If the Company had a basis to recover
19 these expenses, it was to file a rate case at the time the expenses were being incurred
20 and ask for the recovery as part of a rate case, or to come before the Commission and
21 ask for an Accounting Order allowing for the deferral of the legal fees to be
22 considered in a single issue rate case. The Company has not done so, and has merely
23 decided to retroactively attempt to recover these expenses from ratepayers. Thus, it
24 appears to me that the Company should not prevail on this issue based on the fact
25 that it had no authority to defer the expense and no authority to retroactively collect it

1 from ratepayers.

2
3 Ratepayers Not Responsible for Fines, Penalties and Related Costs

4 Q. UNDER RATE MAKING PRINCIPLES ARE RATEPAYERS HELD
5 RESPONSIBLE FOR FINES, PENALTIES AND RELATED COSTS?

6 A. As a general rule, ratepayers are not responsible for fines and penalties or any related
7 costs. Generally, rate making principles have concluded that fines and penalties are
8 violations by management of laws that they knew or should have known existed, and
9 that any violation of law is the responsibility of management, who work directly for
10 stockholders. Thus, ratepayers in utility rate making cases are generally not held
11 responsible for the payment of fines and penalties. Since the underlying principle of
12 utility rate making is that the fines and penalties are the responsibility of management,
13 who work directly for the stockholders, then any related expense, such as legal fees,
14 should be treated in the same manner as the fine or penalty. Clearly, the Florida
15 Public Service Commission has recognized that the fines and penalties incurred by
16 utilities in their operations, regardless of whether those fines and penalties are
17 assessed by a local jurisdiction, the state or a federal agency, should not be collected
18 in rates from ratepayers. It is also reasonable that any associated expense, such as
19 legal fees, interest or cost associated with correcting violations, should not be
20 collected from ratepayers if these costs would not have been incurred absent the fine
21 or penalty.

22 The reasoning underlying this basic principle is that management must be held
23 responsible for its actions. It must be aware of the requirements of the law, and it
24 must follow those laws regardless of their conclusion as to the fairness or economic
25 reasonableness of the requirements of the law. If regulation allowed the recovery of

1 fines and penalties and/or any related costs from ratepayers, clearly, management and
2 stockholders would be shielded from the affects of their actions. They could operate
3 with impunity knowing that as a general principle they could recover any penalty or
4 fine and related costs from ratepayers. Clearly, in a competitive environment they
5 would not recover such costs. To the extent that the Commission shifts the costs of
6 the violations - whether penalty or legal fees incurred in litigation over penalties -
7 from the Company to the ratepayers, it holds the Company harmless from such
8 violations and frustrates the purpose of the Clean Water Act.

9
10 Q. SHOULD THE FLORIDA PUBLIC SERVICE COMMISSION ENSURE THAT
11 ITS ACTIONS ARE CONSISTENT WITH THE INTENT OF FEDERAL AND
12 STATE REGULATORY AGENCIES?

13 A. Yes. This case provides an excellent example of how passing to the customers the
14 expenses associated with a utility's violation of federal law would insulate the utility
15 management from compliance with the CWA. It is worthy of note that neither the
16 EPA, DOJ, nor the federal Judge was ever aware that the Company might shift the
17 expenses of litigation its customers.

18
19 In fact, the contrary was indicated. In FCWC President Mr. Allen's November 13,
20 1995 Deposition, taken by the DOJ, he testified as follows:

21 Q. (By DOJ Attorney Jacobs) Mr. Allen, are you involved in rate making
22 proceedings for Florida Cities Water Company?

23 A. Yes.

24 Q. You mentioned that approximately \$2 million had been set aside for
25 purposes of this litigation. Do you know whether any of that money has been

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included in the rate base?

A. No, it has not.

Q. And do you have plans to include any of that money in the rate base?

A. Highly doubtful.

Q. Why?

A. Well, I probably do not have the expertise from an accounting perspective to really address this, but -- and maybe I was presumptuous when I said probably not. The answer is, frankly, I don't know.

Q. Actually, you said highly doubtful, not probably not.

A. Well --

Q. On what did you base that answer? What made you think it was highly doubtful?

A. We., it depends on -- depends on a number of factors. Quite frankly, the reason I said highly doubtful is I think the commission will look at this expense with -- when I say commission, I'm talking about the public service commission -- without a lot of inclination to include it in a rate base.

Q. Why do you say that?

A. Just based on my past experience with the commission.

Q. As we sit here today, is it your intention, as the president of Florida Cities Water Company, to include in any submission to the public service commission any of these funds that have been set aside for use in this litigation; that is to say, for purposes of rate-base calculations?

A. I don't know.

Q. Well, who will make that decision?

A. Well, I think the -- first, the decision will not be made until --even to

1 consider whether or not to seek rate base or any other treatment of these
2 expenses until the outcome of the case is resolved.

3
4 Thus, Mr. Allen indicated that FCWC's seeking to include expenses associated with
5 this litigation was "highly unlikely." While Mr. Allen hastened to add that he was no
6 expert regarding whether the expenses could be recovered through the rate making
7 process, the matter was apparently not raised again. It is reasonable to conclude that
8 the DOJ and the Federal Judge were under the reasonable impression that the violator
9 - FCWC - like any other violator - would be liable for whatever penalty and expenses
10 arose from this litigation. It is also reasonable to assume that the Court and the DOJ
11 were aware that the Company was incurring substantial litigation expenses, and that
12 its ability to pay any penalty would be lessened to that extent

13
14 Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION ALLOWED THE
15 RECOVERY OF FINES AND PENALTIES IN THE RATE MAKING PROCESS?

16 A. To my knowledge, they have not.

17
18 Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION ALLOWED THE
19 RECOVERY OF LEGAL FEES AND RELATED COSTS ASSOCIATED WITH
20 FINES AND PENALTIES?

21 A. I am aware of two cases in which the Commission dealt with a utility's legal expenses
22 incurred in dealing with the Department of Environmental Regulation (DER) and the
23 Environmental Protection Agency (EPA). The first of these cases involved Lehigh
24 Utilities, Inc., in Docket No. 911188-WS, Order No. PSC-93-0301-FOF-WS, issued
25 February 25, 1993.

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In that Order, at page 21, the Commission stated the following:

Test Year Legal Expenses

In the MFRs, a portion of the allocated A&G expenses included non-rate case related legal expenses. OPC offered no testimony in support of its position that this amount should be reduced by the amount allocated for defense of DER and Environmental Protection Agency (EPA) fines.

Utility witness Ludsen testified that Lehigh should pay its allocated share of legal expenses incurred in defending SSU systems from the various governmental entities that levy fines. Witness Ludsen further testified that negotiations which may avoid or reduce fines, or eliminate or postpone large improvements to systems, are included in this expense. He also testified that allocation of legal expenses maintains stable cost assignments to systems on a year-to-year basis.

Based on the foregoing, we find it appropriate to allow the utility to recover its legal expenses relating to permitting and compliance. Accordingly, no adjustment to legal expenses has been made.

It is not clear from the above quoted Order what the extent of the legal fees were, or whether they related directly to fines and penalties imposed by the Environmental Protection Agency. The last paragraph in the quoted Order which discuss this issue states, in part, that the Commission is allowing "...legal expenses relating to permitting and compliance." This description does not appear to be the same as

1 defending the utility in an action where the Company has been fined for violation of a
2 requirement of the law. Obtaining permits and complying with regulations would be a
3 normal event in the course of operations and would not be the same as legal fees
4 incurred to defend the Company's management and stockholders against violations of
5 statutes or regulations. Additionally, it would appear that whatever legal fees were
6 involved in the Lehigh Utilities case were probably de minimus, since the fine involved
7 was only \$7,500. The \$7,500 fine was removed as part of a stipulation as shown on
8 page 4, Item 4 of the Order.

