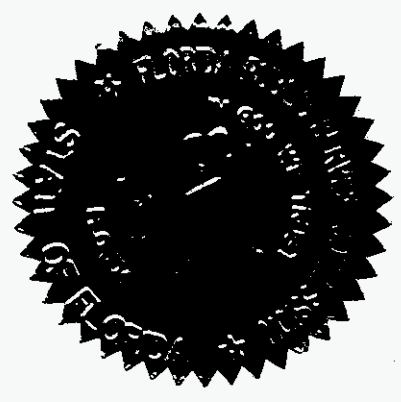


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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of :
Application for Increased :
Wastewater Rates by :
Florida Cities Water :
Company - North Ft. Myers :
Division in Lee County. :

DOCKET NO. 950387-SU



VOLUME 7

Pages 806 through 923

PROCEEDINGS: HEARING

**BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER JOE GARCIA**

DATE: Tuesday, December 8, 1998

TIME: Commenced at 10:10 a.m.

**PLACE: Harborside Convention Center
Room C1
1375 Monroe Street
Fort Myers, Florida**

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

DOCUMENT NUMBER-DATE
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BUREAU OF REPORTING

1 **APPEARANCES:**

2 **B. KENNETH GATLIN**, Ruden, McClosky, Smith,
3 Schuster & Russell, P.A. 215 S. Monroe Street, Suite
4 815, Tallahassee, Florida 32301, appearing on behalf
5 of **Florida Cities Water Company, North Fort Myers.**

6 **HAROLD McLEAN**, Associate Public Counsel,
7 Office of Public Counsel, 111 West Madison Street,
8 Room 812, Tallahassee, Florida 32399-1400, appearing
9 on behalf of the **Citizens of the State of Florida.**

10 **RALPH R. JAEGER**, Florida Public Service
11 Commission, Division of Legal Services, 2540 Shumard
12 Oak Boulevard, Tallahassee, Florida 32399-0862,
13 appearing on behalf of the **Commission Staff.**

14

15 **ALSO PRESENT:**

16 **BOB CROUCH and MARSHALL WILLIS**, FPSC Division of Water
17 and Wastewater

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I N D E X

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P R O C E E D I N G S

(Hearing convened at 10:10 a.m.)

1
2
3 **CHAIRMAN JOHNSON:** My name is Julia Johnson,
4 and I did want to make one preliminary announcement.
5 Ms. Crump just came forward, that was the lady that
6 greeted you as you came into the room. I know that
7 quite a few individuals here were concerned about
8 having enough change for the meters. We did secure
9 that change. And if you need that, she will be out
10 front. So if you put a quarter or two in and you're
11 worried about the time running out, we can make change
12 for those that might need it.

13 It's a little after 10:00 so I want to go
14 ahead and have counsel read the notice this morning
15 and we'll start our customer hearing.

16 **MR. JAEGER:** Notice. In accordance with the
17 holding in Florida Cities Water Company v. State, a
18 hearing on the First District Court of Appeals
19 reversal and remand of the Commission's Order No.
20 PSC-96-1133-FOF-SU has been scheduled for this time
21 and place. And the notice was issued November 17,
22 1998.

23 **CHAIRMAN JOHNSON:** We'll take appearances.

24 **MR. GATLIN:** I'm B. Kenneth Gatlin -- is
25 that on?

1 **CHAIRMAN JOHNSON:** Yes.

2 **MR. GATLIN:** Of the law firm of Ruden,
3 McClosky, Smith, Schuster and Russell, 215 South
4 Monroe Street, Tallahassee, Florida 32301, appearing
5 on behalf of Florida Cities Water Company.

6 **CHAIRMAN JOHNSON:** I know that people were
7 trying to determine who was speaking. It's the
8 gentlemen seated directly in front of the
9 Commissioners here, Mr. Gatlin, representing the
10 Company.

11 **MR. McLEAN:** Madam Chairman, my name is
12 Harold McLean. I'm a member of the Office of Florida
13 Public Counsel. That's Mr. Jack Shreve's office. Our
14 address is 111 West Madison Street, Tallahassee,
15 Florida 32399. I appear on behalf of the Citizens of
16 the State of Florida.

17 **CHAIRMAN JOHNSON:** Thank you, Mr. McLean.
18 And the two ladies that had asked about Public
19 Counsel, this gentleman here represents Public
20 Counsel, and he can assist you at the appropriate
21 time.

22 **MR. JAEGER:** I'm Ralph R. Jaeger, Division
23 of Legal Services, 2540 Shumard Oak Boulevard,
24 Tallahassee, Florida 32399, appearing on behalf of
25 Commission Staff.

1 **CHAIRMAN JOHNSON:** My name is Julia Johnson.
2 I'm the Chairman of the Florida Public Service
3 Commission, and I'll be chairing today's customer
4 hearings and also the technical hearings that will
5 take place today and tomorrow, if necessary. Seated
6 to my right is Commissioner Terry Deason, and to my
7 left is Commissioner Joe Garcia.

8 We will be hearing from you your concerns,
9 your statements. We will also, at the appropriate
10 time, hear from the technical witnesses in the
11 technical portion of the hearing.

12 I had a couple of customers ask after the
13 public testimony that we take, could they stay and
14 listen in to the technical portions. Please feel free
15 to do that. We are here certainly to hear from you.
16 And I know that oftentimes listening to the technical
17 portions of the hearing is an educational process, and
18 you can ask questions, I know, on breaks to the Public
19 Counsel representative, Mr. McLean, sitting there.
20 And we have also several members of the Staff of the
21 Public Service Commission -- if the members of Staff
22 could just stand. We have engineers, we have -- stand
23 briefly -- we have several of our engineers,
24 accounting representatives. So to the extent that
25 there's a technical question that we can't entertain

1 you or you don't want to come forward and ask, you can
2 always feel free to ask one of the members of the
3 Staff committee -- or the Staff members that are
4 present today.

5 Let me just briefly -- and I did get a
6 couple of questions from individuals about our Special
7 Report. In fact, one gentlemen asked me to go into
8 some detail with respect to why we're here today.

9 Before I do that, let me make one other
10 preliminary announcement. The proceeding, both the
11 customer hearing and the technical hearings, they are
12 being transmitted over the Internet. So that there
13 are those all across the state, if they have the
14 appropriate information on their computers, they can,
15 indeed, listen in to this proceeding.

16 Also, if you go home tonight or tomorrow and
17 want to listen to what was actually discussed, it is
18 also available -- it's cataloged and it's available.
19 If you have the appropriate equipment on your
20 computer, you can access this hearing through that
21 process. But I did want those to know that were
22 intending to testify, that yes, it will be transmit
23 over the Internet.

24 Let me give you a little bit of background
25 about the case.

1 The Florida Cities Water Company is a water
2 and wastewater company operating in north and south
3 Fort Myers. They were last granted an increase in
4 wastewater rates in a full rate case July 1, 1992.
5 Price index increases, which allow recovery of certain
6 increased expenses, was granted on July 1996. The
7 current rate case was processed under the proposed
8 agency action proceeding of the Commission. Under
9 that process the case is not set for formal Commission
10 hearing unless a timely protest of the Commission's
11 proposed action is filed.

12 The utility's proposed rate increases were
13 designed to generate \$2,591,000 in annual operating
14 expenses, reflecting a 22.73% increase. The Company
15 maintained this increase was necessary in order to
16 obtain reasonable and -- a fair and reasonable rate of
17 return of 9.08%.

18 The Commission issued a Proposed Agency
19 Order in 1992. That final Order was appealed by
20 customers of the utility and the customers requested a
21 formal hearing.

22 The hearing was granted and -- I'm sorry,
23 the request was granted on January 10th, 1996, and the
24 rates went into effect subject to refund. Those
25 rates, however, do still remain in effect.

1 Hearings were held July 24th and 25th, with
2 customer testimony being taken on that morning and in
3 the evening of July 24th, 1996. Subsequent to the
4 hearing, the Commission issued a final Order on
5 September 10th, 1996. However, that Order was
6 appealed.

7 On appeal the First District Court of
8 Appeals reversed the Commission on two issues
9 regarding to the capacity of wastewater treatment
10 plant and the calculation of used and useful. For the
11 calculation of used and useful, the First DCA gave the
12 Commission the discretion to reopen the record and
13 take additional evidence. The Commission has
14 exercised that Commission (sic) and scheduled the
15 hearing for today and tomorrow. The hearing will
16 allow you to provide us, again, with additional public
17 comment. And we will take your testimony today, this
18 afternoon, and on the 9th we will have additional
19 technical testimony.

20 The Staff will make a recommendation on
21 February 18th, 1999, and the Commission will vote on
22 March 2nd, 1999. All of the information is provided
23 in the blue "Special Report" that, I believe, you all
24 received from Ms. Crump. However, I did have at least
25 one or two people ask that I walk through that again.

1 If you have any questions on procedure and how we got
2 to where we got to today -- because I understand it is
3 a very complicated process -- we're here to try to
4 entertain any questions you might have. The Company
5 is here. Public Counsel is here, and as I stated, the
6 professional Staff members are here.

7 Now, for those of you that have signed up to
8 testify, we do ask that you -- at the appropriate
9 time, which will be in a few moments -- I'll ask you
10 to stand and swear you in. The reason we do that is
11 so your testimony can become a part of the official
12 record upon which we rely when we have our final
13 deliberations and our final decision making.

14 Joy is our court reporter. She'll be seated
15 here to my right and she'll be transcribing everything
16 that's said. As you come forward, I'd ask that you
17 sit here in the seat to my right from Joy, state your
18 name and address for the record, and then begin your
19 statements or your testimony. After you've finished,
20 if you could sit for just a moment, I'll ask if any of
21 the Commissioners or the Staff members or the Company
22 members, if they have any questions we'll ask you
23 those questions. If you feel like answering the
24 questions, please do. If you don't, you don't have to
25 worry about it and that will be just fine.

1 I had a person ask me, well, they don't want
2 to be grilled and they don't want to go through a
3 cross examination process. We're really here to hear
4 from you. That's the main purpose. So feel
5 comfortable in coming forward and we'll try to
6 accommodate you in every way that we can.

7 With that, other than swearing in the
8 witnesses, are there any other preliminary matters?

9 **MR. JAEGER:** The only preliminary matter is
10 Staff filed its Request of Staff to Strike a Portion
11 of Mr. Acosta's Remand Testimony. We could either
12 take that up now or after the customer testimony
13 before the technical --

14 **CHAIRMAN JOHNSON:** We'll take that up after
15 the customers testify at the beginning of the
16 technical portion.

17 **MR. JAEGER:** Okay. That would be fine.

18 **CHAIRMAN JOHNSON:** Anything else?

19 **MR. JAEGER:** That's all I have.

20 **CHAIRMAN JOHNSON:** With that, for those that
21 would like to testify in the customer portion of this
22 hearing, if you could stand and raise your right hand.

23 (Witnesses collectively sworn.)

24 **CHAIRMAN JOHNSON:** Thank you. You may all
25 be seated.

1 Public Counsel will be calling the names of
2 the citizens that would like to provide us with
3 comment. And with that, Public Counsel. Could you
4 call the first customer.

5 MR. McLEAN: Thank you, Madam Chairman. The
6 Citizens call Mr. Harry Green.

7 - - - - -

8 HARRY GREEN
9 was called as a witness on behalf of the Citizens of
10 the State of Florida and, having been duly sworn,
11 testified as follows:

12 DIRECT STATEMENT

13 WITNESS GREEN: Good morning.

14 CHAIRMAN JOHNSON: Good morning.

15 WITNESS GREEN: I have typed up a few copies
16 of my comments. If you want me to hand them out now
17 or later?

18 CHAIRMAN JOHNSON: We'll take care of that.

19 WITNESS GREEN: My name is Harry Green. I
20 live at 4443 North Pacific Circle in North Fort Myers
21 and I'm a customer of Florida Cities Water Company,
22 Waterway Estates wastewater treatment plant --

23 COMMISSIONER GARCIA: Mr. Green, you might
24 want to get that mike a little bit closer.

25 WITNESS GREEN: Is that better?

1 **COMMISSIONER GARCIA:** That's great.

2 **WITNESS GREEN:** I'll read from my prepared
3 statement. First paragraph says the attached table
4 was prepared to determine the amount of reuse water
5 used by Lochmoor Golf Club during the 1997-98 time
6 period and to see what flows went through Waterway
7 Estates wastewater treatment plant during that time
8 period.

9 Secondly, before reviewing the data in the
10 attached table I must note that as of yesterday I was
11 informed by Mr. Robert Dick of the Florida City Water
12 Company that the reuse water shown in their monthly
13 operating reports was not requested by the Lochmoor
14 Country Club, but was used by Florida City Water
15 Company to keep their equipment checked and
16 functional. Therefore, I request that the reuse
17 information shown on the attached table be
18 disregarded.

19 Third, the flow data were obtained from
20 monthly operating reports that the Company submits to
21 the Florida DEP. The purpose of compiling this data
22 was to see what differences would arise in the
23 determination of used and useful ratios, and to also
24 determine if I&I was a significant problem with this
25 plant.

1 I should mention as a footnote I'm a
2 part-time employee of the Florida DEP. I'm an OPS
3 person and I do data entry for the Wastewater Division
4 in the Southwest District.

5 My fourth paragraph is headed "Used and
6 Useful Ratios." A. The original method used by the
7 Public Service Commission for determining this ratio
8 was to divide the max month daily average flow by the
9 plant design capacity. This last term, the plant
10 design capacity, is really the permit capacity, which
11 in this case is 1.25 million gallons a day annual
12 average daily flow.

13 The plant design capacity is much greater
14 than this so as to handle unusual high inflow
15 conditions. Therefore, the value of 1.2 MGD is
16 debatable, as indicated by the fact that at one time
17 values of 1.5 MGD and then 1.3 MGD were used.

18 Since this number is the denominator of the
19 used and useful ratio, the larger values will reduce
20 the result. And it was to Florida Cities Water
21 Company's benefit to keep this value as small as
22 possible.

23 B. Apparently the Public Service Commission
24 decided to change the numerator of the ratio from the
25 max month daily average flow to the annual average

1 daily flow. This reduces the numerator and,
2 therefore, the resultant ratio, and it is this change
3 that Florida Cities Water Company protested to the
4 Court of Appeals.

5 And C. The attached table shows for 1997,
6 if you calculate by the old method, the used and
7 useful comes out to be 93.4%. The new method is only
8 73.4%, a difference of approximately 21.5%. And for
9 1998, for the time through October, by the old method
10 the ratio would be 92.2%, and by the old method,
11 75.8%. A difference of 18.2%. Neither of these
12 results obviously equals the 60% that I recall the
13 Public Service Commission ratio resulted in. The
14 reason for the difference between my results and those
15 of the Public Service Commission is unknown to me as
16 these calculations have not been released to the
17 public, even though I'm fairly certain that they would
18 be made available if requested.

19 It can also be argued that a more meaningful
20 figure for the numerator might be the max three-month
21 daily average flow. However, from the average
22 residence position, none of these parameters are very
23 meaningful and are, to say the least, completely
24 unknown, and at the best, are very confusing.

25 Lastly, I would like to point out that when

1 the max daily flow from Column 5 on the attached table
2 is compared with the average monthly flow, Column 3 in
3 the attached table, it is apparent that this plant
4 has, or had, a serious I&I condition.

5 **COMMISSIONER GARCIA:** When you compare which
6 two, I'm sorry?

7 **WITNESS GREEN:** Column 3 and Column 5 on the
8 attached table. Column 3 being the monthly average
9 daily flow, and Column 5 is the max daily flow for
10 that particular month.