9
10 Q. PLEASE DISCUSS THE SECOND CASE YOU ARE AWARE OF.

11 A. The second case is Docket No. 960451-WS, Order No. PSC-97-0618-FOF-WS,
12 issued May 30, 1997. I was a witness in that docket, and I recommended that the
13 Commission remove legal fees incurred to defend EPA and DEP violations. The
14 amount of legal fees associated with my recommendation was \$453. Needless to say,
15 there was not extensive litigation of this issue. The Commission accepted the
16 conclusion that "...the legal expenses incurred for defending fines from DEP and EPA
17 could facilitate avoided or a reduced amount of fines." The full discussion of the
18 issue in the Order is as follows:

19 Legal Costs for Defense of EPA or DEP Violations

20 OPC witness Larkin identified expenses included in the base year related to
21 legal fees incurred to defend EPA and DEP violations. He testified that the
22 utility's ratepayers should not be required to finance such violations, as these
23 expenses are unrelated to the provision of water and wastewater service. As
24 such, Mr. Larkin proposed adjustments to remove these expenses from the
25 test year. By applying the 1996 and 1997 inflation factors to the base year

1 amount of \$431, he proposed to reduce water operations by \$163 and
2 wastewater operations by \$290.

3 In its brief, UWF argued that the utility has a good record of compliance with
4 environmental rules and regulations. In support of this statement, the utility
5 referred to the testimony of an employee of the Department of Health and
6 Rehabilitative Services (HRS) and two employees of DEP, who appeared on
7 behalf of staff in this proceeding. In further support of UWF's position that
8 these legal expenses should be allowed, in its brief, the utility referenced Order
9 No. PSC-93-0301-FOF-WS. By that Order, the Commission determined that
10 it was appropriate to allow legal expenses incurred for defense of DER (now
11 DEP) and EPA fines, as these costs could serve to avoid or reduce fines, or
12 eliminate or postpone large system improvements.

13
14 Although we find that fines associated with violations of DEP and EPA should
15 be borne by the shareholders of the utility, we believe it is reasonable for UWF
16 to recover the costs of defending such fines. As the commission previously
17 concluded, the legal expenses incurred for defending fines from DEP and EPA
18 could facilitate avoided or a reduced amount of fines. Therefore, we find that
19 no such adjustments are necessary to test year expenses.

20
21 As I previously indicated, the amount of legal fees were small, only \$453. I do not
22 believe that the Order in Docket No. 960451-WS represents a precedent by the
23 Commission, nor does it focus on the relationship between the fines and penalties and
24 legal fees. Moreover, it is doubtful that the commission should or did there intend to
25 establish precedent in a \$453 issue which would control a multi-million dollar issue in

1 a later case.

2
3 It is also worthy of note that in each of the cases, the expenses were test year
4 expenses, unlike the instant case.

5
6 It is fair to say that at least in terms of materiality, this is a case of first impression
7 before the Florida Public Service Commission.

8
9 Q. WHAT DO YOU MEAN BY FOCUS ON THE RELATIONSHIP BETWEEN THE
10 FINES AND PENALTIES AND LEGAL FEES?

11 A. If an expense, whether it be a fine or a penalty, is not recoverable in rates because it
12 does not meet the standard of a necessary and prudent expense incurred in the
13 provision of water and wastewater service, then any related expense, such as legal
14 fees, should not be included in rates. The associated legal expense must take on the
15 same character as the fines and penalties. To do otherwise would cause the
16 ratepayers to be responsible for an expense associated with the primary expense
17 which the Commission has already found ratepayers not to be responsible.

18
19 Q. IS IT NOT TRUE THAT THE LEGAL FEES MAY SERVE TO REDUCE THE
20 FINES AND PENALTIES?

21 A. That may be true. However, since the fines and penalties are the responsibility of the
22 stockholder, only the stockholder would benefit from the reductions of the fine or
23 penalty. Consequently, the stockholders should bear the cost related to the fine or
24 penalty. As an example, if the Commission were to find that a particular item of plant
25 constructed by a utility should not be added to rate base because it is not used or

1 useful or was not prudently incurred, the Commission would not add depreciation
2 expense to rates in order to allow the Company to recover the costs of such plant. If
3 stockholders were not entitled to earn a rate of return on the plant, they also would
4 not be entitled to recover their investment through depreciation expense. The
5 depreciation expense would follow the treatment of the plant. If the plant was
6 eliminated from the cost of service, the depreciation expense would also be removed
7 because the two are inter-related. The same is true with EPA fines and penalties. If
8 the fines and penalties are eliminated from the cost of service, then legal fees
9 associated with those fines and penalties should also be eliminated from the cost of
10 service.

11
12 Q. I NOTE IN THE ORDER YOU QUOTED FROM DOCKET NO. 960451-WS, AN
13 ARGUMENT WAS ADVANCED BY THE COMPANY IN ITS BRIEF THAT
14 THE LEGAL FEES COULD ELIMINATE OR POSTPONE LARGE SYSTEM
15 IMPROVEMENTS. ALTHOUGH THE COMMISSION DID NOT ADOPT THAT
16 PORTION OF THE COMPANY'S ARGUMENT IN APPROVING THE \$453 IN
17 LEGAL FEES, WOULD YOU PLEASE COMMENT ON THAT PROPOSITION?

18 A. It is my understanding that neither the DEP nor the EPA orders companies to add
19 large system improvements. It is my understanding that these two regulatory
20 agencies find that companies are in violation of the law and that the company itself
21 must determine how to eliminate the violation and comply with the law. The
22 elimination of the violation may require the addition of system improvements, it may
23 require repair, or it may require the connection of the wastewater system to another
24 plant. The environmental agencies either find the utility is or is not in compliance
25 with the requirements of the law. If these agencies are mistaken as to whether a

1 particular utility's wastewater treatment facilities comply with the law, then normally
2 the company's own engineers can prove the company's compliance with the
3 requirements of the law. No legal expense would be incurred, since it would be a
4 matter of testing to determine whether the utility complies or does not comply with
5 the environmental requirements. Consequently, I do not see how the incurrence of
6 legal expenses could change the requirements of the law so that a utility would not
7 have to comply with the environmental requirements. If there are alternatives that are
8 less costly, clearly, that is within the prerogative of the utility to make those least cost
9 plant additions, as long as they meet the standard required by the law.

10
11 A very similar argument was advanced by the Company in its litigation. In fact, it
12 appears that the Company scheduled the testimony of Charles Hill, of the Commission
13 staff to make the point. Essentially, the company argued that there could be no
14 economic advantage to the company by deferring investment. As the argument goes,
15 the ratemaking process permits the company a return only upon investment actually
16 made, thus investment deferred or avoided can provide no economic benefit to the
17 company. Implicit in this argument is the notion that deferring investment inures to
18 the benefit of the customers rather than the utility.

19
20 Q. DID THE FEDERAL COURT ADDRESS THIS ARGUMENT.

21 A. Indeed it did. The Court rejected the argument finding that "...the Court disagrees
22 with Florida Cities' contention that it can only realize an economic benefit from
23 investing, not deferring investment. [Exhibit ___(GHB-97, p16) memorandum order
24 dated August 20, 1996] Thus while the company may champion the customer's
25 interest in low rates, it is clear that the company also serves its own economic

1 interests by deferring construction which is sometimes later found to bring about
2 violations of laws such as the CWA.

3
4 Q. IS IT YOUR UNDERSTANDING THAT FLORIDA CITIES WATER COMPANY
5 WAS FOUND TO BE IN VIOLATION OF THE CLEAN WATER ACT?