11 **COMMISSIONER GARCIA:** Got you. Thank you.

12 **WITNESS GREEN:** You're welcome. I'm having
13 trouble reading because I lost a lens and I'm reading
14 with one eye.

15 This fact, the I&I problem, also influences
16 the used and useful ratio, especially when the max
17 monthly flow is used in the numerator.

18 In conclusion, I'd like to thank the Public
19 Service Commission for their deliberations and
20 patience. But I'd also like to take this opportunity
21 to criticize the procedure used in these hearings, in
22 that I think it is very unfair to the residents to
23 have hearings on subjects that are very complicated
24 and which the concerned citizens are not informed of
25 Public Service Commission Staff considerations that

1 lead to certain decisions before the hearings are
2 held. In other words, it would be more reasonable to
3 me to have the Staff present their findings to the
4 public before the public is asked to comment on these
5 findings.

6 Thank you. I have no other comments.

7 **CHAIRMAN JOHNSON:** Thank you, Mr. Green.

8 **WITNESS GREEN:** You're welcome.

9 **CHAIRMAN JOHNSON:** Any questions for
10 Mr. Green?

11 **COMMISSIONER GARCIA:** Mr. Green, I know
12 you've participated in most of the hearings that we
13 have -- I'm over here.

14 **WITNESS GREEN:** Oh, yes, sir.

15 **COMMISSIONER GARCIA:** I know you
16 participated in these -- it just -- and only
17 discussing the issue you brought up at the end, it's
18 sort of very difficult for us, because we've sort of
19 got to put on the case and listen to it -- but it's
20 very tough for us to sort of do both things. I mean,
21 we're sort of wearing two hats here. But clearly a
22 lot of these issues are very complex. So it's tough
23 for me to get a handle on them sometimes, so it's very
24 tough -- and this is all I do -- but it's sort of
25 tough to educate the public on some of these issues

1 and at the same time try to listen to the full case
2 and try to make the issue before it's voted on. So I
3 mean while your suggestion is good, it's just
4 difficult to carry that out.

5 **WITNESS GREEN:** I don't understand why it
6 wouldn't be possible to have the Staff testimony and
7 the Company's testimony before the public citizens'
8 input. But that's for you folks to decide. That's my
9 own opinion.

10 **COMMISSIONER GARCIA:** Mr. Jaeger, how soon
11 is the testimony available for the public?

12 **MR. JAEGER:** I think the problem is we
13 usually have the Utility go first and then
14 intervenors, and Staff comes in a week or two weeks
15 later. So I think that's his problem.

16 The intervenors file their testimony prior
17 to Staff the way it's set up now. We always file
18 testimony a couple of weeks before the prehearing
19 conference, at least. And then that's usually at
20 least three weeks before the hearing. So it is
21 getting tight on the customers. And by the time they
22 get it, it may be of little use except for standing up
23 for the customer to testify.

24 **WITNESS GREEN:** I did request a copy of the
25 prehearing conference, I think it was. In effect it

1 says nothing about the issue. Now, I don't know where
2 the specifics of the issues are covered, but they
3 weren't in the prehearing conference report that I
4 received from Mr. McLean's office.

5 **COMMISSIONER GARCIA:** What do you mean? The
6 prehearing -- you mean the Prehearing Order? All that
7 does, I guess, is get everyone on the same page. And
8 usually -- in this case I was the Prehearing Officer
9 so -- what it basically does is the Company, Staff and
10 Mr. McLean's office comes before us and we sort of
11 narrow down the issues that are going to be considered
12 and that's what we leave. Basically the Order isn't a
13 really thorough discussion of anything. It's simply
14 laying out the issues that will be sort of debated in
15 the hearing today.

16 **WITNESS GREEN:** And that's exactly it. It
17 doesn't tell the customer or resident anything about
18 the --

19 **COMMISSIONER GARCIA:** The Company, Public
20 Counsel's office, the Staff sometimes reserves
21 judgment until the hearing. But the Staff and -- I'm
22 sorry, Public Counsel's office and the Company lays
23 out their position on each of the issues.

24 **WITNESS GREEN:** Not in here, no, sir. The
25 individuals concerned are listed and their

1 backgrounds.

2 **COMMISSIONER GARCIA:** What are you holding?

3 **WITNESS GREEN:** Prehearing conference.

4 Proceedings. November 18th.

5 **COMMISSIONER GARCIA:** Maybe they gave you a
6 transcript as opposed to what we did -- can I see
7 that? Stay right there. (Commissioner Garcia picks
8 up document.)

9 Yeah, this doesn't say a thing.

10 **WITNESS GREEN:** Right.

11 **COMMISSIONER GARCIA:** In fact, what you
12 should have requested -- and I'm sorry -- in fact, it
13 probably -- seeing that I was the hearing officer, it
14 just probably sounds like somebody smugly going
15 through the issue very quickly and trying to get
16 through it. And that's precisely what we're trying to
17 do at the prehearing conference. What you should have
18 gotten, which is available --

19 **MR. JAEGER:** The Prehearing Order was issued
20 November 24th. That's when it came out.

21 **COMMISSIONER GARCIA:** That's what you should
22 have gotten. And, in fact, I'll give you my copy so
23 you get an idea of what that is. But basically
24 it's -- these documents are a product of that
25 transcript. If you read them together you'll find out

1 what occurred there, but it doesn't give you any
2 insight. What you should have had was the Prehearing
3 Order. Now, that won't give you Staff position on
4 every issue. There are some issues that we take a
5 preliminary position on. But as a general rule, our
6 Staff has to reserve judgment as we do until -- they
7 don't -- they may have a preliminary position, but
8 they reserve judgment until after the hearing is
9 completed. Because then we'd be prejudging something.
10 But it does give you a very good idea of where
11 Mr. McLean's office is, or the Public Counsel's office
12 is, and it certainly gives you very determined and
13 directed position on where the Company is. Let me
14 give you a copy of that so -- it may be helpful as we
15 go through -- (Commissioner Garcia hands copy to
16 witness.)

17 **WITNESS GREEN:** Thank you, sir.

18 **CHAIRMAN JOHNSON:** Mr. Green, I appreciate
19 all the work and time that you've put into preparing
20 your documents. Obviously, you're at a level of
21 expertise that oftentimes customers aren't as
22 knowledgeable as you, and information from a public
23 witness, as yourself, is very helpful. And you're
24 pretty familiar with how this process works. Public
25 Counsel in this instance -- do we call you Assistant

1 Public Counsel?

2 **MR. McLEAN:** I think I've made it up there.
3 I'm not sure.

4 **CHAIRMAN JOHNSON:** Mr. McLean is, of course,
5 the customer attorney. And I think oftentimes he
6 wishes that we got stuff to him sooner too. But we do
7 the best we can given the statutory constraints and
8 some of timing constraints that we have. And we will
9 endeavor to the extent that we can, make this process
10 more user friendly; try to do that. I don't know if
11 there's anything else we can do to accommodate getting
12 you information quicker. Maybe working with Staff and
13 helping us understand your dilemma might help us a
14 bit.

15 **WITNESS GREEN:** Thank you, Ms. Johnson. I
16 think reversing the order of today's and tomorrow's
17 session would have been very helpful.

18 **CHAIRMAN JOHNSON:** Like letting the
19 technical folks go first?

20 **WITNESS GREEN:** Yes, ma'am. Yes, ma'am.

21 **CHAIRMAN JOHNSON:** I think that's something
22 we can consider. What happens oftentimes is that --
23 and I guess we could accommodate that too --
24 oftentimes customers want to go first. They want to
25 have their statements on the record. And then if they

1 want to stay around, they stay around. But if they
2 don't, they can leave. In fact, maybe that's
3 something that can be accommodated. Because if we
4 give customers a time certain, if they don't want to
5 come early they don't have to.

6 **WITNESS GREEN:** Or maybe a combination.
7 Like, have customers' comments and testimony, and then
8 the technical, and then a follow-up with it. Any
9 other customer --

10 **CHAIRMAN JOHNSON:** Now, we are doing that
11 tonight.

12 **WITNESS GREEN:** No. But you're not going to
13 have anything after the technical discussion from the
14 customers.

15 **CHAIRMAN JOHNSON:** This morning we're having
16 the customer testimony. Then we're going to bring
17 forth the technical witnesses and this evening we're
18 going to have the customers participate again.

19 **COMMISSIONER GARCIA:** There's a good
20 chance -- the difficult part is most of the people
21 participating are making money by the hour, we sort
22 of -- it's going and gets going. But the truth is, I
23 think we only have one witness we can't take up
24 tonight that we're going to take up tomorrow. That's
25 only a witness from Public Counsel's office, if I'm

1 not mistaken.

2 So if you sit through this today and can
3 remain conscious, which is -- it's a two-parter -- if
4 you can do that, you will have pretty much the entire
5 Company position on this issue. And that will give
6 you the opportunity for tonight to comment on the
7 record that's before us. But it's -- the Chairman is
8 absolutely right, it's a question of time certain. We
9 wish we could say we'll do this at this time. But
10 sometimes Staff or Mr. McLean has a point he wants to
11 make, and the witness doesn't want to get to that
12 point so it takes him quite a while to get there. And
13 likewise, when the Company is deposing someone else,
14 we've got to give them the freedom to develop their
15 case, that generally doesn't have a time certain.

16 **WITNESS GREEN:** Of course, hearing
17 Mr. McLean's technical, I imagine, testimony against
18 the Company's position would be very important to the
19 residents and customers.

20 **CHAIRMAN JOHNSON:** Uh-huh.

21 **WITNESS GREEN:** And yet we will not have an
22 opportunity tomorrow to comment on that.

23 **COMMISSIONER DEASON:** Mr. Green -- right
24 here. (Indicating direction of voice.)

25 One of the procedures we follow at the

1 Commission is we require the expert witnesses to
2 prefile their testimony. It's in question-and-answer
3 format. You've probably seen that before.

4 **WITNESS GREEN:** No.

5 **COMMISSIONER DEASON:** We require that to be
6 prefiled. So that is information that is available.
7 So if an informal customer, such as yourself, or any
8 customer that wishes to become informed, if they can
9 inquire of our Staff when the testimony is going to be
10 filed, you actually can hear -- I mean you can read
11 the questions and answers of the prefiled testimony.
12 Now, obviously the cross examination that takes place
13 later, that can only be done here in a live hearing
14 and you have to be physically present to hear that.
15 But you can hear -- read the direct testimony before
16 the hearing ever begins. That may be of assistance.
17 You may want to keep that for future --

18 **WITNESS GREEN:** Yes. I'll have to ask for
19 prefiled.

20 **COMMISSIONER DEASON:** Prefiled testimony.

21 **CHAIRMAN JOHNSON:** Thank you, Mr. Green.

22 **WITNESS GREEN:** Thank you.

23 **COMMISSIONER GARCIA:** Let me ask you just
24 for functional purposes -- I don't use it for maybe --
25 did you get on the Internet to look at some of our

1 stuff or no?

2 **WITNESS GREEN:** Yes, sir.

3 **COMMISSIONER GARCIA:** Is it easily
4 accessible to you? Did you find it easy to sort of
5 access the information on this case or there was some
6 trick to it?

7 **WITNESS GREEN:** No. It's easily accessible.
8 It's just so verbose and takes forever to download it
9 on my computer.

10 **COMMISSIONER GARCIA:** I agree.

11 **CHAIRMAN JOHNSON:** Thank you, Mr. Green.

12 **WITNESS GREEN:** Thank you.

13 **MR. McLEAN:** Lucille Ebie.

14 - - - - -

15 **LUCILLE EBIE**

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

19 **DIRECT STATEMENT**

20 **WITNESS EBIE:** Good morning. I am
21 Ms. Lucille Ebie from 5965 Sonnet Court, North
22 Fort Myers, Florida 33903, zip code.

23 I'll tell you what I have to ask you this
24 morning. I want to know if you can answer some
25 questions.

1 First is what is going with Florida Cities
2 Water that they are hounding us for more money about
3 every six months? I remember one time they asked for
4 a raise and they got 134% out of 170 they were asking
5 for. And to me I think that's a very large amount for
6 anybody to get. Who gets wages at that kind of
7 percentage? Nobody. If they buy a company, they
8 should be able to take care of it. If they cannot
9 have enough knowledge to make the money they make
10 reach, maybe it's our best interest if we try another
11 company for our water service -- for our water needs.
12 Because, it boils down to a lot of people, whether
13 they have a bunch of children or they have used a lot
14 of water, they can not afford these bills. Just heard
15 of a lady that's renting and she said she's got
16 children and her water bill is atrocious.

17 Well, the old people that are on limited
18 income like I am, that is more than we need to pay.
19 Since we're paying more than anybody in Florida that I
20 know of. And you take -- the water used to be fairly
21 good, but now it's changed quite a bit. I started
22 feeling ill. I thought something is wrong because the
23 water didn't even smell as good so I started buying
24 bottled water and I felt better right away. So it
25 makes a difference if you are getting good water or

1 not.

2 Also one time I had a problem that they
3 had -- my land was disappearing -- you probably heard
4 this story before -- but they wouldn't do anything
5 about it. I called them. Because the neighbor man
6 told me. The sewer line went right between me and the
7 other property right beside him. And the land was
8 going down, down. I filled in, filled in and it just
9 kept disappearing. When I called them, they ignored
10 it until we had one those meetings. I got to the
11 meeting and by that time they said, "Oh, we'll send
12 somebody out to check on it."

13 It took a while, but they finally got there.
14 Within with a year, approximately a year, they finally
15 did do a little something. They promised me extra
16 dirt for the dirt I lost and all of that. They
17 brought one wheelbarrow full, I'll have you know, and
18 a couple of pieces of sod to put on top. That's how
19 they compensated.

20 For the money we're paying them and they
21 can't even do a job proper? I don't think much of a
22 company like that. And if we're running a company, we
23 have to put in books what we're making, what we're
24 using for expenses and what we need for capital gains.
25 Do they do that? If they did that, they should have

1 plenty of money that they could take and pay for these
2 improvements, whatever they are always wanting to do.
3 They have background -- they are run by Avatar, bond
4 company, stock company, whatever you want to call it.
5 Okay. If they need help, why don't they get them to
6 back it up. But I think in the best of us people,
7 that we start looking for another water company and
8 see what we can find out or what company we can get on
9 to that's already in the area. Because the more you
10 give them, the more they want. And to me, I think
11 there comes a time it's got to stop.

12 You take, when we're paying that much out in
13 water, we try to sell our properties, what's going to
14 happen? I know what's going to happen. Nobody will
15 buy it and we're going to be stuck giving away the
16 property for a lot less than it's worth. So we have
17 got that to consider about too. Because who is going
18 to move here when it's the highest paid water bills in
19 Florida? It's not going to happen, I'm sorry. Thank
20 you.

21 **CHAIRMAN JOHNSON:** Thank you very much. Any
22 questions?

23 **WITNESS EBIE:** Okay. Thank you very much.

24 **CHAIRMAN JOHNSON:** Thank you for your
25 testimony.

1 **MR. McLEAN:** Citizens call Helen Brillhart.

2 - - - - -

3 **HELEN BRILLHART**

4 was called as a witness on behalf of the Citizens of
5 the State of Florida and, having been duly sworn,
6 testified as follows:

7 **DIRECT STATEMENT**

8 **WITNESS BRILLHART:** Good morning. My name
9 is Helen Brillhart. I live at 942 Jolly Road in North
10 Fort Myers.

11 **COMMISSIONER GARCIA:** Ma'am, could you
12 repeat your last name? I'm over here. It's these
13 mikes are really bad. If you could just repeat your
14 name. Speak right into the mike. I didn't catch your
15 name.