6 A. It is my understanding, based on my review of the judgement issued by the United
7 States District Court, that Florida Cities Water Company was found to violate the
8 National Pollutant Discharge System (NPDES), violations were at Barefoot Bay and
9 Carrolwood, and there were claims for unpermitted discharges, discharges to an
10 unpermitted location and NPDES violations at Waterway Estates. The Court's Order
11 indicates that there were 269 Clean Water Act violations at Barefoot Bay, 234 Clean
12 Water Act violations at Carrolwood, and 1,038 Clean Water Act violations at
13 Waterway Estates. None of the Court's findings appear to deal with how Florida
14 Cities Water Company should or might have complied with the Clean Water Act, and
15 it does not appear to me to have been part of the litigation before the court.

16
17 In fact, it is clear that the court was faced with two issues during the trial: 1) The
18 amount of the penalty to be assessed against FCWC, and 2) the liability of Avatar, if
19 any. FCWC's violations of the CWA were established by summary judgement.

20
21 Q. THROUGHOUT THE COMPANY'S FILING IN THIS CASE, THE COMPANY
22 APPEARED TO BE ARGUING THAT THE JUSTICE DEPARTMENT
23 REPRESENTING THE ENVIRONMENTAL PROTECTION AGENCY WAS
24 UNREASONABLE AND COULD HAVE, AND SHOULD HAVE, SETTLED
25 THIS SUIT EARLY ON WHEN LESS LITIGATION COST WOULD HAVE

1 BEEN INCURRED. WOULD YOU PLEASE COMMENT?

2 A. The Company's filing clearly indicates that they feel that the Justice Department was
3 unreasonable and that significant legal fees were incurred as a result of the actions of
4 the Justice Department. Neither I, nor the Commission, has any conclusive basis as to
5 whether the Company is right or wrong in this contention. The Federal court had
6 adequate opportunity to agree with the Company on this point. When the company
7 sought to recover its attorney's and costs from the federal governments, the court
8 found that the Company "[had] not adduced sufficient proof of the bad conduct or ill
9 motive of [the Government] in litigating these claims so as to support a finding of bad
10 faith. [The] Government's actions and conduct herein are simply not of the character
11 that merits awards under the bad faith exception." [Exhibit ___(GHB-101, p9)]

12
13 To react to the Company's allegations regarding the zeal of the government's
14 prosecution of this case is to cast the Commission in the position of judging the
15 quality and motives of the Government's case. This is neither a legally sanctioned nor
16 desirable role of the Florida Commission.

17
18 Even if assuming for the sake of argument that the Company is correct and that the
19 Justice Department's pursuit of this case was extremely aggressive, there would be no
20 basis to ask ratepayers to pay the legal cost. Clearly, the ratepayer is not and should
21 not be the payer of last resort. The ratepayer should not be held to pay each and
22 every cost that the Company feels it incurs as a result of over-zealous litigation on the
23 part of the Federal Government. Ratepayers were not in charge of the Company's
24 system. They did not plan it, they did not operate it, and they were not responsible
25 for the analysis, application and violation of the Clean Water Act. Therefore, the

1 ratepayers should not be held responsible for these legal fees on the basis of the
2 Company's argument of over- zealous prosecution. The theory that over-zealous
3 prosecution shifts the burden of responsibility for these legal fees from stockholders
4 to ratepayers is not reasonable.

5
6 Financial Integrity

7 Q. WHAT IS YOUR UNDERSTANDING OF FLORIDA CITIES WATER
8 COMPANY'S ARGUMENT FOR PLACING THE RESPONSIBILITY FOR THE
9 LEGAL FEES EXPENDED BY THE COMPANY TO DEFEND THE
10 STOCKHOLDERS ON RATEPAYERS?

11 A. Two of the Company's witnesses, Mr. Murphy and Mr. McClellan, advance the
12 theory that even though the Company realizes they cannot collect the penalty from
13 ratepayers and that the penalty is the responsibility of the stockholders, any legal fees
14 incurred in defending the stockholders from the incurrance of the penalty is the
15 responsibility of the ratepayer. The underlying theory of both witnesses is that, had
16 the Company not defended the stockholders from the payment of the settlement
17 demanded by the Justice Department, the Company would have suffered financially,
18 even to the extent that a bankruptcy filing might have been required. Had a
19 bankruptcy filing been required, according to the Company's witnesses, the ratepayers
20 would have suffered, and this, therefore, justifies requiring the ratepayers to reimburse
21 the Company for defending its stockholders.

22
23 Q. DO YOU BELIEVE THAT THE COMPANY FILING FOR CHAPTER 11
24 BANKRUPTCY WOULD HAVE AFFECTED THE SERVICE RECEIVED BY
25 RATEPAYERS?

1 A. No, I do not. When filing for Chapter 11 Bankruptcy, the normal procedure is that
2 the payment of liabilities of the bankrupt company are held in abeyance and the
3 company continues to operate in the hands of the debtor (the current owners of the
4 company). The bankruptcy court would then decide which of the debts of the entity
5 will be discharged and whether the entity should be sold in order to discharge debts of
6 the bankrupt firm or reorganized with a restructuring of outstanding obligations. The
7 bankruptcy court attempts to continue to operate businesses where feasible, since an
8 operating entity is essentially more valuable than an entity which has discontinued
9 operations. Additionally, in a situation where health, safety and welfare are part of
10 the responsibility of the company in bankruptcy, the court would be vigilant to ensure
11 that the public was not adversely affected by the bankruptcy filing. Thus, the
12 Company's argument that a bankruptcy filing would have eliminated or affected the
13 quality of service received by ratepayers is not realistic. The primary group which
14 would have been affected detrimentally by a bankruptcy filing would have been the
15 Company's investors (debtholders and stockholders). The stockholders' equity
16 would have been in jeopardy. The satisfaction of any obligation that the court found
17 could not be satisfied through liquid assets available in the bankrupt company would
18 have been satisfied through sale of the Company. The court would have offered the
19 bankrupt company for sale as an operating entity both to protect the health and safety
20 of the public and to receive the highest value from the assets. Common sense would
21 dictate that buried pipe, which does not provide service, is of no value even if the
22 health and safety issues related to the operation of a water and wastewater utility
23 could be set aside. It is probable that other water and wastewater companies in the
24 area would have taken over these facilities in a bankruptcy sale.

25

1 Whereas the company presents a worst case scenario, i.e., that bankruptcy would
2 have occasioned a severance or termination of service, it is as reasonable for the
3 Commission to consider an offsetting best case scenario: that the utility (albeit not the
4 shareholders) could have emerged from the bankruptcy proceedings, debts
5 discharged and stockholder interests extinguished. With neither debt to retire, nor
6 equity to service, utility rates might have seen a significant lessening.

7
8 The Company's dire predictions regarding a severe deterioration or cessation of
9 service should be seen as an extreme and unlikely scenario.

10
11 Q. COULD FCWC JUST HAVE CURTAILED SERVICE WITHOUT DECLARING
12 BANKRUPTCY, THUS HARMING RATEPAYERS?

13 A. I would think not. The Florida Department of Environmental Protection is charged
14 with the responsibility of ensuring that health and safety standards are maintained at
15 water and wastewater facilities. If operators are not operating these systems to
16 protect the public interest, this agency has the responsibility to take action to ensure
17 that they do. I would conclude that the curtailment of service would not be an option
18 to a pervasively regulated industry.

19
20 In fact, one of the Company's own witnesses, Gary H. Baise, states exactly the
21 opposite of Company witnesses Murphy and McClellan. On page 7, of his Direct
22 Testimony, lines 12-14 he states, "FCWC officials immediately started working with
23 the FDEP and EPA to develop a resolution of the matter because this was a public
24 health facility and, unlike a manufacturing facility, could not shut down for repairs or
25 cease operation." Mr. Baise recognized that the scenario set forth by Messrs.