16 **WITNESS BRILLHART:** My name is Helen
17 Brillhart and I live at 942 Jolly Road, North Fort
18 Myers, and I am a Florida Cities Water customer.

19 Now, I spoke before at this hearing and,
20 again, the previous testimony, there's some valid
21 points that were made.

22 But the first question that I have for the
23 Public Service Commission is the request that Florida
24 Cities Water had for their increase was turned down by
25 the Public Service Commission, yet Florida Cities

1 Water went before a Court of Appeals and got that
2 decision overturned. How does that happen? How can
3 they -- how can the Court of Appeals -- after the
4 Public Service Commission, who are the representatives
5 for the state, for the people -- and they are hearing
6 testimony from both Florida Cities Water and from the
7 customers, and I know the last time that we had it,
8 there was testimony, there were statements given, yet
9 a Court of Appeals was able to overturn that decision
10 so that this is why this is continuing. Can I ask why
11 and how this happens?

12 **COMMISSIONER GARCIA:** I'll give you the
13 philosophical answer and then I'll let Mr. Jaeger
14 handle the hard legal question. That's the way it
15 works. We're not the last authority.

16 The Company felt that it didn't get a fair
17 hearing on what it believed was correct, and felt our
18 process was not correct. They have a right to appeal
19 it. Just like you have a right to sort of appeal
20 anything else that comes -- that any agency of the
21 government determines in your life, just like those
22 who participate. But Mr. Jaeger will answer the more
23 technical aspect of it, but that's a right that they
24 have. Maybe I wish they didn't have it, but I don't
25 think we'd live in a democracy if we didn't. They can

1 go to the courts if they feel they didn't get a fair
2 treatment by this Commission on an issue.

3 **WITNESS BRILLHART:** I'm sorry, I think the
4 people of the North Fort Myers water district that are
5 being served by Florida Cities Water are the people
6 that are getting the raw deal in this instance, and
7 have been for years. Now, Avatar Industries, which is
8 it one -- if you follow the paper trail up -- the
9 owners of Florida Cities Water.

10 Now, over the past hearings that have taken
11 place, and the people of North Fort Myers, owe Cheryl
12 Walla a good deal of gratitude for all her efforts and
13 all her research. They have had a lot of violations
14 that have taken place. They have not fulfilled
15 when -- they did get the increases, for what they were
16 wanting to use those increases for, they did not; they
17 have charged the people. They have overcharged the
18 people and overcharged the people in what they have
19 done. And I have gotten some rate comparisons from
20 the different towns. But to top it off, Avatar
21 Industries is building a development in southwest Cape
22 Coral, not in their own water district. They are
23 taking it and putting it in another area.

24 Here they are socking it to us, basically,
25 and yet they are building another development, and

1 advertising it on buses and yet not even putting it in
2 their own water district -- that makes you wonder why
3 they don't want to build something in their own water
4 district.

5 But just as a point of comparison, Florida
6 Cities Water has the South Fort Myers branch and we in
7 the North Fort Myers branch. And basically we're
8 talking about the wastewater rates. This is basically
9 what this is about.

10 Now, we in North Fort Myers have a meter
11 base facility charge. Now, there is no meter. This
12 is just a quote/unquote "figure" as a base rate. So
13 in other words, if you use nothing, if you use no
14 water whatsoever, you're going to pay a sewer
15 facility, base facility charge of \$28.56. In South
16 Fort Myers, that rate -- now mind you, this is still
17 Florida Cities Water -- same meter size for the water
18 and everything, they pay \$14.56. Now, wait a minute.
19 Something's not right here. This is the same company
20 servicing both. We don't have the -- I don't think we
21 even have the quality of water that probably the
22 people in South Fort Myers have. Then the rate per
23 gallonage charged, based on the water usage was how
24 they determine what they are going to charge us for
25 the sewer rate -- in the North Fort Myers area, per

1 gallonage charged per thousand gallons, we pay \$5.15.
2 In South Fort Myers they pay \$2.69. This is the same
3 Company. Okay.

4 Now, just as a point of comparison, I called
5 other local utilities and Gulf Environmental, which
6 serves the San Carlos area in Estero, which is south
7 of Fort Myers. Their base rate for their sewer charge
8 is \$12.15, which is comparable to Florida Cities on
9 their south side, and their rate per thousand gallons,
10 up to a 12,000 maximum is \$3.32. Mind you, ours is \$5
11 and something.

12 Now, the city of Fort Myers, which is --
13 encompasses the part on the other side of the bridge
14 before you get to South Fort Myers, they have a base
15 rate of \$5 for that same -- if they have the same
16 water size, and their water usage -- sewer usage up to
17 10,000 gallons is \$5 per 1,000, but they have a
18 maximum and they said it all depends on the meter, it
19 depends on the usage and it depends -- they had a lot
20 of variances. And I had asked them to send me the
21 information because they said they had a lot of
22 different -- they did not send it to me. And I was
23 disappointed because I did want some comparisons to
24 work with.

25 In the city of Sanibel, which is, you know,

1 an island -- mind you the effort that must go into
2 water and wastewater and treatment there is probably
3 more extensive than it is for us. But they have one
4 flat fee that they charge their residents, \$35 a
5 month. That's it. They said there is -- they didn't
6 service the water, they just handle the sewer
7 treatment and everything, and that's their base rate
8 and they pay quarterly in the city of Sanibel.

9 North Fort Myers Utility, which is the other
10 utility in North Fort Myers that has sewer treatment
11 residential service, they have -- for all meter sizes,
12 their base rate is \$10.98, which, again, we're paying
13 almost \$30, and their gallonage charge is \$3.98 per
14 1,000 gallons up to ten thousand maximum.

15 So it's like -- ours stands out like a sore
16 thumb. And for the service we are not getting, the
17 quality of water we're not getting, the care they are
18 not providing the citizens of North Fort Myers -- I
19 mean one of the testimonies -- I don't know if the
20 lady is here, she was a widow the last time -- used \$5
21 worth of water, yet had almost a \$60 bill.

22 Another point that I wanted to consider for
23 the people is the fact that, you know, like you say
24 fixed incomes, their increase that they got way back
25 was more than enough to suffice for a long, long, long

1 time to come. And they have not proven or shown the
2 citizens of North Fort Myers any -- they have not
3 given us anything back in return.

4 What I want to see, and I want for every
5 resident of North Fort Myers, they have been giving us
6 a 42-cent per bill rebate -- I'm not even sure for
7 what. I mean, that does nothing. When I'm looking at
8 an \$80 to \$90 bill every month for my water usage, and
9 I'm the family of four, and I don't feel -- I mean
10 when I lived on the other side of 41 where I had the
11 other utility, my water rate was less than half of
12 this. It's a sad, sad thing that this could happen.

13 First of all, the thing that they lost the
14 case, I don't know what they are presenting before the
15 Court of Appeals for the Public Service Commission.
16 Like was said, we don't know what they are providing
17 or what they are presenting because we can't counter.
18 We can't say -- we can't argue it because we don't
19 know what they are trying to tell you. They are going
20 to expand this, put these -- one of the things we got
21 a couple of months ago, they are going to be doing
22 galvanized piping and stuff. Excuse me, what did you
23 do with the profit you got way back then? Because
24 they did not do what they were supposed to do, that's
25 not any problem. That's not their problem. We have

1 been paying that money month after month after month
2 to get quality water we're not getting. And that
3 water -- someone else had said that the tank that
4 holds it, when it gets full they just dump it and
5 start over again because it's not -- the people are
6 trying to conserve their water. Well, okay. So what
7 do we do? We're paying for the water they are dumping
8 all over the ground? I mean that's not right either.

9 I think what we need to see is the Public
10 Service Commission stand up to the Court of Appeals.
11 You people are there for us. You people need to be
12 there for us. And you people need to say we want to
13 see that rate cut in half. They want to see our bills
14 half of what they are. And, in fact, I would like to
15 see a rebate for the last -- since '92, '93, whenever
16 they had that big rate increase -- that 134% or
17 whatever they got, they shouldn't have gotten. I mean
18 our rate, like I say, is double South Fort Myers. And
19 we have been paying it. We shouldn't be.

20 I would like to see a refund to the
21 people -- maybe a year's worth with no charge. I
22 don't know. I know it's ridiculous, but what they are
23 asking for is ridiculous too. And how they can get
24 away with going ahead and putting in -- filing for
25 appeals for what reason I don't know. And like I say,

1 I have -- originally I'm from New York state. And our
2 Public Service Commission, when the people protested
3 about utility rates, the Public Service Commission
4 stepped in. They went and they investigated. They
5 had investigators. They went in and they actually
6 went and fired the top people of some of the
7 utilities. Because it's not workers. You can't blame
8 the people going around reading the meters. We're
9 not. We're not faulting them. It's not their fault.
10 But the upper management of Florida Cities Water
11 obviously are pocketing it or -- they certainly are
12 not putting it back to the people. If they were, they
13 would not be asking for increases. The few residents
14 that we are in our area, to be paying the kind of
15 rates that we're paying is abhorrent. Absolutely.
16 It's frustrating and it's not fair.

17 And I would like to see the Public Service
18 Commission fight for the people of this area because
19 we -- and we have been -- we have come out here in
20 full force many times and we've written letters. And
21 like I say, I don't have access to everything you
22 people do. You know what they are doing. You know
23 what they are saying. You don't see what we see. You
24 don't live in the area. You don't taste the water,
25 drink the water. Sometimes it's brown. Sometimes it

1 will even come out brown. Why? We don't know.

2 Sometimes the --

3 **COMMISSIONER GARCIA:** Are you getting brown
4 water, ma'am? I'm sorry, I'm over here. Are you
5 getting brown water? Maybe we should have our Staff
6 go and --

7 **WITNESS BRILLHART:** Right now, no. But I
8 have had instances where you turn on the water and
9 it's definitely not clear, and there is -- there's
10 discoloration. I think what we need to do is show
11 them -- in other words, like I say, they have been
12 fined. They have been fined and fined more than once
13 for violations for not doing what they were supposed
14 to do. So I would like to see them forced into
15 cutting back our rate at least 50%. (Applause)

16 Absolutely. Thank you.

17 **CHAIRMAN JOHNSON:** Thank you. Any
18 questions?

19 **MR. MCLEAN:** No, ma'am.

20 **MR. JAEGER:** No questions.

21 **CHAIRMAN JOHNSON:** Thank you for your
22 testimony.

23 **WITNESS BRILLHART:** Thank you.

24 **MR. MCLEAN:** Citizens call Cheryl Walla.

25

1 **CHERYL WALLA**

2 was called as a witness on behalf of the Citizens of
3 the State of Florida and, having been duly sworn,
4 testified as follows:

5 **DIRECT STATEMENT**

6 **WITNESS WALLA:** I have some information that
7 I have copies of. Should I hand that out now? It's
8 something I'm going to be talking about.

9 **COMMISSIONER GARCIA:** Let me see if I can
10 help you. (Commissioner hands out documents.)

11 **WITNESS WALLA:** My name is Cheryl Walla.
12 1750 Dockway Drive, North Fort Myers, 33903. I'm a
13 customer of Florida Cities Waters. I had highlighted
14 my copy so some of it is darkened, but that's the
15 important numbers, too.

16 I want to thank the Commissioners for coming
17 to Fort Myers today and the people appreciate that
18 you're here.

19 I must tell you I was pleasantly surprised
20 when I was reading Florida Cities Water Company's
21 witnesses' testimony, for instance, Mr. Acosta's and
22 Mr. Cummings'. Because the testimonies for this
23 hearing was called to make new evidence on the used
24 and useful issue. And, frankly, their evidence, or
25 lack thereof, new evidence, was nothing really that

1 wasn't already presented or known already.

2 Under the used and useful issue, "used"
3 meaning put to use regularly, consistently, and
4 "useful" meaning beneficial, serviceable and
5 functional, you cannot put their testimonies into the
6 equation. For example, their max month average daily
7 flow is not used regularly, therefore, cannot be used
8 in the numerator of the equation for used and useful
9 for the entire year.

10 I'm going to speak on Mr. Acosta's remand
11 testimony. Specifically regarding Page 2, Line 4. I
12 don't know if you want to go to that or you want me to
13 just go ahead.

14 Mr. Acosta uses the word "ignored" when
15 describing --

16 **COMMISSIONER GARCIA:** Hang on one second,
17 Ms. Walla. If you're going to go directly to his
18 testimony, let me have a chance to look at what you're
19 citing to. Is it in his direct you said?

20 **WITNESS WALLA:** Yes.

21 **CHAIRMAN JOHNSON:** Page 2, Line 4?

22 **WITNESS WALLA:** Page 2, Line 4.

23 **COMMISSIONER GARCIA:** I'm sorry. Okay.

24 **WITNESS WALLA:** I'm also going to be talking
25 about his remand and Mr. Cummings' regular testimony.

1 Mr. Acosta uses the word "ignored" when
2 describing the PSC determination of percent for the
3 numerator when, in fact, the average daily flow max
4 month was used with the other 11 months' flows to
5 determine the average annual daily flow. It was not
6 ignored. So to allude that the September '94 peak
7 flow was not used as a contributing factor in the
8 numerator of used and useful simply is not a fact.
9 Also, Page 2, Line 14.

10 **MR. GATLIN:** Madam Chairman, may I inquire
11 of the Commission for a moment?

12 Ms. Walla is a party. She's been a party to
13 this proceeding from the very beginning. And parties
14 were supposed to file prepared testimony at the
15 appropriate time. And I do not have copy of her
16 prepared testimony, or of any of her testimony, and I
17 think that is a violation of the rule.

18 **COMMISSIONER GARCIA:** Mr. Gatlin, I didn't
19 see her as a party in the prehearing on this.

20 **MR. GATLIN:** She's a party, and has been a
21 party, since the beginning. I have no notice that she
22 has withdrawn as a party. I still serve documents on
23 her as a party.

24 **CHAIRMAN JOHNSON:** And you're objecting to
25 her testifying?

1 **MR. GATLIN:** Yes. I'd like to have a copy
2 of the testimony; like every other party has to do is
3 file testimony.

4 **CHAIRMAN JOHNSON:** Objection is overruled.
5 I'm going to allow her to complete her testimony.

6 **WITNESS WALLA:** Thank you. I've lost my
7 place.

8 Okay. Also on Page 2, Line 14, the
9 inevitable peaks are also accounted for in the yearly
10 average inflows that the plant experiences. In fact,
11 in the test year '94, nine out of the 12 months'
12 average flows were below the then rated capacity of
13 1 million gallons per day allowed. Whereas, only
14 three months were at capacity or just above. I'm
15 talking about the test year that's used for the used
16 and useful calculation.

17 Those three months being August, September
18 and October, right in the middle of our rainy season,
19 and also not strange to anyone who has studied the
20 peak months of this test year, '94, is that eight out
21 of the ten years used in the chart provided by Florida
22 Cities shows that their peak month flows fall in our
23 rainy season period.

24 Now, what conclusion can be drawn from that?
25 Is it possibly inflated flows from I&I? Now, that

1 chart, I've given you a copy of that for your
2 information.

3 **MR. GATLIN:** Mr. Chairman, this witness is
4 giving opinion testimony, giving technical testimony,
5 and we are not prepared and cannot respond to it.
6 This should have been filed as testimony so that we
7 could have filed responses if it could have been
8 filed. She's been instructed time and time again to
9 abide by the rules that every other party has to abide
10 by. There's no way we can respond to this today. You
11 know, this is a very serious violation of our rights
12 in this case.