1 Murphy and McClellan was not a realistic alternative and apparently neither did the
2 FCWC officials whom Mr. Baise stated immediately started working on a solution.
3 Clearly, the bankruptcy curtailment of service scenario is a strawman set up by the
4 Company to attempt to paint the ratepayer as receiving benefits from FCWC's
5 incurrence of legal fees.

6
7 Q. IS IT POSSIBLE THAT THERE IS SOME LEVEL OF SERVICE THE
8 COMPANY COULD HAVE CURTAILED WITHOUT JEOPARDIZING HEALTH
9 AND SAFETY?

10 A. Yes. It is possible that there are repair services that could have been delayed, minor
11 amounts that could have been saved by not responding quickly to customer
12 complaints, etc. However, the main beneficiary of the expenses incurred to fight the
13 fines and penalties imposed by the Environmental Protection Agency was the
14 stockholders, not the ratepayers. Had any substantial penalty been assessed against
15 the Company, that penalty would purportedly have required the Company to file
16 bankruptcy, thus eliminating or placing in jeopardy the equity interest of stockholders
17 and debtholders. A continuation of service to customers would still have gone
18 forward, regardless of whether the current stockholders and debtholders interest
19 would have survived. The substantial benefit of the litigation was to the stockholders.

20
21
22 Q. WHAT EXPERIENCE HAS LARKIN & ASSOCIATES HAD WITH
23 BANKRUPTCY FILINGS?

24 A. Larkin & Associates have been accountants for the trustee in bankruptcy of Michigan
25 Interstate Railway Company, d/b/a/ Ann Arbor Railroad System, which was in

1 Chapter 11 before the United States Bankruptcy Court for the Eastern District of
2 Michigan for approximately eight years. During that time as accountants for the
3 trustee, we issued financial statements which were filed with the bankruptcy court.
4 At no time during the period that Michigan Interstate Railway Company was in
5 bankruptcy did the trustee attempt to eliminate services. During the approximate
6 eight years that the trustee was in charge of the railroad system, the process was to
7 reorganize the operation, such that it became profitable. It was eventually sold with
8 debtors receiving some percentage of their outstanding obligation, while stockholders
9 received a minor return of their investment. At no time did the trustee attempt to sell-
10 off portions of the assets, which were essential to the operation of the railroad.

11
12 In addition to our direct involvement with the above identified bankruptcy, we have
13 participated before public utility commissions where utilities either were in bankruptcy
14 or were experiencing financial difficulties and contemplating bankruptcy. These
15 utilities were the El Paso Electric Company, which did go into bankruptcy, Consumer
16 Power Company (now Consumer Energy) and Gulf States Utilities. We are currently
17 involved in the State of Connecticut on behalf of the Office of Consumer Counsel in
18 cases involving Connecticut Light & Power Company, a subsidiary of Northeast
19 Utilities. This company is currently experiencing financial difficulties as a result of the
20 failure of its nuclear units to operate. It has been our experience that even utilities
21 under financial stress do not attempt to curtail costs which might affect the quality of
22 service to current ratepayers. The difficulty is always involved in maintaining bond
23 payments to debt holders on an on-going basis. Any cash flow normally is used to
24 maintain the level of service to current ratepayers. Thus, I do not believe that a utility
25 experiencing financial difficulty would jeopardize its operation by curtailing service to

1 ratepayers.

2

3 Our bankruptcy experience aside, it is a matter of general knowledge that the trustee
4 in bankruptcy has a fiduciary duty to creditors to conserve the assets of the
5 bankrupt's estate. It would be a serious breach of that duty to permit a utility such as
6 Florida Cities to simply shut down to the extent that its value was reduced to salvage
7 value. The greatest value of Florida Cities to creditors is that of a going concern; it
8 is entirely reasonable to assume that a trustee in bankruptcy would, on behalf of
9 creditors, ensure that Florida Cities continued to achieve a revenue stream through
10 the routine provision of service and the continued compliance with regulatory
11 authorities. In other words, the Company's theory concerning a decline in service, and
12 possible cessation flies in the face

13

14 of what we know the likely result of bankruptcy to be, and ought to be rejected for
15 that reason.

16

17 Legal Expenses in this Instance are Atypical

18 Q. IN MR. ALLEN'S TESTIMONY, AT PAGE 46, HE ATTEMPTS TO
19 CHARACTERIZE THE LEGAL EXPENSES INCURRED AS NORMAL, RUN OF
20 THE MILL, REASONABLY AND PRUDENTLY INCURRED EXPENSES. DO
21 YOU AGREE WITH THAT CHARACTERIZATION?

22 A. No, I do not. Clearly, these expenses are atypical. The way the Company has asked
23 to recover the costs, the length of time the Company has asked to recover them over,
24 and the fact that this is a single issue rate case clearly shows that they are not typical
25 expenses. The expenses incurred were not incurred fulfilling the Company's

1 obligation to provide service. They were incurred in protecting the Company's
2 stockholders from fines and penalties, resulting from established violations of federal
3 law, which would have affected the stockholder's equity interest.
4

5 Q. MR. ALLEN ALSO CHARACTERIZES THESE LEGAL FEES AS THE SAME
6 AS INCURRED BY THE COMPANY IN OTHER SETTLEMENT DEMANDS BY
7 CLAIMANTS, INCLUDING REGULATORY AGENCIES. WOULD YOU
8 PLEASE COMMENT?

9 A. Mr. Allen does not give specific details of what types of claimants and what
10 regulatory agencies the Company incurs legal fees in relationship to. However, if the
11 legal fees incurred are the result of defending management or the Company's
12 stockholders against violations of laws which management failed to comply with, or
13 against tort liability in which company management was expressly found to have
14 breached a civil duty, then they would be of the same nature as those at issue in this
15 case and should be excluded from recovery. One cannot place a broad description
16 over legal settlements or legal fees as the Company has attempted and state that these
17 are of the same nature, and therefore, ought to be recovered from ratepayers. In any
18 instance where it is discovered that a violation occurred because management failed in
19 its responsibilities, those legal fees should not be the responsibility of ratepayers.
20

21 Criminal Legal Fees

22 Q. IS IT YOUR UNDERSTANDING THAT SOME OF THE LEGAL FEES
23 INCURRED MAY HAVE BEEN FOR THE CRIMINAL DEFENSE OF SOME OF
24 THE COMPANY'S EMPLOYEES?

25 A. It is not clear whether the Company has removed from the total expenses legal fees

1 incurred for the possible criminal prosecution of some of the Company's
2 management. To the extent that the Company incurred legal fees for criminal
3 defense, and those fees are included within the expenses incurred, clearly that has no
4 benefit to ratepayers and should be removed prior to the consideration of the
5 Commission of any recovery.
6

7 Inclusion of Unrecovered Legal Fees in Rate Base

8 Q. SOME OF THE COMPANY'S WITNESSES SUGGEST THAT THE
9 UNRECOVERED LEGAL FEES THAT ARE BEING AMORTIZED OUGHT TO
10 BE INCLUDED IN RATE BASE IN THE COMPANY'S NEXT RATE CASE
11 FILING. DO YOU AGREE?

12 A. No, I do not. The recovery of the legal fees, in my opinion, is not justified, it
13 provides no benefit to the ratepayer and was incurred to protect the stockholders'
14 interests. To allow the Company to earn a return on these illegitimate expenses
15 would add insult to injury. If the Commission were to decide to allow the recovery of
16 these expenses (if it can get around the retroactive recovery issue), that is all that the
17 Company should recover. Anything above that amount is not justified.
18

19 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

20 A. Yes, it does.
21
22
23
24
25

**CERTIFICATE OF SERVICE
DOCKET NO. 971663-WS**

I HEREBY CERTIFY that a true copy of the foregoing Direct Testimony of Hugh Larkin, Jr. was served upon the following entities by United States Mail or by Hand delivery where indicated by an asterisk (*) on this 22nd day of May, 1998.

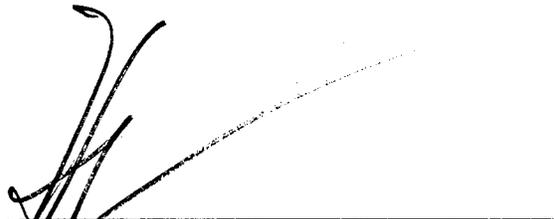
Florida Cities Water Company
(Barefoot Bay Division)
Mr. Gerald S. Allen
4837 Swift Road, Suite 100
Sarasota, Florida 34231-5157

Cheryl Walla
1750 Dockway Drive
N. Ft. Myers, Florida 33903

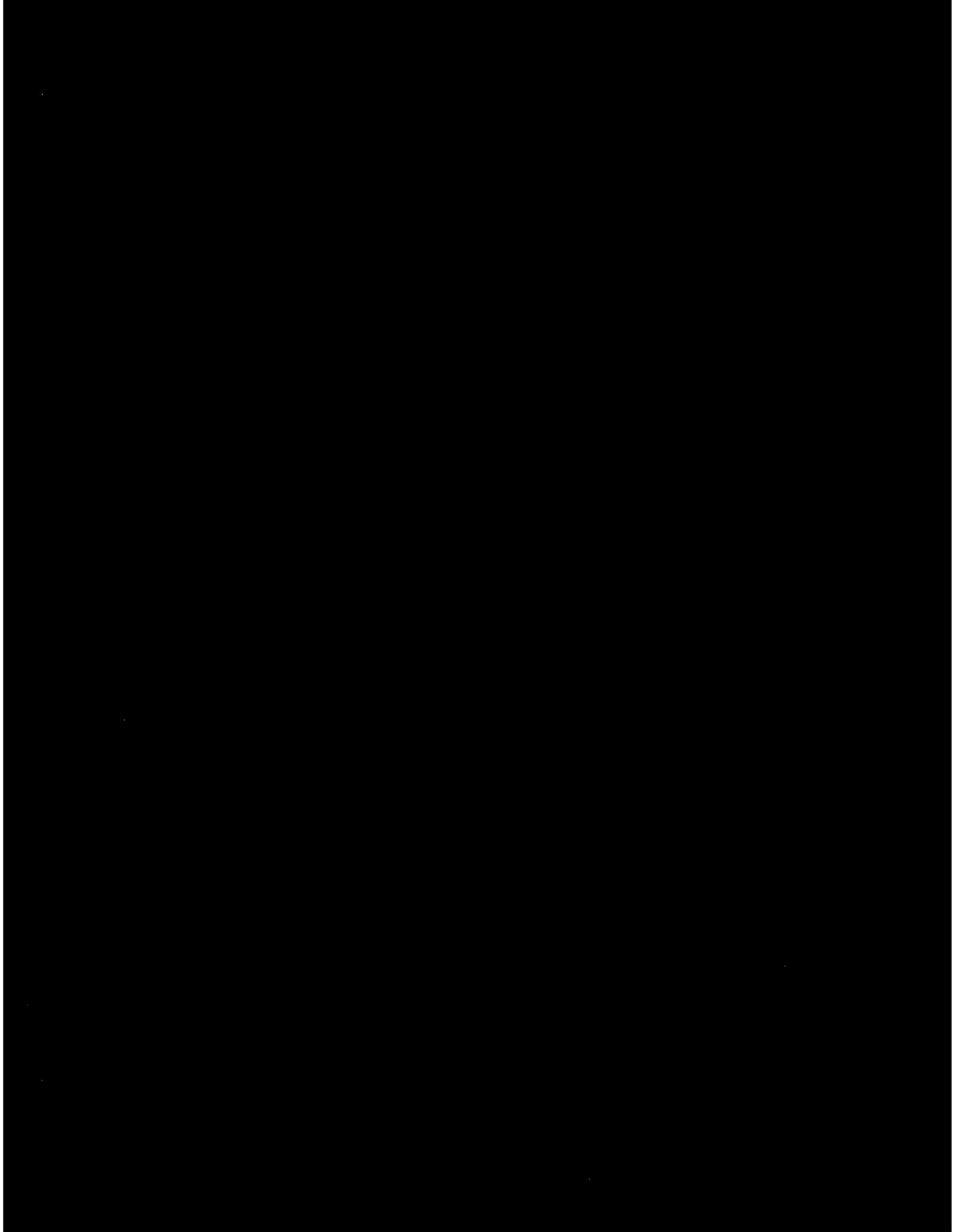
Florida Water Services Co.
Matthew Feil, Esquire
1000 Color Place
Apopka, Florida 32703

Rosanne Gervasi*
Florida Public Service Commission
2540 Shumard Oak Drive
Tallahassee, FL 32399-0850

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Harold McLean



U-4331	Consumers Power Company - Gas Michigan Public Service Commission
U-4332	Consumers Power Company - Electric Michigan Public Service Commission
U-4293	Michigan Bell Telephone Company Michigan Public Service Commission
U-4498	Michigan Consolidated Gas sale to Consumers Power Company Michigan Public Service Commission
U-4576	Consumers Power Company - Electric Michigan Public Service Commission
U-4575	Michigan Bell Telephone Company Michigan Public Service Commission
U-4331R	Consumers Power Company - Gas - Rehearing Michigan Public Service Commission
6813	Chesapeake and Potomac Telephone Company of Maryland, Public Service Commission, State of Maryland
Formal Case No. 2090	New England Telephone and Telegraph Co. State of Maine Public Utilities Commission
Dockets 574, 575, 576	Sierra Pacific Power Company, Public Service Commission, State of Nevada
U-5131	Michigan Power Company Michigan Public Service Commission
U-5125	Michigan Bell Telephone Company Michigan Public Service Commission
R-4840 & U-4621	Consumers Power Company Michigan Public Service Commission
U-4835	Hickory Telephone Company Michigan Public Service Commission
36626	Sierra Pacific Power Company v. Public Service Commission, et al, First Judicial District Court of the State of Nevada
American Arbitration Assoc.	City of Wyoming v. General Electric Cable TV
760842-TP	Southern Bell Telephone and Telegraph Company, Florida Public Service Commission

U-5331	Consumers Power Company Michigan Public Service Commission
U-5125R	Michigan Bell Telephone Company Michigan Public Service Commission
770491-TP	Winter Park Telephone Company, Florida Public Service Commission
77-554-EL-AIR	Ohio Edison Co., Public Utility Commission of Ohio
78-284-EL-AEM	Dayton Power and Light Co., Public Utility Commission of Ohio
OR78-1	Trans Alaska Pipeline, Federal Energy Regulatory Commission (FERC)
78-622-EL-FAC	Ohio Edison Co., Public Utility Commission of Ohio
U-5732	Consumers Power Company - Gas, Michigan Public Service Commission
77-1249-EL-AIR, et al	Ohio Edison Co., Public Utility Commission of Ohio
78-677-EL-AIR	Cleveland Electric Illuminating Co., Public Utility Commission of Ohio
U-5979	Consumers Power Company, Michigan Public Service Commission
790084-TP	General Telephone Company of Florida, Florida Public Service Commission
79-11-EL-AIR	Cincinnati Gas and Electric Co., Public Utilities Commission of Ohio
790316-WS	Jacksonville Suburban Utilities Corp., Florida Public Service Commission
790317-WS	Southern Utility Company, Florida Public Service Commission
U-1345	Arizona Public Service Company, Arizona Corporation Commission
79-537-EL-AIR	Cleveland Electric Illuminating Co., Public Utilities Commission of Ohio
800011-EU	Tampa Electric Company, Florida Public Service Commission