13 **CHAIRMAN JOHNSON:** I'm going to allow her to
14 continue to provide her public testimony. She's
15 participating as a customer and she's testifying
16 before us. We allow other customers to prepare
17 written comments. To the extent you need to have time
18 to respond, we have technical hearings today and
19 tomorrow, and your witnesses can be allowed to react
20 to they would to any other public customer that
21 participates.

22 **MR. GATLIN:** I understand your ruling, Madam
23 Chairman. Of course, I'll abide by it, but I don't
24 think that's sufficient.

25 **CHAIRMAN JOHNSON:** Okay. That's been noted

1 for the record. But I will allow her to testify and
2 to provide these documents. Ms. Walla.

3 **WITNESS WALLA:** Thank you.

4 My next comments are on the rebuttal
5 testimony of Mr. Acosta. Specifically, Page 2, Line
6 10 through 12.

7 **COMMISSIONER GARCIA:** The mikes -- I'm over
8 here -- the mikes are really bad. You need to speak
9 right into the mike. You said what page?

10 **WITNESS WALLA:** Okay. Page 2, Line 10
11 through 12.

12 **COMMISSIONER GARCIA:** Okay. Thank you.

13 **WITNESS WALLA:** Once again, the peak flows
14 are included in the averaging of the 12 month flows
15 and are recognized for ratemaking purposes. Then on
16 Page 6, Line 2 through 3, Mr. Acosta is talking about
17 the Florida Department of Environmental Protection;
18 that they wouldn't allow the plant to be permitted at
19 any higher capacity. FDEP would not allow plant to be
20 permitted at any higher capacity because of discharge
21 limitations into the Caloosahatchee River and reuse
22 not because of plant in-service or in-place
23 limitations.

24 We also have on Page 7, Line 14 through 21.
25 This generic analysis does not take into account the

1 fact that flows were all treated to FDEP standards in
2 test year '94, even though the flows were above
3 permitted capacity in three of the months.

4 Page 8, Line 7 through 21. Here again
5 Mr. Acosta claims the average annual daily flow does
6 not include peak flows, when, in fact, when averaging
7 the 12 months, average daily flow max month was
8 included. How can you average the year without
9 including all 12 months and including the peak month,
10 September '94?

11 Now, this is in testimony of Mr. Cummings'.
12 It deals with his exhibit TAC-1, and it's quite
13 lengthy, his exhibit. In all of Mr. Cummings
14 designing aspects of the plant, his considerations,
15 for example the NAOH requirements, methanol feed
16 requirements, aeration equipment and sludge storage
17 volume, et cetera, he considers winter, summer, peak
18 and average figures so to suggest that average daily
19 flow max month is not considered in the averaging for
20 this design capacity is wrong.

21 On Page 6, Lines 19 through 21 -- 23 --

22 **COMMISSIONER GARCIA:** Mr. Cummings'
23 testimony?

24 **WITNESS WALLA:** Yes, sir. Once again
25 Mr. Cummings states, only short-term variations can be

1 handled by the plant concerning effluent treated
2 properly. This is regarding the exhibits I gave you
3 for their September '94 peak month usage, their
4 monthly operating report, and their general
5 information report.

6 If you recall, which this is subject to
7 check, of course, April 25th, 1996, our hearing,
8 Page 631, Lines 19 through 22, are already in the
9 record. Mr. Cummings considers short-term variations
10 to be a day, when in the test year, September 1994,
11 which contain max month peak flows. There were 29
12 days straight that were above 1 million gallons per
13 day, the permitted capacity at the time, and all
14 effluent was treated within FDEP parameters of what is
15 acceptable as far as BOD, TSS, total nitrogen and
16 total phosphate. And that's all on those reports that
17 I handed you.

18 And to check that they are all in FDEP
19 parameters, Page 12, Lines 5 through 13, FDEP maximum
20 concentrations in milligrams per liter of effluent are
21 listed there, and that's in Mr. Cummings' testimony.

22 In conclusion, the average annual daily flow
23 takes into consideration the max month average daily
24 flow. And although Florida Cities Water Company has
25 once again gone through reams and reams of paper, and

1 racked up thousands of dollars in attorney fees, which
2 by the way are not prudent attorney fees, they've
3 offered nothing new in proof and evidence in their
4 argumentative testimony to this Public Service
5 Commission.

6 I'd like to say to the people, you should
7 get up here and speak your mind. This hearing is for
8 us. We're paying everybody here. Get up here and
9 speak your mind. Thank you.

10 **CHAIRMAN JOHNSON:** Thank you, Ms. Walla.
11 Any questions for, Ms. Walla?

12 **MR. JAEGER:** She handed out three sheets of
13 paper. Did she want to make them an exhibit or is
14 that just informational purposes?

15 **CHAIRMAN JOHNSON:** With the other exhibit we
16 put that in the correspondence side of the record. I
17 guess we should do the same with these.

18 **WITNESS WALLA:** Okay.

19 **CHAIRMAN JOHNSON:** We did give the Court
20 Reporter copies? Yes. Thank you.

21 Any questions of Ms. Walla?

22 **MR. GATLIN:** I have a question or two.

23 **EXAMINATION**

24 **BY MR. GATLIN:**

25 Q Have you withdrawn as a party from this

1 proceeding?

2 A I didn't know that I had to withdraw. I
3 haven't included myself in any prehearing conferences,
4 any prefiled testimony. I thought that these
5 testimonies here were public record. It didn't matter
6 if I had --

7 Q But have you withdrawn as a party?

8 A No. Did I have to?

9 Q Did you file -- didn't you file prepared
10 testimony in the earlier portion of the proceeding?

11 A I did in the hearing in 1996, yes, I did. I
12 did not file testimony in the District Court of
13 Appeals case.

14 Q I was asking about the Commission
15 proceeding.

16 **COMMISSIONER GARCIA:** Hang on, Mr. Gatlin.
17 Let me ask our attorney since I don't know. Is this
18 the same case? At least since I didn't see Ms. Walla
19 in my Prehearing Order, I assumed that she wasn't a
20 party to this case.

21 **MR. JAEGER:** I believe the way it works, she
22 has forfeited her right to put on other -- you know,
23 like if she wanted to call witnesses, she could not.
24 But she hasn't forfeited her right as being a customer
25 of this utility. And I think as a customer she could

1 always testify.

2 **COMMISSIONER GARCIA:** Mr. Gatlin's alluding
3 that he somehow has received some unfair surprise here
4 because Ms. Walla simply is a thorough customer. I
5 thought we were looking at -- that was a case that
6 clearly was finished and we're taking up a separate
7 testimony here on a separate issue.

8 **MR. JAEGER:** I believe she can testify as a
9 customer, and she just cannot -- her deal as a party,
10 she would be able to cross examine or put on issues by
11 cross examining witnesses or bringing her own
12 witnesses, but I think she can always testify as a
13 customer.

14 **MR. GATLIN:** Commissioner Garcia, my
15 position is that this is the same proceeding, as I
16 understand it. It's a continuation of the same
17 proceeding. And as a party, her responsibility was
18 either to inform the other parties that she's
19 withdrawn as a party, which I'm sure Mr. McLean could
20 have advised her to do, or she could have filed
21 testimony, like other parties have had to do.

22 If I'm understanding that she's withdrawn
23 now as a party, it's a surprise to me and has caused
24 some problems for my client.

25 **MR. McLEAN:** Commissioner, it shouldn't be

1 that much of a surprise since Ms. Walla neither
2 appeared at the prehearing conference, was excused
3 from it, nor did she file a prehearing statement.
4 Here's a situation which you're flirting with here, I
5 think. You make all of the testimony and all the
6 details of the rate case available to the customers
7 before the case. And customers may well analyze that
8 and bring some interpretations to you. If you rule --
9 and, incidentally, there's already been a ruling on
10 this issue. But if you rule the way that Mr. Gatlin
11 is urging you to read it, it seems to me like you'll
12 disfranchise their opportunity to comment on the
13 testimony.

14 Now, Mr. Gatlin has this point, and that is
15 this lady is a special customer. She intervened
16 before and she hasn't withdrawn. Well, she has done
17 everything but withdrew. She is essentially -- she is
18 disabled in all material respects from participating
19 in the case the way a party participates, and that's
20 not a surprise to Mr. Gatlin. Certainly he knows
21 that.

22 Ms. Walla has been a very active participant
23 all along and has contacted our office and asked me
24 what the best way was for her to make her views known.
25 And I have advised her that she always has the right

1 to testify before the Commission as any other customer
2 would. And it seems very odd to me because the
3 argument Mr. Gatlin makes is that she's somehow -- she
4 has a lesser opportunity to testify as a customer
5 because she intervened in the earlier portions of the
6 case. And, for example, had we withdrawn, had
7 Ms. Walla withdrawn as a party before the prehearing
8 conference, the situation would be exactly the same as
9 it is today. She would be able to respond just like
10 any other customer can to the written aspects of the
11 case. So I don't see the prejudice.

12 **CHAIRMAN JOHNSON:** Do you have other
13 questions, Mr. Gatlin?

14 **MR. GATLIN:** Yes, I do.

15 **Q (By Mr. Gatlin)** Are you an engineer,
16 Ms. Walla?

17 **A** No, I'm not.

18 **Q** Do you have any training as an engineer?

19 **A** I feel I do now.

20 **Q** From these hearings?

21 **A** From your hearings, from trying to find out
22 the facts about your company.

23 **Q** From any other source other than these
24 hearings, do you have any training as an engineer?

25 **A** No, sir.

1 **Q** Well, other than this case, have you ever
2 participated in a Public Service Commission
3 proceeding?

4 **A** No, I have not.

5 **Q** Have you ever been accepted as an expert in
6 any proceeding?

7 **A** No, I have not.

8 **MR. GATLIN:** That's all I have.

9 **CHAIRMAN JOHNSON:** Thank you. Any other
10 questions?

11 **MR. McLEAN:** No, ma'am. Thank you.

12 **COMMISSIONER GARCIA:** Ms. Walla, thank you
13 for testifying before us today and thank you for
14 making your issues known to this Commission.

15 **WITNESS WALLA:** Thank you.

16 **MR. GATLIN:** I'd like to move to strike
17 Ms. Walla's testimony as it relates to engineering
18 matters as not being expert in those instances where
19 she gave opinions as to what should or should not or
20 should not have been done as to engineering matters
21 only.

22 **CHAIRMAN JOHNSON:** Motion denied.

23 Any other public testimony?

24 **MR. McLEAN:** No, ma'am. That's the last
25 customer who has signed up to testify.

1 **CHAIRMAN JOHNSON:** Okay. Are there any
2 other members from the public that would like to
3 testify that did not sign up to testify this morning?
4 (No response)

5 Let the record reflect that no additional
6 individuals have stated or indicated that they'd like
7 to testify this morning.

8 I want to thank all of you for coming out
9 this morning. Let me make sure that you all are aware
10 you will have another opportunity this evening at 6
11 o'clock to continue your public statements for those
12 of you who might go home or talk between the break or
13 stay for the technical hearing. If you'd like to
14 share comments with the Commission, we will be here
15 and available at 6:00. We're going to take a short
16 break -- we'll go ahead and go into recess on the
17 customer hearing until tonight at 6:00. We'll take
18 about a ten-minute break, then we'll come back and
19 begin the technical portion of our hearing. And feel
20 free to stay if you'd like to hear the testimony that
21 will be presented by all of the parties.

22 Thank you again for your participation.

23 (Brief recess taken.)

24 - - - - -

25 **CHAIRMAN JOHNSON:** We're going to go back on

1 the record and begin the technical portion of our
2 hearing.

3 I know that when we started earlier, the
4 only individuals that were sworn in were the
5 customers. There were four customers that stood. So
6 at the appropriate time I'll swear in the witnesses.
7 Counsel, are there any preliminary matters?

8 **MR. JAEGER:** Yes. The preliminary matter
9 that I referred to was on December 2nd Staff filed its
10 request to strike a portion of remand testimony of
11 Michael Acosta, and we're asking that Lines 3 through
12 10, Page 10 of the remand testimony be stricken. In
13 those lines he states first the reuse --

14 **CHAIRMAN JOHNSON:** I'm sorry. Could you go
15 back. You said rebuttal?

16 **MR. JAEGER:** It's in the direct portion of
17 his remand testimony, and it's Lines 3 through 10,
18 Page 10.

19 **CHAIRMAN JOHNSON:** Page 10.

20 **MR. JAEGER:** Line 3 through 10.

21 **CHAIRMAN JOHNSON:** Okay. Go ahead.

22 **MR. JAEGER:** As you know, on the reversal
23 and remand from the First DCA they reversed us on our
24 setting of the capacity of the wastewater treatment
25 plant capacity 1.25 million based on average daily

1 flows, and we did that in our order, in order number
2 -- just a second. We issued PSC-98-0509-PCO-SU on
3 April 14th, 1998, and we set the capacity of the water
4 treatment plant at 1.2. The Commission voted to
5 reopen the record for the limited purpose of deciding
6 what flows should be used in the numerator when DEP
7 set the capacity of the plant based on annual average
8 daily flows. That's the only purpose. Plus we
9 recognized there was increased rate case expense. And
10 those were the two main issues we opened the record
11 for.

12 I list in my motion nine issues that were
13 set out in the Prehearing Order, and none of those
14 deal with reuse or the testimony by Mr. Acosta on
15 reuse. Staff believes this testimony is totally
16 irrelevant, was not a part of the reversal of the
17 First District Court of Appeal, and, therefore, should
18 not be left in the record.

19 **CHAIRMAN JOHNSON:** Okay. Mr. Gatlin.

20 **MR. GATLIN:** Thank you. Prior to the
21 Southern case, Southern States case, from the DCA that
22 Mr. Acosta refers to in that testimony which is
23 Page 10, Line 3, the Commission interpreted the
24 statute to mean that used and useful applied to reuse
25 just as any other facilities. In the Southern States

1 case, which was the case -- order was entered
2 June 10th, 1998 the District Court interpreted the
3 statute to mean that reuse facilities were special and
4 distinct, and that if the investment in those
5 facilities were prudent, they were to be considered
6 100% used and useful. That opinion came down since
7 the final Commission order in this case, the Florida
8 Cities case, and, therefore, it is our position that
9 that's controlling.

10 And the courts have held, particularly in
11 the Sugarmill Woods Civic Association case versus
12 Southern States, that when there's an intervening
13 change in statute or an intervening controlling court
14 opinion, that that becomes the law that has to be
15 followed. So I don't know whether Mr. Jaeger may be
16 technically right. There's no issue that says reuse
17 facilities are 100% used and useful. And I don't know
18 that it makes any difference. The Court has said they
19 are. And I would assume that the Staff would
20 recommend to the Commission that you follow what the
21 Court has said and recognize them as 100% used and
22 useful.

23 The question that is asked Mr. Acosta is
24 please set forth the manner in which used and useful
25 should be determined in this case. And he correctly

1 notes that the Court has ruled that reuse is 100%. I
2 think to answer the question that was posed to him he
3 has to say that. He has to say the reuse is 100% and
4 then go on to the question about annual average day
5 and the max day/month kind of question. But I don't
6 see the particular point in striking the testimony.
7 He's only reciting what is a fact that has to be
8 considered when making a determination of used and
9 useful.

10 **CHAIRMAN JOHNSON:** Okay. Staff.

11 **MR. JAEGER:** Chairman Johnson, the Utility
12 appealed this order way back a couple of years ago.
13 And we were only reversed on those two issues that I
14 mentioned. And we've taken care of one. And now it's
15 like they've had their appeal and all we have is the
16 one reversal that we're looking at. And now it's like
17 they are wanting to take another look at this appeal
18 that they've already had one shot at. I think we've
19 been reversed on just one issue that remains and that
20 this reuse issue is not a part of that.

21 **CHAIRMAN JOHNSON:** Let me ask you a
22 question. With respect to the first sentence, the
23 interpretation of what happened in the Southern States
24 Utilities versus Florida Public Service Commission
25 case. I don't know -- and I will rule at the end of

1 the argument -- but it strikes me that this is sort of
2 a statement of law, an interpretation of law. And I
3 don't know if he would be the appropriate person to
4 speak to statements of law in his prefiled testimony.
5 So that is one thing.

6 The other is that to the extent that it is a
7 question of law, is this appropriate for him to
8 raise -- for Mr. Gatlin to raise in his brief -- see,
9 I don't know the status of the law. Mr. Gatlin is
10 saying from a legal perspective this is the law and
11 that this happened between an appeal in a case, and
12 that under -- you know, under general legal principles
13 this should apply. Could that argument be made in the
14 brief?

15 **MR. JAEGER:** I believe it could clearly be
16 made as a legal argument, yes. And it is a legal
17 question as to what happens when there's an
18 intervening case during the pendency of this appeal.

19 **CHAIRMAN JOHNSON:** Okay. Mr. Gatlin.

20 **MR. GATLIN:** Madam Chairman, he's not
21 offering an opinion as an attorney, he's representing
22 to you what he understands the case to be. And he's
23 simply saying when you calculate used and useful in
24 response to the question at the top of the page that
25 you have to take into account what the District Court

1 of Appeals said in that case. And, you know, I don't
2 think it would -- it's possible that the Staff would
3 recommend to the Commission that the Commission ignore
4 that case when it makes the determination in this
5 case.

6 **MR. McLEAN:** Just a brief notation. Mr.
7 Gatlin noted that the Southern States case was cited
8 somewhat earlier than we got together on this case.
9 But the fact is the prehearing conference in this case
10 in which Commissioner Garcia presided, the Southern
11 States case had certainly been decided by then. And I
12 think the test whether any testimony is proper or not
13 is whether it is probative of any contested issue in
14 the case. And as Mr. Jaeger points out there are
15 eight or nine contested issues, and this testimony
16 doesn't go to any of them. I don't know that it's
17 been stricken as a necessary remedy because I'm not
18 sure what Mr. Gatlin is suggesting that you do with
19 this testimony. It won't help you decide any of the
20 enumerated issues.

21 So I think it's essentially irrelevant. If
22 it were live testimony I would certainly move to
23 strike it and I'd test the witness and I'd ask you to
24 test the witness to say what issue does that go to?
25 And it doesn't go to a contested issue so far as I can

1 tell.

2 **MR. GATLIN:** I think that's right. It
3 doesn't go to a contested issue. The Court has said
4 that reuse facilities shall be 100% used and useful as
5 in the calculation of used and useful for the
6 investment of the utility. And I don't think there's
7 any question that's what the case says. I don't think
8 anybody would contest that.

9 I'm simply saying he's simply reciting that
10 that's one of the things that you have to do in his
11 opinion in determining used and useful, is first, you
12 have to recognize reuse facilities as a 100% used and
13 useful pursuant to that court case.

14 **CHAIRMAN JOHNSON:** Okay. I'm going to grant
15 the motion, Staff's Motion to Strike, Lines 3 through
16 10 on Page 10 of Witness Acosta's direct testimony on
17 the grounds of relevance. It doesn't go to a specific
18 issue that was posed. And additionally, to the extent
19 this case does have some relevancy to the law that
20 applies, I think, Mr. Gatlin, you'll have the
21 opportunity to raise that in your legal brief.

22 **MR. GATLIN:** Madam Chairman, we'd still like
23 to make a proffer of this testimony, that it remain in
24 there.

25 **CHAIRMAN JOHNSON:** Yes, sir. Are there any

1 other preliminary matters?

2 **MR. JAEGER:** Mr. McLean, did you have any
3 preliminary matters?

4 **MR. McLEAN:** I'm sorry. Yes. Only to say
5 that Mr. Bidy had a conflict, of which I was not
6 aware at the prehearing conference, and I would like
7 him to be able to be called tomorrow. I think
8 Commissioner Garcia alluded to that a little earlier.
9 But he'll be here at about 10:15 in the morning if
10 that's okay. I've discussed that with the parties
11 individually and I did not draw an objection to it.

12 **CHAIRMAN JOHNSON:** Then we'll note that for
13 the record, and Mr. Bidy will be taken out of order
14 no earlier than tomorrow at 10:15 a.m.

15 Mr. Gatlin.

16 **MR. GATLIN:** We have, and it's reflected in
17 the Prehearing Order, we have a witness to take out of
18 order today, Mr. Harley Young from DEP.

19 **CHAIRMAN JOHNSON:** He needs to be taken out
20 of order?

21 **MR. GATLIN:** Yes. His order would be at the
22 end of the rebuttal. He's only available today. I've
23 discussed that with the parties and I think
24 Commissioner Garcia has recognized that in the
25 Prehearing Order.

1 **CHAIRMAN JOHNSON:** Will do. Any other
2 preliminary matters?

3 **MR. GATLIN:** Can you give us any estimate of
4 what kind of schedule you're going to follow as far as
5 lunchtime or breaks or that kind of thing?

6 **CHAIRMAN JOHNSON:** What I'm anticipating,
7 unless we get off to a very slow start is going for a
8 couple of hours, maybe about 2:00, taking a very short
9 lunch, about 30-minute lunch, and then going for
10 another couple of hours, but giving individuals the
11 opportunity to break for dinner before the 6:00
12 hearing.

13 **MR. GATLIN:** That's very helpful. Thank
14 you.

15 **CHAIRMAN JOHNSON:** Uh-huh. Any other
16 questions? Could the witnesses please stand.

17 (Witness collectively sworn.)

18 **MR. GATLIN:** Are you ready?
19
20
21
22
23
24
25

MICHAEL ACOSTA

1
2 was called as a remand witness on behalf of Florida
3 Cities Water Company and, having been duly sworn,
4 testified as follows:

DIRECT EXAMINATION

5
6 **BY MR. GATLIN:**

7 **Q** Would you please state your name and
8 address?

9 **A** My name is Michael Acosta. Address 4837
10 Swift Road, Suite 100, Sarasota, Florida.

11 **Q** By whom are you employed?

12 **CHAIRMAN JOHNSON:** Mr. Acosta -- I
13 apologize, Mr. Gatlin. Could you get right up on the
14 microphone.

15 **WITNESS ACOSTA:** I just pulled it forward.

16 **CHAIRMAN JOHNSON:** Okay.

17 **Q** **(By Mr. Gatlin)** By whom are you employed
18 and in what capacity?

19 **A** I'm employed by Florida Cities Water Company
20 as vice president of Engineering and Operations.

21 **Q** Did you prepare for presentation here today
22 prepared testimony consisting of 12 pages?

23 **A** I did.

24 **Q** If I were to ask you those questions that
25 are set forth in that prepared testimony, would your

1 answers be the same as those set forth in that
2 prepared testimony?

3 A They would. I have a couple of
4 typographical corrections to make.

5 Q Would you give us those?

6 A Sure. On Page 7, Line 1, the word "sever"
7 should be "severe". On Page 11, Line 10, the word
8 "tree" should be "three". And on Page 11, Line 12,
9 the final word in there, in that paragraph, the "g"
10 should be stricken, so it would be "within."

11 One final one that is already stricken, but
12 just for the record, Page 10, Line 21, the word
13 "under" at the end of that line is already stricken,
14 but shouldn't be there at all.

15 Q Does that complete your corrections?

16 A That's correct.

17 Q Did you have with your testimony three
18 exhibits, one which is Page 6 of 7 of Waterway Estates
19 Advanced Treatment Plant Permit Application indicated
20 as MA-1, and a Design of Municipal Wastewater
21 Treatment Plant Manual of Practice No. 8, Volume 1,
22 Water Environmental Federation, Page 74, MA-2, and a
23 letter to FDEP (Edwards) to the FCWC (Overton)
24 requiring submission of construction/expansion permit
25 application 11-9-92, MA-3. And Chapter 62-600.405 FAC

1 MA-4?

2 A That's correct.

3 MR. GATLIN: Madam Chairman, we'd like to
4 have those identified as one composite exhibit.

5 CHAIRMAN JOHNSON: It will be identified as
6 Composite Exhibit 1.

7 MR. JAEGER: Chairman Johnson, we have 32
8 exhibits from the prior proceedings, and I would
9 suggest that we continue numbering them sequentially
10 and start with 33 since this is a reopening of the
11 record.

12 CHAIRMAN JOHNSON: That will be fine. Then
13 strike that and we will identify this as Composite
14 Exhibit 33. Michael Acosta's Composite Exhibit 33
15 direct.

16 (Exhibit 33 marked for identification.)

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1 **FLORIDA CITIES WATER COMPANY**
2 **REOPENING OF RECORD WATERWAY ESTATES**
3 **ADVANCED WASTEWATER TREATMENT PLANT**
4 **DOCKET NO. 950387 - SU**
5 **REMAND TESTIMONY OF MICHAEL ACOSTA**

6
7 Q. Please state your name and business address.

8 A. Michael Acosta, 4837 Swift Road, Suite 100, Sarasota, Florida 34231.

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

10 A. I am employed by Florida Cities Water Company (FCWC) as Vice
11 President, Engineering & Operations.

12 Q. Please describe your educational background and professional
13 qualifications.

14 A. I received my Bachelor of Science degree in Environmental
15 Engineering from the University of Florida in 1985. I have been a
16 registered professional engineer in the State of Florida since 1991.

17 Q. Please describe your professional engineering experience concerning
18 wastewater treatment facilities.

19 A. I have 13 years of continuous experience in the planning, design,
20 permitting and construction of wastewater treatment facilities. I have
21 been involved in the planning, design, permitting and construction of
22 11 upgrades and/or expansions of wastewater treatment plants. This
23 includes completion of capacity analysis reports, all aspects of
24 process design, advanced treatment process design, effluent disposal
25 including reuse of reclaimed water and land disposal systems and all

1 associated permitting.

2 Q. What is the purpose of your testimony?

3 A. The purpose of my testimony is to explain why average daily flow in
4 the maximum month (ADFMM) should not be ignored by the Public
5 Service Commission (Commission) in determining the percentage of
6 the Waterway Estates Advanced Wastewater Treatment Plant
7 (Waterway) that is used and useful.

8 Q. Please explain the Commission's traditional method of determining
9 used and useful for wastewater treatment plants.

10 A. The Commission has historically used the ADFMM, for the test year in
11 question, plus the margin reserve flow equivalent divided by the
12 design treatment plant capacity. The formula used is as follows:
13
$$\text{U\&U Percentage} = \frac{\text{ADFMM} + \text{Margin Reserve Flow}}{\text{Design Capacity}}$$

14 The use of ADFMM recognizes the inevitable peaks in treatment plant
15 flows that the plant experiences and that must be treated to water
16 quality standards established by the Florida Department of
17 Environmental Protection (FDEP). The Margin Reserve Flow
18 accounts for the changing demands of existing customers and growth
19 expected within the service area. Finally, the Design Capacity of the
20 plant is the flow at which the plant can consistently meet the water
21 quality standards mandated by FDEP.

22 Q. Did the Commission follow this methodology of using ADFMM in the
23 numerator of its used and useful calculation in Florida Cities Water
24 Company (FCWC), North Fort Myers Division's previous rate case,
25 Docket 910756-SU?

- 1 A. Yes.
- 2 Q. Did the Commission use ADFMM to calculate how much treatment
3 capacity was used and useful in other FCWC rate cases?
- 4 A. Yes. These include, most recently, in re: Application FCWC (Golden
5 Gate Division), 92 F.P.S.C. 8:270, 291 (1992); in re: Application of
6 FCWC (South Ft. Myers System), 92 F.P.S.C. 4:547, 551-552 (1992);
7 and in re: Application of FCWC, (Barefoot Bay Division), 97 F.P.S.C.
8 2:561, 566-68 (1997).
- 9 Q. Did the Commission change its methodology for calculating used and
10 useful for wastewater treatment plant in this docket?
- 11 A. Yes, sometime between the Proposed Agency Action Order and the
12 Final Order in this case the Commission changed the flow used in the
13 numerator of the used and useful formula from ADFMM to annual
14 average daily flow (AADF).
- 15 Q. Do you know why the Commission changed the flow from ADFMM to
16 AADF?
- 17 A. In the Final Order, PSC-96-1133-FOF-SU, the Commission states
18 "The flows to be considered should be annual average flows, as
19 specified in the DEP permit" and "Flows shown in the MFRs for the
20 used and useful calculations are not annual average flows, but instead
21 are average flows from the peak month. These flows do not match the
22 plant design [nor] the permitting considerations in the DEP
23 construction permit. For these reasons, the flows shown in the MFRs
24 are rejected." The Commission apparently believes that because the
25 basis of design of the plant is AADF that all peak flows should be

1 ignored. The Commission has also relied upon a change in the permit
2 application form used by FDEP for wastewater treatment facilities as a
3 reason to change the methodology.

4 Q. Has the FDEP changed the method by which plant capacity is
5 determined?

6 A. No.

7 Q. What did the FDEP do regarding operating permits that is different
8 than before?

9 A. In approximately 1991, the FDEP changed the permit application form.
10 This change required the permittee to designate the basis of design,
11 as AADF, ADFMM, three-month average daily flow or other of the
12 treatment plant, Exhibit___ (MA-1) shows the designation on the
13 Waterway permit application. This change bears no relationship to,
14 nor does it change, the capacity of Waterway or any other wastewater
15 treatment plant.

16 Q. Prior to the new form designating basis of design, what was the basis
17 of design used for Waterway and where was it noted.

18 A. The basis of design for Waterway and almost all domestic municipal
19 wastewater treatment plants is AADF. This was typically noted in the
20 engineering report that was submitted with the permit application.

21 Q. Why was AADF and not ADFMM chosen as the basis of design?

22 A. As in the previous answer, AADF is almost exclusively the basis of
23 design flow for domestic municipal wastewater treatment plants. A
24 basis of design of ADFMM is usually reserved for highly seasonal
25 treatment plants, plants whose flow is received over a condensed

1 portion of the year such as a campground or recreational vehicle park.
2 In these cases, flow may not be received by the plant year round and
3 the use of AADF would give an artificially low flow. The use ADFMM
4 as the basis of design does not preclude the use of peak flow in the
5 design of the treatment plant. Indeed, peak flows must be
6 incorporated and would be calculated in a similar fashion as if the
7 basis of design were AADF. The peak flow design for plant using
8 ADFMM as the basis of design would approximate a peak day or peak
9 several days. In designing Waterway, using AADF, peak flows were
10 accounted for as discussed in more detail in the remand testimony of
11 Thomas A. Cummings in this docket.

12 Q. Did the FDEP change in format change the plant capacity of
13 Waterway prior to expansion.

14 A. No.

15 Q. Did the FDEP permit application form change affect the design of the
16 expansion of Waterway?

17 A. No, since the basis of previous design of Waterway was already
18 AADF, the design was unaffected by the change.

19 Q. Should the Commission change the traditional method of determining
20 used and useful so that the flows used in the numerator of the used
21 and useful formula (that is, use of ADFMM or peak flows) depends
22 upon (and "matches") the flows shown on the FDEP permit as the
23 permitted plant capacity (that is AADF or ADFMM)?