800001-EU	Gulf Power Company, Florida Public Service Commission
U-5979-R	Consumers Power Company, Michigan Public Service Commission
800119-EU	Florida Power Corporation, Florida Public Service Commission
810035-TP	Southern Bell Telephone and Telegraph Company, Florida Public Service Commission
800367-WS	General Development Utilities, Inc., Port Malabar, Florida Public Service Commission
TR-81-208**	Southwestern Bell Telephone Company, Missouri Public Service Commission
810095-TP	General Telephone Company of Florida, Florida Public Service Commission
U-6794	Michigan Consolidated Gas Company, 16 refunds Michigan Public Service Commission
U-6798	Cogeneration and Small Power Production -PURPA, Michigan Public Service Commission
810136-EU	Gulf Power Company, Florida Public Service Commission
E-002/GR-81-342	Northern State Power Company Minnesota Public Utilities Commission
820001-EU	General Investigation of Fuel Cost Recovery Clauses, Florida Public Service Commission
810210-TP	Florida Telephone Corporation, Florida Public Service Commission
810211-TP	United Telephone Co. of Florida, Florida Public Service Commission
810251-TP	Quincy Telephone Company, Florida Public Service Commission
810252-TP	Orange City Telephone Company, Florida Public Service Commission
8400	East Kentucky Power Cooperative, Inc., Kentucky Public Service Commission

U-6949	Detroit Edison Company - Partial and Immediate Rate Increase Michigan Public Service Commission
18328	Alabama Gas Corporation, Alabama Public Service Commission
U-6949	Detroit Edison Company - Final Rate Recommendation Michigan Public Service Commission
820007-EU	Tampa Electric Company, Florida Public Service Commission
820097-EU	Florida Power & Light Company, Florida Public Service Commission
820150-EU	Gulf Power Company, Florida Public Service Commission
18416	Alabama Power Company, Public Service Commission of Alabama
820100-EU	Florida Power Corporation, Florida Public Service Commission
U-7236	Detroit Edison-Burlington Northern Refund Michigan Public Service Commission
U-6633-R	Detroit Edison - MRCS Program, Michigan Public Service Commission
U-6797-R	Consumers Power Company - MRCS Program, Michigan Public Service Commission
82-267-EFC	Dayton Power & Light Company, Public Utility Commission of Ohio
U-5510-R	Consumers Power Company - Energy Conservation Finance Program, Michigan Public Service Commission
82-240-E	South Carolina Electric & Gas Company, South Carolina Public Service Commission
8624	Kentucky Utilities, Kentucky Public Service Commission
8648	East Kentucky Power Cooperative, Inc., Kentucky Public Service Commission
U-7065	The Detroit Edison Company (Fermi II), Michigan Public Service Commission
U-7350	Generic Working Capital Requirements, Michigan Public Service Commission

820294-TP	Southern Bell Telephone Company, Florida Public Service Commission
Order RH-1-83	Westcoast Gas Transmission Company, Ltd., Canadian National Energy Board
8738	Columbia Gas of Kentucky, Inc., Kentucky Public Service Commission
82-168-EL-EFC	Cleveland Electric Illuminating Company, Public Utility Commission of Ohio
6714	Michigan Consolidated Gas Company Phase II, Michigan Public Service Commission
82-165-EL-EFC	Toledo Edison Company, Public Utility Commission of Ohio
830012-EU	Tampa Electric Company, Florida Public Service Commission
ER-83-206**	Arkansas Power & Light Company, Missouri Public Service Commission
U-4758	The Detroit Edison Company - (Refunds), Michigan Public Service Commission
8836	Kentucky American Water Company, Kentucky Public Service Commission
8839	Western Kentucky Gas Company, Kentucky Public Service Commission
83-07-15	Connecticut Light & Power Company, Department of Utility Control State of Connecticut
81-0485-WS	Palm Coast Utility Corporation, Florida Public Service Commission
U-7650	Consumers Power Company - (Partial and Immediate), Michigan Public Service Commission
83-662**	Continental Telephone Company, Nevada Public Service Commission
U-7650	Consumers Power Company - Final Michigan Public Service Commission
U-6488-R	Detroit Edison Co. (FAC & PIPAC Reconciliation), Michigan Public Service Commission
Docket No. 15684	Louisiana Power & Light Company, Public Service Commission of the State of Louisiana

U-7650 Reopened	Consumers Power Company (Reopened Hearings) Michigan Public Service Commission
38-1039**	CP National Telephone Corporation Nevada Public Service Commission
83-1226	Sierra Pacific Power Company (Re application to form holding company), Nevada Public Service Commission
U-7395 & U-7397	Campaign Ballot Proposals Michigan Public Service Commission
820013-WS	Seacoast Utilities Florida Public Service Commission
U-7660	Detroit Edison Company Michigan Public Service Commission
U-7802	Michigan Gas Utilities Company Michigan Public Service Commission
830465-EI	Florida Power & Light Company Florida Public Service Commission
U-7777	Michigan Consolidated Gas Company Michigan Public Service Commission
U-7779	Consumers Power Company Michigan Public Service Commission
U-7480-R	Michigan Consolidated Gas Company Michigan Public Service Commission
U-7488-R	Consumers Power Company - Gas Michigan Public Service Commission
U-7484-R	Michigan Gas Utilities Company Michigan Public Service Commission
U-7550-R	Detroit Edison Company Michigan Public Service Commission
U-7477-R	Indiana & Michigan Electric Company Michigan Public Service Commission
U-7512-R	Consumers Power Company - Electric Michigan Public Service Commission
18978	Continental Telephone Company of the South - Alabama, Alabama Public Service Commission

9003	Columbia Gas of Kentucky, Inc. Kentucky Public Service Commission
R-842583	Duquesne Light Company Pennsylvania Public Utility Commission
9006*	Big Rivers Electric Corporation Kentucky Public Service Commission *Company withdrew filing
U-7830	Consumers Power Company - Electric (Partial and Immediate) Michigan Public Service Commission
7675	Consumers Power Company - Customer Refunds Michigan Public Service Commission
5779	Houston Lighting & Power Company Texas Public Utility Commission
U-7830	Consumers Power Company - Electric - "Financial Stabilization" Michigan Public Service Commission
U-4620	Mississippi Power & Light Company (Interim) Mississippi Public Service Commission
U-16091	Louisiana Power & Light Company Louisiana Public Service Commission
9163	Big Rivers Electric Corporation Kentucky Public Service Commission
U-7830	Consumers Power Company - Electric - (Final) Michigan Public Service Commission
U-4620	Mississippi Power & Light Company - (Final) Mississippi Public Service Commission
76-18788AA & 76-18793AA	Detroit Edison (Refund - Appeal of U-4807) Ingham County Circuit Court Michigan Public Service Commission
U-6633-R	Detroit Edison (MRCS Program Reconciliation) Michigan Public Service Commission
19297	Continental Telephone Company of the South - Alabama, Alabama Public Service Commission
9283	Kentucky American Water Company Kentucky Public Service Commission
850050-EI	Tampa Electric Company Florida Public Service Commission