24 A. No, peak flows (ADFMM) should always be considered. While the
25 basis of design flow may be AADF, the hydraulic component is but one

1 of the considerations in the design of a wastewater treatment plant.
2 The biological process design is equally, if not more, important than
3 the hydraulic component. To look at only the AADF without regard for
4 peak flows misses the important biological process design, hydraulic
5 peaks and other important permitting or design considerations. As
6 stated in the recognized authority Design of Municipal Wastewater
7 Treatment Plants, Manual of Practice No. 8, Vol. I, Water Environment
8 Federation, Alexandria, VA, 74 (1992), "Wastewater treatment plants
9 and their processes are commonly discussed and defined in terms of
10 their average day capacity. As a practical matter, average day
11 conditions are points on a curve of events that may not be observed
12 on a daily basis. Sound design practice does not use average day
13 condition for anything except as a convenient point of reference for
14 peaking factors that are actually of interest in the design.

15 Conceptually, preferred practice applies two peaking factors: a
16 hydraulic peak and a process peak." In reality a plant's capacity is its
17 ability to (1) pass a specific instantaneous flow rate (gallon per minute
18 or million gallons per day), (2) satisfy a specific biochemical oxygen
19 demand (pounds per hour or day), (3) remove specific amounts of
20 suspended solids (pounds per day), and (4) remove specific amounts
21 of dissolved mineral and organic compounds (pounds per day).

22 Characterizing capacity in terms of these parameters would be much
23 more accurate but obviously too cumbersome for practical use.

24 Each component and process unit must be designed to meet the
25 expected peak pollutant and hydraulic loading. Failure to select the

1 most ~~sever~~^{severe} combination would result in hydraulic backup in the
2 wastewater collection system or spills from treatment units and/or
3 failure to meet effluent quality standards. Obviously, any of these
4 events is serious since environmental regulations would likely be
5 violated and the ability to provide continuous quality service is
6 jeopardized. Again, from Design of Municipal Wastewater Treatment
7 Plants, Manual of Practice No. 8, Vol. I, Water Environment
8 Federation, Alexandria, VA, 74-75 (1992), "Process design should be
9 based on required performance attainment at maximum process
10 loading conditions. Before Public Law 92-500 (*Clean Water Act*) and
11 its implementing regulations, performance and the loading basis on
12 which performance was to be measured were considered in terms of
13 seasonal or annual average conditions. Now, a minimum definition for
14 this condition of design corresponds with the compliance interval
15 included in the plant's National Pollutant Discharge Elimination
16 System permit. This interval typically represents the maximum month
17 and week period of compliance as noted in Chapter 2." Exhibit
18 33 (MA-2)

19 The Commission's simplistic approach is inappropriate and leads to
20 erroneous conclusions that could jeopardize both continuous quality
21 service and the environment.

22 Q. Is it good engineering practice to design all the components of a
23 wastewater treatment plant on an AADF basis?

24 A. No. By the very definition of average, if all components were designed
25 on an annual average basis, peak flows could not be contained and

1 peak organic loadings could not be treated to the water quality
2 standards required in the FDEP permit. It should be noted that peak
3 flows and peak organic loadings do not necessarily occur
4 simultaneously. A peak organic loading can upset the biological
5 process very quickly, much quicker than a peak flow. If treatment
6 plants were designed to only meet the AADF any flow in excess of the
7 AADF would result in overflows or in effluent that did not meet all
8 water quality standards.

9 Q. Do you agree with the Commission that the type of flows used in the
10 numerator and denominator of the used and useful formula must both
11 be peak flows or both be annual average flows, that is, that the flows
12 must "match"?

13 A. No, I do not. A determination of used and useful must be concerned
14 with the maximum flows the treatment plant may experience in order to
15 allow for such an event. This is the only way to ensure that safe,
16 adequate service is continuously provided. In Florida, large seasonal
17 population fluctuations contribute to widely varying use patterns for
18 water, and therefore wastewater, service. Using the AADF completely
19 misses these seasonal fluctuations. The use of AADF is analogous to
20 a person having one foot in freezing water and one foot in boiling
21 water and saying that on average the person is comfortable.
22 Obviously, this analogy shows that widely varying peaks are ignored
23 by an average. The same is true of the use of AADF. A treatment
24 plant design based on solely the AADF would lead to a plant that
25 could not provide service during peak flow and/or peak organic

1 loading periods. There is no "matching" used in the design of a
2 wastewater treatment plant. To use such a concept in the
3 determination of used and useful for a plant is improper. A plant
4 designed on an AADF basis must also be able to contain and treat the
5 ADFMM when it arrives. To ignore this basic design principle is
6 simply wrong.

7 Q. Does the margin reserve calculation allow any recognition into rate
8 base of facilities required to accommodate maximum flows
9 experienced in connection with current customers?

10 A. Generally no.

11 Q. Please explain your answer.

12 A. Assuming existing customers do not increase their usage, margin
13 reserve would be used by future customers. The maximum flows
14 associated with current customers would not be accounted for within
15 the margin reserve calculation.

16 Q. Does AFPI allow any recognition into rate base of facilities required to
17 accommodate maximum flows experienced in connection with current
18 customers?

19 A. No, it does not.

20 Q. Please explain your answer.

21 A. AFPI does not allow facilities into rate base. AFPI is associated with
22 prudently constructed plant that is deemed non-used and useful plant,
23 which is associated with future customers. As such, AFPI makes no
24 accommodation for maximum flows experienced in connection with
25 current customers.

1 Q. Please set forth the manner in which used and useful should be
2 determined in this case.

3 A. First, the reuse facilities used and useful determination should be
4 determined separately from the rest of the facilities, pursuant to the
5 Court's interpretation of 367.0817 in Southern States Utilities v.
6 Florida Public Service Commission, et. al., Case No. 96-4227 (June
7 10, 1998) (Fla. 1st DCA 1998). These facilities as well as the
8 Lochmoor site were found by the Commission to have been prudently
9 incurred (Order No. PSC-96-1133-FOF-SU, pg. 39). They must
10 therefore be considered 100% used and useful in rate base.
11 Second, use of the ADFMM in the numerator and the plant capacity of
12 1.25 mgd, as ordered by the court in Florida Cities Water Co. v.
13 Florida Public Service Commission, 705 So. 2d 620 (Fla. 1st DCA
14 1998) results in a 100% used and useful determination:
15 $\%U\&U = [(1.1753 + 0.0573) / 1.25][100] = 98.61$, say 100%

16 Q. What would the result be if the Commission used AADF in the
17 numerator of the equation instead of ADFMM?

18 A. Use of AADF in the numerator would yield a used and useful
19 determination of 80%, as follows:

20 $\%U\&U = [(0.9421 + 0.0573) / 1.25][100] = 79.94$, say 80%

21 It is interesting to note that the AADF during the test year was ~~under~~
22 less than the permitted capacity of the plant (0.9421 mgd compared to
23 1.0 mgd) yet FDEP, under the requirements of 62-600 FAC, required
24 that the plant be expanded Exhibit ____ (MA-3). Using the
25 Commission's methodology (AADF), the calculated used and useful

1 percentage for the Waterway Estates Advanced Wastewater
2 Treatment Plant prior to expansion would have 99.94%. Clearly, any
3 additional plant capacity would yield a result of less than 100 percent
4 used and useful. This is a clear indication that the use of AADF does
5 not recognize what is happening at the treatment plant (peak flows)
6 and is not consistent with Chapter 62-600 FAC.

7 Q. Please describe the requirements of Chapter 62-600 FAC as it relates
8 to wastewater treatment plant planning and construction.

9 A. Chapter 62-600.405 requires utilities to initiate planning via an initial
10 Capacity Analysis Report (CAR) upon the ~~five~~³-month average daily
11 flow exceeding 50% of the permitted capacity of the treatment plant. If
12 the CAR indicates that capacity will be equaled or exceeded within~~g~~
13 the next five years preliminary design must be initiated. If the capacity
14 will be equaled or exceeded with the next four years plans and
15 specifications for the necessary expansion must begin to be prepared.
16 If capacity will be equaled or exceeded within the next three years a
17 complete construction permit application must be submitted to the
18 FDEP within 30 days of submission of the CAR. If capacity will be
19 equaled or exceeded within the next six months an operation permit
20 application for the expanded facility must be submitted to the FDEP.

21 Exhibit 33 (MA-4)

22 Q. Does Commission's used and useful percentage (80%) accurately
23 represent the percentage of facilities which are needed to provide
24 service to current customers?

25 A. No, it does not.

- 1 Q. Please explain your answer.
- 2 A. Under this determination, sufficient capacity to accommodate the
3 maximum month flows is not recognized. The plant is required, by
4 regulation, to not only accept these flows but also to biologically treat
5 the flows sufficiently to meet effluent water quality standards
6 established and enforced by the FDEP. A plant designed both
7 biologically and hydraulically to accommodate AADF without regard to
8 peak flows will not meet these requirements.
- 9 Q. Does this conclude your testimony?
- 10 A. Yes.

1 **MR. GATLIN:** Mr. Acosta is available for
2 questions.

3 **CHAIRMAN JOHNSON:** Public Counsel.

4 **MR. McLEAN:** Yes, ma'am.

5 **CROSS EXAMINATION**

6 **BY MR. McLEAN:**

7 **Q** Good morning, Mr. Acosta.

8 **A** Good morning.

9 **Q** Mr. Acosta, you hold a degree in engineering
10 from a school up in Gainesville; is that right?

11 **A** Yes. It's "The University of Florida."

12 **Q** It was on the tip of my tongue.

13 Did you study used and useful as a concept
14 in engineering school, sir?

15 **A** Not used and useful as a concept. The
16 components of used and useful certainly.

17 **Q** I see. When you took -- you took a
18 professional engineering exam and passed it as well?

19 **A** That's correct.

20 **Q** Did it have any element of used and useful
21 on it?

22 **A** To the extent that plant capacity is a
23 determination of -- in the design of wastewater
24 treatment plants it's on there, but not a specific
25 direct used and useful PSC calculation, no.

1 Q Not the regulatory concept of used and
2 useful, correct? That was not on the PE exam.

3 A Correct.

4 Q When did you learn about what it is and how?

5 A Generally, sometime after I came to Florida
6 Cities in 1985. The exact time frame of introduction
7 to used and useful I'm not exactly sure. Sometime in
8 the last 13 years.

9 Q How did you become aware of the used and
10 useful concept?

11 A Probably through some cases here in South
12 Fort Myers, in particular, when I was regional
13 engineer in Fort Myers for Florida Cities as they
14 related probably to Fiesta Village.

15 Q Would that have included conversations with
16 other persons engaged in the used and useful as an
17 endeavor?

18 A It would have included conversations of used
19 and useful of particular plants that Florida Cities
20 had, yes.

21 Q But in a general sense, your education, if
22 you will, on the issue of used and useful came not
23 from formal education but from conversations you had
24 had and exposure you had had to the issue, rather than
25 formal education. Is that the case?

1 A On used and useful as a concept, as I said
2 before, certain approaches used within the used and
3 useful determination are engineering terms that
4 should -- and under 471 Florida Statutes -- only be
5 determined by professional engineers.

6 Q Let me ask you to listen to this sentence
7 and see if you agree with it: I believe that the
8 concept of used and useful, while it may be an
9 engineering one, as it is applied to a ratemaking
10 function, that it takes an intertwining of expertise
11 and experience and background to come to a conclusion
12 as it relates to ratemaking. Do you agree with that
13 statement, sir?

14 A Generally, yes.

15 Q Thank you. Let's move to your testimony, to
16 the lines of Page 4 of your direct rebuttal -- I'm
17 sorry, remand testimony. Your direct testimony.
18 Page 4, Line 21 -- I'm sorry, Line 24, where you say:
19 "highly seasonal." I believe what you're saying
20 there, and tell me if I have the correct impression,
21 is that the design basis for the Waterway Estates
22 utilities is average annual daily flow, and that you
23 recognize the design basis for some plants might be
24 average daily flow maximum month; is that correct?

25 A They can certainly -- there are four boxes

1 to be checked on the permit applications, so there can
2 be varying bases of design for a wastewater treatment
3 plant, yes.

4 Q And it is typical, I think -- I have the
5 impression from your testimony is that it's typical
6 that the box for ADFMM, that is average daily flow
7 maximum month, is checked for utilities which are
8 highly seasonal; is that correct?

9 A That would be a more appropriate basis of
10 design for a plant that had a highly seasonal flow.

11 Q Are you recommending to the Commission that
12 the Waterway Estates plant has to deal with a highly
13 seasonal flow?

14 A To the extent that the flows vary by 20 and
15 30% over the course of the year, yes.

16 Q The way you use "highly seasonal" there on
17 Line 24, you're asserting that that highly seasonal is
18 the justification for checking ADFMM in the box, but,
19 in fact, they didn't check that box, did they, sir?

20 A No.

21 Q Are you saying they checked the wrong box?

22 A No.

23 Q Okay. So is it true then, can I conclude
24 from that that the Florida Cities Company Waterway
25 plant is not a plant which can be characterized as

1 highly seasonal for the purposes you're discussing
2 there?

3 A The average daily flow in the max month, as
4 a basis of design as I used it here, envisioned a
5 plant similar to -- I believe on the next page in the
6 testimony, where it talks about an RV park, where flow
7 may only be coming to that plant on an intermittent
8 basis. So I think that ADFMM could be used at
9 Waterway Estates without any problem.

10 Q Are you saying, then, that that the Waterway
11 Estates plant is highly seasonal to the same extent
12 that one of those mobile home parks to which you make
13 reference is?

14 A No, I didn't say that.

15 Q Okay. Turn to Page 5 and then Line 19.
16 You're asked a question, should the Commission change
17 the traditional method of determining used and useful
18 and so forth. I take it by your answer that you
19 accept the word -- use of the word "traditional" in
20 the question. That is, you believe, too, don't you
21 that the Commission does, in fact, have a traditional
22 method of determining used and useful and so forth as
23 it continues in that question, correct?

24 A To the extent that the -- that we're talking
25 about annual average and annual average daily flow in

1 the max month, yes. In all of the cases that I'm
2 aware of involving Florida Cities, the Commission has
3 used annual average daily flow in the maximum month as
4 the numerator of the used and useful formula.

5 Q Are you advocating to the Commission in any
6 way that it should rely upon tradition alone in making
7 the decision that faces them to today?

8 A I think the Commission needs to recognize
9 what they have done historically and think about why
10 they are changing, yes.

11 Q Would you take the same position with
12 respect to imputation of CIAC to margin reserve? That
13 they look at what they have done historically and
14 change now?

15 A Sure.

16 Q They should observe tradition in both
17 instances, then?

18 A No. They shouldn't observe tradition in
19 imputation. Been down that road.

20 Q Tradition is good on this question, but bad
21 on imputation, correct?

22 A That's correct.

23 Q On Page 8, Mr. Acosta, you invite the
24 Commission's attention somewhat away from hydraulic
25 loading and to the issue of biological loading. Is it

1 fair for me to say that?

2 A Page 8.

3 Q I'm sorry. Did I not give you a correct
4 reference?

5 A If you'll give me the page and line again.

6 Q I'm sorry. I wrote down the number of my
7 question rather than the page. (Pause)

8 Mr. Acosta, do you begin to discuss the
9 issue of biological loading in contrast with hydraulic
10 loading in your testimony?

11 A I inject a certain portion of the biological
12 process, yes.

13 Q What page to you begin that endeavor on?
14 (Laughter)

15 A I believe Page 6, Line 2. The sentence
16 begins "The biological process design."

17 Q Yes, sir. Is it fair for me to interpret
18 what you say there that you're inviting the
19 Commission's attention somewhat over the mere measure
20 of hydraulic capacity into the area of biological
21 loading; is that correct?

22 A I think that the biological process
23 associated with the wastewater treatment plant is
24 equally important to the hydraulic loading of that
25 plant, yes.

1 Q Now, when you check one of those boxes on
2 the applications, the one that said average annual
3 daily flow, that is an assertion by the Company that
4 it intends to design and operate a plant that has the
5 capacity of 1.25 million gallons a day average annual
6 daily flow, correct?

7 A That's correct.

8 Q Is there a similar box of sorts that you
9 check to show the Florida Department of Environmental
10 protection what the biological loading capacity of the
11 plant is?

12 A No, there's not a box. You showed that
13 through the Preliminary Engineering Design Report and
14 then through the formal design of the wastewater
15 treatment plant, but that's certainly something that
16 they consider.

17 Q In which they are interested. But for
18 purposes of sizing that plant and for your
19 certification to the DEP of what size the plant is
20 intended to be, there is no reference to biological
21 loading, is there?

22 A No, I disagree. There certainly is a
23 reference to it. The DEP is not going to permit, at
24 least in my opinion, a plant at 1.25 without knowing
25 what its biological loading characteristics are.

1 There's not -- I don't believe that that can be done.

2 Q By reference to the only place in the DEP
3 permit application where it mentions 1.25 gallons per
4 day average annual daily flow, there is no reference
5 in that part of the application to the biological
6 capacity of the plant, is there?

7 A There's not a reference there. But as I
8 said, the preliminary engineering design report is an
9 integral part, an attachment to the permit application
10 and would be deemed -- the permit application would be
11 deemed incomplete without that Preliminary Engineering
12 Design Report.

13 Q And if I went to that portion of the report
14 I wouldn't find any language to deal with average
15 annual daily flows, would I?

16 A You may indeed find what the basis of design
17 is, yes.

18 Q Are you saying I may find that?

19 A In all likelihood you will find that. The
20 two are not independent of each other. They must be
21 included together. Obviously, the loading is
22 associated and biological are expressed in milligrams
23 per liter so when we multiply those numbers together
24 to get a total pounds into the plant, it has to be
25 multiplied by some flow basis. So yes, at some point

1 it's there.

2 Q And it's your testimony that the two are
3 closely linked together; is that correct? Is that
4 what I just heard you say?

5 A No, that's not what you hear me say. What I
6 said is that the two must be considered in concert
7 together to come up with the ultimate design of a
8 plant. You cannot design a plant only on flow without
9 consideration of the biological and organic loading to
10 the plant. And similarly you can't design only an
11 organic loading without a flow component.

12 Q When you prepare your capacity analysis
13 report to the Department of Environmental Protection,
14 is there any consideration of biological loading in
15 the rule that requires you to submit that report?

16 A No. To the extent that the plant is meeting
17 the permit parameters associated with the particular
18 flow at that point, DEP has a monthly report that says
19 you are or are not meeting that organic load. So they
20 would be under a different impression. They would
21 understand the biological load from those reports, not
22 from the capacity analysis report.

23 Q But the capacity analysis report is that
24 procedure, if you will, which permits DEP to know how
25 much of your plant is necessary at any particular

1 portion and how much longer it might be before you
2 need to build another one. Isn't that what it's for?

3 **A** I think the Capacity Analysis Report is
4 generally a planning document for -- in essence to do
5 what you're saying, to see when capacity is likely to
6 be exceeded at the plant. Now, capacity is a
7 two-headed monster. There's an organic capacity that
8 can be exceeded without the hydraulic capacity being
9 exceeded. That's not common, but that does happen.

10 **Q** Do you have a copy of the rule which
11 requires a Capacity Analysis Report?

12 **A** I believe it's one of my exhibits.

13 **Q** Hang on a second. I'll pass out one so we
14 can all look at it.

15 **A** I've got it. (Counsel hands out documents.)

16 **CHAIRMAN JOHNSON:** Did you want this
17 identified?

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

19 **CHAIRMAN JOHNSON:** Identify it as
20 Exhibit 34.

21 **MR. McLEAN:** 34, Commissioner?

22 **CHAIRMAN JOHNSON:** Uh-huh.

23 (Exhibit 34 marked for identification.)

24 **Q** **(By Mr. McLean)** Mr. Acosta, does that look
25 like the rule you and I have just been talking about?

1 A 62-600.405?

2 Q Yes, sir.

3 A Yes.

4 Q Now, with respect -- I don't want to go over
5 each one of these paragraphs, Mr. Acosta, but I
6 suppose we could. Let's look at Paragraph 3, if you
7 will. I want to ask you, Paragraph 3 is the primary
8 triggering mechanism. Doesn't that pretty much tell a
9 utility whether they need to file a Capacity Analysis
10 Report?

11 A Yes. When -- in essence, when your
12 three-month average daily flow exceeds 50% of your
13 plant capacity.

14 Q Is there any mention of biological loading
15 in Paragraph 3?

16 A No.

17 Q In fact, if you wanted to look at the
18 Capacity Analysis Report and see whether there's any
19 reference to biological loading, you'd have to look
20 down perhaps to Paragraph 6; is that correct?

21 Let me ask the question differently.
22 Arguably Paragraph 6 has so many parameters that you
23 have to report in the Capacity Analysis Report that it
24 could conceivably include things such as biological
25 loading, correct?

1 A It's certainly included in the Capacity
2 Analysis Reports that we have filed.

3 Q But with respect to the trigger, an item
4 which tells Florida Cities Water Company whether it
5 needs to file a Capacity Analysis Report, there's no
6 reference to any biological loading in there, is
7 there?

8 A No. The only trigger on the initial filing
9 is hydraulic component.

10 Q The hydraulic component. And that is
11 similar pretty much to the Commissions' used and
12 useful analysis, isn't it? It concerns itself only
13 with hydraulic loading, doesn't it?

14 A Yes. Its current methodology does.

15 Q Mr. Acosta, I don't want to test your memory
16 too hard, but Schedule F-6 is the portion of the --
17 page of the MFRs that shows the -- I'm sorry, the used
18 and useful computation and analysis to the Commission
19 in its MFRs; isn't that correct?

20 A As I recall that's the correct schedule,
21 yes.

22 Q Can you say whether there's any reference to
23 biological loading on that particular computation?

24 A Not that I recall, no.

25 Q You don't make that analysis, though, did

1 you? You didn't submit that page for the purposes of
2 the Commission -- for the purposes of your application
3 before the Commission, did you, sir? Schedule F-6?

4 A Did I prepare the schedule?

5 Q Yes, sir.

6 A I think in concert with Mr. Coel we did.

7 Q Mr. Coel is the sponsor of that exhibit?

8 A Mr. Coel, I believe, is to the extent that
9 he sponsors the MFRs, yes. And he was the preparer of
10 that particular sheet of paper and the Lotus
11 spreadsheet.

12 The plant capacity component, and the annual
13 average daily flow, as well as the max month daily
14 flow are either based on my determination of the plant
15 capacity from a professional engineering standpoint,
16 and the -- that's the plant capacity component -- the
17 average daily flow and the max month and the annual
18 average daily flow, are matters of historical record.

19 Q Did you sponsor the exhibit or did Mr. Coel
20 sponsor the exhibit?

21 A I believe that Mr. Coel did.

22 Q He's not a registered professional engineer
23 is he, Mr. Acosta?

24 A You'll have to ask him. Not that I'm aware
25 of.

1 Q Okay. Thank you, sir.

2 Do you happen to have a copy of

3 Mr. Cummings' testimony before you, sir?

4 A I do.

5 Q I want to give everybody time to catch up to
6 get to Mr. Cummings' testimony, but I want to ask you
7 a question about Page 16, Line 21 of Mr. Cummings
8 testimony. Do you have it, sir?

9 A Page 16, Line 21.

10 Q Yes, sir.

11 A Yes, I do.

12 Q He says there "The flow rate used in the
13 design is not the annual average flow of 1.25 million
14 gallons a day, but a daily peak flow rate that is
15 twice the annual average rate." Is that what he says?

16 A That's what those words say. If you read up
17 above, he's talking about the ability of the tanks to
18 pass a hydraulic flow rate without overflowing at any
19 point or facility.

20 Q It is your continuing thesis that the
21 Commission's new, if you will, methodology of
22 computing used and useful ignores peaks; is that
23 correct?

24 A In the ratemaking prospect, it does.

25 Q Yes, sir. And, of course, you're saying

1 that the numerator of the load over capacity equation
2 neglects peaks, right?

3 A No, that's not what I'm saying. To the
4 extent -- as Ms. Walla pointed out, and I don't
5 disagree with her, the computation of annual average
6 certainly includes the max month within that
7 computation. Not any question about that. However,
8 the plant capacity, the max month must be dealt with
9 on that particular day when it arrives at the plant.
10 You can't store it. You can't save it for later use,
11 if you will, or for later treatment in this case.

12 So to the extent that that plant must be
13 able to handle that flow, for ratemaking purposes that
14 flow is initially -- not initially, but is ignored by
15 dilution on a low -- on a day when the flow is less
16 than that peak number.

17 Q I want to ask you about the equation that's
18 before the Commission, the equation -- or the fraction
19 that the Commission decided on was average daily flow
20 maximum month. I'm sorry. Strike that.

21 The formula that you would like them to use,
22 and the one you suggested at the hearing, was average
23 daily flow maximum month over annual average daily
24 flow, correct?

25 A That's correct.

1 Q Now, the average annual daily flow
2 represents the design capacity of the plant; is that
3 right, sir?

4 A Actually let me strike my previous answer.
5 What I have suggested to them is that they use the
6 average day and the max month, divided by the plant
7 capacity, which has been determined at 1.25.

8 Q Okay. That's close enough for me.

9 The capacity that's represented here on
10 Page 16 isn't reflected in that fraction, is it, sir?

11 MR. GATLIN: Which fraction?

12 MR. McLEAN: I think it's my turn to ask the
13 questions, actually.

14 Q (By Mr. McLean) Do you understand the
15 question?

16 MR. GATLIN: I object to the question in
17 that it's not clear as to which fraction Mr. McLean is
18 talking about.

19 MR. McLEAN: I wonder if the witness knows
20 which one?

21 A (Witness continues) Which fraction?

22 Q I've got you. The one for the used and
23 useful which you are suggesting the Commission use.
24 The one you just described as average daily flow
25 maximum month over average annual daily flow?

1 A That's not what I described.

2 Q Well, you can describe it again, please.

3 A I described annual average daily flow in the
4 max month divided by the plant capacity of 1.25.
5 That's what I described.

6 Q I accept that. Now, looking to a capacity
7 number -- well, let me ask you that fraction. The
8 bottom of that fraction, known as the denominator, is
9 the plant capacity; is that correct?

10 A That's correct.

11 Q And what we're doing here is trying to
12 compare the load that that plant faces over its
13 capacity to deal with a load, correct? That's what
14 used and useful is, isn't it?

15 A That's what that fraction is. Used and
16 useful may be something different.

17 Q It's what it's intended to be.

18 A I think that that's what it's intended to
19 be. I agree with that.

20 Q And you say that the numerator that our side
21 is suggesting to the Commission, which is average
22 annual daily flow, ignores peaks, correct?

23 A To the extent that the peak monthly flows or
24 the peak daily flows are diluted by the low flow days,
25 yes.

1 Q I would like to know if the denominator
2 seems to include peaks. And a piece of information
3 about that, I think, is what Mr. Cummings say on
4 Page 16, Line 21. Mr. Cummings seems to say that this
5 plant is capable of accommodating a peak of
6 2.5 million gallons per day, doesn't he?

7 A I believe that that's correct. On a
8 hydraulic basis.

9 Q That 2.5 number doesn't find it's way into
10 the denominator of this fraction, does it?

11 A I disagree with that. I think it is in
12 there. A properly designed plant must be, must be
13 capable of handling the peak hydraulic and peak
14 organic loads. You could not permit the plant at 1.25
15 MGD were it not for its capability to pass a higher
16 hydraulic load.

17 Q 100% more, correct.

18 A At least 100%. And in most cases it's
19 greater than that.

20 Q Okay.

21 Q Mr. Acosta, would you turn to Page 9,
22 Line 12?

23 A Mr. Cummings' or mine?

24 Q I'm sorry. Your testimony, sir.

25 A Okay.

1 MR. GATLIN: What was that cite?

2 MR. McLEAN: Page 9, Line 12.

3 A I'm there.

4 Q (By Mr. McLean) Yes, sir. Again it's your
5 thesis that the computation which the Citizens, and
6 perhaps the Staff, urge upon the Commission ignores
7 the Utility's obligation to treat peaks, correct?

8 A As I have previously stated what I mean that
9 to be.

10 Q And the Citizens have advanced a theory that
11 margin reserve was justified by this Company and
12 others, perhaps by the Florida Water Association as
13 well, as margin reserve being partially capable of
14 handling those peaks for which you say you received no
15 compensation, correct?

16 A I think that what -- if you go back to my
17 testimony in the original hearing in this case, that
18 margin reserve -- you'll see that I believe I used the
19 definition of margin reserve to mean two things. One
20 is potential changing demands of existing customers,
21 and to accommodate growth within some specified
22 reasonable time period.

23 Q Can I interpret those changing demands of
24 existing customers to be peaks to some extent?

25 A They could go either up or down, obviously.

1 Q Are you -- by your testimony today before
2 the Commission are you saying that the varying
3 demands, or the peak demands, of the customers are not
4 the justification for margin reserve?

5 A Ask that question again.

6 Q Yes, sir. Are you saying by your testimony
7 today before the Commission that the peak demands
8 placed on the system by customers are no longer
9 justification for margin reserve?

10 A I don't think I ever asserted that. I think
11 that my testimony at the earlier hearing said the
12 changing demands of existing customers.

13 Q Well, should the Commission compute --
14 should the Commission look for justification for
15 margin reserve to the peak demands on the plant by the
16 customers?

17 A No -- well, partially. The Commission
18 should recognize that the existing customers can
19 change their flows from one minute to the next, one
20 day to the next, and obviously year to year. That
21 needs to be recognized in margin reserve for existing
22 customers. For instance, if the capacity of the plant
23 is 1 MGD this year, and the customers put a demand of
24 1.5 on it, and they are going to stay at that elevated
25 level, you're obviously not going to be within the

1 same ballpark on being able to treat those flows or
2 provide water in whichever case.

3 So to the extent that those changing demands
4 can go up and down, it should be included in margin
5 reserve. Margin reserve should also include an
6 allowance for growth within the service area that
7 would be expected over some reasonable period of time.

8 Q So you're not talking about -- when you say
9 the changing demands of customers, existing customers,
10 you're not talking about the daily diurnal ebb and
11 flow of the load on the plant. You're talking about
12 long-term trend where the customers, existing
13 customers' demand actually increases; is that what
14 you're saying?

15 A I think it can be both. I think that -- but
16 generally the longer term is what I'm talking about.

17 Q Well, in your testimony you say the maximum
18 flows associated with current customers would not be
19 accounted for within the margin reserve calculation.
20 Now, it seems to me like you have excluded the maximum
21 flows associated with current customers from your
22 calculations of margin reserve; isn't that correct?

23 A No. I think that you didn't read the
24 beginning of the answer. The answer in full says
25 "Assuming existing customers do not increase their

1 usage, margin reserve would be used for future
2 customers. The maximum flows associated with the
3 current customers would not be accounted for within
4 the margin reserve calculation."

5 Q So then is it true that the peaks that you
6 say that the used and useful function neglects because
7 of its average-over-average calculation are, in fact,
8 included in margin reserve, at least to some extent?

9 A I don't know that I've ever seen anybody
10 break them out. I think that the argument from the
11 industry and that I made at hearing here have been
12 that margin reserve should include both a potential
13 increase in demand by existing customers, some
14 parameter associated therewith, perhaps based on a
15 percentage of the current flows or -- and, excuse me,
16 not or -- a growth allowance for some reasonable
17 period of time.