R-850021	Duquesne Light Company Pennsylvania Public Service Commission
TR-85-179**	United Telephone Company of Missouri Missouri Public Service Commission
6350	El Paso Electric Company The Public Utility Board of the City of El Paso
6350	El Paso Electric Company Public Utility Commission of Texas
85-53476AA & 85-534855AA	Detroit Edison-refund-Appeal of U-4758 Ingham County Circuit Court Michigan Public Service Commission
U-8091/ U-8239	Consumers Power Company-Gas Michigan Public Service Commission
9230	Leslie County Telephone Company, Inc. Kentucky Public Service Commission
85-212	Central Maine Power Company Maine Public Service Commission
850782-EI & 850783-EI	Florida Power & Light Company Florida Public Service Commission
ER-85646001 & ER-85647001	New England Power Company Federal Energy Regulatory Commission
Civil Action * No. 2:85-0652	Allegheny & Western Energy Corporation, Plaintiff, - against - The Columbia Gas System, Inc., Defendant
Docket No. 850031-WS	Orange Osceola Utilities, Inc. Before the Florida Public Service Commission
Docket No. 840419-SU	Florida Cities Water Company South Ft. Myers Sewer Operations Before the Florida Public Service Commission
R-860378	Duquesne Light Company Pennsylvania Public Service Commission
R-850267	Pennsylvania Power Company Pennsylvania Public Service Commission
R-860378	Duquesne Light Company - Surrebuttal Testimony - OCA Statement No. 2D Pennsylvania Public Service Commission

Docket No. 850151	Marco Island Utility Company Before the Florida Public Service Commission
Docket No. 7195 (Interim)	Gulf States Utilities Company Public Utility Commission of Texas
R-850267 Reopened	Pennsylvania Power Company Pennsylvania Public Service Commission
Docket No. 87-01-03	Connecticut Natural Gas Corporation Connecticut Department of Public Utility Control
Docket No. 5740	Hawaiian Electric Company Hawaii Public Utilities Commission
1345-85-367	Arizona Public Service Company Arizona Corporation Commission
Docket 011 No. 86-11-019	Tax Reform Act of 1986 - California Generic California Public Utilities Commission
Case No. 29484	Long Island Lighting Company New York Department of Public Service
Docket No. 7460	El Paso Electric Company Public Utility Commission of Texas
Docket No. 870092-WS*	Citrus Springs Utilities Before the Florida Public Service Commission
Case No. 9892	Dickerson Lumber EP Company - Complainant vs. Farmers Rural Electric Cooperative and East Kentucky Power Cooperative - Defendants Before the Kentucky Public Service Commission
Docket No. 3673-U	Georgia Power Company Before the Georgia Public Service Commission
Docket No. U-8747	Anchorage Water and Wastewater Utility Report on Management Audit
Docket No. 861564-WS	Century Utilities Before the Florida Public Service Commission
Docket No. FA86-19-001	Systems Energy Resources, Inc. Federal Energy Regulatory Commission
Docket No. 870347-TI	AT&T Communications of the Southern States, Inc. Florida Public Service Commission

Appendix

Docket No. 870980-WS	St. Augustine Shores Utilities Inc. Florida Public Service Commission
Docket No. 870654-WS*	North Naples Utilities, Inc. Florida Public Service Commission
Docket No. 870853	Pennsylvania Gas & Water Company Pennsylvania Public Utility Commission
Civil Action* No. 87-0446-R	Reynolds Metals Company, Plaintiff, v. The Columbia Gas System, Inc., Commonwealth Gas Services, Inc., Commonwealth Gas Pipeline Corporation, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Defendants - In the United States District Court for the Eastern District of Virginia - Richmond Division
Docket No. E-2, Sub 537	Carolina Power & Light Company North Carolina Utilities Commission
Case No. U-7830	Consumers Power Company - Step 2 Reopened Michigan Public Service Commission
Docket No. 880069-TL	Southern Bell Telephone & Telegraph Florida Public Service Commission
Case No. U-7830	Consumers Power Company - Step 3B Michigan Public Service Commission
Docket No. 880355-EI	Florida Power & Light Company Florida Public Service Commission
Docket No. 880360-EI	Gulf Power Company Florida Public Service Commission
Docket No. FA86-19-002	System Energy Resources, Inc. Federal Energy Regulatory Commission
Docket Nos. 83-0537-Remand & 84-0555-Remand	Commonwealth Edison Company Illinois Commerce Commission
Docket Nos. 83-0537-Remand & 84-0555-Remand	Commonwealth Edison Company -Surrebuttal Illinois Commerce Commission
Docket No. 880537-SU	Key Haven Utility Corporation Florida Public Service Commission
Docket No. 881167-EI***	Gulf Power Company Florida Public Service Commission

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Docket No. 881503-WS	Poinciana Utilities, Inc. Florida Public Service Commission
Cause No. U-89-2688-T	Puget Sound Power & Light Company Washington Utilities & Transportation Committee
Docket No. 89-68	Central Maine Power Company Maine Public Utilities Commission
Docket No. 861190-PU	Proposal to Amend Rule 25-14.003, F.A.C. Florida Public Service Commission
Docket No. 89-08-11	The United Illuminating Company State of Connecticut, Department of Public Utility Control
Docket No. R-891364	The Philadelphia Electric Company Pennsylvania Public Utility Commission
Formal Case No. 889	Potomac Electric Power Company Public Service Company of the District of Columbia
Case No. 88/546*	Niagara Mohawk Power Corporation, et al Plaintiffs, v. Gulf+Western, Inc. et al, defendants (In the Supreme Court County of Onondaga, State of New York)
Case No. 87-11628*	Duquesne Light Company, et al, plaintiffs, against Gulf + Western, Inc. et al, defendants (In the Court of the Common Pleas of Allegheny County, Pennsylvania Civil Division)
Case No. 89-640-G-42T*	Mountaineer Gas Company West Virginia Public Service Commission
Docket No. 890319-EI	Florida Power & Light Company Florida Public Service Commission
Docket No. EM-89110888	Jersey Central Power & Light Company Board of Public Utilities Commissioners
Docket No. 891345-EI	Gulf Power Company Florida Public Service Commission
BPU Docket No. ER 8811 0912J	Jersey Central Power & Light Company Board of Public Utilities Commissioners
Docket No. 6531	Hawaiian Electric Company Hawaii Public Utilities Commissioners
Docket No. 890509-WU	Florida Cities Water Company, Golden Gate Division Florida Public Service Commission

Docket No. 880069-TL	Southern Bell Telephone Company Florida Public Service Commission
Docket Nos. F-3848, F-3849, and F-3850	Northwestern Bell Telephone Company South Dakota Public Utilities Commission
Docket Nos. ER89-* 678-000 & EL90-16-000	System Energy Resources, Inc. Federal Energy Regulatory Commission
Docket No. 5428	Green Mountain Power Corporation Vermont Department of Public Service
Docket No. 90-10	Artesian Water Company, Inc. Delaware Public Service Commission
Case No. 90-243-E-42T*	Wheeling Power Company West Virginia Public Service Commission
Docket No. 900329-WS	Southern States Utilities, Inc. Florida Public Service Commission
Docket Nos. ER89-* 678-000 & EL90-16-000	System Energy Resources, Inc. (Surrebuttal) Federal Energy Regulatory Commission
Application No. 90-12-018	Southern California Edison Company California Public Utilities Commission
Docket No. 90-0127	Central Illinois Lighting Company Illinois Commerce Commission
Docket No. FA-89-28-000	System Energy Resources, Inc. Federal Energy Regulatory Commission
Docket No. U-1551-90-322	Southwest Gas Corporation Before the Arizona Corporation Commission
Docket No. R-911966	Pennsylvania Gas & Water Company The Pennsylvania Public Utility Commission
Docket No. 176-717-U	United Cities Gas Company Kansas Corporation Commission
Docket No. 860001-EI-G	Florida Power Corporation Florida Public Service Commission
Docket No. 6720-TI-102	Wisconsin Bell, Inc. Wisconsin Citizens' Utility Board
(No Docket No.)	Southern Union Gas Company Before the Public Utility Regulation Board of the City of El Paso
Docket No. 6998	Hawaiian Electric Company, Inc.