18 Q So you agree with our side then that margin
19 reserve does, in fact, take care of some of those
20 peaks that you say that the average-over-average flows
21 neglect?

22 A I don't know if that's the current position
23 of the Office of Public Counsel. It certainly was not
24 at the hearing that we had a couple of years ago.

25 Q Suppose I should thank you for agreeing with

1 us.

2 MR. McLEAN: That's all questions I have.

3 CROSS EXAMINATION

4 BY MR. JAEGER:

5 Q Good morning, Mr. Acosta, or is it
6 afternoon?

7 Mr. Acosta, have you read the positions of
8 the parties as stated in the Prehearing Order?

9 A I think I scanned them. I don't know that
10 "read" is an appropriate word.

11 Q It wouldn't surprise you that all the
12 professional engineers agree that the wastewater
13 treatment plant must be designed to handle peak flows
14 whether they be hourly, daily or monthly, would it?
15 That's pretty standard. The wastewater treatment
16 plant must be capable of handling peak flows, and that
17 professional engineers agree with that?

18 A No, that doesn't surprise me.

19 Q Okay. Now, the choice of permitted
20 parameters, specifically the period of average flows,
21 is selected by the utility in their permit
22 application; is that correct?

23 A The basis of design?

24 Q The permitted parameters, you check a box on
25 the application with DEP and that's where you check

1 annual average daily flow?

2 A I think that that's the basis of design.
3 That is not a permitted parameter.

4 Q Okay. But that is selected by the utility?

5 A The basis of design is, indeed, is selected
6 by the utility.

7 Q And DEP will not -- would not approve that
8 if the plant was not -- it was not appropriate; is
9 that correct?

10 A I believe that DEP would question it if
11 there were sufficient reason to question it, yes.

12 Q But in this case they did approve annual
13 average daily flow, did they not?

14 A I believe that's a fair characterization.

15 Q Now, plant hours of operation and required
16 manpower, is that determined by the permitted capacity
17 or the design capacity?

18 A They are usually one and the same, and they
19 are one and the same in this case. 1.25.

20 Q Okay. Now --

21 A I guess what I'm saying is there's not a
22 difference between the permitted capacity and the
23 design capacity in this case. And the staffing
24 requirements -- to answer the question further -- is
25 determined by a matrix in the rule. And the rule is

1 an exhibit to my rebuttal testimony.

2 Q Well, would it be to the utility's advantage
3 to get permitted at the lowest average, thereby
4 reducing hours of operation and required manpower?

5 A I don't believe it's to the utility's
6 advantage, no.

7 Q And is that because the costs are going to
8 be passed on to the customers no matter what?

9 A No. No. As we painfully know, all costs
10 are not passed on to the customers no matter what.
11 They are subject to the prudence test associated with
12 the normal hearings, and appropriately so.

13 It's been my experience that regulatory
14 requirements on staffing are not big contentious
15 issues during hearings or rate cases.

16 Q But at a lower capacity, there are lesser
17 staffing, both hourly and manpower staffing; is that
18 correct?

19 A Depending on the category of the plant that
20 could be, yes. In this particular case the staffing
21 of the plant before its expansion was 16 hours per day
22 7 days a week. After its expansion was 16 hours per
23 day 7 days a week.

24 Q Mr. Acosta, on Page 8, Line 9 through 13,
25 that's in your testimony, your remand, you testified

1 that you did not agree that the flows must match; is
2 that correct?

3 A That's correct.

4 Q Going back to your college physics days,
5 would you agree with the statement that if at some
6 stage in a calculation you find an equation or
7 expression has inconsistent units, you know that
8 you've made an error somewhere? Would you agree with
9 that statement?

10 A I'd agree with that statement. I never
11 found that to be the case in this particular issue.

12 The units of flow are volume over time, be
13 they gallons per minute, gallons per day, million
14 gallons per day. And they are expressed the same
15 whether they are for an average day in the max month
16 or an annual average; those are the units of flow.
17 When you divide those out in the used and useful
18 formula you get a dimensionless number that can be
19 multiplied by a hundred to ascertain a percentage. So
20 I would not characterize any dimensional inconsistency
21 associated with dividing max average day and max month
22 divided by the plant capacity expressed in
23 either million gallons per day or gallons per day.

24 Q Okay. I believe the max month average daily
25 flow for the test year was 1.1-some-odd million; is

1 that correct?

2 A It's in my testimony on Page 10, Line 15,
3 1.1753.

4 Q Okay. That was the max month average daily
5 flow; is that correct?

6 A Yes.

7 Q And that's what you want to put in the
8 numerator; is that correct?

9 A That, plus the associated margin reserve.

10 Q Plus the margin reserve. And you're going
11 to put that over the capacity of the million gallons
12 per day, 2.5 million gallons per day?

13 A No. We're putting it over the capacity of
14 1.25.

15 Q I'm sorry, 1.25. Okay. If you divide
16 1.37 -- I'm sorry, 1.7 --

17 A 1.1753.

18 Q Max month average daily flow by 1.25 --

19 A You get a dimensionless number, because both
20 flows are expressed in volume per time million gallons
21 per day. They cancel each other out and you get a
22 dimensionless number. The units are flow, are volume
23 per time.

24 Q For the max month. And I don't see where
25 the max month is being crossed out.

1 A Max month is not a unit. The units of
2 flow -- I have a fluid -- elementary fluid mechanic's
3 book here with me -- the units of flow are volume per
4 time, gallons per day, gallons per minute, those kind
5 of things.

6 Q You stated earlier in your testimony that a
7 plant designed solely upon annual average daily flow
8 would be to a plant that could not provide service for
9 in-peaking flows. Do you remember that?

10 A Well, generally yes.

11 Q Okay. Does the North Ft. Myers wastewater
12 treatment plant have a surge tank?

13 A It has a flow equalization tank, yes.

14 Q Flow equalization tank. What is the purpose
15 of the flow equalization tank?

16 A Flow equalization tanks have multiple
17 purposes. A couple of things you can do a with a flow
18 equalization tank. They are generally designed to
19 eliminate the diurnal flow pattern associated with a
20 particular day's flows. And they will -- you can have
21 a properly designed one would collect wastewater as it
22 came into the plant and pump it out at a constant rate
23 to the biological process for constant treating of
24 biological parameters downstream of that.

25 What that allows you to do generally is to

1 downsize, or make smaller, the treatment tanks'
2 biological process, aeration facilities, filters, all
3 of that stuff can generally be made smaller downstream
4 by the use of that flow equalization tank because you
5 are feeding it at a constant rate. And the tank on a
6 daily basis is taking out those within the day flow
7 pattern, flow changes. You get a peak flow or a peak
8 diurnal flow in the morning when people get up and
9 take a shower, have breakfast. Those kind of things.

10 You get a slug to the plant. It would flow
11 into the flow equalization tank. It would start to
12 fill up. During the period in the afternoon after
13 lunch, the flows tend to slow down and you would be
14 treating more flow than would be coming into the plant
15 during that time, and the flow equalization tank would
16 drop.

17 Again in the afternoon, early evening you'd
18 get another peak coming in and it would fill up. And
19 then during the nighttime hours you would empty the
20 flow equalization tank. That's the primary purpose of
21 a flow equalization tank. They are not designed to
22 hold the wastewater of 30 days' worth of flow.
23 Obviously, if you had a flow equalization tank of that
24 size, it would cover a large part of North Ft. Myers.

25 Q But a flow equalization tank will smooth out

1 or level out the flow peaks or surges and save them
2 for treatment hours later in the day?

3 A Within the day. Within the day I think that
4 that's true. If you do not have an empty flow
5 equalization tank by 6 a.m. the next morning, you
6 don't have a flow equalization tank any longer.
7 You're either going to overflow it or you're going to
8 have to increase the flow out of it to keep it from
9 overflowing. It's good for a day. Not a month. Not
10 a year.

11 If I could get some water from that pitcher.
12 This isn't Florida Cities' water and there's stuff in
13 it. (Indicating)

14 Q You say Florida Cities water does have stuff
15 in it? (Laughter) (Pause)

16 Are you ready?

17 A Yes.

18 Q Okay. If you took the average daily flow --
19 of course, if you divide by 24, you would obtain an
20 average hourly flow; is that correct?

21 A If you take the --

22 Q Average daily flow and divide it by 24,
23 that's just a mathematical --

24 A No. That's not mathematical. You have to
25 take the flow within 24 hours and divide it by 24 to

1 get an average hourly flow. For instance, you do not
2 take the average flow over a year, divide it by 24 and
3 get an average hourly flow. The two numbers are not
4 necessarily the same.

5 Q Okay. But a wastewater treatment plant has
6 daily surges certain hours of the days when there are
7 flows which greatly exceed that hourly average; is
8 that correct?

9 A If I'm understanding you correctly, if you
10 take the -- say the flow to the plant was 1 MGD, you
11 divide that by 24, you get an average hourly flow,
12 whatever that number turns out to be. And you're
13 asking me are there periods during the 24-hour period
14 where that flow exceeds that number? Is that the
15 question?

16 Q Yes.

17 A The answer is yes.

18 Q And a well-designed plant would have to have
19 the capacity to handle those daily surges or peak
20 flows?

21 A A well-designed plant would have to handle
22 all flows to the plant, be they peak hour, peak
23 minute, whatever.

24 Q And even if that plant is permitted on an
25 average daily flow basis, they still have to handle

1 all of those flows?

2 A No different than if it were permitted on
3 any other basis of design such as three month or max
4 month.

5 Q So a well designed plant must be able to
6 handle peak day flows, peak hour flows regardless of
7 the permitted capacity?

8 A I think that all well-designed plants should
9 be able to handle peak flows associated with that
10 particular plant regardless of the basis of design.
11 And it does have something to do with its permitted
12 capacity. Obviously, there is some physical
13 limitation on how much water you can push through a
14 certain size pipe, for instance.

15 **MR. JAEGER:** I have no further questions.

16 **CHAIRMAN JOHNSON:** How much redirect will
17 you have?

18 **MR. GATLIN:** Maybe about ten minutes.

19 **CHAIRMAN JOHNSON:** We'll do redirect.

20 **REDIRECT EXAMINATION**

21 **BY MR. GATLIN:**

22 Q Mr. Acosta, if the record shows that you
23 directly sponsored and supported Schedule F-6 out of
24 the MFRs, would you stand corrected that Mr. Coel
25 sponsored them?

1 A I would.

2 **MR. JAEGER:** Chairman Johnson, I just
3 realized I missed one question I'd like to ask. If
4 Ken would indulge me, I'd like to ask one more
5 question. I'm sorry, Ken.

6 **MR. GATLIN:** Go ahead.

7 **CONTINUED CROSS EXAMINATION**

8 **BY MR. JAEGER:**

9 Q I think I heard you, in questioning -- under
10 Mr. McLean's questioning, that the PSC has always, in
11 cases you were familiar with, used annual average
12 daily flow in the denominator and max month average
13 daily flow in the numerator. Do you remember saying
14 that?

15 A No. If I said that, I misspoke.

16 What the Commission has historically done is
17 used the average daily flow in the max month in the
18 numerator and the permitted plant capacity in the
19 denominator.

20 Q And prior to this case, DEP was not stating
21 in the permit whether it was based on annual average
22 daily flow, three-month average daily flow or max
23 month average daily flow; is that correct?

24 A No, I disagree with that. It's certainly
25 on -- the basis of design is checked, for instance, in

1 the Barefoot Bay case. The basis of design was
2 checked in this case. In fact, it's in the 1989
3 permit that the basis of design is average flow. It
4 doesn't have a little box that says "annual average"
5 but the information was included in the Preliminary
6 Engineering Design Report available as an appendix or
7 an attachment to the permit application.

8 Q But didn't DEP change their rule at the end
9 of '91 and that's when they went to the annual average
10 flow, three-month average daily flow or max month
11 average daily flow?

12 A I think that -- I don't know the exact
13 timing of the DEP rule change, but those three bases
14 of design have been around for time immemorial. I
15 mean, I learned about those in college. They weren't
16 here -- I mean, those didn't get invented in 1991, no.
17 Those have been around for a long period of time.

18 Q But DEP didn't require that in the permit,
19 did it?

20 A There was no box to check but it was
21 included in the Preliminary Engineering Design Report
22 what the basis of design was. You have to have that
23 in order to design a plant.

24 MR. JAEGER: No further questions.

25

1 Q Isn't what your position is that you want
2 the investment that is necessary to treat peak and max
3 flows to be in the rate base?

4 MR. McLEAN: Objection, leading.

5 MR. GATLIN: What was it?

6 CHAIRMAN JOHNSON: There was an objection.

7 He said you were leading.

8 MR. GATLIN: Sure. Was I really?

9 CHAIRMAN JOHNSON: You might want to
10 rephrase it.

11 Q (By Mr. Gatlin) What is the reason that
12 you're asking for a larger percentage to be in rate
13 base?

14 A I believe that the peak flows associated
15 with any particular given wastewater treatment plant
16 must be treated biologically hydraulically and meet
17 all the environmental parameters associated therewith,
18 and should, therefore, be recovered through the rates
19 associated with that particular service territory.
20 The folks within the service territory are generating
21 the flows and should be responsible for paying for
22 those flows.

23 Q In this case -- let me show you the
24 Commission Order PSC-96-1133-FOF-SU, Page 17. If you
25 will look at the bottom of the page, read that

1 sentence there.

2 A Yes. "In part, the above-mentioned \$800,000
3 approximate reduction is due to the elimination of
4 peak flow measurements." Then it goes on.

5 Q That's all you need to read. Does that
6 indicate to you -- could you state whether or not that
7 indicates to you that the Commission, in fact, deleted
8 investment that was attributable to the treatment of
9 peak flows, max flows?

10 A Yes.

11 Q And is it your position that this investment
12 ought to be restored?

13 A Yes.

14 Q You were asked several questions about
15 checking the boxes for the kind of permit for the DEP
16 issuance. What were the other boxes? One was annual
17 average day and one was --

18 A The other options are three-month average
19 daily flow, max month average daily flow, and then
20 there's a box characterized as "Other."

21 Q What would be the capacity of the plant if
22 you checked one of the other boxes?

23 A 1.25 MGD.

24 Q No matter what box --

25 A Regardless of the box that you check.

1 Q Capacity is 1.25?

2 A Correct.

3 Q The checking of the box has no effect on the
4 capacity?

5 A No. It's the basis of design.

6 MR. GATLIN: That's all I have.

7 CHAIRMAN JOHNSON: Okay. Exhibits.

8 MR. GATLIN: I move exhibits, exhibit
9 number --

10 CHAIRMAN JOHNSON: 33.

11 MR. GATLIN: 33.

12 CHAIRMAN JOHNSON: Show that admitted
13 without objection.

14 (Composite Exhibit 33 received in evidence.)

15 MR. GATLIN: And I believe the testimony was
16 inserted.

17 CHAIRMAN JOHNSON: If it wasn't, then it
18 should have been inserted into the record as though
19 read.

20 MR. GATLIN: All right. Thank you.

21 MR. McLEAN: Citizens move Exhibit 34.

22 CHAIRMAN JOHNSON: Show that admitted
23 without objection.

24 (Exhibit 34 received in evidence.)

25 CHAIRMAN JOHNSON: Thank you, Mr. Acosta.

1 We're going to go ahead and take our lunch
2 break now for about 30 minutes. According to my
3 watch. It's 20 to 1:00. We'll reconvene at 10 after
4 1:00.

5 (Lunch recess was taken at 12:20 p.m.)

6 (Transcript continues in Volume 8.)

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