Before the Public Utilities Commission of the State of Hawaii

Docket No. TC91-040A In the Matter of the Investigation into the Adoption of a Uniform
Access Methodology
Before the Public Utilities Commission of the State of South Dakota

Docket Nos. 911030-WS
& 911067-WS General Development Utilities, Inc.
Before the Florida Public Service Commission

Docket No. 910890-EI Florida Power Corporation
Before the Florida Public Service Commission

Docket No. 910890-EI Florida Power Corporation, Supplemental
Before the Florida Public Service Commission

Case No. 3L-74159 Idaho Power Company, an Idaho corporation
In the District Court of the Fourth Judicial District of the State of
Idaho, In and For the County of Ada - Magistrate Division

Cause No. 39353* Indiana Gas Company
Before the Indiana Utility Regulatory Commission

Docket No. 90-0169
(Remand) Commonwealth Edison Company
Before the Illinois Commerce Commission

Docket No. 92-06-05 The United Illuminating Company
State of Connecticut, Department of Public Utility Control

Cause No. 39498 PSI Energy, Inc.
Before the State of Indiana - Indiana Utility Regulatory Commission

Cause No. 39498 PSI Energy, Inc. - Surrebuttal testimony
Before the State of Indiana - Indiana Utility
Regulatory Commission

Docket No. 7287 Public Utilities Commission - Instituting a Proceeding to Examine the
Gross-up of CIAC
Before the Public Utilities Commission of the State of Hawaii

Docket No. 92-227-TC US West Communications, Inc.
Before the State Corporation Commission of the State of New Mexico

Docket No. 92-47 Diamond State Telephone Company
Before the Public Service Commission of the State of Delaware

Docket Nos. 920733-WS General Development Utilities, Inc. &
920734-WS
Before the Florida Public Service Commission

Docket No. 92-11-11 Connecticut Light & Power Company
State of Connecticut, Department of Public Utility Control

Docket Nos. EC92-21-000 Entergy Corporation

& ER92-806-000	Before the Federal Energy Regulatory Commission
Docket No. 930405-EI	Florida Power & Light Company Before the Florida Public Service Commission
Docket No. UE-92-1262	Puget Sound Power & Light Company Before the Washington Utilities & Transportation Commission
Docket No. 93-02-04	Connecticut Natural Gas Corporation State of Connecticut, Department of Public Utility Control
Docket No. 93-02-04	Connecticut Natural Gas Corporation Supplemental State of Connecticut, Department of Public Utility Control
Docket No. 93-057-01	Mountain Fuel Supply Company Before the Utah Public Service Commission
Cause No. 39353 (Phase II)	Indiana Gas Company Before the Indiana Utility Regulatory Commission
PU-314-92-1060	US West Communications, Inc. Before the North Dakota Public Service Commission
Cause No. 39713	Indianapolis Water Company Before the Indiana Utility Regulatory Commission
93-UA-0301*	Mississippi Power & Light Company Before the Mississippi Public Service Commission
Docket No. 93-08-06	SNET America, Inc. State of Connecticut, Department of Public Utility Control
Docket No. 93-057-01	Mountain Fuel Supply Company - Rehearing on Unbilled Revenues - Before the Utah Public Service Commission
Case No. 78-T119-0013-94	Guam Power Authority vs. U.S. Navy Public Works Center, Guam - Assisting the Department of Defense in the investigation of a billing dispute. Before the American Arbitration Association
Application No. 93-12-025 - Phase I	Southern California Edison Company (Before the California Public Utilities Commission)
Case No. 94-0027-E-42T	Potomac Edison Company (Before the Public Service Commission of West Virginia)
Case No. 94-0035-E-42T	Monongahela Power Company (Before the Public Service Commission of West Virginia)
Docket No. 930204-WS**	Jacksonville Suburban Utilities Corporation (Before the Florida Public Service Commission)

Docket No. 5258-U	Southern Bell Telephone and Telegraph Company (Before the Georgia Public Service Commission)
Case No. 95-0011-G-42T*	Mountaineer Gas Company (Before the West Virginia Public Service Commission)
Case No. 95-0003-G-42T*	Hope Gas, Inc. (Before the West Virginia Public Service Commission)
Docket No. 95-02-07	Connecticut Natural Gas Corporation State of Connecticut, Department of Public Utility Control
Docket No. 95-057-02*	Mountain Fuel Supply Before the Utah Public Service Commission
Docket No. 95-03-01	Southern New England Telephone Company State of Connecticut, Department of Public Utility Control
BRC Docket No. EX93060255 OAL Docket PUC96734-94	Generic Proceeding Regarding Recovery of Capacity Costs Associated with Electric Utility Power Purchases from Cogenerators and Small Power Producers Before the New Jersey Board of Public Utilities
Docket No. U-1933-95-317	Tucson Electric Power Before the Arizona Corporation Commission
Docket No. 950495-WS	Southern States Utilities Before the Florida Public Service Commission
Docket No. 960409-EI	Prudence Review to Determine Regulatory Treatment of Tampa Electric Company's Polk Unit 1
Docket No. 960451-WS	United Water Florida Before the Florida Public Service Commission
Docket No. 96-UA-389	Generic Docket to Consider Competition in the Provision of Retail Electric Service Before the Public Service Commission of the State of Mississippi

*Case Settled

**Issues Stipulated

***Company withdrew case

Additionally, I performed an investigation and analysis of Michigan Consolidated Gas Company and participated in the discussion which led to the settlement of Michigan Consolidated rate case which was culminated in Rate Order U-4166.

From April 28, 1975, to March 15, 1976, I was under contract to the Michigan House of Representatives as Technical Staff Director of a Special House Committee to study and evaluate the effectiveness of the Michigan Public Service Commission and the rates and service of public utilities. As Technical Staff Director, I supervised personnel loaned to the Committee from the State Auditor General's Office. The reports to that Committee prepared by myself and Allen Briggs, an attorney, to revise utility regulation, were adopted in virtually all material respects in its final report and recommendations and served as a basis of numerous bills introduced in the 1976 and 1977 sessions of the legislature. The Staff of the Committee, under my direction, investigated and reported to the Committee on numerous regulatory issues, including ratepayer participation in utility regulation, fuel cost adjustment clauses, purchased gas adjustment

clauses, comparative electric, gas and telephone rates, treatment of subsidiaries of utilities in ratemaking, research and planning capabilities of the Michigan Public Service Commission, utility advertising, regulatory oversight of utility management, deferred taxes in ratemaking and the organizational structure and functions of the Michigan Public Service Commission.

In the course of my work as a certified public accountant, I advise clients concerning the obtaining of capital funds, and have worked with banking institutions in obtaining loans. I have participated in negotiating the sale and purchase of businesses for clients, in connection with which I have valued the physical assets of various business firms, and also determined the value of present and future earnings measured by market rates of return. I have participated in acquisition audits on behalf of large national companies interested in acquiring smaller companies.

My testimony in utility rate cases has been sponsored by state Attorney Generals, groups of municipalities, a district attorney, Peoples' Counsel, Public Counsel, a ratepayers' committee, and I have also worked as a Staff Consultant to the Arizona Corporation Commission.

In November 1985, with two members of the firm, I presented a seminar on utility accounting for the Legal Services Regional Utilities Task Force in Atlanta, Georgia.

In September, 1988, with two members of the firm, I presented a seminar on utility accounting for the Office of Consumer Advocate, Attorney General's Office, State of Pennsylvania. Individuals from that division as well as Commission Staff members attended.